

CONSTRUCTION MANAGER  
<<FIRST OR SECOND>> SUPPLEMENTAL AGREEMENT

The Board of Directors, on the <<Day of Board Meeting>> day of <<Month>>, <<Year>>, authorized this <<FIRST OR SECOND>> SUPPLEMENTAL AGREEMENT to be entered into by and between THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY, an instrumentality and administrative agency of the State of Illinois, hereinafter sometimes referred to as "TOLLWAY", and <<Consultant>>, a <<corporation/partnership>> authorized and existing within the laws of the State of Illinois, hereinafter sometimes referred to as "CONSTRUCTION MANAGER".

W I T N E S S E T H:

WHEREAS, the TOLLWAY selected CONSTRUCTION MANAGER from <<PSB YY-N, Item NN>>, and CONSTRUCTION MANAGER entered into an agreement on <<Date of Original Agreement>>, to provide construction management services (hereinafter "Services") for Contract No. <<Contract No.>> for <<Work to be done/location>>; and

WHEREAS, additional supplemental Services are necessary due to the increased scope of the work; and

WHEREAS, CONSTRUCTION MANAGER has submitted a proposal dated <<Date of Proposal>>, a copy of which is attached hereto as Exhibit "1", to provide said additional Services, and it is in the best interest of the TOLLWAY to accept said proposal.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto mutually covenant and agree as follows:

ARTICLE I

General Provisions

Except as modified or changed herein, all terms, provisions and conditions contained in the original agreement between the TOLLWAY and the CONSTRUCTION MANAGER dated <<Date of Original Agreement>> ("Original Agreement") and commonly referred to as Contract No. <<Contract No.>> and any prior supplements, shall govern this agreement and be in full force and effect, however, any changes to multipliers, unit costs, prices and/or rates of compensation shall only be applied to Services rendered solely under this Supplement pursuant to changes in the scope of work. The supplemental proposal attached as Exhibit "1" is hereby incorporated into and made a part of this <<FIRST OR SECOND>> Supplemental Agreement.

## ARTICLE II

### Time of Performance

The CONSTRUCTION MANAGER shall perform the services herein until the latest of the end date of the original agreement, the end date of the most recent supplemental agreement, the end date of any previously approved contract renewal or amendment or the last day of the last month of the last year of the schedule included at Exhibit "A" in the attached proposal.

## ARTICLE III

### Reaffirmation of Original Agreement

All covenants and agreements contained in the Original Agreement made and entered into by and between the TOLLWAY and CONSTRUCTION MANAGER and any and all prior Supplemental Agreements, if any, to provide Services for Contract No. << **Contract No.**>> for <<**Work to be done/location**>> are reaffirmed and shall govern this Agreement as if fully set forth herein, it being the intent that this Agreement shall be a supplement to said agreement(s).

## ARTICLE IV

### Record Retention and Audit

In compliance with the Illinois Procurement Code (30 Ill. Comp. Stat. 500/20-65) and rules promulgated thereunder, every CONTRACT for goods and services shall provide that the contractor shall maintain certain records, books and documents.

The CONSTRUCTION MANAGER shall maintain in the State of Illinois, for a minimum of five years from the latter of the date of completion of the CONTRACT or the date of final payment under the CONTRACT, adequate books, records, and supporting documents from an accounting system maintained in accordance with generally accepted accounting principles to verify the amounts, recipients, uses and methods of all disbursements of funds passing in conjunction with the CONTRACT. The five year record maintenance period shall be extended for the duration of any audit in progress at the time of that period's expiration. The CONSTRUCTION MANAGER shall at its own expense make such records available in a timely manner for inspection and audit (including copies and extracts of records) as required by the Auditor General and other State Auditors, the Chief Procurement Officer for General Services, the Illinois Department of Transportation, and the TOLLWAY's Inspector General, Internal Audit or other TOLLWAY agents at all reasonable times and without prior notice. For purposes of this section, "timeliness" will be considered production within the time period specified by the Auditor General and other State Auditors, the Chief Procurement Officer for General Services, the Illinois Department of Transportation and the TOLLWAY's Inspector General, Internal Audit or other TOLLWAY agents, but no later than thirty days after a request for records being made unless otherwise agreed to by the parties.

The CONSTRUCTION MANAGER agrees to cooperate fully with any audit conducted by the Auditor General and other State Auditors, the Chief Procurement Officer for General Services, the Illinois Department of Transportation and the TOLLWAY's Inspector General, Internal Audit or other TOLLWAY agents, and to provide full access to all relevant materials. The auditors reserve the right to enter the CONSTRUCTION MANAGER's place of business in order to audit the records. If they are not produced in a timely manner by the CONSTRUCTION MANAGER, then the CONSTRUCTION MANAGER shall reimburse the TOLLWAY or other State agency for the travel expenses of its auditors in the event that this right is invoked.

The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the CONSTRUCTION MANAGER and any subcontractors or suppliers of goods and services to the extent that those subcontracts or agreements relate to fulfillment of the CONSTRUCTION MANAGER's obligations to the TOLLWAY. Such subcontractor shall be required to comply with the terms and conditions of this Section and the TOLLWAY shall be entitled to enforce a breach of that contract.

Any audit adjustment will be submitted on a final invoice for any underpayment or overpayment to the CONSTRUCTION MANAGER or its subcontractors. The CONSTRUCTION MANAGER shall promptly reimburse the TOLLWAY for any overpayment, or the TOLLWAY at its option may deduct any overpayment from any funds due the CONSTRUCTION MANAGER, whether those funds are due under this contract or other contracts to which the CONSTRUCTION MANAGER is a party either directly with the TOLLWAY or as a subcontractor. In the event the CONSTRUCTION MANAGER fails or refuses to reimburse the TOLLWAY for an overpayment, the CONSTRUCTION MANAGER shall be responsible for all costs, including attorney fees, incurred by the TOLLWAY to collect such overpayment.

Failure to maintain or make available the books, records, and supporting documents required by this Section shall establish a presumption in favor of the TOLLWAY for recovery of any funds paid by the TOLLWAY under the contract for which adequate books, records and supporting documentation are not available to support their purported disbursement.

The CONSTRUCTION MANAGER shall reimburse the TOLLWAY for the total costs of an audit that identifies significant findings that would benefit the TOLLWAY, including but not limited to reasonable attorney's fees and other expenses. Significant findings for the purposes of this provision shall be identified as an amount in excess of \$50,000 in aggregate of the audit report or findings of material performance or compliance deficiencies.

If the CONSTRUCTION MANAGER fails to comply with these requirements, the CONSTRUCTION MANAGER may be disqualified or suspended from bidding on or working on future contracts.

## ARTICLE VI

### Compensation

The upper limit of compensation for said supplemental Services for Contract No. <<Contract No.>> for <<Work to be done/location>> performed by the CONSTRUCTION MANAGER under the Original Agreement and including the services set forth herein, is hereby increased from \$ <<Original Agreement ULC>> by \$ <<Change of ULC>> to \$ <<New ULC>>.

## ARTICLE VII

### Report of a Change in Circumstances

The CONSTRUCTION MANAGER agrees to report to the TOLLWAY as soon as practically possible, but no later than 21 days following any change in facts or circumstances that might impact the CONSTRUCTION MANAGER's ability to satisfy its legal or contractual responsibilities and obligations under this contract. Required reports include, but are not limited to changes in the CONSTRUCTION MANAGER's Certification/Disclosure Forms, the CONSTRUCTION MANAGER's IDOT pre-qualification, or any certification or licensing required for this project. Additionally, the CONSTRUCTION MANAGER agrees to report to the Tollway within the above timeframe any arrests, indictments, convictions or other matters involving the CONSTRUCTION MANAGER, or any of its principals, that might occur while this contract is in effect. This reporting requirement does not apply to common offenses, including but not limited to minor traffic/vehicle offenses.

Further, the CONSTRUCTION MANAGER agrees to incorporate substantially similar reporting requirements into the terms of any and all subcontracts relating to work performed under this agreement. The CONSTRUCTION MANAGER agrees to forward or relay to the Tollway any reports received from subcontractors pursuant to this paragraph within 21 days.

Finally, the CONSTRUCTION MANAGER acknowledges and agrees that the failure of the CONSTRUCTION MANAGER to comply with this reporting requirement shall constitute a material breach of contract which may result in this contract being declared void.

## ARTICLE VIII

### EXPATRIATED ENTITIES

Except in limited circumstances, no business or member of a unitary business group, as defined in the Illinois Income Tax Act, shall submit a bid for or enter into a contract with a State agency if that business or any member of the unitary business group is an expatriated entity.

IN WITNESS WHEREOF, the parties hereto have executed this <<# of Suppl. Agreement – ex. FIRST>> SUPPLEMENTAL AGREEMENT for <<Contract No.>> the day and year first above written.

THE ILLINOIS STATE TOLL  
HIGHWAY AUTHORITY

<<Name of Consultant>>

By \_\_\_\_\_  
Chairman/CEO - Signature                      Date  
Willard S. Evans, Jr.

\_\_\_\_\_  
President-Signature                      Date

\_\_\_\_\_  
Printed Name as Signed Above

APPROVED:

\_\_\_\_\_  
Executive Director - Signature                      Date  
Jose Alvarez

APPROVED:

\_\_\_\_\_  
Chief Financial Officer - Signature                      Date  
Cathy R. Williams

APPROVED:

\_\_\_\_\_  
General Counsel – Signature                      Date  
Kathleen Pasulka-Brown

Approved as to Form and Constitutionality

\_\_\_\_\_  
Attorney General, State of Illinois - Signature                      Date