

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY,  
THE TOWNSHIP OF SCHAUMBURG ROAD DISTRICT,  
AND  
THE VILLAGE OF SCHAUMBURG**

This INTERGOVERNMENTAL AGREEMENT (hereinafter referred to as the "AGREEMENT") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY, an instrumentality and administrative agency of the State of Illinois, hereinafter called the "ILLINOIS TOLLWAY", the TOWNSHIP OF SCHAUMBURG ROAD DISTRICT, a body corporate and politic of the State of Illinois, hereinafter called the "TOWNSHIP", and THE VILLAGE OF SCHAUMBURG, a municipal corporation of the State of Illinois, hereinafter called the "VILLAGE", individually referred to as "PARTY", and collectively referred to as "PARTIES".

**WITNESSETH:**

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

WHEREAS, the eastbound and westbound frontage roads along Illinois Route 390 from Springinsguth Road to Wright Boulevard are within the EOWA project limits and will be transferred from the ILLINOIS TOLLWAY to the VILLAGE and TOWNSHIP within their respective jurisdictional limits to occur following the ILLINOIS TOLLWAY assuming jurisdiction of Illinois Route 390 from U.S. 20 to Illinois Route 53 which is anticipated to take place July 1, 2016. The frontage roads and appurtenant features will be improved as requested by the VILLAGE as part of this jurisdictional transfer (hereinafter referred to as the "PROJECT") by making the following improvements:

The scope of work includes improvements to the eastbound and westbound frontage roads along Illinois Route 390 from Springinsguth Road to Wright Boulevard and improvements to the associated traffic signals and lighting. Pavement improvements to the frontage roads include through lane pavement milling and resurfacing (6 inch depth), the milling and overlaying of the shoulders and full depth patching of the pavement and shoulders as needed. The signal heads on traffic signals at the eastbound and westbound frontage road intersections with Springinsguth Road, Rodenburg Road, and Wright Boulevard will be replaced with LED signal heads. The scope of work also includes

converting existing lighting located along the frontage roads to LED lighting, separating the frontage road lighting to its own system, installing underpass lighting on the Illinois Route 390 bridges over Springinsguth Road, Rodenburg Road, and Wright Boulevard, fence removal, and all other work necessary to complete the PROJECT in accordance with the approved plans and specifications; and

WHEREAS, the right of way parcels associated with the existing Elgin O'Hare Expressway frontage roads to be transferred from the ILLINOIS TOLLWAY to the TOWNSHIP and the VILLAGE in accordance with this AGREEMENT are situated along Illinois Route 390 between Springinsguth Road and Wright Boulevard; and

WHEREAS, the ILLINOIS TOLLWAY has improved the westbound and eastbound frontage road pavements between Illinois Route 19 and the westbound Illinois Route 390 exit ramp and between Illinois Route 19 and the eastbound Illinois Route 390 entrance ramp, respectively, as part of a separate EOWA project, and therefore, pavement improvements are not required to be included within these segments as part of the PROJECT; and

WHEREAS, existing access control fencing along the Illinois Route 390 ramps, mainline or detention ponds may be located on the right of way parcels to be transferred from the ILLINOIS TOLLWAY to the TOWNSHIP and VILLAGE and will be the responsibility of the ILLINOIS TOLLWAY; and

WHEREAS, the ILLINOIS TOLLWAY, the TOWNSHIP and the VILLAGE by this instrument, desire to determine and establish their respective responsibilities toward engineering, right of way acquisition, utility relocation, construction, funding and maintenance of the PROJECT as proposed; and

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

WHEREAS, the VILLAGE by virtue of its powers as set forth in the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.* is authorized to enter into this AGREEMENT; and

WHEREAS, the TOWNSHIP by virtue of its powers as set forth in the Township Code, 60 ILCS 1/1-1-1 *et seq.* is authorized to enter into this AGREEMENT; and

WHEREAS, a cooperative Intergovernmental Agreement is appropriate and such an Agreement is authorized by Article VII, Section 10 of the Illinois Constitution and the "Intergovernmental Cooperation Act", 5 ILCS 220/1 *et seq.*

NOW, THEREFORE, in consideration of the aforementioned recitals and the mutual covenants contained herein, the PARTIES hereto agree as follows:

**I. ENGINEERING**

- A. The VILLAGE agrees to perform the preliminary and final design engineering, obtain necessary engineering related survey data, and prepare the final plans and specifications for the PROJECT. During the design and preparation of the plans

and specifications, the VILLAGE shall submit the plans and specifications to the ILLINOIS TOLLWAY for its review and comment at the following stages of plan preparation:

Pre-final

Final

- B. The final approved plans and specifications for the PROJECT shall be promptly delivered to the ILLINOIS TOLLWAY by the VILLAGE.
- C. The ILLINOIS TOLLWAY shall review the plans and specifications which have the potential to impact the ILLINOIS TOLLWAY's maintained highways within twenty one (21) calendar days of receipt thereof. Approval by the ILLINOIS TOLLWAY shall mean the ILLINOIS TOLLWAY agrees with all specifications in the plans, including alignment and location of the PROJECT's improvements which impact the ILLINOIS TOLLWAY's maintained highways. In the event of disapproval, the ILLINOIS TOLLWAY will detail in writing its objections to the proposed plans and specifications for review by the VILLAGE.
- D. Any dispute concerning the plans and specifications shall be resolved in accordance with Section IX of this AGREEMENT.
- E. The VILLAGE agrees to assume the overall PROJECT responsibility, including assuring that all permits and approvals, as may be required by the PROJECT, are secured by the PARTIES hereto in support of general project schedules and deadlines. All PARTIES hereto agree to cooperate, insofar as their individual jurisdictional authorities allow, with the timely acquisition and clearance of said permits and agreements and in complying with all applicable Federal, State, and local regulations and requirements pertaining to work proposed for the PROJECT.

## **II. RIGHT OF WAY**

- A. The ILLINOIS TOLLWAY shall perform all survey work, prepare all parcel plats, establish legal descriptions as necessary, and generally comply with its' written Policies and Procedures for all parcels to be transferred from the ILLINOIS TOLLWAY to the TOWNSHIP and VILLAGE.
- B. The parcels shall be transferred or conveyed by the ILLINOIS TOLLWAY to the VILLAGE following the ILLINOIS TOLLWAY assuming jurisdiction of Illinois Route 390 from U.S. 20 to Illinois Route 53 which is anticipated to take place July 1, 2016, as listed on "EXHIBIT A", attached hereto.
- C. The parcels shall be transferred or conveyed by the ILLINOIS TOLLWAY to the TOWNSHIP following the ILLINOIS TOLLWAY assuming jurisdiction of Illinois Route 390 from U.S. 20 to Illinois Route 53 which is anticipated to take place July 1, 2016, as listed on "EXHIBIT B", attached hereto.

- D. The parcels to be conveyed or transferred from the ILLINOIS TOLLWAY to the VILLAGE and TOWNSHIP are shown on the attached map “EXHIBIT C”, attached hereto.
- E. Any and all right of way acquisition costs, including but not limited to the purchase price, expenses for title research, survey preparation, and appraisal, negotiations, relocation, and court proceedings shall be borne by the transferring PARTY and shall not be subject to reimbursement by the receiving PARTY.
- F. The PARTIES agree to convey fee simple title, or any lesser property interest as may be required for the PROJECT, to the other PARTY. To effectuate the conveyance, the granting PARTY shall execute and deliver a quit claim deed in a form established by the ILLINOIS TOLLWAY.
- G. Unless otherwise agreed, the granting PARTY will provide the receiving PARTY the following documentation associated with the parcels being conveyed:
- Original Title Commitment
  - Plat & Legal Description
- H. The VILLAGE and TOWNSHIP agree to involve the ILLINOIS TOLLWAY in future negotiations for new or modified access control limits adjacent to Toll Highway ramp merge locations within the VILLAGE’s and TOWNSHIP’s right of way conveyed as part of the PROJECT.
- I. The VILLAGE and TOWNSHIP agree to allow the ILLINOIS TOLLWAY access to maintain access control fencing along the Illinois Route 390 ramps, mainline or detention ponds that may be located on the right of way parcels to be transferred from the ILLINOIS TOLLWAY to the VILLAGE and TOWNSHIP at no cost.

### **III. UTILITY RELOCATION**

- A. In the event that any future work proposed by the VILLAGE results in a conflict with the ILLINOIS TOLLWAY’s fiber optic cable system or other ILLINOIS TOLLWAY infrastructure, the VILLAGE shall reimburse the ILLINOIS TOLLWAY for the cost to locate, mark, design, protect, adjust and/or relocate the system.

### **IV. CONSTRUCTION**

- A. The VILLAGE shall advertise and receive bids, obtain the ILLINOIS TOLLWAY’s concurrence as to the amount of bids, award the contract(s), provide construction engineering inspections and cause the PROJECT to be constructed in accordance with the approved plans and specifications, subject to reimbursement by the ILLINOIS TOLLWAY as hereinafter stipulated.

- B. After award of the PROJECT, any proposed deviations from the plans and specifications that affect the other PARTY shall be submitted to that PARTY for approval prior to commencing such work. The PARTY shall review the proposed deviations and indicate its approval or disapproval thereof in writing. If the proposed deviation to the plans and specifications are not acceptable, the PARTY shall detail in writing its specific objections.
- C. After award of the PROJECT, assuming there are no proposed deviations from the plans and specifications that affect the other PARTY, the VILLAGE shall provide no less than five (5) calendar days' written notice to the other PARTY prior to commencement of work on the PROJECT.
- D. The VILLAGE shall require that the ILLINOIS TOLLWAY and TOWNSHIP, and their agents, officers, directors and employees be named as "additional insured" PARTIES in the General Liability Insurance and any other type of insurance coverage that the VILLAGE requires of its contractor(s) and that the ILLINOIS TOLLWAY and TOWNSHIP be added as an additional protected PARTY on all performance bonds required of the VILLAGE's contractor(s). The above referenced insurance requirements must be incorporated into any and all contract(s) and subcontracts for the PROJECT, construction, maintenance, or otherwise, that might be entered into in furtherance of this AGREEMENT. In addition, the VILLAGE must include contractual language in any of its contracts entered into in furtherance of this AGREEMENT requiring its contractor(s) to maintain documentation throughout the duration of this AGREEMENT evidencing the existence of required ILLINOIS TOLLWAY and TOWNSHIP insurance coverage. The required insurance documentation shall include, but not be limited to: copies of policies, certificates of insurance and additional insured endorsements.
- E. The VILLAGE, its contractor, subcontractors or vendor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work by the VILLAGE, its contractor, vendor, his agents, representatives, employees or subcontractors. Work shall not commence until all insurance required by this section has been obtained. All coverage's must be with Insurance Companies with an A.M. Best Company financial strength rating of "A minus" or better.
- F. Scope of Insurance – Coverage shall be at least as broad as:
1. Commercial General Liability – Include coverage for premises and operation, broad form property damage, products completed operations, independent contractor's personal injury liability and contractual obligations. Policy coverage shall be on Insurance Service Office (ISO) occurrence form CG 00 01 12 04 (or a substitute form providing equivalent protection).

2. Business Automobile Liability – Covering owned hired and non-owned vehicles and includes any required uninsured and underinsured insurance coverage for all operators. Policy coverage shall be on the latest filed ISO occurrence form (or a substitute form providing equivalent protection).
  3. Workers’ Compensation Insurance – As required by the Workers’ Compensation Act of the State of Illinois. Contractor may use a Self-Insured plan if the plan is approved by the State of Illinois and certified by the Illinois Workers’ Compensation Commission.
  4. Excess/Umbrella Liability – To apply over the limits and coverage provided through Commercial General Liability, Business Automobile Liability and Employers Liability Insurance. Coverage shall include drop-down provisions if the underlying coverage is exhausted.
  5. Limits of Liability – Limits of liability will be provided for the following provisions, minimum limit requirements shown may be fulfilled with those indicated or the higher limits carried by the Contractor.
  6. Commercial General Liability – Limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual general aggregate. The general aggregate limit shall be endorsed on a per project basis. Products completed operations coverage will be maintained by the Contractor for a minimum of two (2) years following acceptance of work.
  7. Business Automobile Liability – Limit liability of not less than \$1,000,000 combined single limit per accident for bodily injury and property damage per accident.
  8. Excess/Umbrella Liability – In addition to the limits of coverage specified in (1), (2) and (3) above, not less than \$5,000,000 per occurrence and annual aggregate per project will be maintained by the Contractor.
  9. Worker’s Compensation and Employers Liability – Statutory Limits with Employers Liability limit of \$1,000,000 per occurrence.
- G. The TOWNSHIP 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 that affects the TOWNSHIP’s system. The ILLINOIS TOLLWAY 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 that affects the ILLINOIS TOLLWAY’s system. The PARTIES shall assign personnel to perform inspections on behalf of the respective PARTY of all work included in the PROJECT that affects the other PARTIES system, and will deliver written notices to the Chief Engineer of the ILLINOIS TOLLWAY, the Village Manager of the VILLAGE and the Highway

Commissioner of the TOWNSHIP advising the respective PARTY as to the identity of the individual(s) assigned to perform said inspections.

- H. Notices required to be delivered by either PARTY pursuant to this AGREEMENT shall be delivered as indicated in Section IX of this AGREEMENT.
- I. The VILLAGE shall give notice to the ILLINOIS TOLLWAY and to the TOWNSHIP upon completion of 70% and 100% of all PROJECT construction contracts to be funded by the ILLINOIS TOLLWAY, and the ILLINOIS TOLLWAY shall make an inspection thereof not later than seven (7) calendar days after notice thereof. If the ILLINOIS TOLLWAY does not perform a final inspection within seven (7) calendar days after receiving notice of completion of 100% of all PROJECT construction contracts or other inspection arrangements are not agreed to by the PARTIES hereto, the PROJECT shall be deemed accepted by the VILLAGE. At the request of the ILLINOIS TOLLWAY, the VILLAGE's representative shall join in on such inspection. In the event said inspections disclose work that does not conform to the approved final plans and specifications, the ILLINOIS TOLLWAY's or TOWNSHIP's representative shall give immediate verbal notice to the VILLAGE's representative of any deficiency, and shall thereafter deliver within five (5) calendar days a written list identifying such deficiencies to the VILLAGE's Engineer. Deficiencies thus identified shall be subject to joint re-inspection upon completion of the corrective work. The ILLINOIS TOLLWAY or TOWNSHIP shall perform such joint re-inspections within seven (7) calendar days after receiving notice from the VILLAGE that the deficiencies have been remedied.

## **V. FINANCIAL**

- A. The ILLINOIS TOLLWAY agrees to reimburse the VILLAGE for the design engineering costs for the PROJECT, estimated at \$80,280.64, hereafter referred to as "DESIGN ENGINEERING COSTS".
- B. The ILLINOIS TOLLWAY agrees to reimburse the VILLAGE for construction of the PROJECT improvements, estimated at \$2,297,977.30 for construction costs and \$192,862.00 for construction engineering, for a total cost of \$2,490,839.30, hereinafter referred to as "CONSTRUCTION COSTS".
- C. The ILLINOIS TOLLWAY will reimburse the VILLAGE based on actual DESIGN ENGINEERING COSTS of the PROJECT (\$80,280.64) and CONSTRUCTION COSTS of the PROJECT (\$2,490,839.30), or a total estimated cost of \$2,571,119.94.
- D. The ILLINOIS TOLLWAY agrees to reimburse the VILLAGE for the DESIGN ENGINEERING COSTS for the PROJECT, estimated at \$80,280.64. The ILLINOIS TOLLWAY shall pay to the VILLAGE the initial fifty percent (50%) of the DESIGN ENGINEERING COSTS within sixty (60) days of receipt of an invoice for the same from the VILLAGE, which may be submitted at any point

after the full execution of this AGREEMENT. The ILLINOIS TOLLWAY shall pay to the VILLAGE the remaining fifty percent (50%) of the DESIGN ENGINEERING COSTS within sixty (60) days of receipt by the ILLINOIS TOLLWAY of the seventy percent (70%) complete design engineering plans, as set forth in Section I (B).

- E. The ILLINOIS TOLLWAY agrees that upon award of the contract for the PROJECT and receipt of an invoice from the VILLAGE, the ILLINOIS TOLLWAY will pay to the VILLAGE, an amount equal to 80% of its obligation incurred under this AGREEMENT for CONSTRUCTION COSTS, based upon actual bid prices, and will pay to said VILLAGE the remainder of its obligation for CONSTRUCTION COSTS in a lump sum, upon completion of the PROJECT, based on final costs.
- F. The PARTIES agree to transfer the properties identified in this AGREEMENT without cash consideration.
- G. It is further agreed that notwithstanding the estimated cost, the PARTIES shall be responsible for the actual costs associated with their responsibilities as described in the Recital section of this AGREEMENT.
- H. The PROJECT costs shall not exceed the actual cost set forth in the accepted bid without prior written approval by all PARTIES. Should any additional costs be approved by all PARTIES, the VILLAGE shall invoice the ILLINOIS TOLLWAY for their share of any such additional costs, which additional payment shall be submitted to the VILLAGE within 30 days of such notification.

Either PARTY may request, after the construction contract(s) are let, that supplemental work that increases the total costs of any PROJECT or more costly substitute work be added to the construction contract(s). The PARTY implementing the construction contract(s) will cause said supplemental work or such substitute work to be added to the construction contract(s), provided that said work will not delay construction of the PROJECT. The PARTY requesting or causing said supplemental work or more costly substitute work shall pay for the cost increases of said work in full.

## **VI. MAINTENANCE - DEFINITIONS**

- A. The term "local" means any PARTY to this AGREEMENT other than the ILLINOIS TOLLWAY. With respect to this AGREEMENT, it means the VILLAGE or TOWNSHIP.
- B. The term "local road" refers to any highway, road or street under the jurisdiction of the VILLAGE or TOWNSHIP.
- C. As used herein, the terms "maintenance" or "maintain" mean keeping the facility being maintained in good and sufficient repair and appearance. Such maintenance



includes the full responsibility for the construction, removal, replacement of the maintained facility when needed, and unless specifically excluded in Section VII, MAINTENANCE - RESPONSIBILITIES, other activities as more specifically set forth in the following subparts of this Section VI. Maintenance includes but is not limited to:

- i. "Routine maintenance" refers to the day to day pavement maintenance, pothole repair, anti-icing and de-icing, snow removal, sweeping, pavement marking, mowing, litter and debris removal, and grate and scupper cleaning and repair, including compliance with state laws and local ordinances.
  - ii. "Structural maintenance" refers to the integrity of the grade separation structure, including abutments, bridge deck beams, bridge deck (except wearing surface), expansion joints, parapet walls and drainage structures.
  - iii. "Signal maintenance" 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 and power, but shall not include permanently installed variable message signs or temporary signals or signs relating to construction or repair projects.
  - iv. "Lighting maintenance" 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.
  - v. "Emergency maintenance" refers to any maintenance activity which must be performed immediately in order to avoid or to repair a condition on the roadway or right of way which causes or threatens imminent danger or destruction to roadway facilities or rights of way of the PARTIES hereto, to the motoring public, to public health, safety or welfare, including but not limited to accident restoration, chemical or biological removal or remediation, or response to acts of God or terrorism.
- D. The term "drainage facilities" refers to both open and enclosed systems. The term "drainage structures" refers to enclosed systems only, and includes those elements of the drainage facility affixed to the bridge superstructures downstream from the scupper.
- E. The terms "notify", "give notice" and "notification" refer to written, verbal or digital communication from one PARTY to another concerning a matter covered by this AGREEMENT, for which the PARTY transmitting the communication produces and retains a record which substantiates the content, date, time, manner of communication, identification of sender and recipient, and manner in which the recipient may respond to the sender, as to the communication.

- F. The terms "be responsible for" or "responsibility" refer to the obligation to ensure performance of a duty or provision of a service under this AGREEMENT, provided, that a PARTY may arrange for actual performance of the duty or provision of the service by another competent entity if the other PARTY to this AGREEMENT is notified of such arrangement, but in no case shall the entity with the duty be relieved of ultimate responsibility for performance of the duty or provision of the service.
- G. The terms "consultation" or "consult with" refer to the duty of a PARTY to give notice to the other PARTY of a proposed action, with reasonable time for that PARTY to respond, but the PARTY with the duty to consult may proceed with the proposed action if the other PARTY does not respond within the time frame set forth in the notice provided, or in the case of the TOLLWAY, it may proceed with the proposed action if deemed necessary by the Chief Engineer.
- H. The term "approve" refers to the duty of a PARTY not only to consult with the other PARTY but also to provide consent for the proposed action and to retain a record which documents such consent.

## **VII. MAINTENANCE – RESPONSIBILITIES**

- A. The maintenance responsibilities are shown on “EXHIBIT D” attached hereto and detailed below.
- B. The ILLINOIS TOLLWAY shall retain jurisdiction and maintenance responsibilities for Illinois Route 390, including the westbound exit ramp and eastbound entrance ramp to/from Illinois Route 19 within ILLINOIS TOLLWAY right of way as depicted on “Exhibit D”, and the access control fencing along the Illinois Route 390 ramps, mainline or detention ponds, in their entirety.
- C. The VILLAGE agrees to retain or accept jurisdiction and maintain or cause to maintain Springinsguth Road; Rodenburg Road; Wright Boulevard; the eastbound frontage road from Springinsguth Road to approximately 800 feet west of Illinois Route 19 and from Illinois Route 19 to Wright Boulevard within the VILLAGE limits; the westbound frontage road from Springinsguth Road to Illinois Route 19 and from approximately 750 feet east of Illinois Route 19 to Wright Boulevard within the VILLAGE limits; fencing along the north side of the westbound frontage road from east of Illinois Route 19 to Rodenburg Road and along the west side of Rodenburg Road north of the westbound frontage road; all lighting along aforementioned roadways including two lighting controllers; underpass lighting on Illinois Route 390 bridges over Springinsguth Road, Rodenburg Road, and Wright Boulevard; traffic signals at the intersections of the eastbound frontage road with Springinsguth Road, Rodenburg Road, and Wright Boulevard; and traffic signals at the intersections of the westbound frontage road with Springinsguth Road, Rodenburg Road, and Wright Boulevard, in their entirety.

- D. The TOWNSHIP agrees to retain or accept jurisdiction and maintain or cause to maintain Long Avenue, the eastbound frontage road from approximately 800 feet west of Illinois Route 19 to Illinois Route 19, the westbound frontage road from Illinois Route 19 to approximately 750 feet east of Illinois Route 19 within the TOWNSHIP's unincorporated limits, including associated lighting and fencing along the north side of the westbound frontage road east of Illinois Route 19, in their entirety.

## **VIII. ADDITIONAL MAINTENANCE PROVISIONS**

- A. During construction, the VILLAGE and TOWNSHIP shall continue to maintain all portions of the PROJECT within their respective rights of way that are not to be improved or maintained by the construction contractor(s) pursuant to the approved plans and specifications, and the TOLLWAY shall continue to maintain all portions of the Toll Highway that are not required to be maintained by the construction contractor(s).
- B. All items of construction which are stipulated in this AGREEMENT to be maintained by the VILLAGE shall, upon completion of construction and final inspection, be the sole maintenance responsibility of the VILLAGE, and all items of construction which are stipulated in this AGREEMENT to be maintained by the TOWNSHIP shall, upon completion of construction, be the sole maintenance responsibility of the TOWNSHIP.
- C. The PARTIES agree to remove all snow and ice from the roadways under their respective jurisdiction, and such removal shall be accomplished in such a manner as not to block or obstruct any roadway of the other PARTY.
- D. Nothing herein is intended to prevent or preclude the PARTIES from entering into reciprocal agreements in the future for any particular interchange for the efficient removal of snow, ice, and debris or for incident management.
- E. Attached as "EXHIBIT D" is a description and identification of the PARTIES respective maintenance responsibilities. In the event there is a conflict between the aforementioned Exhibit and the maintenance provisions contained in Section VII of this AGREEMENT, the text in Section VII shall control.
- F. It is understood and agreed by the PARTIES hereto that this AGREEMENT shall supersede any and all earlier Agreements entered into by the PARTIES hereto regarding maintenance of TOWNSHIP highways, VILLAGE highways and Toll Highway facilities within the limits of this PROJECT.

## **IX. GENERAL PROVISIONS**

- A. It is understood and agreed that this is an AGREEMENT between the Township of Schaumburg Road District, the Village of Schaumburg and the Illinois State Toll Highway Authority.

- B. It is understood and agreed that this AGREEMENT constitutes the complete and exclusive statement of the agreement of the PARTIES relative to the subject matter hereof and supersedes all previous oral and written proposals, negotiations, representations or understandings concerning such subject matter.
- C. Wherever in this AGREEMENT approval or review by any PARTY is provided for, said approval or review shall not be unreasonably delayed or withheld.
- D. Not later than fourteen (14) calendar days after execution of this AGREEMENT each PARTY shall designate in writing a representative who shall serve as the full time representative of the said PARTY during the carrying out of the execution of this AGREEMENT. Each representative shall have authority, on behalf of such PARTY, to make decisions relating to the work covered by this AGREEMENT. Representatives may be changed, from time to time, by subsequent written notice. Each representative shall be readily available to the other PARTY.
- E. In the event of a dispute between the PARTIES in the carrying out of the terms of this AGREEMENT, the Chief Engineer of the ILLINOIS TOLLWAY, the Engineer of the VILLAGE and the TOWNSHIP's Highway Commissioner shall meet and resolve the issue. In the event that they cannot mutually agree on the resolution of a dispute concerning the plans and specifications for the PROJECT or in the carrying out of the terms of this AGREEMENT in reference to the PROJECT, the Executive Director of the Illinois Tollway, the Village Manager of the Village and the Township's Highway Commissioner shall meet and resolve the issue. In the event that they cannot mutually agree on the resolution of the dispute, any Party may file suit in the Circuit Court of Cook County, Illinois to resolve the dispute.
- F. This AGREEMENT may be executed in three (3) or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.
- G. Under penalties of perjury, the VILLAGE certifies that its correct Federal Tax Identification number is 36-2491861 and it is doing business as a governmental entity, whose mailing address is Village of Schaumburg, 101 Schaumburg Court, Schaumburg, Illinois 60193
- H. Under penalties of perjury, the TOWNSHIP certifies that its correct Federal Tax Identification number is \_\_\_\_\_ and it is doing business as a governmental entity, whose mailing address is 1 Illinois Boulevard, Hoffman Estates, Illinois 60169
- I. This AGREEMENT may only be modified by written modification executed by duly authorized representatives of the PARTIES hereto.

- J. This AGREEMENT and the covenants contained herein shall become null and void in the event the contract covering the construction work contemplated herein is not awarded within three (3) years subsequent to the date of execution of this AGREEMENT.
- K. This AGREEMENT shall be binding upon and inure to the benefit of the PARTIES hereto and their respective successors and approved assigns.
- L. The failure by the PARTIES to seek redress for violation of or to insist upon the strict performance of any condition or covenant of this AGREEMENT shall not constitute a waiver of any such breach or subsequent breach of such covenants, terms, conditions, rights and remedies. No provision of this AGREEMENT shall be deemed waived by the PARTIES unless such provision is waived in writing.
- M. It is agreed that the laws of the State of Illinois shall apply to this AGREEMENT and that, in the event of litigation, venue shall lie in DuPage County, Illinois.
- N. 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 TOLLWAY:                    The Illinois Toll Highway Authority  
2700 Ogden Avenue  
Downers Grove, Illinois 60515  
Attn: Chief Engineer

To the TOWNSHIP:                    The Township of Schaumburg Road District  
1 Illinois Boulevard  
Hoffman Estates, Illinois 60169  
Attn: Highway Commissioner

To the VILLAGE:                    The Village of Schaumburg  
101 Schaumburg Court  
Schaumburg, Illinois 60193  
Attn: Village Manager

- O. The VILLAGE certifies that it is not barred from being awarded a contract under 30 ILCS 500/50-10. Section 50-10 prohibits a contractor from entering into a contract with a State agency if the contractor has been convicted of a felony and 5 years have not passed from the completion of the sentence for that felony. The contractor further acknowledges that the chief procurement officer may declare the related contract void if this certification is false.

- P. The VILLAGE certifies that neither the VILLAGE nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This applies to contracts that exceed \$10,000 (30 ILCS 582).
- Q. The VILLAGE certifies it complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the ILLINOIS TOLLWAY under this AGREEMENT have been or will be produced in whole or in part by forced labor, or indentured labor under penal sanction (30 ILCS 583).
- R. The PARTIES shall maintain their respective records relating to the performance of the Agreement in compliance with the requirements of the Local Records Act (50 ILCS 205/1 *et seq.*) and the Freedom of Information Act (5 ILCS 140/1 *et seq.*) (“FOIA”) until written approval for the disposal of such records is obtained from the Local Records Commission. The PARTIES shall cooperate with each other and agree: (a) to comply with any request for public records by providing full access to and copying of all relevant books and records within a time period which allows the PARTIES to comply timely with the time limits imposed by the FOIA, (b) to comply with any request for public records made pursuant to any audit, (c) to maintain books and records related to the performance of this AGREEMENT and necessary to support amounts charged to the TOLLWAY and/or the VILLAGE under the AGREEMENT for a minimum of three (3) years from the last action on the AGREEMENT. Failure by a PARTY to maintain the books, records and supporting documents required by this Section or the failure by a PARTY to provide full access to copying of all relevant books and records within a time period which allows the PARTY to comply timely with the FOIA shall establish a presumption in favor of the PARTY served with the FOIA request who shall also be entitled to the recovery of any funds paid including the recovery of any penalties or attorneys’ fees imposed by FOIA. The obligations imposed by this Section shall survive final payment and the termination of other obligations imposed by this Agreement. The PARTIES shall further agree to cooperate fully with any audit and to make its books and records, and books and records within its custody or control available to the Illinois Attorney General, the Illinois Auditor General, the ILLINOIS TOLLWAY Inspector General, the ILLINOIS TOLLWAY Department of Internal Audit, the ILLINOIS TOLLWAY or any other governmental agency or agent thereof that is authorized to audit or inspect such books and records.
- S. The introductory recitals included at the beginning of this AGREEMENT are agreed to and incorporated into this AGREEMENT.
- T. The PARTIES agree to comply with all applicable Federal, State, and local regulations and requirements pertaining to work proposed for the PROJECT, including, but not limited to, the Equal Employment Opportunity Clause, the

Illinois Human Rights Act and the Illinois Department of Human Rights Rules and Regulations. Specifically:

- a. The PARTIES will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, sexual orientation, military status or an unfavorable discharge from military service; and, further, that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any underutilization.
- b. If any of the PARTIES hires additional employees in order to perform this contract or any portion of this contract, it will determine the availability (in accordance with the Illinois Department of Human Rights Rules and Regulations) of minorities and women in the areas from which the PARTIES may reasonably recruit; and the PARTIES will hire for each job classification for which employees are hired in a way that minorities and women are not underutilized.
- c. In all solicitations or advertisements for employees placed by the PARTIES or on the PARTIES' behalf, the PARTIES will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, sexual orientation, military status or an unfavorable discharge from military service.
- d. The PARTIES will send to each labor organization or representative of workers with which the PARTIES has or is bound by a collective bargaining or other agreement or understanding, a notice advising the labor organization or representative of the PARTIES' obligations under the Act and the Illinois Department of Human Rights Rules and Regulations. If any labor organization or representative fails or refuses to cooperate with the PARTIES in the PARTIES' efforts to comply with the Illinois Human Rights Act and Illinois Department of Human Rights Rules and Regulations, the PARTIES will promptly notify the Illinois Department of Human Rights; and the PARTIES and will recruit employees from other sources when necessary to fulfill its obligations under the contract.
- e. The PARTIES will submit reports as required by the Illinois Department of Human Rights Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the PARTIES, and in all respects comply with the Illinois Human Rights Act and the Illinois Department of Human Rights Rules and Regulations.

- f. The PARTIES will permit access to all relevant books, records, accounts and work sites by personnel of the H-GAC, the End User and the Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Illinois Department of Human Rights Rules and Regulations.
  - g. The PARTIES will include verbatim or by reference the provisions of this clause in every subcontract awarded under which any portion of the contract obligations are undertaken or assumed so that the provisions will be binding upon the subcontractor. In the same manner as with other provisions of this Agreement, the PARTIES will be liable for compliance with applicable provisions of this clause by subcontractors; and further, it will promptly notify the H-GAC, the End User and the Illinois Department of Human Rights in the event any subcontractor fails or refuses to comply with the provisions. In addition, the PARTIES will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the state of Illinois or any of its political subdivisions or municipal corporations.
  - h. The PARTIES will not maintain or provide for its employees any segregated facilities at any of its establishments, and not permit its employees to perform their services at any location, under its control, where "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise. The PARTIES shall (except where it has obtained identical certifications from proposed subcontractors and material suppliers for specific time periods) obtain certifications in compliance with this subparagraph from proposed subcontractors or material suppliers prior to the award of a subcontract or the consummation of material supply agreements, exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity Clause, and that the PARTIES will retain such certifications in its files.
  - i. The PARTIES has and will have in place and will enforce a written sexual harassment policy in compliance with 775 ILCS 5/2-105(A)(4).
- U. In the event either PARTY is non-compliant with the provisions of the Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights, the non-compliant PARTY may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations; and this Agreement may be cancelled or voided in whole or in part, and other



sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

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

**THE TOWNSHIP OF SCHAUMBURG ROAD DISTRICT**

By: \_\_\_\_\_ Attest: \_\_\_\_\_  
Scott M. Kegarise, Highway Commissioner

Date: \_\_\_\_\_ (Please Print Name)

**THE VILLAGE OF SCHAUMBURG**

By: \_\_\_\_\_ Attest: \_\_\_\_\_  
Al Larson, President

Date: \_\_\_\_\_ (Please Print Name)

**THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Greg M. Bedalov, Executive Director

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Michael Colsch, Chief of Finance

By: \_\_\_\_\_ Date: \_\_\_\_\_  
David A. Goldberg, General Counsel

Approved as to Form and Constitutionality

\_\_\_\_\_  
Robert T. Lane, Senior Assistant Attorney General, State of Illinois