

INTERGOVERNMENTAL AGREEMENT

THE COUNTY OF COOK
THE ILLINOIS TOLLWAY
VILLAGE OF SCHAUMBURG

CENTRAL ROAD
Ela Road to Roselle Road
Section: 16-A6110-00-RP

This Intergovernmental Agreement (the "Agreement") is made and entered into by and between the County of Cook, a body politic and corporate of the State of Illinois (the "County"); the Illinois State Toll Highway Authority, an instrumentality and administrative agency of the State of Illinois (the "Tollway"); and the Village of Schaumburg (the "Village") a municipal corporation of the State of Illinois. The County, the Tollway and the Village are sometimes individually referred to as "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, the Constitution of the State of Illinois, 1970, Article VII, Section 10, authorizes units of local government to contract or otherwise associate among themselves in any manner not prohibited by law or ordinance; and

WHEREAS, the provisions of the Intergovernmental Cooperation Act, (5 ILCS 220/1 *et seq.*), authorizes and encourages intergovernmental cooperation; and

WHEREAS, the County and the Village are units of government within the meaning of the Constitution of the State of Illinois, 1970, Article VII, Section 10, having the power and authority to enter into this intergovernmental agreement; and

WHEREAS, the 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 intergovernmental agreement; and

WHEREAS, in order to facilitate the free flow of traffic and ensure the safety of the motoring public, the County, the Tollway and the Village wish to make improvements to Central Road from east of Ela Road to Roselle Road to provide for a full interchange for the I-90 expressway at Roselle Road; and

WHEREAS, the improvement is characterized as intersection improvements at Central Road and Roselle Road, construction of a new I-90 Tollway westbound on-ramp completing the full interchange at Roselle Road, open-channel construction for Salt Creek, land bridge construction, pavement reconstruction and rehabilitation, culvert construction, drainage improvements, utility relocation, multi-use shared path reconstruction, street lighting, traffic signal improvements, acquisition of temporary easements and right-of-way and other attendant highway appurtenances (hereinafter called "Project") and said Project is herein designated as County Section: 16-A6110-00-RP; and

WHEREAS, the County will be the lead agent for construction of the Project; and

WHEREAS, the Tollway will be the lead agent for design engineering, construction engineering, and right of way acquisition of the Project; and

WHEREAS, the County, the Tollway and the Village by this instrument, desire to memorialize their respective obligations and responsibilities toward engineering, right-of-way acquisition, construction, and funding of the Project as proposed as well as future maintenance responsibilities of the completed Project; and

WHEREAS, the Village, the County and the Tollway have fully executed a Memorandum of Understanding (MOU) dated August 28, 2013 as the basis for interagency cooperation in the construction of a full access interchange at I-90 and Roselle Road; and

NOW THEREFORE, in consideration of the promises, covenants, terms and conditions set forth in this Agreement, the Parties hereto agree as follows:

SECTION 1. INCORPORATION OF RECITALS

The above recitals are incorporated into this Agreement as if fully set forth herein.

SECTION 2. TERM AND TERMINATION

This Agreement between the County, the Tollway and the Village shall not become effective unless authorized and executed by the Cook County Board of Commissioners, the Tollway Executive Director and the Village of Schaumburg Village President. This Agreement shall terminate upon completion of the Project. Notwithstanding the foregoing, the Parties hereto agree that the provisions of Sections 4.9 Post-Project Maintenance, 5.4 Post-Project Maintenance, 6.2 Post-Project Maintenance, 5.5 Payment to the County and 6.3 Payment to the County herein shall survive termination of this Agreement, unless expressly terminated by the Parties.

SECTION 3. PROJECT FUNDS

- 3.1 County's Share of the Project. The County shall finance the entire cost of construction for the Project subject to reimbursement as herein stipulated. The County's share of expenses for the Project shall be equal to the actual cost of the Project less the Tollway and Village (Local Participation) shares of funds allocated to said components or fifty percent (50%) of the total cost of the Project. A project funding table setting forth the estimated funding contributions is attached hereto as Exhibit A. See Section 3.5 below. Provided, however, that should the County receive additional unallocated MFT funds, or if additional funding is secured by the County for this Project or any other projects within the Village, said additional funding shall be applied to this Project to directly and proportionately reduce the Local Participation shares of funds set forth in Sections 3.2 and 3.3 below. Should such additional funding become available to reduce the Local Participation funds, such a reduction shall be based on the proportionate funding contributions as set forth in Exhibit A.
- 3.2 Tollway's Share of the Project. The Tollway shall initially finance the entire cost of design and construction engineering for the Project. The Tollway's share of the costs and expenses associated with the Project shall be forty percent (40%) of the total cost of Project. See attached Exhibit A.
- 3.3 Village's Share of the Project. The Village's share of expenses for the Project shall be ten percent (10%) of the total cost of the Project. See attached Exhibit A.
- 3.4 Computation of Costs: It is mutually agreed by the Parties hereto that preliminary and design engineering costs shall be computed as 5% of the estimated construction costs and that

construction engineering shall be computed as 10% of construction costs.

- 3.5 Cost Estimates. A Funding Breakdown for the Project is incorporated and attached hereto as Exhibit A. The Funding Breakdown is only an estimate and does not limit the financial obligations of the Parties as described in 3.1 through 3.3 above. A cost sharing aerial plan accompanying Exhibit A is incorporated and attached hereto as Exhibit B.
- 3.6 Cancellation or Reconsideration. Any PARTY can cancel or request reconsideration of this AGREEMENT if prior to the award of the construction contract it is estimated that the total cost of the PROJECT will exceed the Engineer's estimate by more than 10% or a construction contract has not been awarded within five (5) years of the effective date of this AGREEMENT. Any PROJECT costs incurred by any and all PARTIES prior to the cancellation or reconsideration of this AGREEMENT shall be shared pursuant to the allocation of PROJECT costs set forth in PROJECT FUNDS SECTION.

SECTION 4. COUNTY'S RESPONSIBILITIES

- 4.1 Construction. The County shall advertise and obtain concurrence from the Tollway and the Village as to the amount of bids before award (for work to be funded wholly or partially by the Tollway and Village), let, award, and cause the Project to be built in accordance with the approved plans, specifications and construction contract.
- 4.1.1 After award of the construction contract, any proposed deviations from the approved plans and specifications that affect the Tollway and/or Village shall be submitted to the Tollway and Village for approval prior to commencing such work. The Tollway and Village 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 Tollway and Village shall detail in writing its specific objections. If the County receives no written response from the Tollway or Village within fifteen (15) calendar days after delivery to the Tollway and Village of the proposed deviation, the proposed deviation shall be deemed approved by the Tollway or Village.
- 4.1.2 Subsequent to the award of the construction contract, and before any work is started on the Project, a pre-construction conference shall be held between the Illinois Tollway, the County, the interested contractor(s), the Village of Schaumburg, the Village of Hoffman Estates, and the affected utility agencies, at a time and place as designated by the County's representative, for the purpose of coordinating the work to be performed by the several contingents, and at which time a schedule of operations will be adopted.
- 4.1.3 The County shall require all construction performed within the Village and Tollway rights-of-way to comply with the current Illinois Department of Transportation Standard Specifications for Road and Bridge Construction. The County shall also require all construction performed within the Tollway right-of-way to comply with the current Illinois Tollway Supplemental Specifications for construction, issued April 2016, and as amended.
- 4.2 County as Lead Agent; Appropriation of Funds. The County shall finance the construction and act as Lead Agent for the Project.
- 4.3 Finance and Expenditures. The County shall provide annual finance updates for the Project to the Illinois Tollway and Village for the duration of the Project. The County shall provide

expenditures to date (as of September 30 of each year) for funding sources and a forecast of annual expenditures for the remainder of the Project for each funding source on or before October 30 of each year.

4.4 Coordination with the Tollway and the Village. The County shall allow the Tollway and the Village to observe all construction of infrastructure installed as part of the Project, address concerns expressed by the Tollway and the Village regarding said construction, and allow the Tollway and the Village to participate in the Final Inspection of the Project.

4.5 Notification of Final Inspection. The County shall provide the Tollway and the Village fourteen (14) days' advance notice of the Final Inspection of all work constructed as part of the Project.

4.6 Post-Project Maintenance.

4.9.1 The County shall own, operate and maintain Central Road from Ela Road to Roselle Road upon completion of the Project.

4.9.2 The County shall own, operate and maintain the traffic signal system along Central Road at Ramp A (see Exhibit Plan A and B), cause it to be maintained and energized, and be responsible for all settings and timings upon completion of the Project.

4.9.3 The County shall own, operate and maintain the street lights constructed as part of the project on combination traffic signal mast arms only.

SECTION 5. TOLLWAY'S OBLIGATIONS

5.1 Design Plans and Specifications.

5.1.1 The Tollway shall prepare Project construction plans, specifications, estimates and contract documents for bidding purposes and obtain County approval of final plans, specifications, estimates and contract documents.

5.1.2 The Tollway shall supply the County with final design plans, specifications and contract documents for bidding purposes. Said information shall be provided to the County no later than sixty (60) days prior to the bid date as determined by the County.

5.1.3 Design Engineering costs shall be applied to the overall project cost estimate and the Tollway shall receive a credit as identified in Exhibit A.

5.2 Construction Engineering. The Tollway shall finance the construction engineering for the Project. Construction Engineering costs shall be applied to the overall project cost estimate and the Tollway shall receive a credit as identified in Exhibit A.

5.3 Right-of-Way. The Tollway shall be the lead agency for proposed right-of-way acquisition for the Project.

5.3.1 The Tollway shall perform all survey work and prepare all parcel plats and legal descriptions for all right-of-way (both permanent and temporary) necessary for the construction of the Project pursuant to the approved construction plans and specifications.

- 5.3.2 The Tollway shall acquire all necessary right-of-way (both permanent and temporary) as needed for the construction of the Project pursuant to the approved construction plans and specifications.
- 5.3.3 Right-of-way costs shall include the purchase price thereof, as well as the costs of negotiations, appraisals, title evidence, relocation assistance payment, property management, and such legal fees and expenses as may be necessary to acquire said right-of-way. Right-of-way cost responsibilities are delineated on a separate IGA for the Roselle Road Bridge project (section: 15-34117-01-RP).
- 5.3.4 Upon parcel acquisition related to highways under County jurisdiction, the Tollway will perform a direct transfer of the parcel to the County. In lieu of a transfer, the Tollway shall record the parcel in the name of the County of Cook. All parcels shall be transferred or recorded prior to the Project Letting.
- 5.3.5 The Tollway shall provide the County with official correspondence regarding the current right-of-way parcel acquisition process. The correspondence shall identify appraisers, relocation agents, negotiators, plats and legal descriptions involved in the process.
- 5.4 Final Inspection: The Tollway shall participate in the Final Inspection of the Project. In the event that said inspections disclose work that does not conform to the approved final plans and specifications, the Party's representative shall give immediate verbal notice to the County's representative of any deficiency and shall thereafter deliver within five (5) calendar days a written list identifying such deficiencies to the County Superintendent, Department of Transportation and Highways. Deficiencies thus identified shall be subject to joint re-inspection upon completion of corrective work. The Party shall perform such joint re-inspections within ten (10) calendar days after receiving notice from the County that the deficiencies have been remedied.
- 5.5 Post-Project Maintenance. Following acceptance of the Project after a Final Inspection conducted jointly with the County, the Tollway and the Village, the Tollway shall:
 - 5.5.1 Own, operate and maintain Tollway plaza, Ramp A and Concrete Box Culvert 26A, all lighting installed on Tollway right-of-way or inside fences installed to protect the Toll Highway, for the purpose of illuminating the Toll Highway and ramps to and from Toll Highway, Tollway signs on Ramp A and on Central Road, and Ramp A to the point of connection with the County's through-traffic lanes.
 - 5.5.2 Own, operate and maintain the storm sewers, storm water detention basins and channel grading that are located within the Tollway right-of-way.
- 5.6 Payment to the County. It is mutually agreed that to the extent available, the Tollway's share of the cost for this improvement shall be satisfied by a construction credit owed to it by the County, currently in the amount of \$9,518,909.00. The invoicing for the Tollway's share of the improvements as estimated in Exhibit A shall be paid in three installments as follows:
 - 5.6.1 The first installment in the amount of 50% of the Tollway's total estimated financial obligation to this PROJECT shall be invoiced against its County credit within ninety (90) days following the contract award.

- 5.6.2 The second installment in the amount of 40% of the Tollway's total estimated financial obligation to this PROJECT shall be invoiced against its County credit one (1) year following the contract award.
- 5.6.3 The third installment for the remaining 10% balance of Tollway financial obligations based upon the actual quantities used and the contract unit prices as awarded shall be invoiced against the Tollway's County credit subsequent to completion of the Project. The Tollway and County shall reconcile Parties' respective financial responsibilities based upon final costs for the Project and the Tollway's I-13-4166 project. The final balance due from any party will be invoiced by either the Tollway or County within sixty (60) days after the reconciled balance is agreed upon by both parties.
- 5.6.4 Any payments to the County shall be by check payable to the Treasurer of Cook County, for deposit into the County's Motor Fuel Tax Fund (600-585 Account). The check shall be delivered to the Superintendent, Cook County Department of Transportation and Highways.

SECTION 6. VILLAGE'S OBLIGATIONS

- 6.1 Final Inspection. The Village shall participate in the Final Inspection of the Project. The Village shall submit final punch list items within seven (7) days prior to the Final Inspection date as determined by the County. In the event that said inspections disclose work that does not conform to the approved final plans and specifications, the Party's representative shall give immediate verbal notice to the County's representative of any deficiency, and shall thereafter deliver within five (5) calendar days written list identifying such deficiencies to the County Superintendent, Department of Transportation and Highways. Deficiencies thus identified shall be subject to joint re-inspection upon completion of the corrective work. The Party shall perform such joint re-inspections within ten (10) calendar days after receiving notice from the County that the deficiencies have been remedied.
- 6.2 Post-Project Maintenance. Following acceptance of the Project after a Final Inspection conducted jointly with the Village, the Tollway and the County, the Village shall:
 - 6.2.1 Own, operate and maintain the existing repaired culverts at East and West Center Court, East and West Center Court up to Central Road edge of pavement as part of the Project.
 - 6.2.2 Own, operate and maintain the street lights constructed as part of the project, except lights on combination traffic signal mast arms, which will be maintained by the county.
 - 6.2.3 Maintain the sidewalk along Central Road.
- 6.3 Additional Maintenance Provision. The Village shall agree to defend, indemnify, and hold harmless the County and its commissioners, officials, employees, agents and representatives, and their respective heirs, successors and assigns, from and against any and all costs, expenses attorney's fees, losses, damages and liabilities incurred or suffered directly or indirectly from or attributable to claims arising out of or incident to the construction, use, repair and/or maintenance of the sidewalk and/or the acts, errors or omissions of the officers, agents, employees, contractors, subcontractors, licensees or invitees of the PARTIES, excluding any loss or damage caused by any negligence on the part of the COUNTY relating to the existing sidewalk

- 6.4 Payment to the County. The costs that the Village is obligated to pay to the County as described in Section 3. Project Funds, shall be paid in two installments as follows, with all such payments subject to prior appropriation and approval by the Village Board of Trustees:
- 6.4.1 The first installment in the amount of 50% of the Village's financial obligation to this PROJECT shall be invoiced by the County within ninety (90) days following the contract award, and the Village shall pay the County within sixty (60) days after receipt of invoice from the County, subject to prior appropriation and approval by the Village Board of Trustees.
 - 6.4.2 The second installment in the amount of 40% of the Village's financial obligation to this PROJECT shall be invoiced by the County one (1) year following the contract award, and the Village shall pay the County within sixty (60) days after receipt of invoice from the County, subject to prior appropriation and approval by the Village Board of Trustees.
 - 6.4.3 The third installment, the remaining balance of Village obligations based upon the actual quantities used and the contract unit prices as awarded shall be invoiced by the County subsequent to completion of the Project, and the Village shall pay the County within sixty (60) days after receipt of invoice from the County, subject to prior appropriation and approval by the Village Board of Trustees.
 - 6.4.4 Payments to the County shall be by check payable to the Treasurer of Cook County, for deposit into the County's Motor Fuel Tax Fund (600-585 Account). The check shall be delivered to the Superintendent, Cook County Department of Transportation and Highways.

SECTION 7. GENERAL PROVISIONS

- 7.1 Governing Law and Venue. This Agreement shall be interpreted under, and governed by, the laws of the Village of Illinois, without regard to conflicts of laws principles. Any claim, suit, action, or proceeding brought in connection with this Agreement shall be in the Circuit Court of Cook County and each Party hereby irrevocably consents to the personal and subject matter jurisdiction of such court and waives any claim that such court does not constitute a convenient and appropriate venue for such claims, suits, actions, or proceedings.
- 7.2 Default. The Tollway or the Village shall be in default hereunder in the event of a material breach by the Tollway or the Village of any term or condition of this Agreement including, but not limited to, a representation or warranty, where the Tollway or the Village has failed to cure such breach within thirty (30) days after written notice of breach is given to Tollway or the Village by the County, setting forth the nature of such breach. Failure of County to give written notice of breach to the Tollway or the Village shall not be deemed to be a waiver of the County's right to assert such breach at a later time. Upon default by the Tollway or the Village, the County shall be entitled to exercise all available remedies at law and in equity, including but not limited to termination of this Agreement upon thirty (30) days' notice to the Tollway and the Village.

The County shall be in default hereunder in the event of a material breach by the County of any term or condition of this Agreement including, but not limited to, a representation or warranty, where the County has failed to cure such breach within thirty (30) days after written notice of breach is given to the County by the Tollway or the Village, setting forth the nature of such breach. Failure of Tollway or the Village to give written notice of breach to the County shall not be deemed to be a waiver of the Tollway's or the Village's right to assert such breach at a later

time. Upon default by the County, the Tollway or the Village shall be entitled to exercise all available remedies at law and in equity, including but not limited to termination of this Agreement upon thirty (30) days notice to the County and the other Party.

- 7.3 Modification. This Agreement may not be altered, modified or amended except by a written instrument signed by all three Parties. Provided, however, the Parties agree that provisions required to be inserted in this Agreement by laws, ordinances, rules, regulations or executive orders are deemed inserted whether or not they appear in this Agreement and that in no event will the failure to insert such provisions prevent the enforcement of this Agreement.
- 7.4 Binding Successors. The County, the Village and the Tollway agree that their respective successors and assigns shall be bound by the terms of this Agreement.
- 7.5 Force Majeure. Neither the County, the Village, nor the Tollway shall be liable for failing to fulfill any obligation under this Agreement to the extent any such failure is caused by any event beyond such Party's control and which event is not caused by such Party's fault or negligence. Such events shall include but not be limited to acts of God, acts of war, fires, lightning, floods, epidemics or riots.
- 7.6 Time of the Essence. The obligations of the Parties as set forth in this Agreement shall be performed in a timely manner such that it will not result in a delay of the Project timetable as determined by the Parties.
- 7.7 Permits. All Parties hereto agree to cooperate, insofar as their individual jurisdictional authorities allow, with the timely acquisition and clearance of the permits.
- 7.8 Notices. Unless otherwise specified, any notice, demand or request required under this Agreement must be given in writing at the addresses set forth below by any of the following means: personal service, overnight courier, mailed via certified mail, or electronic delivery.

TO THE COUNTY:

Mr. John Yonan, P.E.
Superintendent
Cook County Department of Transportation and Highways
69 West Washington, Suite 2400
Chicago, IL 60602

TO THE TOLLWAY:

Chief Engineer
The Illinois State Toll Highway Authority
2700 Ogden Avenue
Downers Grove, IL 60515

TO THE VILLAGE OF SCHAUMBURG:

Village of Schaumburg
101 Schaumburg Court
Schaumburg, IL 60193
Attn: Village Manager

7.9 Authorized Agents. The Parties and their 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 Party's infrastructure and/or right-of-way. All Parties may assign personnel to perform inspections on behalf of the respective Party of all work included in the Project that affects the Party's infrastructure and/or right-of-way, and will deliver written notices to the County Superintendent, Department of Transportation and Highways advising the County as to the identity of the individual(s) assigned to perform said inspections.

7.10 Entire Agreement. This Agreement constitutes the entire agreement between the County, the Village and the Tollway, merges all discussion between them and supersedes and replaces any and every other prior or contemporaneous agreement, negotiation, understanding, commitments and writing with respect to such subject matter hereof.

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.

7.11 Insurance. The County shall require that the Parties, their agents, officers and employees be included as additional insured parties in the General Liability Insurance that the County requires of its contractor(s) and that the Parties will be added as additional protected Party's on all performance bonds required of the contractor(s). These requirements shall be included in the Special Provisions of the construction contract(s).

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IN WITNESS WHEREOF, the County, the Village and the Tollway have caused this Agreement to be executed by their respective officials on the dates as shown.

EXECUTED BY COUNTY:

Toni Preckwinkle
President
Board of County Commissioners

This ____ day of _____ A.D. 2016.

ATTEST: _____
County Clerk

(SEAL)

RECOMMENDED BY:

Superintendent
County of Cook
Department of Transportation and Highways

APPROVED AS TO FORM:
Anita Alvarez, State's Attorney

Assistant State's Attorney

EXECUTED BY THE ILLINOIS STATE
TOLL HIGHWAY AUTHORITY

Greg Bedalov, Executive Director

This ____ day of _____ A.D. 2016.

Michael Colsch, Chief of Finance

This ____ day of _____ A.D. 2016.

David Goldberg, General Counsel

This ____ day of _____ A.D. 2016.

Approved as to Form and Constitutionality:

Robert T. Lane, Senior Assistant Attorney General
Village of Illinois

Intergovernmental Agreement
Central Road - Ela Road to Roselle Road
Section:

EXECUTED BY VILLAGE OF SCHAUMBURG:

Al Larson
Village President

This ____ day of _____ A.D. 2016.

ATTEST: _____
Village Clerk

(SEAL)