

DRAFT

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

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 LAKE, a body corporate and politic of the State of Illinois (“COUNTY”), individually referred to as “PARTY” and collectively referred to as “PARTIES.”

RECITALS

WHEREAS, the ILLINOIS TOLLWAY, in order to facilitate the free flow of traffic and enhance the safety of the motoring public, is improving certain portions of the Tri-State Tollway (“I-94/I-294”) and its crossroad bridges, including rehabilitating bridge no. 360, Deerfield Road over I-94 (Mile Post 24.26), as set forth in various contracts, including but not limited to Contract No. I-24-4947 (“PROJECT”);

WHEREAS, the COUNTY has maintenance responsibility for certain portions of Deerfield Road, as identified in the intergovernmental agreement between the PARTIES executed July 31, 2008;

WHEREAS, the COUNTY requests and the ILLINOIS TOLLWAY agrees to include in the PROJECT certain repair items that are the jurisdictional responsibility of the COUNTY (“COUNTY WORK”), subject to reimbursement by the COUNTY to the ILLINOIS TOLLWAY. See attached EXHIBIT A;

WHEREAS, by this AGREEMENT, the PARTIES desire to determine and establish their respective responsibilities toward design engineering, mobilization, construction engineering, construction, funding and maintenance of the COUNTY WORK;

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

WHEREAS, the COUNTY is authorized to enter into this AGREEMENT by virtue of its powers as set forth in the Counties Code, 55 ILCS 5/1-1001, *et seq.*, and the Illinois Highway Code, 605 ILCS 5/5-101; and

WHEREAS, a cooperative intergovernmental agreement is appropriate for the above purposes, 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 foregoing and the mutual covenants 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, including the COUNTY WORK (“PROJECT PLANS”).
- B. The COUNTY will reimburse the ILLINOIS TOLLWAY for the COUNTY WORK.
- C. The ILLINOIS TOLLWAY shall provide an electronic copy of the PROJECT PLANS to the COUNTY for its review and comment at the following stages of plan preparation:
 - 30% Complete;
 - 60% Complete (preliminary);
 - 95% Complete (pre-final); and
 - Final.
- D. The COUNTY shall review the PROJECT PLANS which impact its property within fifteen (15) business days of receipt thereof. In the event the COUNTY disapproves of the PROJECT PLANS, the COUNTY shall detail, in writing, its specific comments and/or objections and deliver the same to the ILLINOIS TOLLWAY for review and consideration. If the ILLINOIS TOLLWAY does not receive a written response from the COUNTY within the fifteen (15) business day time period, the PROJECT PLANS shall be deemed approved by the COUNTY.
- E. The PARTIES shall work cooperatively to address and resolve any review comments and/or objections. Any dispute concerning the PROJECT PLANS shall be resolved in accordance with below Article IX.C. of this AGREEMENT.
- F. The ILLINOIS TOLLWAY agrees to assume overall PROJECT responsibility, including ensuring that all permits and approvals (including but not limited to permits and approvals required by the U.S. Army Corps of Engineers, Illinois Department of Transportation, Illinois Department of Natural Resources, Department of Environmental Concerns and Division of Highways, Illinois Environmental Protection Agency) and joint participation and/or force account agreements as may be required by the PROJECT. The PARTIES agree to cooperate, insofar as their individual jurisdictional authorities allow, with the timely acquisition and clearance of said permits and agreements and all applicable federal, state and local laws, regulations, requirements and ordinances pertaining to the PROJECT.
- G. At no cost to the ILLINOIS TOLLWAY, the COUNTY shall, upon full execution of this AGREEMENT, grant and consent to any and all permits, rights of access (ingress and egress), temporary use of its property as requested by the ILLINOIS TOLLWAY.

II. RIGHT OF WAY

No transfer of property interests between the PARTIES is required for the PROJECT, nor is the transfer of any interest in land deemed necessary for the future maintenance and operation of their respective facilities.

III. UTILITY RELOCATION

- A. The ILLINOIS TOLLWAY is responsible for utility coordination and relocation, as necessary, for the PROJECT, including identifying utility adjustments and making all reasonable efforts to minimize the number of utility adjustments in the design of improvements.
- B. If utilities located on COUNTY property must be adjusted or relocated due to the PROJECT, the COUNTY agrees to (i) cooperate with the ILLINOIS TOLLWAY in making arrangements with the applicable utility, and (ii) issue all permits for the requisite adjustment(s) at no cost to the ILLINOIS TOLLWAY. In such cases, before the COUNTY issues a permit, the COUNTY agrees to secure the ILLINOIS TOLLWAY's written concurrence. Approval of requests relating to such permits will not be unreasonably withheld, provided the proposed activities do not harm or adversely affect operations.

IV. CONSTRUCTION

- A. The ILLINOIS TOLLWAY shall advertise and receive bids, provide construction engineering inspections, and cause the PROJECT to be constructed in accordance with the PROJECT PLANS.
- B. After award of the PROJECT construction contract(s), the ILLINOIS TOLLWAY shall submit any proposed deviation from the PROJECT PLANS that impacts the COUNTY to the COUNTY for its approval prior to commencing work on such proposed deviation. If the COUNTY does not accept the proposed deviation to the PROJECT PLANS, the COUNTY shall detail, in writing, its specific objections and deliver the same to the ILLINOIS TOLLWAY for review and consideration. If the ILLINOIS TOLLWAY does not receive a written response from the COUNTY within the fifteen (15) calendar day time period, the proposed deviation shall be deemed approved by the COUNTY.
- C. After award of the PROJECT construction contract(s), assuming there are no proposed deviations from the PROJECT PLANS that impact the COUNTY, the ILLINOIS TOLLWAY shall provide no less than fifteen (15) business days written notice to the COUNTY prior to commencement of work on the PROJECT.
- D. The COUNTY and its authorized agents shall have all reasonable rights of inspection (including pre-final and final inspection) while the ILLINOIS TOLLWAY is implementing the PROJECT. The COUNTY shall assign personnel to perform inspections on its behalf and advise the ILLINOIS TOLLWAY's Chief Engineering Officer, in writing, of the identity of the individual(s) assigned to perform said inspections.
- E. The ILLINOIS TOLLWAY shall notify the COUNTY upon completion of 70% and 100% of all COUNTY WORK, and the COUNTY shall inspect the COUNTY WORK not later than fourteen (14) calendar days after receiving said notice. If the COUNTY does not perform a final inspection within fourteen (14) calendar days after receiving notice of completion of 100% of the COUNTY WORK and the PARTIES do not arrange or agree to any other inspection, the COUNTY WORK shall be deemed accepted by the COUNTY. At the request of the COUNTY, the ILLINOIS TOLLWAY's representative shall attend

inspection(s). In the event said inspections disclose work that does not conform to the approved final PROJECT PLANS, the COUNTY's representative immediately shall give verbal notice of any deficiency to the ILLINOIS TOLLWAY's representative and within seven (7) calendar days thereafter, the COUNTY shall deliver a written list of the deficiencies to the ILLINOIS TOLLWAY's Chief Engineering Officer. Deficiencies thus identified shall be subject to joint re-inspection upon completion of any necessary corrective work. The PARTIES shall perform such joint re-inspections within ten (10) calendar days after the ILLINOIS TOLLWAY notifies the COUNTY that the deficiencies have been remedied.

- F. The ILLINOIS TOLLWAY shall have the right, in its sole judgment and discretion, to cancel or alter any or all portions of the PROJECT provided that cancellation does not impact the existing conditions of COUNTY roadways. Upon any such cancellation, the ILLINOIS TOLLWAY shall have no obligation to pay for any cancelled work or any costs or expenses associated therewith.
- G. The PARTIES agree that all PROJECT construction work performed on or within the COUNTY property shall conform to the then current edition of the ILLINOIS TOLLWAY Supplemental Specifications to the Illinois Department of Transportation Standard Specifications for Road and Bridge Construction as well as the COUNTY's standard drawings and special provisions included in the PROJECT.

V. FINANCIAL

- A. The ILLINOIS TOLLWAY agrees to pay all PROJECT related engineering, construction engineering and construction costs, subject to reimbursement by the COUNTY in accordance with this AGREEMENT.
- B. After the ILLINOIS TOLLWAY lets the construction contract(s), the COUNTY may request supplemental or substitute work to be included in the PROJECT. The ILLINOIS TOLLWAY, based on its sole judgment and discretion, may cause said supplemental or substitute work to be added to the PROJECT, provided that (i) said work will not delay construction of the PROJECT, and (ii) the COUNTY agrees to pay the full amount of any and all cost increases relating to said work.
- C. As referenced in attached EXHIBIT A, the PARTIES agree that the total estimated cost to the COUNTY for the COUNTY WORK is \$1,542,383.61, which includes the following:
 - 1. \$951,207.90 for the COUNTY WORK, including but not limited to protective shield concrete removal, bridge deck scarification, ($\frac{3}{4}$ inch), bridge deck latex concrete overlay, (2 $\frac{1}{4}$ inches), concrete superstructure, epoxy coated reinforcement bars and temporary concrete barrier;
 - 2. \$190,241.58 for contingency;
 - 3. \$142,681.19 for maintenance of traffic;
 - 4. \$57,072.47 for mobilization;
 - 5. \$67,060.16 for design engineering; and
 - 6. \$134,120.31 for construction engineering.

- D. It is further agreed that notwithstanding the estimated cost, the COUNTY shall be responsible for the actual costs associated with the COUNTY WORK.
- E. The PARTIES agree to the following payment terms: 35% due upon execution of this AGREEMENT, 35% due upon the ILLINOIS TOLLWAY's Notice to Proceed as defined in Section 101.45 of the ILLINOIS TOLLWAY Supplemental Specifications to the Illinois Department of Transportation Standard Specifications for Road and Bridge Construction relative to the COUNTY WORK, and the remainder based on final actual costs, due one (1) year after substantial completion of the COUNTY WORK.

VI. MAINTENANCE – DEFINITIONS

For purposes of this AGREEMENT:

- A. “Jurisdiction” means the authority and obligation to administer, control, maintain and operate a roadway and its appurtenances.
- B. “Local road” means any highway, road or street under the jurisdiction of the COUNTY.
- C. “Maintenance” or “maintain” mean to keep 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, except as otherwise set forth in below Article VII, other activities as more specifically set forth in the following subparts of this Article VI, including but not limited to:
 - 1. “Routine maintenance” means 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 all applicable federal, state and local laws, regulations, requirements and ordinances.
 - 2. “Structural maintenance” means 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.
 - 3. “Lighting maintenance” means 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.
 - 4. “Emergency maintenance” means any maintenance activity that must be performed immediately in order to avoid or to repair a condition on the roadway or right-of-way that causes or threatens imminent danger or destruction to (i) roadway facilities, (ii) right of way or (iii) the public, including but not limited to restoration of an accident site, chemical or biological removal or remediation, or responses to acts of God or terrorism.
- D. “Drainage facilities” mean both open and enclosed systems. “Drainage structures” mean enclosed systems only and includes those elements of the drainage facility affixed to the bridge superstructures downstream from the scupper.

- E. “Notify,” “give notice” and “notification” mean written, verbal or digital communication from one PARTY to the other PARTY concerning a matter covered by this AGREEMENT. The PARTY transmitting the communication shall create and retain a record that substantiates the content, date, time, manner of communication, identification of sender and recipient and manner in which the recipient may respond to the sender.
- F. “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. Under no circumstances shall the PARTY with the duty or responsibility for the service be relieved of ultimate responsibility for performance of the duty or provision of the service.
- G. “Consultation” or “consult with” mean the duty of a PARTY to give notice to the other PARTY of a proposed action, with reasonable time for that PARTY to respond. The PARTY with the duty to consult may proceed with the proposed action if the other PARTY does not respond within the time period set forth in the notice or, in the case of the ILLINOIS TOLLWAY, the ILLINOIS TOLLWAY may proceed with the proposed action if deemed necessary by the ILLINOIS TOLLWAY’s Chief Engineering Officer.
- H. “Approve” means the duty of a PARTY not only to consult with the other PARTY but also to provide consent for the proposed action when appropriate and to retain a record that documents such consent.
- I. “Grade separation structure” means all structural elements between the abutments and below the wearing surface of a bridge carrying one roadway over another, unless otherwise specified.
- J. The PARTIES generally agree that the following three types of bridge structures intersect ILLINOIS TOLLWAY right-of-way:
- Type 1. An intersection where a grade separation structure has been constructed to carry the toll highway over the local road.
 - Type 2. An intersection where a grade separation structure has been constructed to carry the local road over the toll highway.
 - Type 3. An intersection where a partial or complete ramp interchange system, as well as a grade separation structure, has been constructed between the local road and the toll highway.

VII. JURISDICTION AND MAINTENANCE – RESPONSIBILITIES

- A. The bridge improvements being constructed as part of the PROJECT under this AGREEMENT are of the following types (as described in above Article VI.J.) and involve the following highway:

Type of Bridge Structure: Type 3

Affected Highway: Deerfield Road

- B. The ILLINOIS TOLLWAY agrees to maintain the Toll Highway within the limits of this PROJECT in its entirety and its portion of the bridge improvements as indicated below:
1. Excluding items identified in below Article VII.C., all parts of the grade separation structure, including but not limited to bearings, beams, girders, slope walls, abutments, wingwalls and piers;
 2. All fences along ILLINOIS TOLLWAY routes, except overpass fencing installed to separate pedestrians, bicycles and non-vehicular traffic from highway traffic;
 3. All bridge deck downspouts, from a clean-out installed directly below the scuppers to the outfall;
 4. All remaining drainage facilities installed for the purpose of carrying exclusively Toll Highway drainage; and
 5. Any underpass lighting.
- C. The COUNTY shall continue the maintenance of the right-of-way of Deerfield Road and the COUNTY WORK as indicated below:
1. COUNTY right-of-way and COUNTY roadway approaches to the grade separation structure;
 2. The approach slabs and approach embankments outside access control fences;
 3. The wearing surface;
 4. The deck below the wearing surface and above the structural beams;
 5. The approach slabs and approach embankments outside access control fences;
 6. Expansion joints at approach roadway and raised median;
 7. Sidewalks;
 8. Parapet walls;
 9. Guardrail;
 10. Drainage facilities above structural beams and girders and all drainage facilities carrying exclusively COUNTY drainage;
 11. All lighting except underpass;
 12. All COUNTY signs and pavement markings; and
 13. Ice and snow removal, which shall be accomplished in such a manner as to not block or obstruct the toll highway below.
- D. The PARTIES agree that the ILLINOIS TOLLWAY reserves the exclusive right to review and approve the following:
1. Any and all signage affixed to the grade separation structure or placed on ILLINOIS TOLLWAY property.
 2. The permitting of any and all loads traversing a grade separation structure over the ILLINOIS TOLLWAY issued in accordance with the Illinois Administrative Code, 92 Ill. Admin. Code 554.605 (Superload Moves).
 3. Any COUNTY highway intersection modifications that lead to ILLINOIS TOLLWAY owned facilities.

4. The PARTIES agree that each PARTY shall 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 all construction, the COUNTY shall continue to maintain all portions of the PROJECT on its property that is not to be improved or maintained by the ILLINOIS TOLLWAY's construction contractor(s) pursuant to the PROJECT PLANS, and the ILLINOIS TOLLWAY shall continue to maintain all portions of the toll highway that are not required to be maintained by their construction contractor(s).
- B. Upon completion of construction and final inspection, each PARTY shall continue to have sole maintenance responsibility for all items of PROJECT construction for which the PARTY is assigned such responsibility herein.

IX. GENERAL PROVISIONS

- A. Wherever in this AGREEMENT approval or review by either PARTY is required, said approval or review shall not be unreasonably delayed or withheld.
- B. 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 the said PARTY during the performance of this AGREEMENT. Each such representative shall have authority, on behalf of such PARTY, to make decisions relating to the work covered by this AGREEMENT. Each representative shall be readily available to the other PARTY. Representatives may be changed, from time to time, by subsequent written notice.
- C. In the event of a dispute regarding the PROJECT PLANS, the construction of the PROJECT and/or the performance of this AGREEMENT, representatives authorized by the ILLINOIS TOLLWAY's Chief Engineering Officer and the COUNTY's County Engineer shall meet to resolve the dispute. In the event they cannot mutually agree on a resolution, the ILLINOIS TOLLWAY's Chief Engineering Officer's decision shall be final. In the event that the PARTIES cannot mutually agree on a resolution of a dispute solely concerning COUNTY property, the decision of the COUNTY's County Engineer shall be final.
- D. This AGREEMENT may be executed electronically or otherwise and may be executed in two (2) or more counterparts, each of which shall be deemed an original instrument and all of which together shall constitute one and the same instrument.
- E. The COUNTY certifies that its correct Federal Tax Identification number is 36-6006600, and it is doing business as a governmental entity, whose mailing address is: Lake County, IL, 18 North County Street, Waukegan, Illinois 60085.
- F. The ILLINOIS TOLLWAY certifies that its correct Federal Tax Identification no. is 36-2811931, and that it is doing business as a governmental entity, whose mailing address is:

The Illinois State Toll Highway Authority, 2700 Ogden Avenue, Downers Grove, Illinois 60515.

- G. This AGREEMENT may be modified only by written instrument executed by duly authorized representatives of the PARTIES and the Illinois Attorney General.
- H. 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 after the date this AGREEMENT is executed.
- I. This AGREEMENT shall be binding upon and inure to the benefit of the PARTIES and their respective successors and approved assigns. No PARTY may assign, transfer, sell, grant, convey, deed, cede or otherwise give over, in any manner or form, any of its duties, obligations and/or responsibilities as set forth in this AGREEMENT without first obtaining the express written consent and permission of the other PARTY and the Illinois Attorney General, except as otherwise provided in this AGREEMENT.
- J. In the event there is a conflict between the terms contained in this document and the attached exhibit, the terms included in this document shall control.
- K. The failure by either PARTY to seek redress for violation of, or to insist upon strict performance of, any conditions, covenants or provisions of this AGREEMENT shall not constitute a waiver of any breach or subsequent breach of such conditions, covenants or provisions. No provision of this AGREEMENT shall be deemed waived unless such provision is waived in writing by the PARTY charged with waiver.
- L. This AGREEMENT shall be governed and construed in accordance with the laws of the State of Illinois, without regard to conflict of law principles. If any provision of this AGREEMENT shall be deemed invalid, inoperative or unenforceable by a court of competent jurisdiction, all other provisions of this AGREEMENT shall continue in full force and effect. In the event of litigation regarding this AGREEMENT, venue and jurisdiction shall lie exclusively in the Circuit Court of DuPage County, Illinois and/or the United States District Court for the Northern District of Illinois, Eastern Division.
- M. All written reports, notices and other communications related to this AGREEMENT shall be in writing and shall be personally delivered (via certified mail, overnight mail delivery or electronic mail delivery), to the following persons, or their designees, at the following addresses:

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

With a copy to:

The Illinois State Toll Highway Authority
2700 Ogden Avenue
Downers Grove, IL 60515
Attn: General Counsel
kpasulkabrown@getipass.com

To the COUNTY:

Lake County Division of Transportation
600 W. Winchester Road
Libertyville, IL 60048
Attn: County Engineer
DOT@lakecountyil.gov

- L. The PARTIES shall maintain books and records related to 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 and recipients 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 or any other governmental entity with monitoring authority, upon reasonable notice and during normal business hours.
- M. The COUNTY agrees to fully cooperate in any IG investigation conducted pursuant to Section 8.5 of the Toll Highway Act, 605 ILCS 10/8.5, and shall not bill the ILLINOIS TOLLWAY for such time. Unless prohibited by law, 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.
- N. All matters set forth in the Recitals are agreed to by the PARTIES, and the PARTIES understand the Recitals are part of this AGREEMENT.

SIGNATURE PAGE TO FOLLOW

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

THE COUNTY OF LAKE

RECOMMENDED FOR EXECUTION

By: _____
Shane E. Schneider, P.E.
Lake County Director of Transportation/
County Engineer

Date: _____

By: _____
Sandy Hart
Chair, Lake County Board

Attest: _____
Anthony Vega
County Clerk

Date: _____

Date: _____

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By: _____
Arnaldo Rivera
Chairman/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