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subcontractors of the UTILITY to ensure that the relocation of FACILITIES shall progress as expeditiously as possible with minimal interference to any of the UTILITY'S operations.

- I. The UTILITY reserves the right to proceed with such work as may be required to protect and insure the safe and efficient operation of the FACILITIES.

XLIII.

PERFORMANCE OF THE WORK

- E. The UTILITY shall perform the work in accordance with the approved Order for Utility Work in conjunction with the approved plans and cost estimates. All work shall comply with the approved plans, applicable statutes, codes and safety standards of general applicability in the industry for the type of work involved.
- F. All work performed by the UTILITY within the ILLINOIS TOLLWAY'S right-of-way shall comply with the ILLINOIS TOLLWAY'S applicable Standard Specifications and the ILLINOIS TOLLWAY'S Policy on the Accommodation of Utilities to the extent not inconsistent with this Agreement. Copies of any such applicable Specifications or Policies will be provided to the UTILITY by the ILLINOIS TOLLWAY upon request.

XLIV. CHANGES IN THE WORK

- I. The UTILITY shall give written notice to the Chief Engineer of any changes from the approved plans and cost estimates or any unscheduled or extra work required with respect to a Utility Job Number. Such changes or extra work shall be approved in writing by the Chief Engineer of the ILLINOIS TOLLWAY. The UTILITY shall not be entitled to reimbursement for field changes or extra work without prior written notice and approval from the ILLINOIS TOLLWAY.

- J.** In the event the UTILITY'S Contract does not contain unit prices for the unscheduled or extra work to MODIFY the FACILITIES, the cost of any change in the approved final plans or the cost of extra work shall be negotiated between the UTILITY and its Contractor and subject to approval by the ILLINOIS TOLLWAY.
- K.** If the ILLINOIS TOLLWAY and the UTILITY cannot agree on the negotiated additional charges for proposed field changes or extra work and the UTILITY elects to proceed with the work in dispute, the UTILITY shall keep separate and complete records of the time and materials and other related costs required to perform the work in dispute. Nothing herein shall prevent the UTILITY from completing the extra work or field changes at its sole cost and expense. In this event, extra work submitted for reimbursement shall be negotiated based upon the applicable rates used within the "Schedule of Average Annual Equipment Ownership Expense" published by the Illinois Department of Transportation (IDOT).
- L.** The Chief Engineer of the ILLINOIS TOLLWAY reserves the right to disallow proposed field changes or extra work and direct the UTILITY to stop work in connection with a Utility Job Number if continuation of the work results in a substantial increase in costs or disrupts the construction of the PROJECTS. However, the UTILITY may continue the work if necessary to restore or maintain service to its customers.

XLV.

REMOVAL OF EQUIPMENT AND SALVAGE

- C.** Upon completion of the removal or relocation of the FACILITIES in accordance with approved plans, or any modifications thereof as ordered by the ILLINOIS TOLLWAY, the UTILITY shall, without unreasonable delay, dismantle and remove all existing permanent and temporary FACILITIES and other structures which have been abandoned, except for portions thereof which have been abandoned in place in accordance with approved plans, and shall inventory all materials having salvage value.

The ILLINOIS TOLLWAY shall receive a credit from the UTILITY for the salvage value of the removed facilities.

XLVI.

RECORD DOCUMENTS

- E.** The UTILITY shall provide the ILLINOIS TOLLWAY with one (1) set of reproducible full size (24" x 36") and one set of reduced size (11" x 17") as-built record drawings and specifications for each permanent FACILITY located within the ILLINOIS TOLLWAY'S right-of-way within ninety (90) calendar days after completion of work on the FACILITIES.
- F.** It is understood and agrees that this AGREEMENT constitutes a complete and exclusive understanding between the PARTIES relative to the design, construction and the reimbursement of cost for relocation of the FACILITIES for the PROJECT. Further, the PARTIES may have prior agreements and/or anticipate subsequent agreements pertaining to RIGHT of Entry, Permits and /or Contracts for Sale which shall remain in force and be governed by these previously approved documents.

XLVII. INSURANCE

- G.** The UTILITY agrees to procure and maintain, or, with respect to operations undertaken by its contractors, to cause its contractors to procure and maintain, insurance of the kinds and amounts specified herein, with insurance companies rated A - or better by AM Best and authorized to transact insurance business in the State of Illinois, covering all operations undertaken pursuant to any order for MODIFICATIONS of the FACILITIES given by the ILLINOIS TOLLWAY under the terms of this Agreement. Before commencing any such work, the UTILITY shall furnish the certificates of insurance satisfactory to the ILLINOIS TOLLWAY, which shall provide that thirty (30) days prior written notice will be given to the ILLINOIS TOLLWAY in the event of

cancellation. The ILLINOIS TOLLWAY'S failure to request certificates of insurance or insurance policies do not constitute a waiver of the obligations and requirements to maintain the minimal coverage specified as stated in the ILLINOIS TOLLWAY STANDARD SPECIFICATIONS.

H. The UTILITY shall maintain the insurance requirements as well as third party liability insurance covering bodily injury and property damage with coverage and limits as specified in the ILLINOIS TOLLWAY STANDARD SPECIFICATIONS section 107.27. All independent and outsourcing contracts and contractors for the UTILITY shall have and maintain the insurance limits as associated in the ILLINOIS TOLLWAY STANDARD SPECIFICATIONS section 107.27 and have the ILLINOIS TOLLWAY named as additionally insured.

I. In lieu of procuring and maintaining insurance as provided in the ILLINOIS TOLLWAY STANDARD SPECIFICATIONS (section 107.27), if the UTILITY is self-insured for any of the risks for which insurance is required, must furnish the ILLINOIS TOLLWAY with evidence of its financial responsibility to undertake such self-insurance, which is reasonably satisfactory to the ILLINOIS TOLLWAY, and with CERTIFICATE of self-Insurance.

D. The UTILITY understands that the ILLINOIS TOLLWAY has not obtained Builders Risk Insurance covering loss to the property of the UTILITY on account of the work being performed by the UTILITY and its Contractors. Nothing in this Agreement is intended to impose liability on the ILLINOIS TOLLWAY for property losses of the UTILITY on account of work being performed by the UTILITY and its Contractors.

- E.** The UTILITY shall indemnify and save the ILLINOIS TOLLWAY, its directors, officers, agents, and employees harmless from any and all liability for any loss of life, personal injury, damage to property and any and all claims, suits, actions, judgments, costs and fees of every nature and description arising out of or connected with the work performed by the UTILITY or its contractors under this Agreement, or from the operations of the FACILITIES covered by this Agreement or resulting from the failure of the FACILITIES to operate properly or from other malfunctions of the FACILITIES, or from any other actions or inactions on the part of or on behalf of the UTILITY in the design, construction, reconstruction or maintenance of the UTILITY'S FACILITIES located on or near the ILLINOIS TOLLWAY'S right-of-way.
- F.** To the extent allowable by law, the ILLINOIS TOLLWAY shall indemnify and save the UTILITY, its directors, officers, agents, and employees harmless from any and all liability for loss of life, personal injury, damage to property and any and all claims, suits, actions, judgments, costs and fees of every nature and description arising out of or connected with construction of the IMPROVEMENT by the ILLINOIS TOLLWAY or its Contractors, or from the ILLINOIS TOLLWAY'S operations on the ILLINOIS TOLLWAY'S right-of-way or from any other actions or inactions on the part of or on behalf of the ILLINOIS TOLLWAY in connection with the design, construction, reconstruction, or maintenance of the IMPROVEMENT.

XLIX. SUBMISSIONS OF COSTS AND BILLING

- C.** The ILLINOIS TOLLWAY shall reimburse the UTILITY for all substantiated, actual and approved costs to perform the FACILITIES MODIFICATION work as per this Agreement.
- B.** Upon completion of the work contemplated by a Utility Job Number or of a PROJECTS including more than one Utility Job Number, the UTILITY shall

submit to the ILLINOIS TOLLWAY a bill for reimbursement, accompanied by supporting documents showing the following costs itemized as follows:

1. Construction or Removal of FACILITIES.
 - a. Engineering Costs;
 - b. Labor Costs;
 - c. Costs of Work Contracted for by the UTILITY;
 - d. Motor Vehicle and Equipment Costs; and
 - e. Material Costs.
2. General and Overhead Costs
 - a. Administrative and General;
 - b. Payroll Taxes;
 - c. Pension;
 - d. Welfare; and
 - e. Insurance
3. Credit for the salvage value of abandoned or removed Facilities
 4. Credit for any and all Betterment of Facilities
 5. Credit for the reimbursable percentage due to OTHER GOVERNMENT IMPROVEMENTS.

C. The statement shall be signed by a duly authorized representative of the UTILITY with certification that he/she has examined the records and accounts of the UTILITY and that the statement is a true and complete bill for the items set forth therein.

D. Audit/retention of records: UTILITY and its subcontractors shall maintain books and records relating to the performance of the MODIFICATIONS necessary to support amounts charged to the State. Books and records, including information stored in databases or other computer systems, shall be maintained by the UTILITY for a period of three years from the later of the date of final payment under the contract or completion of the contract. Books and records required to be maintained under this section shall be available for review or audit by representatives of: the ILLINOIS TOLLWAY, the Auditor General, the Executive Inspector General, and the State of Illinois internal auditors or other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. The UTILITY and

its contractors and subcontractors shall cooperate fully with any such audit and with any investigation conducted by any of these entities. Failure to maintain books and records required by this section shall establish a presumption in favor of the State for the recovery of any funds paid by the ILLINOIS TOLLWAY under the contract for which adequate books and records are not available to support the purported disbursement. The UTILITY or subcontractors shall not impose a charge for audit or examination of the UTILITY's books and records. See 30 ILCS 500/20-65.

L. PAYMENT

- G.** After the UTILITY has submitted an approved invoice for reimbursement with all required supporting statements and documentation, the ILLINOIS TOLLWAY shall promptly reimburse the UTILITY for its substantiated costs for the MODIFICATION of the FACILITIES covered by each Utility Job Number. Periodic or partial payments and invoicing shall be permitted for materials and supplies delivered with work completed. The UTILITY shall also submit, prior to payment, any additional information reasonably requested by the ILLINOIS TOLLWAY.
- H.** Final payment by the ILLINOIS TOLLWAY for the cost of eligible reimbursable utility work performed on each Utility Job Number or improvement shall constitute full payment for the performance of its obligation to pay money, full satisfaction of any and all claims for payment of money which the UTILITY may have against the ILLINOIS TOLLWAY arising from the Utility Job Number or improvement set forth in this AGREEMENT.
- I.** The UTILITY shall submit a final invoice within one (1) year of the completion of work on each Utility Work Order unless prior arrangements are made to extend the time period due to unforeseen circumstances. The final invoice shall be marked "FINAL INVOICE" and shall state the date on which the last work was performed or the last item of billed expense was incurred.

- LI. FUTURE REMOVALS OR RELOCATIONS**

 - C.** If at any time the ILLINOIS TOLLWAY determines that it is necessary to remove, adjust, protect or relocate the UTILITY'S FACILITIES, the PARTIES shall proceed in accordance with the terms and conditions of this Agreement.

- LII. MODIFICATIONS**

 - E.** This Agreement is not subject to modification except in writing, executed

by the duly authorized representatives of the PARTIES.

F. It is understood and agrees that this AGREEMENT constitutes a complete and exclusive understanding between the PARTIES relative to the design, construction and the reimbursement of cost for relocation of the FACILITIES for the PROJECT. Further, the PARTIES may have prior agreements and/or anticipate subsequent agreements pertaining to Right of Entry, Permits and /or Contracts for Sale which shall remain in force.

LIII. TERMINATION

C. Either PARTY may terminate this Agreement upon one (1) year prior written notice to the other PARTY.

LIV. GENERAL PROVISIONS

M. This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed and enforced only in accordance with the laws of the United States and the State of Illinois. Any suit or proceeding relating to this Agreement, including arbitration proceedings, shall be brought in DuPage County, Illinois.

N. This AGREEMENT may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.

O. Under penalties of perjury, the UTILITY certifies that its correct Federal Tax Identification number is 91-2019476 and it is doing business as a private entity, whose mailing address is 13865 Sunrise Valley Drive, Herndon, VA 20171.

D. This AGREEMENT may only be modified in writing and executed by duly authorized representatives of the PARTIES hereto.

E. This Agreement shall be binding upon and inure to the benefit of the PARTIES hereto and their respective successors and assigns.

F. The failure by the ILLINOIS TOLLWAY or the UTILITY 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 ILLINOIS TOLLWAY or the UTILITY unless such provision is waived in writing.

NOTICES

All notices shall be in writing and shall be personally delivered or mailed to the following persons at the following addresses:

To: The Illinois State Toll Highway Authority
2700 Ogden Avenue
Downers Grove, Illinois 60515
Attention: Chief Engineer

To: XO Communications
Attn: Gegi Leeger, Director- Regulatory Contracts
13865 Sunrise Valley Drive
Herndon, VA 20171

With a copy to:
Randy Woods
XO Communications
810 Jorie Blvd.
Suite 200
Oak Brook, Illinois 60523
Attention: Randy Wood

EXHIBITS

The following exhibits are attached to this Agreement and hereby incorporated by reference:

- Exhibit A: Notice of Utility Interference.
- Exhibit B: Order for Utility Work.
- Exhibit C: Notice to Proceed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated.

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By: _____ Date: _____

Kristi Lafleur, Executive Director

ATTEST: _____ Date: _____

Secretary

XO COMMUNICATIONS SERVICES, LLC

By: _____ Date: _____
Steve Pecorella, Executive Director

ATTEST: _____ Date: _____
Title: _____

Approved as to Form and Constitutionality

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

EXHIBITS

"A" – NOTIFICATION OF UTILITY INTERFERENCE

"B" – ORDER FOR UTILITY WORK

"C" – NOTICE TO PROCEED – UTILITY WORK

EXHIBIT A

Utility Job Number

**THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY
NOTIFICATION OF UTILITY INTERFERENCE
_____TOLLWAY**

(Utility or Municipality) Date _____

Address

City, State, Zip

Dear Sir,

This is notification that your facilities consisting of

BRIEF DESCRIPTION OF FACILITIES

Location _____

GENERAL LOCATION OF INTERFERENCE

Within _____ and more specifically located at _____ + _____,
on the

DESIGN SECTION/CONTACT NUMBER STATION NUMBER MILEPOST
NO.

_____ Tollway, will interfere with the construction or improvement of said Toll Highway

This interference has been assigned UTILITY JOB

NUMBER _____

Recommended for Notification this _____ day of _____ of 20_____

By _____

By _____

DESIGN SECTION ENGINEER

ISTHA UTILITY SECTION

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

Signed _____

CHIEF ENGINEER

04-29-14 rev

EXHIBIT B

Utility Job Number _____

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY
ORDER FOR UTILITY WORK - _____
TOLLWAY

The _____ hereby requests authority to do such work as shown on
(Utility or Municipality)

the attached drawings and identified by Utility Job Number _____ in accordance with the
terms and conditions of the Utility Agreement dated _____, 20 _____ and the
Supplemental Provisions and Restrictions as may be hereinafter set forth:

Final Plans, a detailed cost estimate, and time estimate to perform the utility work are attached.

A summary of the estimated cost and time requirements are listed below:

- 13. Estimated Cost of Abandoning, Removing or Retiring Existing Facilities: \$ _____
- 14. Estimated Cost of Adjusting or Protecting Existing Facilities: \$ _____
- 15. Estimated Cost of Relocating Facilities: \$ _____
- 16. Estimated Cost of Temporary Facilities: \$ _____
- 17. Estimated Cost of Additional Right-of-Way (if required): \$ _____
- 18. Estimated Credit for Used Life, Betterment, Salvage: \$ _____

Total Estimated Cost: \$ _____

The estimated time to complete the work is _____ days.

Signed on this _____ day of _____, 20 ____ . _____
(Utility or Municipality)

Signature Title

Recommended for Approval this _____ day of _____ of 20 ____.

Design Section Engineering Signature

Tollway Utility Section

Approved and Ordered for Construction this _____ day of _____, 20 ____ .

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

Signed _____

Chief Engineer

04-29-14

rev

EXHIBIT C

Utility Job Number

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY
NOTICE TO PROCEED - UTILITY WORK

Date _____

(Utility or Municipality)

Address

City, State, Zip

Gentlemen:

You are hereby authorized to proceed, effective this date, with construction of the utility work

Identified by Utility Job Number _____.

All work is subject to the terms and conditions of the Utility Agreement and the approved Order for Utility Work. The estimated time to complete the utility work is _____ days.

It is the Utility's responsibility to make known to itself the construction schedule for the project

and to coordinate the utility work with the work of others.

Sincerely,

Chief Engineer

Illinois State Toll Highway Authority

04-29-14 rev

RESOLUTION NO. 20451

Background

It is in the best interest of the Illinois State Toll Highway Authority (“Tollway”) to enter into an Intergovernmental Agreement with the City of Aurora and the Aurora Township Highway Department in connection with a bridge replacement at I-88 (Ronald Reagan Memorial Tollway) and Church Road. The Church Road Bridge will be closed to traffic during construction, and the Farnsworth Avenue Bridge will serve as a detour route to take local traffic over I-88. Because of the detour, the City of Aurora and the Aurora Township Highway Department have requested that the Tollway provide minor repairs to the Farnsworth Avenue Bridge approach slabs to improve the ride-ability during construction of the Church Road Bridge.

Resolution

The Chief Engineer and the General Counsel are authorized to negotiate and prepare an Intergovernmental Agreement between the Illinois State Toll Highway Authority, the City of Aurora, and Aurora Township Highway Department in substantially the form attached to this Resolution, and the Chair or the Executive Director is authorized to execute said agreement.



Approved by: _____
Chair

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY,
THE CITY OF AURORA
AND
THE AURORA TOWNSHIP HIGHWAY DEPARTMENT**

This INTERGOVERNMENTAL AGREEMENT (hereinafter referred to as the "AGREEMENT") is entered into this _____ day of _____ AD, 2014, 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 CITY OF AURORA, a municipal corporation of the State of Illinois, hereinafter called the "CITY", and THE AURORA TOWNSHIP HIGHWAY DEPARTMENT, a body politic and corporate of the State of Illinois, hereinafter called the "TOWNSHIP", 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 Ronald Reagan Memorial Tollway (I-88) (hereinafter sometimes referred to as "Toll Highway") at Church Road, ILLINOIS TOLLWAY Bridge Number 815, and included in ILLINOIS TOLLWAY construction contract(s) including but not limited to Design Contract I-14-5693 (hereinafter referred to as the "PROJECT") by making the following improvements:

Remove the existing four-span bridge and replace the bridge with a longer two-span structure approximately 260 feet in length. The Church Road profile will be raised to provide additional vertical clearance over I-88. A widened deck will be provided that will offer 1-12 foot through traffic lane in each direction with an 8 foot shoulder on either side. The approach slabs will be removed and replaced. A closed drainage system will be installed along with wing walls, and a retaining wall along Church Road in the southeast quadrant and the superstructure will be designed to accommodate future sidewalk or bike path construction. Church Road will be improved to approximately 350 feet north and south of the bridge center pier, temporary erosion control, grading, landscaping, pavement markings, light pole relocation. The Church Road Bridge will be closed to traffic during construction and the Farnsworth Avenue Bridge will be utilized to take local traffic over I-88, and all other work necessary to complete the PROJECT in accordance with the approved plans and specifications; and

WHEREAS, the CITY and the TOWNSHIP have requested that the ILLINOIS TOLLWAY provide minor repairs to the Farnsworth Avenue Bridge approach slabs to improve the ride ability during construction of the Church Road Bridge; and

WHEREAS, the ILLINOIS TOLLWAY has agreed to the CITY's and the TOWNSHIP's request to do minor repairs to the Farnsworth Avenue Bridge approach slabs; and

WHEREAS, the PARTIES 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

property or rights of way which the any PARTY deems necessary for the maintenance and operation of their respective highway systems. Therefore, it is understood by the PARTIES hereto that there will be no exchange of any interest in any PARTIES right of way.

- B. In the event, the ILLINOIS TOLLWAY identifies areas of the CITY's and/or the TOWNSHIP's right of way temporarily needed for the ILLINOIS TOLLWAY to enter, access and use to allow the ILLINOIS TOLLWAY and/or its contractor(s) to construct the PROJECT, the CITY and/or the TOWNSHIP, shall upon the ILLINOIS TOLLWAY's application to the CITY's and/or the TOWNSHIP's permit form, together with a plan set, issue the ILLINOIS TOLLWAY a permit without charge to the ILLINOIS TOLLWAY; allowing the ILLINOIS TOLLWAY all temporary use. In addition, the CITY and/or the TOWNSHIP shall waive any surety bonding requirement. The ILLINOIS TOLLWAY agrees upon completion of the PROJECT, that those lands used are to be restored to an "as good as – or – better" than pre-construction condition. Approval of any permit shall not be unreasonably withheld by the CITY or the TOWNSHIP.

III. UTILITY RELOCATION

- A. The ILLINOIS TOLLWAY agrees to provide the CITY and the TOWNSHIP, as soon as they are identified, the locations (existing and proposed) of public and/or private utility facilities within existing CITY and/or TOWNSHIP rights of way which require adjustment as part of the PROJECT. As part of its PROJECT engineering responsibilities, the ILLINOIS TOLLWAY shall identify adjustments to the aforementioned existing utilities.
- B. The ILLINOIS TOLLWAY agrees to make arrangements for and issue all permits for the PROJECT required adjustments to utility facilities located on existing ILLINOIS TOLLWAY rights of way, and on proposed ILLINOIS TOLLWAY rights of way which are outside areas of CITY and TOWNSHIP jurisdiction, where improvements to ILLINOIS TOLLWAY facilities are proposed to be done as part of the PROJECT, at no expense to the CITY or the TOWNSHIP.
- C. At all locations where utilities are located on CITY or TOWNSHIP rights of way and must be adjusted due to work proposed by the ILLINOIS TOLLWAY, the CITY and/or the TOWNSHIP agree to cooperate with the ILLINOIS TOLLWAY in making arrangements with the applicable utility and issue all permits for the requisite adjustment(s) at no cost to the ILLINOIS TOLLWAY. The ILLINOIS TOLLWAY agrees to reimburse and/or credit the CITY and/or the TOWNSHIP for any and all out of pocket costs, the CITY and/or the TOWNSHIP may incur in causing the aforementioned utility or utilities to be adjusted.

IV. CONSTRUCTION

- A. The ILLINOIS TOLLWAY shall advertise and receive bids, provide construction engineering inspections for and cause the PROJECT to be constructed in accordance with the PROJECT plans and specifications.
- B. After award of the construction contract(s), assuming there are no proposed deviations from the plans and specifications that affect the CITY and/or the TOWNSHIP, the ILLINOIS TOLLWAY shall provide no less than five (5) calendar days' written notice to the CITY and the TOWNSHIP prior to commencement of work on the PROJECT.
- C. The CITY and the TOWNSHIP, 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 CITY's and/or the TOWNSHIP's system. The CITY and the TOWNSHIP shall assign personnel to perform inspections on behalf of the CITY and/or the TOWNSHIP of all work included in the PROJECT that affects their respective system, and will deliver written notices to the Chief Engineer of the ILLINOIS TOLLWAY advising the ILLINOIS TOLLWAY as to the identity of the individual(s) assigned to perform said inspections.
- D. Notices required to be delivered by any PARTY pursuant to this AGREEMENT shall be delivered as indicated in Section IX of this AGREEMENT.
- E. The ILLINOIS TOLLWAY shall have the right, in its sole judgment and discretion, to cancel or alter any or all portions of the work due to circumstances either known or unknown at the time of bidding or arising after the Contract(s) was entered into, in accordance with the ILLINOIS TOLLWAY Supplemental Specifications for construction, issued March 2013, or the Canceled Items provision in the applicable version of the Illinois State Toll Highway Authority's Standard or Supplemental Specifications.

V. FINANCIAL

- A. The ILLINOIS TOLLWAY agrees to pay all PROJECT related engineering, construction engineering and construction costs.
- B. Any PARTY may request, after the construction contract(s) are let by the ILLINOIS TOLLWAY, that supplemental work that increases the total costs of the PROJECT or more costly substitute work be added to the construction contract(s). The ILLINOIS TOLLWAY 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 CITY and the TOWNSHIP.

- B. The term "local road" refers to any highway, road or street under the jurisdiction of the CITY and/or the 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:
1. "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.
 2. "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.
 3. "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.
 4. "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 ILLINOIS 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.
- I. The term "grade separation structure" refers to all structural elements between the abutments and below the wearing surface of a bridge carrying one roadway over another, unless otherwise specified.
- J. These are three types of bridge structures that intersect the ILLINOIS TOLLWAY rights 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. MAINTENANCE - RESPONSIBILITIES

- A. The ILLINOIS TOLLWAY agrees to maintain I-88 in its entirety.
- B. The CITY agrees to maintain, or cause to maintain, Church Road north of I-88 including approach slabs, all facilities, sidewalks, bike paths, and any and all fences, walls or appurtenances built to separate vehicular traffic from pedestrian traffic, lighting, roads, etc., or any work the ILLINOIS TOLLWAY is including in the PROJECT for the CITY at their request, in its entirety.
- C. The TOWNSHIP agrees to maintain, or cause to maintain, Church Road south of I-88 including approach slabs, all facilities, sidewalks, bike paths, and any and all fences, walls or appurtenances built to separate vehicular traffic from pedestrian traffic, lighting, roads, etc., or any work the ILLINOIS TOLLWAY is including in the PROJECT for the CITY at their request, in its entirety. The TOWNSHIP also agrees to retain ownership

and jurisdiction of Farnsworth Avenue including the repaired approach slabs in their entirety.

- D. The bridge improvements being constructed under this AGREEMENT are of the following types as described in Section VI, Paragraph J above and involve the following roadway(s):

Type of Bridge Structure	Affected Roadway
Type 2	Church Road

Type 2 - TOWNSHIP Roadway over ILLINOIS TOLLWAY Right of Way

1. The TOWNSHIP has all maintenance responsibility as to the following:
 - a. All TOWNSHIP right of way and TOWNSHIP highway roadway approaches to the grade separation structure, including but not limited to pavement, curb and gutter, shoulders, sidewalks, guardrail, approach slabs, and approach embankments outside access control fences.
 - b. The following portions of the grade elevation structure:
 - c. The wearing surface;
 - d. The deck, below the wearing surface and above the structural beams including expansion joints, parapet walls, railings, etc.;
 - e. Drainage facilities above structural beams and girders;
 - f. All lighting except underpass;
 - g. All TOWNSHIP signals and signs;
 - h. To the extent not addressed in other intergovernmental agreements to which the TOWNSHIP is a PARTY, any facilities designed for traffic other than motor vehicles, such as bicycle or pedestrian paths or lanes;
 - i. All drainage facilities carrying exclusively TOWNSHIP drainage.
2. The ILLINOIS TOLLWAY has all maintenance responsibility for all portions thereof not maintained by the TOWNSHIP or the CITY as set forth herein, including but not limited to the following:
 - a. All parts of the grade separation structure, including but not limited to bearings, beams, girders, slope walls, abutments and piers;

- b. All fences along ILLINOIS TOLLWAY routes, except overpass fencing installed to separate pedestrians, bicycles and non-vehicular traffic from highway traffic;
 - c. All bridge deck downspouts, from a clean-out installed directly below the scuppers to the outfall;
 - d. All remaining drainage facilities installed for the purpose of carrying exclusively Toll Highway drainage;
 - e. All underpass lighting.
- E. The PARTIES agree that the ILLINOIS TOLLWAY reserves the exclusive right to review and comment on the following:
- 1. Any and all signage affixed to the grade separation structure or placed on ILLINOIS TOLLWAY right of way;
 - 2. The permitting of any and all loads traversing a grade separation structure over the ILLINOIS TOLLWAY issued in accordance with 92 Illinois Administration Code 554, Subchapter f, Subpart F, Section 554.605 (Super load Moves);
 - 3. The ILLINOIS TOLLWAY will perform the periodic inspections required by the guidelines developed and agreed to by the ILLINOIS TOLLWAY and the Illinois Department of Transportation in 1996 and consistent with the National Bridge Inspection Standards (NBIS) to determine the current condition ratings for all jointly maintained bridges. The inspections performed by the ILLINOIS TOLLWAY will provide condition ratings for the entire jointly maintained structure. The ILLINOIS TOLLWAY and the TOWNSHIP will perform the inspections necessary to collect in depth information for determining maintenance and repair needs for the portions of the structure for which they have maintenance responsibility. A copy of the ILLINOIS TOLLWAY's final inspection reports shall be delivered to the TOWNSHIP.
 - 4. In the event the TOWNSHIP must perform maintenance of the superstructure, as required, the ILLINOIS TOLLWAY, after proper notice by the TOWNSHIP, shall assist in the coordination of any required lane closures on I-88 to perform such maintenance work.
- F. The PARTIES agree that each PARTY has the duty to perform such regular inspections, surveys and reviews as are reasonably necessary to fulfill their respective obligations under this AGREEMENT.

VIII. ADDITIONAL MAINTENANCE PROVISIONS

- A. During construction, the PARTIES shall continue to maintain all portions of the PROJECT within the PARTIES respective right of way that are not to be improved or

maintained by the construction contractor(s) pursuant to the approved plans and specifications.

- B. All items of construction which are stipulated in this AGREEMENT to be maintained by the respective PARTIES shall, upon completion of construction and final inspection, be the sole maintenance responsibility of that PARTY.
- C. ALL 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 any of 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.

IX. GENERAL PROVISIONS

- A. It is understood and agreed that this is an AGREEMENT between the City of Aurora, the Aurora Township Highway Department and the Illinois State Toll Highway Authority.
- B. It is understood and agreed by the PARTIES hereto, that the ILLINOIS TOLLWAY shall have jurisdiction of I-88. The CITY shall retain jurisdiction of Church Road north of I-88 traversed or affected by I-88 and the TOWNSHIP shall retain jurisdiction of Church Road south of I-88 and of Farnsworth Avenue traversed or affected by I-88, except as otherwise expressly provided for in this AGREEMENT. For the purpose of this AGREEMENT, jurisdiction shall mean the authority and obligation to administer, control, construct, maintain, and operate.
- C. 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.
- D. Wherever in this AGREEMENT approval or review by any PARTY is provided for, said approval or review shall not be unreasonably delayed or withheld.
- E. 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.
- F. In the event of a dispute between PARTIES in the carrying out of the terms of this AGREEMENT, the Chief Engineer of the ILLINOIS TOLLWAY, the CITY's Engineer and the Highway Commissioner of the TOWNSHIP 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 decision of the Chief Engineer of the ILLINOIS TOLLWAY shall be final.

- G. In the event of a dispute between the PARTIES in the carrying out of the terms of this AGREEMENT in reference to the CITY's or the TOWNSHIP's maintained highways, or a dispute concerning the plans and specifications for the CITY's or TOWNSHIP's highways, the Chief Engineer of the ILLINOIS TOLLWAY, the CITY's Engineer 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 concerning the CITY's and/or the TOWNSHIP's maintained highways, the decision of the City's Engineer and/or the TOWNSHIP's Highway Commissioner shall be final as long as that decision does not delay delivery of the PROJECT or be detrimental to the maintenance and operation of the Toll Highway.
- H. 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.
- 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 ILLINOIS TOLLWAY, the CITY, or the TOWNSHIP 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 ILLINOIS TOLLWAY, the CITY, or the TOWNSHIP 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 ILLINOIS TOLLWAY:

The Illinois Toll Highway Authority
2700 Ogden Avenue

Downers Grove, Illinois 60515
Attn: Chief Engineer

To the CITY:

City of Aurora
44 East Downer Place
Aurora, Illinois 60507
Attn: City Engineer

To the TOWNSHIP:

Aurora Township
220 Butterfield Road
North Aurora, Illinois 60542
Highway Commissioner

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

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

AURORA TOWNSHIP

By: _____
John Shoemaker, Highway Commissioner

Attest: _____

(Please Print Name)

Date: _____

THE CITY OF AURORA

By: _____
Thomas J. Weisner, Mayor

Attest: _____

(Please Print Name)

Date:

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By: _____
Kristi Lafleur, Executive Director

Date: _____

Approved as to Form and Constitutionality

Tiffany Bohn, Assistant Attorney General, State of Illinois

JMR_IGA_Aurora_I-88 @ Church Rd.Revised072414

RESOLUTION NO. 20452

Background

It is in the best interest of the Illinois State Toll Highway Authority (“Tollway”) to enter into an Intergovernmental Agreement with the Fox River Water Reclamation District (“District”) and the Illinois Department of Transportation (“Department”) in connection with the widening of I-90 (Jane Addams Memorial Tollway) at Route 25. Due to the proposed widening, the District’s 6” sanitary force main under I-90, which is on Tollway property by permit, is in conflict with the proposed project and the District has to extend their casing pipe which will also result in the need to reconstruct the force main up to the top of the embankment on Illinois Route 25 on Department right-of-way. The District shall construct the facilities in accordance with Permit Number NW 1964-2, and the District agrees to obtain a “Work Order” and amend its Permit Number NW 1964-2 from the Tollway for the facilities located on Tollway property, and to obtain an approved permit or amend the current permit from the Department for the facilities located on Department property. The cost to the Tollway for its portion of the relocation is estimated at \$153,699.92.

Resolution

The Chief Engineer and the General Counsel are authorized to negotiate and prepare an Intergovernmental Agreement between the Illinois State Toll Highway Authority, Fox River Water Reclamation District, and the Illinois Department of Transportation in substantially the form attached to this Resolution, the Chair or the Executive Director is authorized to execute said agreement, and the Chief of Finance is authorized to issue warrants in payment of actual costs thereof.

Approved by: _____



Chair

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY,
THE ILLINOIS DEPARTMENT OF TRANSPORTATION
AND
THE FOX RIVER WATER RECLAMATION DISTRICT**

This INTERGOVERNMENTAL AGREEMENT (hereinafter referred to as the "AGREEMENT") is entered into this _____ day of _____ AD, 2014, 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 STATE OF ILLINOIS, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter called the "DEPARTMENT", and THE FOX RIVER WATER RECLAMATION DISTRICT, of the State of Illinois, hereinafter called the "DISTRICT", individually referred to as "PARTY", and collectively referred to as "PARTIES".

WITNESSETH:

WHEREAS, the ILLINOIS TOLLWAY, to facilitate the free flow of traffic and further the safety to the motoring public, recently approved a 15 year Capital Program, "Move Illinois; *The Illinois Tollway Driving the Future*," which includes improvements to the Jane Addams Memorial Tollway (I-90) (hereinafter sometimes referred to as "Toll Highway"), including reconstructing and widening from the John F. Kennedy Expressway to Interstate 39. The contemplated improvements are substantially included in multiple ILLINOIS TOLLWAY construction contracts including but not limited to Contract I-13-4104 (hereinafter referred to as the "PROJECT") by making the following improvements:

The pavement of I-90 will be reconstructed and widened within the limits of the Illinois Route 25 interchange to provide a fourth lane in each direction and a wider inside shoulder. The Illinois Route 25 Bridge (ILLINOIS TOLLWAY Bridge 501, DEPARTMENT Bridge 045-0042) over I-90 and the Illinois Route 25 Ramp AB Bridge (ILLINOIS TOLLWAY Bridge 503, DEPARTMENT Bridge 016-9957) over I-90 will both be reconstructed. A portion of Illinois Route 25 approximately 960 feet north of the bridge and approximately 570 feet south of the bridge will be reconstructed to accommodate the new vertical alignment of the Illinois Route 25 Bridge. The interchange ramps A, B, C, and D will be reconstructed. Retaining walls will be constructed and noise abatement walls will be installed at various locations. A new drainage system will be constructed and new roadway lighting installed. The Ramp B and Ramp D toll plazas will be relocated, and any work necessary to complete the PROJECT in accordance with the approved plans and specifications; and

WHEREAS, due to the proposed widening of I-90, the DISTRICT's 6" sanitary force main incased within a 16" steel casing pipe under I-90, which is on ILLINOIS TOLLWAY property by Permit Number NW 1964-2, (referred to here by reference), is in conflict with the proposed PROJECT; and

WHEREAS, the ILLINOIS TOLLWAY has made modifications to the proposed drainage design and proposed soldier pile retaining wall located along the north side of I-90 to avoid such conflicts, however, the DISTRICT has to extend their casing pipe due to the overall

proposed widening of I-90 and this will also result the need to reconstruct the force main up to the top of the embankment on Illinois Route 25 and to reconstruct two structures (one clean out and one air release) on either side of I-90, hereinafter referred to as the DISTRICT's "FACILITIES"; and

WHEREAS, the DISTRICT shall construct the FACILITIES in accordance with Permit Number NW 1964-2; and

WHEREAS, subsequent to this AGREEMENT, the DISTRICT agrees to obtain a "Work Order" and amend its Permit Number NW 1964-2 from the ILLINOIS TOLLWAY for the FACILITIES located on ILLINOIS TOLLWAY property, and to obtain an approved permit or amend the current permit from the DEPARTMENT for the FACILITIES located on DEPARTMENT property, and to abide by all conditions set forth therein; and

WHEREAS, the ILLINOIS TOLLWAY, the DEPARTMENT and the DISTRICT 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 FACILITIES work included in this PROJECT as proposed; and

WHEREAS, the ILLINOIS TOLLWAY and the DEPARTMENT are parties to another Intergovernmental Agreement which establishes their responsibilities for the entire PROJECT; 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 DEPARTMENT by virtue of its powers as set forth in 605 ILCS 5/4-101 *et seq.* is authorized to enter into this AGREEMENT; and

WHEREAS, the DISTRICT by virtue of its powers as set forth in the "Sanitary District Act of 1917", Code 70 ILCS 2405 *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 ILLINOIS TOLLWAY agrees to perform preliminary and final design engineering, obtain necessary surveys, and prepare the final plans and specifications for the PROJECT.

- B. The DISTRICT agrees to perform preliminary and final design engineering, and prepare the final plans and specifications for the FACILITIES, subject to reimbursement by the ILLINOIS TOLLWAY as hereinafter stipulated.
- C. The ILLINOIS TOLLWAY and the DEPARTMENT shall review the plans and specifications for the FACILITIES presented by the DISTRICT, which impact the ILLINOIS TOLLWAY's and the DEPARTMENT's maintained highways within fifteen (15) calendar days of receipt thereof. Approval by the ILLINOIS TOLLWAY and the DEPARTMENT shall mean they agree with all specifications in the plans, including alignment and location of the FACILITIES which impact the ILLINOIS TOLLWAY's and the DEPARTMENT's maintained highways and the DISTRICT's FACILITIES. In the event of disapproval, the ILLINOIS TOLLWAY and/or the DEPARTMENT will detail in writing its objections to the proposed plans and specifications for review and consideration by the ILLINOIS TOLLWAY.
- D. Any dispute concerning the plans and specifications shall be resolved in accordance with Section IX of this AGREEMENT.
- E. The final approved plans and specifications for the FACILITIES shall be promptly delivered to the ILLINOIS TOLLWAY and the DEPARTMENT by the DISTRICT.
- F. The ILLINOIS TOLLWAY agrees to assume the overall PROJECT responsibility, including assuring that all permits (U.S. Army Corps of Engineers, Illinois Department of Natural Resources, Metropolitan Water Reclamation District of Greater Chicago, Environmental Protection Agency, etc.) and joint participation and/or force account agreements (County, Township, Municipal, Railroad, Utility, etc.), 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.
- G. The ILLINOIS TOLLWAY and the DEPARTMENT shall grant and consent to any and all permits, rights of access (ingress and egress), and temporary use to the DISTRICT for the FACILITIES, without charge to the DISTRICT. Any permit for right of access, temporary use shall not be unreasonably withheld by the ILLINOIS TOLLWAY or the DEPARTMENT.
- H. The DISTRICT shall require all construction performed within the ILLINOIS TOLLWAY's rights of way to comply with the current Illinois Department of Transportation Standard Specifications for Road and Bridge Construction and the ILLINOIS TOLLWAY Supplemental Specifications for construction, issued March 2014, as amended, and shall require all work performed within the DEPARTMENT's rights of way to conform to the same current Standards and Specifications.

II. RIGHT OF WAY

- A. The acquisition or transfer of permanent right of way interests is not required from the DEPARTMENT for the construction of the PROJECT pursuant to the approved plans and specifications. Therefore, it is understood by the PARTIES hereto that there will be no exchange of any interest in the DEPARTMENT's right of way or of the ILLINOIS TOLLWAY's right of way.
- B. In the event, the ILLINOIS TOLLWAY identifies areas of the DEPARTMENT's right of way temporarily needed for the ILLINOIS TOLLWAY to enter, access and use to allow the ILLINOIS TOLLWAY and/or its contractor(s) to complete the PROJECT, the DEPARTMENT, shall upon the ILLINOIS TOLLWAY's application to the DEPARTMENT's permit form, (OPER-1045 form) together with a plan set, issue the ILLINOIS TOLLWAY a permit without charge to the ILLINOIS TOLLWAY; allowing the ILLINOIS TOLLWAY all temporary use. In addition, the DEPARTMENT shall waive the contractor's surety bonding requirement. The ILLINOIS TOLLWAY agrees upon completion of the PROJECT, that those lands used are to be restored to an "as good as – or – better" than pre-construction condition. Approval of any permit shall not be unreasonably withheld by the DEPARTMENT.

III. UTILITY RELOCATION

- A. The DEPARTMENT agrees to make arrangements for and issue all permits for the FACILITIES and cooperate with necessary adjustments located within existing DEPARTMENT rights of way where improvements to the DISTRICT's FACILITIES are proposed by the DISTRICT to be done in conjunction with the PROJECT, at no expense to the ILLINOIS TOLLWAY.
- B. The ILLINOIS TOLLWAY agrees to make arrangements for and issue all permits for the required adjustments to the FACILITIES located on existing ILLINOIS TOLLWAY rights of way which are outside areas of DEPARTMENT jurisdiction, where improvements to DISTRICT FACILITIES are proposed to be done as part of the PROJECT, at no expense to the DEPARTMENT.
- C. In the event that the work proposed by the DISTRICT results in a conflict with the ILLINOIS TOLLWAY's fiber optic cable system, the DISTRICT shall reimburse the ILLINOIS TOLLWAY for the cost to locate, mark, design, protect, adjust and/or relocate the system.
- D. At all locations where the ILLINOIS TOLLWAY's infrastructure (remote traffic microwave sensors, message signs, weather stations, weigh-in-motion sites, signs, roadway lighting controllers, electrical services and data connections) that are currently in place within the PROJECT limits and must be adjusted due to work proposed by the DISTRICT, the DISTRICT agrees to reimburse the ILLINOIS TOLLWAY for any and all out of pocket costs the ILLINOIS TOLLWAY may incur in causing the aforementioned infrastructure to be adjusted.

IV. CONSTRUCTION

- A. The ILLINOIS TOLLWAY shall advertise and receive bids, provide construction engineering inspections for and cause the PROJECT to be constructed in accordance with the PROJECT plans and specifications.
- B. The DISTRICT shall advertise and receive bids, obtain ILLINOIS TOLLWAY concurrence as to the amount of bids (for work to be funded wholly or partially by the ILLINOIS TOLLWAY before award), award the contract(s), provide construction engineering inspections and cause the FACILITIES to be constructed in accordance with the plans and specifications, subject to reimbursement by the ILLINOIS TOLLWAY as hereinafter stipulated.
- C. After award of the construction contract(s), any proposed deviations from the plans and specifications for the PROJECT and/or the FACILITIES that affect any of the PARTIES shall be submitted to the PARTIES for approval prior to commencing such work. Each PARTY shall review the proposed deviation(s) and indicate its approval or disapproval thereof in writing. If the proposed deviation(s) to the plans and specifications are not acceptable, the respective PARTY shall detail in writing its specific objections. If the ILLINOIS TOLLWAY receives no written response from the other PARTIES for deviation(s) to the PROJECT plans and specifications and/or the DISTRICT does not receive a written response to any deviation(s) to the FACILITIES' plans and specifications within fifteen (15) calendar days after delivery to the PARTIES of the proposed deviation(s), the proposed deviation(s) shall be deemed approved by the PARTIES.
- D. After award of the construction contract(s), assuming there are no proposed deviations from the plans and specifications that affect the other PARTIES, the ILLINOIS TOLLWAY and/or the DISTRICT shall provide no less than five (5) calendar days' written notice to the PARTIES prior to commencement of work on the PROJECT and/or the FACILITIES.
- E. The DISTRICT shall require that the ILLINOIS TOLLWAY and the DEPARTMENT, 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 DISTRICT requires of its contractor(s) and that the ILLINOIS TOLLWAY and the DEPARTMENT be added as an additional protected PARTY on all performance bonds required of the DISTRICT's contractor(s). The above referenced insurance requirements must be incorporated into any and all contract(s), construction, maintenance, or otherwise, that might be entered into in furtherance of this AGREEMENT. In addition, the DISTRICT 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 DEPARTMENT insurance coverage. The required insurance documentation shall include, but not be limited to: copies of policies, certificates of insurance and additional insured endorsements.
- F. The DISTRICT, 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 DISTRICT, 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.

1. Scope of Insurance - Coverage shall be at least as broad as:

- a. 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).
- b. 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).
- c. 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.
- d. 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.

2. 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.

- a. 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.
- b. 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.
- c. Worker's Compensation.

3. Statutory Limits.

- a. Employers Liability of \$1,000,000 per accident, per disease, including voluntary compensation and where applicable, United States Longshoreman and Harbor Workers.
 - b. Excess/Umbrella Liability – In addition to the limits of coverage specified in (1), (2) and (30 above, not less than \$5,000,000 per occurrence and annual aggregate per project will be maintained by the Contractor.
 - c. Worker’s Compensation and Employers Liability: Statutory Limits with Employers Liability limit of \$500,000 per occurrence.
 - d. The ILLINOIS TOLLWAY shall be named “Additional Insured” for the commercial general liability and automobile liability coverage. This coverage shall be primary for the Additional Insured and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other coverage be primary, contributing or excess.
 - e. All deductibles or self-insured retentions must be declared and any self-insured retention in excess of \$50,000 must be approved and accepted by the ILLINOIS TOLLWAY. Evidence of insurance shall be provided for review by the ILLINOIS TOLLWAY and shall include originals of the applicable “additional insured” endorsements for approval of the ILLINOIS TOLLWAY. Any failure by the ILLINOIS TOLLWAY to request proof of insurance will not waive the requirement of maintenance of minimum protection specified.
- G. The ILLINOIS TOLLWAY and the DEPARTMENT, 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 FACILITIES work that affects the ILLINOIS TOLLWAY’s and the DEPARTMENT’s maintained highways. The ILLINOIS TOLLWAY and the DEPARTMENT shall assign personnel to perform inspections on behalf of the ILLINOIS TOLLWAY and the DEPARTMENT of all work included in the FACILITIES that affects the ILLINOIS TOLLWAY’s and the DEPARTMENT’s maintained highways, and will deliver written notices to the Technical Services Director of the DISTRICT advising the DISTRICT as to the identity of the individual(s) assigned to perform said inspections.
- H. Notices required to be delivered by any PARTY pursuant to this AGREEMENT shall be delivered as indicated in Section IX of this AGREEMENT.
- I. The ILLINOIS TOLLWAY shall have the right, in its sole judgment and discretion, to cancel or alter any or all portions of the work due to circumstances either known or unknown at the time of bidding or arising after the Contract(s) was entered into, in accordance with the Canceled Items Provision 109.06 included in the Illinois Tollway Supplemental Specifications to the Illinois Department of Transportation Standard Specifications for Road and Bridge Construction, adopted January 1, 2012, issued March 2014, or the applicable version of the ILLINOIS TOLLWAY Standard or Supplemental Specifications.

V. FINANCIAL

- A. Except as otherwise identified herein, the ILLINOIS TOLLWAY agrees to pay all PROJECT related engineering, right of way, construction engineering and construction costs.
- B. The ILLINOIS TOLLWAY agrees to reimburse the DISTRICT for construction costs incurred by the DISTRICT in relocating a portion of its FACILITIES onto DEPARTMENT property to reconstruct the force main up to the top of the embankment on Illinois Route 25.
- C. It is mutually agreed by the PARTIES hereto that the estimated cost to relocate the FACILITIES in accordance to the actual bids is \$288,041.00 for construction and \$71,086.00 for engineering, for a total estimated cost of \$359,127.00. It is further agreed by the PARTIES hereto that the cost to the ILLINOIS TOLLWAY for its portion of the FACILITIES relocation necessitated by the PROJECT is estimated at \$123,276.92 for construction costs and \$30,423.00 for engineering cost for a total estimated cost of \$153,699.92 based upon actual bid prices.
- D. The ILLINOIS TOLLWAY agrees that upon award of the contract for the FACILITIES relocation and receipt of an invoice from the DISTRICT, the ILLINOIS TOLLWAY will pay to the DISTRICT, an amount equal to 80% of its obligation incurred under this AGREEMENT, based upon actual bid prices, and will pay to said DISTRICT the remainder of its obligation in a lump sum, upon completion of the FACILITIES relocation, based on final costs.
- E. Any PARTY may request, after the construction contract(s) for the PROJECT are let by the ILLINOIS TOLLWAY, that supplemental work that increases the total costs of the PROJECT or more costly substitute work be added to the construction contract(s). The ILLINOIS TOLLWAY 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 DEPARTMENT and/or the DISTRICT.
- B. The term "local road" refers to any highway, road or street under the jurisdiction of the DEPARTMENT.
- 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:

1. "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.
 2. "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 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.
- E. 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. It is understood and agreed by the PARTIES that the ILLINOIS TOLLWAY shall retain jurisdiction and maintenance responsibilities for I-90 in its entirety and the DEPARTMENT shall retain jurisdiction and maintenance responsibilities for Illinois Route 25 within the PROJECT limits in its entirety. The PARTIES maintenance responsibilities are further detailed in the Intergovernmental Agreement executed on December 21, 1960.
- B. The DISTRICT agrees to maintain, or cause to maintain, its' FACILITIES in accordance with the ILLINOIS TOLLWAY's amended permit and the approved permit or amended permit from the DEPARTMENT for the FACILITIES located on ILLINOIS TOLLWAY property and on DEPARTMENT property respectively, and to abide by all conditions set forth therein, in its entirety.
- C. The PARTIES agree that each PARTY has the duty to perform such regular inspections, surveys and reviews as are reasonably necessary to fulfill their respective obligations under this AGREEMENT.

- D. In the event that one PARTY observes that emergency maintenance is needed, then the observing PARTY shall immediately notify the other of the observed condition, the nature of the immediate need, and a general description of the measures the observing PARTY intends to take to remedy the immediate need. The observing PARTY may then implement such measures without consultation, provided however that the observing PARTY remains subject to such emergency response and disaster protocols as apply generally to governmental entities. The other PARTIES shall not be charged for the cost of the emergency measures taken by the observing PARTY, except after consultation and then only to the extent such maintenance is within the duties of another PARTY under this AGREEMENT.

VIII. ADDITIONAL MAINTENANCE PROVISIONS

- A. During construction, the DEPARTMENT shall continue to maintain all portions of the PROJECT within the DEPARTMENT's right of way that are not to be improved or maintained by the construction contractor(s) pursuant to the approved plans and specifications, the DISTRICT shall continue to maintain all portions of the FACILITIES within the DEPARTMENT's and the ILLINOIS TOLLWAY's right of way that are not to be improved by the construction contractor(s), and the ILLINOIS TOLLWAY shall continue to maintain all portions of the Toll Highway that are not required to be maintained by the construction contractor(s).

IX. GENERAL PROVISIONS

- A. It is understood and agreed that this is an AGREEMENT between the Fox River Water Reclamation District, the Illinois Department of Transportation and the Illinois State Toll Highway Authority.
- B. It is understood and agreed by the PARTIES hereto, that the ILLINOIS TOLLWAY shall have jurisdiction of I-90. The DEPARTMENT shall retain jurisdiction of Illinois Route 25 traversed or affected by I-90, and the DISTRICT shall retain jurisdiction and ownership of the FACILITIES located within I-90 right of way and within Illinois Route 25 right of way. For the purpose of this AGREEMENT, jurisdiction shall mean the authority and obligation to administer, control, construct, maintain, and operate.
- C. 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.
- D. Wherever in this AGREEMENT approval or review by either the PARTIES is provided for, said approval or review shall not be unreasonably delayed or withheld.

- E. 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.
- F. 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 Deputy Director/Region One Engineer and the Executive Director of the DISTRICT 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 decision of the Chief Engineer of the ILLINOIS TOLLWAY shall be final.
- G. In the event of a dispute between the PARTIES in the carrying out of the terms of this AGREEMENT in reference to the FACILITIES, or a dispute concerning the plans and specifications for the FACILITIES, the Chief Engineer of the ILLINOIS TOLLWAY, the Deputy Director/Region One Engineer and the Executive Director of the DISTRICT shall meet and resolve the issue. In the event that they cannot mutually agree on the resolution of the dispute concerning the FACILITIES, the decision of the Executive Director of the DISTRICT shall be final as long as that decision does not delay delivery of the PROJECT or be detrimental to the maintenance and operation of the Toll Highway.
- H. 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.
- I. The ILLINOIS TOLLWAY agrees that in the event any work is performed by other than ILLINOIS TOLLWAY forces, the applicable provisions of the "Prevailing Wage Act" 820 ILCS 130/1 shall apply.
- J. Under penalties of perjury, the DISTRICT certifies that its correct Federal Tax Identification number is _____ and it is doing business as a governmental entity, whose mailing address is Fox River Water Reclamation District, P.O. Box 328, Elgin, Illinois 60121-0328.
- K. This AGREEMENT may only be modified by written modification executed by duly authorized representatives of the PARTIES hereto.
- L. 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.
- M. This AGREEMENT shall be binding upon and inure to the benefit of the PARTIES hereto and their respective successors and approved assigns.

THE FOX RIVER WATER RECLAMATION DISTRICT

By: _____
Robert Trueblood, Executive Director
Date: _____

Attest: _____
Judie Seyller, Office Manager

THE STATE OF ILLINOIS DEPARTMENT OF TRANSPORTATION

By: _____
John A. Fortmann, P.E.
Deputy Director/Region One Engineer

Attest: _____

Date: _____

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By: _____
Kristi Lafleur, Executive Director

Date: _____

Approved as to Form and Constitutionality

Tiffany I. Bohn, Assistant Attorney General, State of Illinois

RESOLUTION NO. 20453

Background

The Illinois State Toll Highway Authority, pursuant to resolution No. 19745 approved July 26, 2012, authorized certain law firms to potentially provide the Tollway with legal services in connection with the Tollway's existing capital debt, new bond issues, and other upcoming financing initiatives; and

It is necessary and desirable for the Tollway to periodically select, from that previously authorized group, firms to be utilized for the next financing transactions the Tollway is contemplating, namely, a potential refunding of certain of its bonds pursuant to a plan to be approved by the Board, or issuance of new bonds as part of its previously approved Move Illinois capital program, and to perform legal services in connection with such transactions and the Tollway's capital financing program.

Resolution

The General Counsel is authorized to retain the firm of Chapman and Cutler, LLP as Bond Counsel, and the firm of Polsinelli, PC as Issuer's Counsel to provide the services described herein on the next Tollway financing transaction. Further, the Tollway is authorized to make the recommendation of the firm Quarles and Brady, LLP to serve as underwriters Counsel in such transaction.

The fee arrangements exclusive of reasonable and necessary costs for the next financing transaction remain as follows:

Bond Counsel Fee: Not to exceed the following:

Minimum	\$50,000	Maximum	\$180,000
	<u>\$ per \$1K par</u>	<u>Increment</u>	<u>Cumulative</u>
<i>Up to \$100M</i>	\$0.60	\$60,000	\$60,000
<i>\$100-\$200M</i>	\$0.40	\$40,000	\$100,000
<i>\$200-\$300M</i>	\$0.15	\$15,000	\$115,000
<i>\$300-\$500M</i>	\$0.15	\$30,000	\$145,000
<i>\$500-\$700M</i>	\$0.05	\$10,000	\$155,000
<i>\$700-\$1000M</i>	\$0.05	\$15,000	\$170,000

ISSUER'S COUNSEL FEE: 50% of the Bond Counsel Fee.\


UNDERWRITER COUNSEL FEE: 80% of the Bond Counsel Fee.

RESOLUTION NO. 20453

Resolution – Continued

The above fees are separate and apart from such standard Special Assistant Attorney General fees as may become applicable for the performance of other related legal services as described herein.

The Chair, Executive Director, or General Counsel is authorized to execute any documents necessary to effectuate such legal representation subject to the approval of the Illinois Attorney General; and the Chief of Finance is authorized to issue warrants in payment thereof.

Approved by: 
Chair

RESOLUTION NO. 20454

Background

The Illinois State Toll Highway Authority (“Tollway”) has negotiated a proposed settlement regarding a worker’s compensation claim with Joseph Colello as recommended by defense counsel Nyhan, Bambrick Kinzie & Lowry. It is in the best interest of the Tollway to go forward with the settlement.

Resolution

The settlement of Joseph Colello’s workers compensation claim is approved. The General Counsel is authorized to finalize the settlement agreement consistent with the terms presented to the Board in executive session. The Chair or the Executive Director and the General Counsel are authorized to execute any and all necessary documents to effectuate this settlement and resolve all adjunct legal matters, and the Chief of Finance is authorized to issue warrants in payment thereof.



Approved by: _____
Chair

RESOLUTION NO. 20455

Background

The Illinois State Toll Highway Authority (“Tollway”) has negotiated a proposed settlement regarding a worker’s compensation claim with Ronald Lullo as recommended by defense counsel Nyhan, Bambrick, Kinzie & Lowry P.C. It is in the best interest of the Tollway to go forward with the settlement.

Resolution

The settlement of Ronald Lullo’s workers compensation claim is approved. The General Counsel is authorized to finalize the settlement agreement consistent with the terms presented to the Board in executive session. The Chair or the Executive Director and the General Counsel are authorized to execute any and all necessary documents to effectuate this settlement and resolve all adjunct legal matters, and the Chief of Finance is authorized to issue warrants in payment thereof.



Approved by: _____
Chair

RESOLUTION NO. 20456

Background

The Illinois State Toll Highway Authority (“Tollway”) has negotiated a proposed settlement regarding a personal injury case (No. 2012 L 009637, Circuit Court Cook County) with Plaintiff, Rosa Martinez, and her attorney in the amount as discussed in Executive Session. It is in the best interest of the Tollway to go forward with the settlement.

Resolution

The settlement of Rosa Martinez’s lawsuit is approved. The General Counsel is authorized to finalize the settlement agreement consistent with the terms presented to the Board in executive session. The Chair or the Executive Director is authorized to execute the final settlement agreement, the General Counsel is authorized to execute any and all other documents necessary to effectuate this settlement and resolve all adjunct legal matters, and the Chief of Finance is authorized to issue warrants in payment thereof.

Approved by: 
_____ Chair