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Date	Ver.	Action By	Action	Result
2/22/2017	1	City Council	Passed	Pass
2/16/2017	1	Committee on Aviation	Recommended to Pass	Pass
1/25/2017	1	City Council	Referred	

OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

January 25, 2017

TO THE HONORABLE, THE CITY COUNCIL OF THE CITY OF
CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Aviation, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with the Illinois State Toll Highway Authority.

Your favorable consideration of this ordinance will be appreciated.

Mayor

Very truly yours,

ORDINANCE

WHEREAS, the City of Chicago ("City") is a duly constituted and existing municipality within the meaning of Article VII, Section 1 of the 1970 Constitution of the State of Illinois ("Constitution"), and is a home rule unit of local government under Article VII, Section 6(a) of the Constitution and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City owns and operates the airport known as Chicago O'Hare International Airport ("Airport") and is implementing the O'Hare Modernization Program (the "OMP") which includes construction of future Runway 9C/27C and a future extended configuration of Runway 9R/27L; and

WHEREAS, the O'Hare Modernization Act contemplates and requires that the following be constructed: "public roadway access through the existing western boundary of O'Hare to passenger terminal and parking facilities located inside the boundary of O'Hare and reasonably accessible to that western access is an essential element of the O'Hare Modernization Program 620 ILCS 65/5(a); and

WHEREAS, in addition to the OMP, the City has identified potential development of a series of improvements to the Airport to meet projected air transportation demand including a new centralized deicing facility and new expanded terminal and gate facilities, and the City also has identified a future western landside reserved area for development compatible with western access to the Airport; and

WHEREAS, the Illinois State Toll Highway Authority ("Tollway") is an instrumentality and administrative agency of the State of Illinois which, pursuant to the Illinois Toll Highway Act, 605 ILCS 10/1 et seq., may exercise all powers necessary to carry out its legislative purposes as to the construction, operation, regulation and maintenance of its system of toll highways;

WHEREAS, the Tollway has commenced construction of the project known as the Elgin- O'Hare Western Access Project (the "EOWA Project"), which includes construction of the Illinois Route 390 toll road from U.S. Route 20 (Lake Street) to the Airport, and also includes the construction of Interstate 490 along the western border of the Airport connecting Interstate Highway 90 with Interstate Highway 294; and

WHEREAS, in connection with the Tollway's EOWA Project which will benefit access to the Airport and traffic circulation in and around the Airport, the Tollway seeks to acquire property title and rights in Airport property from the City in several forms including fee ownership, permanent easement, and temporary construction easement, to build the EOWA Project and the Lee Street Improvements, and to allow the County of Cook to build certain Touhy Avenue Improvements; and

WHEREAS, because the property in which the Tollway seeks title and rights is currently obligated for use for Airport purposes pursuant to an Federal Aviation Administration ("FAA")-approved Airport Layout Plan ("ALP") and/or is located within the boundary of the Airport, the City must obtain FAA concurrence as to the fair market value for the title and rights to be transferred, approval that granting of such title and rights will not interfere with the City's operation of the Airport, and release of such property from applicable grant restrictions, prior to conveying the property title and rights to the Tollway; and

WHEREAS, the City and the Tollway wish to enter into an intergovernmental agreement in substantially the form attached as Exhibit A (the "Intergovernmental Agreement") whereby the City and the Tollway shall agree, amongst other things, to the transfer of property title and rights sought by the Tollway for the EOWA Project as depicted and described in Exhibit A-1, each of which are attached hereto and incorporated by reference herein;

NOW, THEREFORE;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The foregoing findings, determinations and definitions are hereby adopted and made or remade as the findings, determinations and definitions of the City Council.

SECTION 2. Subject to the approval of the Corporation Counsel of the City of Chicago as to form and legality, the Commissioner of Aviation is hereby authorized to execute and deliver an Intergovernmental Agreement in substantially the form attached hereto as Exhibit A, and such other documents as are necessary, between the City of Chicago and the Tollway.

SECTION 3. Upon receipt of notice that the FAA has granted release from applicable grant restrictions and issued any other and further necessary approvals for the property identified in the Intergovernmental Agreement, the Commissioner of Aviation is authorized to execute such additional agreements and documents as are reasonably necessary or appropriate to implement this Ordinance and the transfer of property title and rights sought by the Tollway for the EOWA Project, the Lee Street Improvements, as defined in the Intergovernmental Agreement, and the Touhy Avenue Improvements, as defined in the Intergovernmental Agreement.

SECTION 4. All ordinances, resolutions, motions or orders inconsistent with this ordinance are hereby superseded to the extent of such conflict.

SECTION 5. This ordinance shall take effect immediately upon its passage and approval.

Exhibit "A" referred to in this ordinance reads as follows:

Exhibit A to Authorizing Ordinance

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE ILLINOIS STATE
TOLL HIGHWAY AUTHORITY AND THE CITY OF CHICAGO REGARDING
THE ELGIN O'HARE WESTERN ACCESS PROJECT**

This Intergovernmental Agreement (this "Agreement") is made and entered into as of 2017, by the ILLINOIS STATE TOLL HIGHWAY AUTHORITY, an instrumentality of the State of Illinois, (the "Tollway") and the CITY OF CHICAGO, an Illinois home rule municipality (the "City").

RECITALS:

WHEREAS, the Tollway has commenced construction of the project known as the Elgin- O'Hare Western Access Project (the "EOWA Project"), which includes construction of the Illinois Route 390 toll road from U.S. Route 20 (Lake Street) to O'Hare International Airport (the "Airport"), and also includes the construction of Interstate 490 along the western border of the Airport connecting Interstate Highway 90 with Interstate Highway 294; and

WHEREAS, the O'Hare Modernization Act contemplates and requires that the following be constructed: "public roadway access through the existing western boundary of O'Hare to passenger terminal and parking facilities located inside the boundary of O'Hare and reasonably accessible to that western access is an essential element of the O'Hare Modernization Program"620 ILCS 65/5(a);and

WHEREAS, the State of Illinois Department of Transportation ("IDOT") jointly with the U.S. Department of Transportation, Federal Highway Administration (the "FHWA") have vetted the EOWA Project through the National Environmental Protection Act ("NEPA"), developed an Environmental Impact Statement, and have received a Record of Decision from the FHWA; and

WHEREAS, the Tollway has developed a multi-phased implementation plan for the EOWA Project spanning several years; and

WHEREAS, the City owns and operates the Airport and is implementing the O'Hare Modernization Program (the "OMP") which includes construction of future Runway 9C/27C and a future extended configuration of Runway 9R/27L; and

WHEREAS, the City considers the EOWA Project a significant aspect and element of the OMP and of the development and expansion opportunities associated with the OMP; and

WHEREAS, in addition to the OMP, the City has identified development of a series of improvements to the Airport to meet projected air transportation demand including a new Centralized Deicing Facility and new expanded terminal and gate facilities, and the City also has identified a future western landside reserved area for development compatible with western access to the Airport; and

WHEREAS, the Tollway seeks to acquire property title and rights in Airport property from the City in several forms including fee ownership, permanent easement, and temporary construction easement, as listed in Exhibit A attached to this Agreement, to build the EOWA Project and related improvements, and to allow the County of Cook to build the Touhy Avenue Improvements as defined in this Agreement; and

WHEREAS, the property in which the Tollway seeks title and rights is currently obligated for use for Airport purposes pursuant to an Federal Aviation Administration ("FAA")-approved Airport Layout Plan ("ALP") and, therefore, the City must obtain FAA approval to convey the property title and rights to the Tollway; and

WHEREAS, the City and the Tollway have assessed and determined the value of the property title and rights sought by the Tollway; and

WHEREAS, the City desires to convey the property title and rights to the Tollway in furtherance of the EOWA Project, the Lee Street Improvements, the Touhy Avenue Improvements, and related improvements under the terms of this Agreement; and

WHEREAS, the City and the Tollway desire to enter into this Agreement, which is authorized by Article VII, Section 10 of the Illinois Constitution and the Illinois Intergovernmental Cooperation Act 5 ILCS 220/1 et seq.; and

WHEREAS, the tollway and the City are public agencies under the Illinois Intergovernmental Cooperation Act; and

WHEREAS, the Tollway by virtue of its powers as set forth in the Illinois Toll Highway Act, 605 ILCS 10/1 et seq. is authorized to enter into this Agreement; and

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

WHEREAS, City has authorized execution of this Agreement pursuant to an Ordinance approved by the City of Chicago Council on _____, 2017 (C.J. pp _____, et seq.);

NOW, THEREFORE, in consideration of the covenants and conditions to be fulfilled by the Tollway and the City as hereinafter set forth, the City and the Tollway agree as follows:

Section 1. INCORPORATION OF RECITALS

The Recitals set forth above are by this reference incorporated as substantive provisions of this Agreement.

Section 2. DEFINITIONS

For purposes of this Agreement, the following words and terms have the meanings ascribed to them in this Section 2:

Advanced Temporary Construction Easement or Advanced TCE means a Temporary Construction Easement granted by the City to the Tollway for work on City-owned property before the Tollway has acquired fee title or a permanent easement from the City in that property under this Agreement.

Airport means the O'Hare International Airport.

Airport or Aircraft Interference means any of the following:

- o Constructing, installing, or permitting to stand any building, structure, poles, trees, or other object, whether natural or otherwise, of a height above any of the applicable Federal Aviation Regulation Part 77, or any other airspace protected surfaces as defined by the FAA.
- o Failure to file notice consistent with requirements of Federal Aviation Regulation Part 77 (FAA Form 7460-1) prior to constructing any facility, structure, or item.
- o Permitting or suffering the use of property in such a manner as to create electrical or any other type of interference with radio communication between the Airport and any aircraft or as to make it difficult for fliers or air traffic control to distinguish between Airport lights and others, or as to impair visibility in the vicinity of the Airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft.
- o Permitting or suffering the use of property in such a manner as to create a potential for attracting birds and other wildlife, which may pose a hazard to aircraft.
- o Any other interference with aircraft or operations related to the Airport.
- o Any other action or interference as may be determined by the FAA to pose a hazard to aircraft or Airport operations related to aviation.

Airport Layout Plan or ALP means the Airport Layout Plan for the Airport in its form as of the Effective Date.

AOA Perimeter Fence and Road means the Air Operations Area ("AOA") perimeter fence at the Airport, constructed and maintained in compliance with FAA standards and guidance, and the perimeter road adjacent to the security fence. See Section 12 of this Agreement.

City means the City of Chicago.

Closing means a real estate closing on conveyances of title to or rights in Transfer Property. The Parties may conduct Closings from time to time as various parcels of Transfer Property meet the conditions precedent to Closing. See Sections 7, 8, and 9 of this Agreement.

Compensation means the \$96,000,000 consideration to be paid by the Tollway to the City for Transfer Property rights and interests as set forth in Section 5 of this Agreement.

Contractor means any person or entity, other than the officers and employees of the Party, that is hired, retained, or directed by a Party or an authorized agent or employee of the Party, to perform work.

Days means calendar days except when they are specifically designated as business days in the text.

Effective Date means _____, 2017.

Environmental Laws means federal or State of Illinois laws relating to the regulation and protection of human health, safety, the environment and natural resources now or hereafter in effect, as amended or supplemented from time to time, including without limitation the

Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal

Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., and all regulations promulgated thereunder, and all analogous state and local counterparts or equivalents, including, without limitation, the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq., and the common law including trespass and nuisance.

Environmental Remediation means the clean-up, removal, or other treatment of Hazardous Material as required by, and in compliance with, applicable Environmental Laws.

EOWA means Elgin O'Hare Western Access.

EOWA Plans means all of the drawings, plans, specifications, and other documents prepared by the Tollway for the EOWA Project.

EOWA Project means the construction by the Tollway of Illinois Route 390 and the Western Access.

FAA means the Federal Aviation Administration.

FAA Approval means an FAA acknowledgment, authorization, release, approval, decision, or other action required by law or FAA regulations that allows the City to convey title to or rights in Transfer Property to the Tollway and the City to undertake elements of the OMP. Examples include, but are not limited to, the release of a parcel from applicable grant restrictions, an approval of a concurrent use of the property, or changing the status, length, or configuration of a runway.

Fee Parcels means the parcels of Transfer Property that the City will convey in fee simple to the Tollway.

Hazardous Material means any special waste, toxic substance, hazardous substance, hazardous material, hazardous chemical, or hazardous, toxic, or dangerous waste defined or qualifying as special waste or hazardous waste by Environmental Laws.

I-390 means the Elgin-O'Hare element of the EOWA Project, being the east-west toll highway being constructed by the Tollway along the corridor formerly known as the Elgin-O'Hare Expressway.

I-490 means the Western Access element of the EOWA Project, being the proposed toll highway along the western and southern boundaries of the Airport connecting I-90 to I-294 and providing for western access into the Airport.

Lee Street Improvements means improvements to add an eastbound exit ramp from the Jane Addams Memorial Tollway (I-90) to Lee Street at the existing partial diamond interchange; widening northbound Lee Street Access Drive to add a right-turn-only lane at the intersection with Touhy Avenue; widening eastbound Higgins Road (IL-72), to add a right-turn-and-through lane at the intersection with Patton Drive; and reconstruction of Upper Express Drive, an airport service road, along 715 of length and realigned up to 120 feet south to accommodate the eastbound exit ramp. See Subsection 14C of this Agreement.

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Lee Street Parcels means Parcel NW-7B-13-001 and any other parcels related to the Lee Street Improvements.

Lee Street Improvements Plans means all of the drawings, plans, specifications, and other documents prepared by the Tollway or the Village of Rosemont for the Lee Street Improvements. See Subsection 14C of this Agreement.

OMP means the O'Hare Modernization Program.

Parties means the City and the Tollway.

Permanent Easements means the permanent easements in parcels of Transfer Property that the City will convey to the Tollway.

Remediation Costs means all actual costs, expenses, fees, and charges incurred directly by the City or by the Tollway in performing Remediation of Hazardous Material including without limitation the actual costs of professional engineering services, contractor costs, inspection of work, and labor costs, but not including any direct or indirect administrative or overhead costs or legal fees.

Soil Management Plan means the plan and program attached to this Agreement as Exhibit B for the handling, management, and relocation of Stockpiled Soil, which plan and program may be revised from time to time by agreement of the City and the Tollway.

Stockpiled Soil means soil that has been stockpiled by the City on Transfer Property. Stockpiled Soil does not include Excess Road Soil.

Subsequently Identified Property means any parcel of City-owned property identified by the Tollway in the future in which the Tollway requires fee title, a permanent easement, or a temporary construction easement from the City as part of the EOWA Project. See Subsection 3B of this Agreement.

Taft Avenue Parcels means Parcels P1 WA-1D-12-077 and P2 WA-1D-12-078.

Temporary Construction Easements or TCEs means an easement for defined purposes and for a period of five years, or such other time equal to its needs, in parcels of Transfer Property that the City will convey to the Tollway. A Temporary Construction Easement may be for any purpose related to the EOWA Project, the Touhy Avenue Improvements, or the Lee Street Improvements. The compensation for Temporary Construction Easements is included in the Compensation set forth in Section 5 of this Agreement.

Touhy Avenue Improvements means improvements along Touhy Avenue in the vicinity of the Airport including improvements to Touhy Avenue, intersection improvements for Touhy Avenue at Elmhurst Road, improvements for grade separation of Touhy Avenue over the Western Access, improvements for grade separation of Touhy Avenue over the Union Pacific Railroad, intersection, improvements for Touhy Avenue at Mount Prospect Road, and related elements, all ancillary to the EOWA Project. See Subsection 14B of this Agreement.

Touhy Avenue Parcels means Parcels P17 WA-3D-12-074, P18 WA-3D-12-075, P19 WA-3D-12-076, P20 WA-3D-12-077, and TE-P20- WA-3D-12-084.T.

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Touhy Avenue Plans means all of the drawings, plans, specifications, and other documents prepared by the Tollway or the County of Cook for the Touhy Avenue Improvements.

Title Company means the Chicago Title Insurance Company at 10 South La Salle Street, Chicago, Illinois 60603, unless changed in writing by the Parties.

Tollway means the Illinois State Toll Highway Authority.

Transfer Property means every parcel of property in which the City will transfer to the Tollway property interests that include but are not limited to fee title, permanent easements, temporary construction easements,

or Advanced Temporary Easements of any kind, at any time. The Transfer Property is identified in Exhibit A attached to this Agreement.

York Road Flyover means the hook ramp over the existing Union Pacific and Canadian Pacific Railroad rights of way connecting southbound York Road to the Airport, as part of the Western Access.

Western Access means I-490. See the definition of I-490.

Section 3. CONDITIONS OF AGREEMENT

A. Navigational Aids. The Parties understand that certain navigational aids for future Runway 9C-27C and the extension of Runway 9R-27L, including Approach Light System facilities conceptually depicted in the Future ALP attached to this Agreement as Exhibit C, will need to be constructed and located in and near the Transfer Property, following the City's transfer or grant of rights to the Tollway.

B. No Conflict with Western Access. The Parties understand that the EOWA Project improvements will not inhibit or conflict with construction of access into the Airport from I-390 and I-490 or the City's proposed future development of certain adjacent land area on the west side of the Airport outside of the AOA Perimeter Fence.

C. Negative Impacts. The Parties understand that the EOWA Plans, the Touhy Avenue Plans, and the Lee Street Improvements Plans will not cause material adverse impacts on Airport operations including but not limited to airfield and runway operations; surrounding navigable airspace and protected surfaces as defined by 14 C.F.R. Part 77 and the FAA; or any runway classification, instrument rating, or otherwise utility or capability of any runway, including future Runway 9C/27C and the extension of 9R/27L. Except for the treatment of Runway 14R/32L as provided in Subsection 5C of this Agreement, to the extent the FAA determines that the EOWA Project, the Touhy Avenue Improvements, the Lee Street Improvements, or the conveyance of any Transfer Property or Subsequently Identified Property may cause material adverse impacts on Airport operations including but not limited to airfield and runway operations; surrounding navigable airspace and protected surfaces as defined by 14 C.F.R. Part 77 and/or the FAA; or any runway classification, instrument rating, or otherwise utility or capability of any runway including future Runway 9C/27C and the extension of Runway 9R/27L, then the Tollway must cooperate with the City in pursuing mitigation of such material adverse impacts including design alternatives and revising the proposed Transfer Property, sufficient to allow the EOWA Project, the Touhy Avenue Improvements, and the Lee Street Improvements to proceed while eliminating material adverse impacts on existing and planned Airport runway operations and facilities.

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Section 4. APPROVAL OF PARCELS COMPRISING TRANSFER PROPERTY; SUBSEQUENTLY IDENTIFIED PROPERTY

A. Transfer Property Approved. The City and the Tollway have agreed on the parcels of Transfer Property.

B. Approvals of Subsequently Identified Property. The City and the Tollway anticipate that, as construction of the EOWA Project progresses, the Tollway from time to time may identify parcels of City-owned property over which the Tollway requires additional property rights essential to complete the EOWA Project. In that case, the following standards will apply:

- 1) The Tollway will request a conveyance and provide the City with draft conveyance documents for that parcel, including among other any other things an ALTA survey, a legal description, a form of deed or easement, and, if applicable, the scope of the easement rights.

- 2) The City will promptly review the conveyance documents provided by the Tollway and will determine, in the City's reasonable discretion, whether the requested conveyance is acceptable. The City will not unreasonably withhold approval of a request for property essential to complete the EOWA Project.
- 3) Upon City's approval of the transfer of any Subsequently Identified Property, the City will collaborate with the Tollway to finalize conveyance documents, and will diligently seek any regulatory authority, including City Council approval (if necessary) and FAA Approval, which may be required for the conveyance.
- 4) The closing on a conveyance will be scheduled and conducted on the earliest feasible date.
- 5) Any easement conveyed to the Tollway will be subject to the City reserved rights stated in Subsection 6C of this Agreement.
- 6) For any Subsequently Identified Property approved by the City within 36 months after the Effective Date, the compensation will be: (a) \$11 per square foot of land area for a parcel transferred in fee simple or for a grant of a permanent easement and (b) no compensation in addition to the Compensation for temporary easements. For any Subsequently Identified Property approved by the City more than 36 months after the Effective Date, the compensation will be determined by agreement between the City and the Tollway.

Section 5. COMPENSATION FOR PROPERTY TITLE AND RIGHTS

A. Compensation. The City and the Tollway agree that the Compensation to be paid by the Tollway to the City is \$96,000,000, which is the full and complete consideration for all transfers and grants of Fee Parcels, Permanent Easements, Temporary Construction Easements, and Advanced TCEs.

B. Strict Joint Order Escrow Account: Disbursement of Compensation. The Compensation will be disbursed to the City as follows: (1) \$20,000,000 will be disbursed to the City after all FAA Approvals have been granted for all parcels of Transfer Property for the EOWA Project and Touhy Avenue Improvements, and (2) the remaining \$76,000,000 (the "Closing Payment Funds") will be deposited from time to time into a strict joint order escrow account as necessary for a pending Closing. The escrow account will be governed by

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instructions consistent with this Agreement and satisfactory to the City, the Tollway, and the Title Company. The Closing Payment Funds will be disbursed from escrow to the City proportionately for each Closing by multiplying the "Unit Value" as defined in this Subsection B by the total square feet of land area of the Fee Parcels and Permanent Easement Parcels subject to that Closing. As depicted in Exhibit A, the seven Fee Parcels and 18 Permanent Easement Parcels have a total land area of 8,588,246 square feet. The Unit Value is \$8.85, calculated as \$76,000,000 divided by 8,588,246 and slighted rounded. As stated above, the disbursement of Closing Payment Funds to the City at a Closing will be the \$8.85 times the total square feet of the Fee Parcels and Permanent Easement Parcels subject to that Closing, except that the disbursement of Closing Payment Funds at the final Closing (that includes the last Transfer Property to be conveyed to the Tollway) will be adjusted so that all, but not more than all, of the Closing Payment Funds have been disbursed to the City. Unless the Tollway and the City otherwise agree in writing after the Effective Date, and subject to the effects of force majeure, Closings must occur as follows:

- 1) Closing on Transfer Property Parcels 17, 18, 19, 20 and Parcels 3, 4, 5, 6 will occur no later than 90 days after FAA Approval of those parcels;
- 2) Closing on Transfer Property Parcels 7, 8, 9, 10, 11, PY1, PY2 will occur no later than one year

after FAA Approval of those parcels;

- 3) Closing on Transfer Property Parcels 12, 13, 14, 15, 16 and Parcels 1, 2 will occur no later than two years after FAA Approval of those parcels; and
- 4) Closing on the Lee Street Parcels of the Transfer Property will occur no later than one year after FAA Approval on those parcels.

C. Final FAA Approvals for EOWA Project and Touhy Avenue Improvements. The City will diligently undertake to secure final FAA Approvals and any other approvals, permits, and authorizations required of the City necessary for the EOWA Project and Touhy Avenue Improvements to proceed without undue delay because of the failure to receive an approval, permit, or other authorization. In particular, the City will take the actions necessary to permanently change the status of Runway 14R/32L, whether through decommissioning, issuance of a NOTAM, or other methods so that Runway 14R/32L will not interfere with the Tollway's construction or operation of the EOWA Project in accordance with the EOWA Plans. The decommissioning, issuance of a NOTAM, or other method concerning Runway 14R/32L status must be in place by April 30, 2019. The Tollway in its discretion may agree in writing with the City to an extension of the April 30, 2019, deadline to a date certain.

D. Final FAA Approvals for Lee Street Improvements. The City will diligently undertake to secure final FAA Approvals and any other approvals, permits, and authorizations required of the City necessary for the Lee Street Improvements to proceed without undue delay because of the failure to receive an approval, permit, or authorization. The Tollway will cooperate with the City and the FAA to provide documents requested or required by the FAA for the FAA's review of airspace impacts and environmental impacts relating to the Lee Street Improvements. The City's request for, and pursuit of, final FAA Approvals for the Lee Street Parcels of the Transfer Property will be made separately from the City's request for, and pursuit of, final FAA Approvals relating to the Transfer Property for the EOWA Project and the Touhy Avenue Improvements.

Section 6. PROPERTY CONVEYANCES

A. Agreement to Convey Transfer Property. Subject to payment of Compensation by the Tollway as provided in Section 4 this Agreement and the terms and conditions precedent to the Closing in Section 6 and elsewhere in this Agreement, the City will convey Transfer Property to the Tollway by special warranty deeds, Permanent Easements, and Temporary Construction Easements. Each special warranty deed, Permanent Easement, and Temporary Construction Easement will be generally in the form of the model forms attached to this Agreement as Exhibit D.

B. Conveyances of Advanced Temporary Construction Easements. The Tollway anticipates that it will commence certain EOWA Project earthwork on the Transfer Property prior to conveyance of property rights to the Tollway. At the Tollway's request from time to time, and subject to any required FAA Approval, the City will grant to the Tollway defined-scope temporary construction easements (each an "Advanced TCE") for the purposes and activities stated in each Advanced TCE and for the time estimated by the Tollway necessary to complete those purposes and activities, provided the term of any such Advanced TCE shall be limited to a duration not greater than 30 months. Advanced TCEs will be in the general form of the model Temporary Construction Easement included in Exhibit D. Each Advanced TCE will provide that the City may extend the term if the purposes and activities for which that Advanced TCE was issued have not been completed. The City will not unreasonably delay or withhold an extension of such an Advanced TCE. Except as stated otherwise in an Advanced TCE, an Advanced TCE will be conditioned on compliance with the terms and

conditions of this Agreement. The compensation for all Advanced TCEs is included in the Compensation set forth in Section 5 of this Agreement. If the FAA denies a request for FAA Approval over any portion of the Transfer Property subject to an Advanced TCE, then, unless the Parties have otherwise agreed or provided, the Advanced TCE will terminate automatically 90 days after the City delivers the FAA decision to the Tollway. During that 90-day period, the Tollway shall remove all of its equipment and presence from the Advanced TCE and shall restore the property subject to the Advanced TCE to its pre-existing condition or to such condition as otherwise reasonably acceptable to the City.

C. Condition of Temporary Easement Rights. Every Temporary Construction Easement, including each Advanced TCE, is granted and impressed subject to the City's right to terminate the easement upon six months advance written notice to the Tollway, if the City determines, in its reasonable discretion, that continuation of the easement will cause conflict with Airport development activities and opportunities.

D. City Reserved Rights. Every Permanent Easement, Temporary Construction Easement, and Advanced TCE is subject to all rights the City may require for FAA airspace protection and for existing and future facilities provided in the ALP and the Future ALP, including navigational aids and similar facilities. Further:

- (1) The Tollway understands and acknowledges that certain navigational aids for future Runway 9C-27C and the extension of Runway 9R-27L will need to be located in or near the Transfer Property. To meet the projected FAA commissioning dates for future Runway 9C-27C and the extension of Runway 9R-27L, the City anticipates the need to construct and implement navigational aid facilities in advance of the Tollway's construction of EOWA Project improvements near future Runway 9C-27C and the extension of Runway 9R-27L. The City and the Tollway will agree on appropriate reservations of easements or other rights to facilitate construction, location, operation, access, maintenance, repair, and replacement for those facility locations, which reservations will be included in the.

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terms of the special warranty deeds, Permanent Easements, and Temporary Construction Easements for any relevant Transfer Property. To the extent specific locations for navigational aids for future Runway 9C-27C and the extended Runway 9R-27L in its final configuration have not been determined or finalized between the City, the FAA, and the Tollway prior to a relevant Closing, the Tollway will grant appropriate easements or other rights within the Transfer Property for the City and the FAA to construct, locate, operate, and access those facilities. The City will endeavor to install the navigational aid facilities in locations that minimize or eliminate conflicts with the EOWA Project improvements as shown on the EOWA Plans. After the initial construction and commissioning by the City of navigational aid facilities for future Runway 9C-27C and the extended Runway 9R-27L, the Tollway will be responsible for modifying or relocating any navigational aid facilities that conflict with the EOWA Project, at the Tollway's expense. Modifications and relocations must be coordinated with the City and the FAA in accordance with Section 13 of this Agreement.

- (2) With respect to existing navigational aids located within the Transfer Property, the Tollway will coordinate with the City and the FAA on any necessary reservations or other terms to preserve access for the FAA and the City in the event that such facilities may become subject to access limitations, restrictions or impacts as result of the EOWA Project.

E. City Waiver of Benefits Claim. The City waives any claim for benefits under the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 and under the Illinois Toll Highway Act, 605 ILCS 10/1 et seq., relating to the Transfer Property.

F. No Further Encumbrances, Material Changes. Other than as specifically provided in this

Agreement, the City will not intentionally encumber or allow to be encumbered the City's title to, or allow any new or different uses of, any Transfer Property. The City also will not materially change the condition of any Transfer Property, whether by re-grading, stockpiling soil upon, or any other action. The City's existing use of and operations within the Transfer Property may continue, from time to time, until Closing on the transfers of rights to the Tollway in that particular Transfer Property, including without limitation the grant of an Advanced TCE.

Section 7. CONDITIONS PRECEDENT TO CLOSING

A. FAA Approval. The City will diligently work to secure all FAA Approvals required as a condition precedent to a Closing on a conveyance of property title or rights in Transfer Property. The following standards and process apply:

- 1) The City will promptly submit to the FAA, from time to time, requests for FAA Approvals required for conveyance of rights in various parcels of Transfer Property, including with the requests all documents and information necessary for, or requested by the FAA as part of, the FAA Approval. Promptly after receipt of any written decision by FAA, the City will deliver a copy of the decision to the Tollway.
- 2) If the FAA initially withholds or denies the City's request for FAA Approval as to a parcel of Transfer Property, then the City, with the Tollway's assistance if necessary, will take all reasonable actions, including without limitation submitting revised parcel maps or plans, to secure FAA Approval of that parcel.

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- 3) The City and the Tollway will keep each other fully apprised of communications with the FAA.
- 4) The Tollway will not be required to complete a Closing prior to removal of all Stockpiled Soil from the parcels of Transfer Property subject to the Closing.

B. Title Commitment; Exceptions. Not less than 60 days prior to a Closing or as soon thereafter as possible if the 60-day deadline cannot reasonably be met, the Tollway will deliver to City recent title commitments issued by a title company licensed to do business in Illinois for all of the parcels of Transfer Property related to the Closing (the "Title Commitments"), along with copies of pertinent agreements and items raised as Schedule B exceptions in the Title Commitments.

- 1) *Title Commitment. The Tollway will obtain Title Commitments for an Owner's Policy of Title Insurance (the "Title Policy").*
- 2) *Tollway Disapproval and Permitted Exceptions. If items on any Title Commitment are unsatisfactory to the Tollway, then the Tollway will object to those items in writing to the City (a "Disapproval Notice"). Items not included in a Disapproval Notice will be deemed to be approved by the Tollway. All title exceptions that are approved or deemed approved by the Tollway will constitute permitted exceptions (the "Permitted Exceptions").*
- 3) **City's Response to Tollway Objections.** The City will use all reasonable efforts to cure the Tollway objections.
- 4) **Tollway's Rights to Cure.** If the City fails to remove or correct any disapproved exception, then the Tollway, with the reasonable assistance of the City, may undertake to cure the exceptions or cause the Title Company to issue an endorsement against any such disapproved exceptions.

- 5) No Encumbrances without Tollway Consent. During the period of time from the Effective Date through the date of the Closing, the City must not mortgage or otherwise encumber any portion of the parcel subject to the Closing.

C. Surveys. Not less than 60 days prior to a Closing, or as soon thereafter as possible if the 60-day deadline cannot reasonably be met, the Tollway, at its expense, will obtain and provide the City an ALTA survey or surveys, of the parcels of Transfer Property subject to the Closing or an update of a prior survey or surveys approved by the City in accordance with this Agreement. The surveys and legal descriptions must be in a form reasonably acceptable to the City, the Tollway, and the Title Company. The City will promptly notify the Tollway if the City has objections or concerns with the surveys provided by the Tollway.

Section 8. CLOSINGS

A. Scheduling and Conducting Closing. When one or more parcels of Transfer Property have met the conditions precedent to a Closing, then the Parties will conduct the Closing expeditiously.

B. Escrow Closing. Each Closing will be conducted in accordance with the escrow instructions for the strict joint order escrow account.

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C. Documents. Prior to a Closing, the City and the Tollway each will deposit documents into the strict joint order escrow trust as provided in the escrow instructions.

D. Possession. Immediately after a Closing, the Tollway will have (1) immediate possession of every parcel in which fee title was conveyed and (2) authority to immediately exercise all rights conveyed in any Permanent Easement and Temporary Construction Easement.

E. Closing Costs. Closing costs will be paid by the Tollway.

F. Post Closing. After a Closing conveying a Fee Parcel, the City and the Tollway will cooperate in preparing and submitting any necessary or required filings and completing such action necessary to divide or renumber property identification numbers.

Section 9. CLOSINGS ON SUBSEQUENTLY IDENTIFIED PROPERTY

When the Tollway and the City agree on the conveyance of title or rights in a Subsequently Identified Property, then the conditions precedent to a closing on that conveyance, and the closing itself, will be generally the same as the conditions applicable to the Closings on Transfer Property.

Section 10. CONDITION OF TRANSFER PROPERTY; ENVIRONMENTAL REMEDIATION

A. Inspections by Tollway. Prior to a Closing, the Tollway and its representatives will be given reasonable opportunities to inspect the Transfer Property or Subsequently Identified Property as the Tollway and its representatives reasonably desire. Any inspection may include geotechnical and environmental sampling and testing.

B. Environmental Documents. Each Party will provide the other Party, from time to time, with all documents that Party has regarding the environment conditions of Transfer Property or Subsequently Identified Property.

C. "As Is" Condition of Property. The Tollway acknowledges and agrees that the parcels of Transfer Property and any parcels of Subsequently Identified Property will be conveyed to and accepted by

Tollway in an "as is" condition with all faults. The City makes no representations or warranties of any kind whatsoever, either express or implied, with respect to any Transfer Property or Subsequently Identified Property.

D. Limited Waiver Related to Environmental Conditions. Except for claims of, and causes of action for breaches of, this Agreement and subject to the provisions of Subsection E below, the Tollway hereby waives the right to assert a claim against the City or any of the City's officers or employees based on the presence of Hazardous Material on. Transfer Property or Subsequently Identified Property.

E. Handling Hazardous Material. The City and the Tollway will work cooperatively on all matters related to managing, disposing of, or Remediation of Hazardous Material as required by Environmental Laws. However, except as specifically provided otherwise in this Agreement, if any Hazardous Material is discovered within the Transfer Property or any Subsequently Identified Property other than a temporary easement parcel, which Hazardous Material requires off-Airport disposal under Environmental Laws, then the Tollway will undertake at its expense to cause any required disposal and to cause any required Environmental Remediation of that Transfer Property or any Subsequently Identified Property other than a

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temporary easement parcel, if and as required by Environmental Laws. In the event the Tollway desires, prior to a Closing, to conduct efforts related to managing, disposing of, or Environmental Remediation of Hazardous Material for or within any Transfer Property or Subsequently Identified Property, the City will work cooperatively with the Tollway provided that all such efforts will be at the Tollway's expense.

Section 11. RIGHTS OF ENTRY

A. City Grant of Rights of Entry. Except as provided in Subsection B of this Section 10, the transfers to be conducted pursuant to this Agreement will constitute the City's grant of all rights of entry necessary for the Tollway to undertake activities and work within Transfer Property or Subsequently Identified Property consistent with the terms of this Agreement. The Tollway is not required to seek or secure any additional right of entry except as provided in Subsection B of this Section 10.

B. Work on City-Owned Property. Before the Tollway or any of its Contractors may enter any City-owned property other than Transfer Property or Subsequently Identified Property, the Tollway must obtain a right of entry from the City to commence and perform work. The Tollway must submit a request for a right of entry to the City, including a detailed description of the nature of the access request, the activities or work proposed to be conducted, a detailed description of the limited portion of Airport property sought to be accessed, a list of the entities to which the right of entry will apply, and a scope of work for each of those entities. Within 10 business days after the Tollway's request is made, the City will provide the Tollway a response identifying whether the request is acceptable or unacceptable or whether the City requires further information from the Tollway to appropriately process the request. The City will not unreasonably delay or deny a request.

C. Tollway Grant of Rights of Entry. This Agreement constitutes the Tollway's grants of the rights of entry necessary for the City to enter onto Tollway property during construction of the EOWA Project, as necessary for inspections and compliance with this Agreement. The City must submit certificates of insurance and other documentation generally required by the Tollway's standard right of entry procedures.

D. Conditions on Rights of Entry. Each right of entry granted to the Tollway for work on a City property must include the Tollway's submission of certificates of insurance and other documentation generally required by the City's standard right of entry procedures and is further subject to the rights and the obligations of the City to use and maintain its property for the aviation purposes in accordance with all applicable statutes, regulations, and other law, as well as all existing, applicable grant assurances on the City-owned property.

Section 12. AOA PERIMETER FENCE AND ROAD RELOCATION; HOOK RAMP

A. AOA Perimeter Fence and Road Relocation Plans. The City has prepared plans for the relocation of the AOA Perimeter Fence and Road (the "Fence Relocation Work"). A depiction of the AOA Perimeter Fence and Road location and path is attached to this Agreement as Exhibit E. The Fence Relocation Work may be undertaken in phases agreeable to the Tollway and the City and may be revised only by written agreement of the City and the Tollway. In particular, the City may undertake a portion of the Fence Relocation Work as part of its development and construction of the Centralized Deicing Facility.

B. Fence Relocation Work Timing and Process.

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- 1) Contract and Construction. The Tollway will prepare bidding and construction contract documents for the Fence Relocation Work, which must comply with the design requirements of the City. The City will promptly review the documents and either approve them or specify required changes to them. The Tollway thereafter will promptly bid the work, determine the lowest qualified Contractor in the best interests of the Tollway, award the contract, and supervise and manage the Fence Relocation Work.
- 2) Costs. All agreed upon costs for the Fence Relocation Work will be borne by the Tollway. If the City and the Tollway agree that the City will undertake one or more portions of the Fence Relocation Work, then the cost of those portions undertaken by the City, including engineering, testing, management, and construction management will be reimbursed by the Tollway.
- 3) Coordination, Soil, and Permits. The Tollway will coordinate with a designated City representative during the Fence Relocation Work. Soil that must be relocated during construction ("Excess Road Soil"), which is estimated to be approximately 200,000 cubic yards, will be sorted as directed by the City and placed in an area designated by the City that will not interfere with work by the Tollway under the EOWA Plans. All of the sorting, relocation, placement, grading, and disposal of Excess Road Soil will be at the Tollway's expense. If the City designates sites for relocation of the Excess Road Soil that are outside of the AOA Perimeter Fence, then the City will be responsible for the costs to prepare those sites for storage of Excess Road Soil, including without limitation all necessary site work and any other legal or regulatory requirements. The City will issue all City permits, temporary easements, or other approvals necessary for the Tollway to undertake the relocation, at no expense to the Tollway.
- 4) Environmental Conditions of Excess Road Soil on City Designated Sites. All Hazardous Material discovered in the Excess Road Soil will be disposed of properly at the Tollway's expense. With respect to each City-designated site outside of the AOA Perimeter Fence, the City's hold harmless obligations under Subsection 15F.2 of this Agreement will apply.

C. York Road Flyover. The Tollway will build the York Road Flyover at its expense. The plans for the York Road Flyer have been prepared by the Tollway and provided to the City. The location of the York Road Flyer depicted in the plans has been determined by the City to be compatible with the Airport. The location of roads connecting to the York Road Flyover within the AOA Perimeter Fence will be determined by the City in coordination and cooperation with the Tollway. The Tollway will build the York Road Flyover as soon as practicable.

Section 13. AIRPORT FACILITY RELOCATIONS

A. Navigation Aids. All relocations of navigational aids, equipment serving aviation operations, or facilities held or controlled by the FAA and required for purposes of the EOWA Project, the Touhy Avenue Improvements, or the Lee Street improvements will be undertaken by the Tollway at its expense. The Tollway will coordinate with the City and the FAA on these relocation matters, including without limitation entering into any required agreements with the FAA and development of plans for any necessary or required relocation or for the reestablishment of any affected navigational aid or equipment serving aviation operations. The Tollway will not relocate any FAA and Airport navigation aid facilities onto Airport property outside of the Transfer Property without the prior written consent of the City, and where applicable, the FAA.

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B. Airport Facilities, Utilities, and Third Party Installations. The Tollway, at its expense, is responsible for relocating or otherwise addressing Airport facilities, utilities, third-party facilities, and City-owned or controlled utility facilities that interfere with the EOWA Project, the Touhy Avenue Improvements, or the Lee Street Improvements ("Utility Work"). The Tollway will not propose relocation of any utility facilities onto Airport property outside of the Transfer Property without prior written consent of the City.

C. K-9 Training Facility. The Tollway will coordinate with the City, including the City's Department of Aviation (CDA), Department of Fleet and Facility Management (2FM), and Police Department (CPD), on a relocation plan for the existing K-9 Training Facility located on Airport property. The Tollway shall be responsible for the costs for the relocation.

D. Touhy Avenue Reservoir. The Tollway, at its expense, will relocate, replace, incorporate, or otherwise reconstruct the Touhy Avenue Reservoir, which is the east cell of the great O'Hare Plant Reservoir, in accordance with the Tollway plans approved by the City and the Metropolitan Water Reclamation District ("MWRD"). The Tollway shall coordinate with the City and the MWRD on the reconstruction project.

E. Storm Water or Drainage Facilities. The Tollway shall coordinate with the City on a relocation plan for any existing wetland, storm water detention, or storm water drainage facilities located on Airport property impacted by the EOWA Project or the Touhy Avenue Improvements, and the Tollway shall be responsible for the costs of any necessary or required replacement or relocation of such facilities or alternative mitigation that might be necessary in lieu of replacement or relocation.

Section 14. PLAN COORDINATION, REVISIONS.

A. Plans and Specifications. The Tollway has been, and is, in the process preparing plans and specifications for the EOWA Project, and the Tollway has been submitting to the City the plans and specifications regarding elements of the EOWA Project that affect the Airport. The City will cooperate with the Tollway in its work on the plans and specifications and will respond promptly to questions and requests of the Tollway related to the plans and specifications.

B. Touhy Avenue Improvements. The Tollway is coordinating development of the plans, specifications, contracts, and agreements regarding the Touhy Avenue Improvements with the County of Cook, by and through its Cook County Department of Transportation and Highways, for design and construction of the Touhy Avenue Improvements. The Tollway will oversee construction of the Touhy Avenue Improvements in accordance with the approved plans and specifications for those improvements. The City will cooperate with the Tollway and the County of Cook on the plans and specifications and will respond promptly to questions and requests of the Tollway or the County of Cook related to the plans and specifications.

C. Lee Street Improvements. The Tollway is coordinating with IDOT, the Village of Rosemont, and other municipalities on development of the Lee Street Improvements Plans and eventual construction of the Lee Street Improvements. The Lee Street Improvements will be undertaken after the Tollway, IDOT, and the Village of Rosemont have entered into an intergovernmental agreement that will govern the project. The City intends to be a party to the intergovernmental agreement. The Tollway will oversee construction of those Lee

Street Improvements to be made on or adjacent to the Lee Street Parcels and otherwise in accordance with the intergovernmental agreement. The City will cooperate with the Tollway, IDOT, and the

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Village of Rosemont on the Lee Street Plans and will respond promptly to questions and requests related to the Lee Street Improvements. In addition, as part of the Lee Street Improvements, the Tollway, the Village of Rosemont, and the City will undertake design and construction of an intersection of Higgins Road (IL-72) with an extension of Johnson Road (the "Johnson Road Improvements"), for which the Tollway or the Village of Rosemont will contribute \$1,500,000 and the City will contribute \$500,000. The City will be responsible for completing the design of the Johnson Road Improvements. If the City is not a party to the intergovernmental agreement, then the Tollway and the City will memorialize in writing their agreement regarding the Johnson Road Improvements.

D. City Requests for Revisions, Additional Work. The City may request a change to (1) the EOWA Plans or the Touhy Avenue Plans or (2) design or construction work by the Tollway or the County of Cook not included in the EOWA Plans, the Touhy Avenue Plans, or this Agreement that does not unreasonably affect the timing, cost, design, function, required approvals, or other elements of the EOWA project or the Touhy Avenue Improvements and does not impact the approved Environmental Impact Statement or any FAA Approval. The Tollway will take reasonable steps to accommodate the City's requests.

E. Tollway Revisions. If the Tollway revises the EOWA Plans for work on a parcel of Transfer Property in a way that materially affects the City's current use of that parcel for Airport purposes, then the Tollway, before commencing work related to the revised EOWA Plans, will submit the revised EOWA Plans for review by the City. The City may review the revised EOWA Plans and provide comments to the Tollway within 10 business days after they are received. If the City provides comments to the Tollway, then the Tollway will revise the revised EOWA Plans as the Tollway determines is necessary or appropriate and re-submit the revised EOWA Plans to the City for further review. If the City after receipt of the re-submitted plans has further comments, then the City and the Tollway will meet promptly to discuss and resolve all matters related to the Plans to the best of their ability.

Section 15. MANAGEMENT OF STOCKPILED SOIL

A. Stockpiled Soil Amounts. The Tollway estimates that there are 2,000,000 cubic yards of Stockpiled Soil that must be relocated. The City or the Tollway may measure, from time to time, the quantity of Stockpiled Soil by use of digital terrain model (DTM) data or other methods agreed upon by the Parties. These measurements may be used for purposes of the Soil Management Plan and this Section. Without limitation, the City makes no representations or warranties of any kind whatsoever, either express or implied, with respect to any Stockpiled Soil. The Stockpiled Soil is classified into two separate zones in one of which the City will undertake the relocation and the other in which the Tollway will undertake the relocation.

B. Zone 1 Stockpiled Soil Relocation. The Zone 1 area is depicted in Exhibit F attached to this Agreement. The Zone 1 area includes Stockpiled Soil in the estimated amount of 900,000 cubic yards. The City will issue a contract for sorting, placement, and grading the Zone 1 Stockpiled Soil in locations designated by the City and the Tollway (the "Zone 1 Work"), as set forth in Subsection C of this Section. The City will remove all Zone 1 Stockpiled Soil, regardless of its total amount. Approximately 500,000 cubic yards of the Zone 1 Stockpiled Soil will be sorted and relocated to sites within the EOWA Project designated by the Tollway. The Tollway-designated sites will be within the York Road area. The City will coordinate the Zone 1 Work with a designated Tollway representative. The remaining Zone 1 Stockpiled Soil, in the approximate amount of 400,000 cubic yards, will be sorted and relocated to sites determined by the City. The City will be responsible for properly disposing of all Hazardous Material. All of the

Zone 1 Work, including without limitation disposal of Hazardous Material, will be at the Tollway's expense.

C. Zone 1 Timing, Procedures. The Zone 1 Work is time-sensitive to both the initial construction of portions of the Tollway's EOWA Project and certain Airport development and construction of the Centralized Deicing Facility by the City. The following provisions govern the Zone 1 Work:

- 1) Plans and Contracting. The Tollway has prepared plans for the Zone 1 Work (the "Zone 1 Plans"). The City will promptly transmit design comments and requirements to the Tollway regarding the Zone 1 Plans. Upon agreement of the Tollway and the City as to the Zone 1 Plans, the City will (a) submit the Zone 1 Work to public bid as part of a larger bid package that includes work associated with the City's construction of the Centralized Deicing Facility, (b) determine the lowest responsible and responsive bidder, (c) award the contract, and (d) supervise and manage the Zone 1 Work. The City will comply with applicable laws and regulations, including applicable City requirements for MBEAA/BE participation, and will obtain all permits and approvals legally required to complete the Zone 1 Work. The Tollway will cooperate with the City in the City's efforts to obtain required permits and approvals and will reimburse the City for the costs of those permits and approvals. Subject to payment and reimbursement by the Tollway as provided in this Subsection C, the City will cause the Zone 1 Work to be performed in accordance with the Zone 1 Plans.
- 2) *Costs, Funding. All costs relating to the Zone 1 Work will be borne by the Tollway. Within 30 days after the Effective Date, the Tollway will deposit with the City the sum of \$33,600,000 to fund the Zone 1 Work (the "Zone 1 Funding"). The Zone 1 Funding will be disbursed by the City during the course of construction in payment of costs of Zone 1 Work. The Tollway has the right to audit pay requests, invoices, charges, payments, and other records related to the Zone 1 Funding. If after bidding the Zone 1 Work and determining the lowest responsible and responsive bidder the Zone 1 Funding is less than that bid (including a standard construction contingency, management, testing, a construction management fee, and all other costs necessary to complete the Zone 1 Work), then the Tollway will deposit with the City an additional sum equal to the difference promptly after notice from the City but in no event less than 10 days prior to the City issuing a notice to proceed to the contractor awarded the Zone 1 Work. If after bidding the Zone 1 Work, the Zone 1 Funding exceeds the lowest responsible and responsive bid (including a standard construction contingency, management, testing, a construction management fee, and all other costs necessary to complete the Zone 1 Work), then the City will return the excess Zone 1 Funding to the Tollway within 30 days. The costs of the Zone 1 Work will include the construction contract amount including a standard construction contingency, management, testing, a construction management fee, and all other costs necessary to complete the Zone 1 Work (the "Zone 1 Actual Costs").*
- 3) True-Up of Funding. The City will provide the Tollway a detail statement of the Zone 1 Actual Costs promptly after substantial completion of the Zone 1 Work. If the Zone 1 Actual Costs exceed the Zone 1 Funding, then the Tollway will pay to the City the difference within 30 days after receipt of the statement. If Zone 1 Actual Costs are less than the Zone 1 Funding, then the City will return the excess Zone 1 Funding to the Tollway within 30 days.

D. Zone 2 Stockpiled Soil Relocation. The Zone 2 area is depicted in Exhibit F. The Zone 2 area includes Stockpiled Soil in the estimated amount of 1,100,000 cubic yards. The Tollway will sort and relocate, to sites on Airport property designated by the City, an amount of Zone 2 Stockpiled Soil that, together with the amount Zone 1 Stockpiled Soil relocated to City-designated sites under Subsection B of this Section 15, will not exceed 800,000 cubic yards. The Tollway will coordinate with a designated City representative on the

sorting, placement, and grading of that Stockpiled Soil. The Tollway will sort and relocate the remaining Zone 2 Stockpiled Soil, in the approximate amount of 700,000 cubic yards, to sites off of Airport property determined by the Tollway. The Tollway will be responsible for properly disposing of all Hazardous Material in that soil. All of the sorting, relocation, placement, grading, and disposal of Zone 2 Stockpiled Soil and Hazardous Material will be at the Tollway's expense. The City will issue all City permits, temporary easements, or other approvals necessary for the Tollway to undertake all sorting and relocation, at no expense to the Tollway. If the City designates sites for relocation of Stockpiled Soil or Excess Road Soil that are outside of the AOA Perimeter Fence, then the City will be responsible for the costs to prepare those sites for storage of Stockpiled Soil, including without limitation all necessary site work and any other legal or regulatory requirements.

E. Stockpiled Soil Retained by the City. The City will retain not more than 800,000 cubic yards of Stockpiled Soil on City-owned property, as measured in place. Except as otherwise specifically provided in Section 15 and other provisions of this Agreement, the sorting, relocation, placement, grading, and disposal, including without limitation disposal of Hazardous Material, of any additional Stockpiled Soil necessary for the EOWA Project or the Touhy Avenue Improvements and not otherwise contemplated in Zone 1 or Zone 2 areas as aforesaid, will be at the Tollway's expense.

F. Hold Harmless Agreements.

1. Tollway. With respect to the relocation of Stockpiled Soil by the City to Tollway-designated sites, the Tollway agrees to, and shall, hold harmless the City and its officers, employees, agents, contractors, successors, and assigns (collectively the "City Parties") from and against any and all claims, actions, legal or regulatory proceedings or violations, liability, loss, damage, costs, and expenses (including reasonable attorneys' fees) (each a "Claim"), regardless of how or by whom the Claim is alleged or initiated, related to the placement, quality, and other conditions of the Stockpiled Soil relocated onto Tollway-designated sites.
2. City. With respect to the relocation of Stockpiled Soil or Excess Road Soil by the Tollway to City-designated sites, the City agrees to, and shall, hold harmless the Tollway and its officers, employees, agents, contractors, successors, and assigns (collectively the "Tollway Parties") from and against any and all claims, actions, legal or regulatory proceedings or violations, liability, loss, damage, costs, and expenses (including reasonable attorneys' fees) (each a "Claim"), regardless of how or by whom the Claim is alleged or initiated, related to the placement, quality, and other conditions of the Stockpiled Soil or Excess Road Soil relocated onto City-designated sites.

G. Coordination with City Airfield Work. The City and the Tollway understand that the certain of the Temporary Construction Easements being granted in the mid-airfield portion of the existing western Airport boundary will be on land overlapping or abutting land on which the City is or will be constructing Airport improvements and development projects, including but not limited to a new Central Deicing Facility and future Runway 9C/27C and the extension of 9R/27L. After completion of the Zone 1 Work, the City may designate a liaison to coordinate

with the Tollway concerning management of grading and other elements of work by the City or the Tollway that may affect those Airport improvements and development projects. The City's liaison, if any, will communicate with the Tollway on planning and land use matters relating to those Airport improvements and development projects anticipated during the course of the EOWA Project. The City's liaison may remain in place during initial phase Tollway construction activities until (1) the initial construction of navigational aids relating to future 9C/27C and the extension of 9R/27L and (2) the Tollway's fieldwork to relocate the Stockpiled Soil to be retained by the City under this Section 15 have been completed. The cost of the City's appointed liaison will be reimbursed by the Tollway.

Section 16. PERFORMANCE OF TOLLWAY WORK

A. Performance of Tollway Work. The Tollway will perform its work on the EOWA Project in compliance with applicable laws. The City will cooperate with the Tollway in the Tollway's efforts to obtain required permits, rights, and permissions from third-party property owners.

B. Access. The City will grant all required approvals and issue all required permits and authorizations necessary for the Tollway to undertake all work provided in this Agreement on Airport property.

C. City Inspections. The City may inspect the EOWA Project, the Touhy Avenue Improvements, and the Lee Street Improvements during construction for purposes of protecting against Airport or Aircraft Interference and compliance by the Tollway with the provisions of this Agreement. The Tollway will provide, or cause to be provided, the City with reasonable access for inspections.

D. Airport and Aircraft Safety. Except as specifically provided for in the EOWA Plans, the Tollway must not do or permit anything that causes Airport or Aircraft Interference.

E. Non-Disturbance of Airport Operations. With specific exception to Runway 14R/32L, the Tollway will perform its work on the EOWA Project and the Lee Street Improvements in a manner that will not impact, even by temporary intrusion or interference, Airport runway operations and/or runway use and will further ensure that work performed on the Touhy Avenue Improvements is performed in a manner that will not impact, even by temporary intrusion or interference, Airport runway operations and/or runway use. The Tollway, in coordination with the County of Cook, will cause the work on the Touhy Avenue Improvements to be undertaken in a manner that will not impact, even by temporary intrusion or interference, Airport runway operations and/or runway use. Further the Tollway, in coordination with the County of Cook, will cause, any such impact to be ceased immediately.

F. Restoration of City Property. Unless otherwise agreed upon by the Parties, the Tollway with respect to all Transfer Property or Subsequently Identified Property subject to a temporary easement or other City Property or portion of the Airport over or upon which the Tollway is granted either a temporary right of entry or access pursuant to this Agreement or which has been otherwise impacted, directly or indirectly, by the Project or the Tollway's Work, the Tollway shall, as part of its Project and at its expense, restore such property to the condition in which it existed prior to Tollway's use, access, or other impact by reason of this EOWA Project, the Touhy Avenue Improvements, or the Lee Street Improvements. To the extent that restoration of such property to its pre-existing condition cannot be reasonably accomplished or is otherwise infeasible, such property shall be restored in a manner and condition reasonably acceptable to the City. The requirements of this Section shall be in addition to, and not

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exclusive of, any requirements agreed upon between the Parties within a Soil Management Plan or other agreement between the Parties in accordance with this Agreement, and shall survive termination of this Agreement.

Section 17. HAZARDOUS MATERIAL

A. Tollway. The Tollway agrees that it will not use or permit the use of Hazardous Material in or on any Permanent Easement or Temporary Construction Easement, except as unavoidably required and in accordance with applicable law. If the Tollway or any of its Contractors causes a release of Hazardous Material in or on a Permanent Easement or a Temporary Construction Easement that could result in liability for the City, as reasonably determined by the City, then the Tollway must diligently perform, at its cost, all remediation of the release and restoration of the affected property in accordance with applicable law. The City and the Tollway agree to cooperate and work in good faith to develop cost-effective remediation strategies. Prior to

submitting any report, document, plan, drawing, or laboratory analysis related to a release of Hazardous Material (each a "Release Document") to any regulatory agency or authority, the Tollway will deliver that Release Document to the City for review.

B. City. The City agrees that it will not use or permit the use of Hazardous Material in or on any Transfer Property, except as unavoidably required and in accordance with applicable law. If the City or any of its Contractors causes a release of Hazardous Material in or on Transfer Property that could result in liability for the Tollway, as reasonably determined by the Tollway, then the City must diligently perform, at its cost, all remediation of the release and restoration of the affected property in accordance with applicable law. The City and the Tollway agree to cooperate and work in good faith to develop cost-effective remediation strategies. Prior to submitting any Release Document to any regulatory agency or authority, the City will deliver that Release Document to the Tollway for review.

Section 18. INSURANCE

A. Tollway Insurance. The Tollway or its Contractors will maintain all insurance coverage required by the Tollway's construction project specifications at all times until the portions of the Western Access constructed on Transfer Property are completed.

B. City Insurance. The City or its Contractors will maintain all insurance coverage required by the City's construction project specifications at all times until the portions of the Western Access constructed on Transfer Property are completed.

Section 19. EOWA PROJECT AND FUTURE TOLLWAY OPERATIONS

A. Lawful Use; Limitation of Impact. The Tollway covenants, warrants and represents that it will conduct all activities relating to the EOWA Project and the Tollway's future use and operation of its roadways and other Tollway facilities located on Transfer Property or any Subsequently Identified Property in accordance with applicable laws and regulations. If the FAA determines that reconstruction or reconfiguration of any Tollway roadway or other facility located on Transfer Property or any Subsequently Identified Property will negatively impact Airport operations including but not limited to airfield and runway operations or surrounding navigable airspace and protected surfaces as defined by 14 C.F.R. Part 77 and/or the FAA, or any runway classification, instrument rating, or otherwise utility or capability of any runway, including future Runway 9C/27 and the extension of Runway 9R/27L, then the Tollway shall cooperate with the FAA and the City in a reasonable manner to mitigate the negative impact.

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B. Tollway Indemnity. To the extent permitted by law, the Tollway shall indemnify, defend, and hold harmless the City and its officers, employees, agents, contractors, successors, and assigns (collectively the "City Parties") from and against any and all liability, loss, damage, costs, and expenses (including reasonable attorneys' fees) for injury or death to a person or property damage (each a "Claim") caused by the Tollway's breach of, or failure to comply with, any provisions of this Agreement, except to the extent caused by the negligent, willful and wanton, or intentionally tortious conduct of any City Parties. To the extent permitted by law, the Tollway hereby waives any limits to the amount of its obligations to indemnify, defend, or contribute to any sums due under any losses, including any Claim by an employee of the City, the Tollway, or a Contractor that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other law or judicial decision (such as, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)).

C. City Indemnity. To the extent permitted by law, the City shall indemnify, defend, and hold harmless the Tollway and its officers, employees, agents, contractors, successors, and assigns (collectively the "Tollway Parties") from and against any and all liability, loss, damage, costs, and expenses (including

reasonable attorneys' fees) for injury or death to a person or property damage (each a "Claim") caused by the City's breach of, or failure to comply with, any provisions of this Agreement, except to the extent caused by the negligent, willful and wanton, or intentionally tortious conduct of any Tollway Parties. To the extent permitted by law, the City hereby waives any limits to the amount of its obligations to indemnify, defend, or contribute to any sums due under any losses, including any Claim by an employee of City, the Tollway, or a Contractor that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other law or judicial decision (such as, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)).

Section 20. TOLLWAY AUDIT OF CITY COSTS

The Tollway may audit the City costs in performing work for which the Tollway is responsible for reimbursing the City. The City will provide all reasonable and customary documentation the Tollway requests as necessary or appropriate to complete such an audit. In the event of an underpayment, the Tollway will provide the City with a copy of the audit report along with a payment of any additional City costs that should have been reimbursed. In the event of an overpayment, the Tollway will provide the City with a copy of the audit report and the City will have 60 days to review the findings of the report and undertake its own investigation. The Tollway will provide City with all reasonable and customary documentation the City requests as necessary or appropriate to complete such investigation. After the expiration of the 60-day period, the City must promptly reimburse the Tollway the amount of any overpayment unless the City disagrees with the amount. In that case, the City must pay the amount not in disagreement and the City and the Tollway will meet promptly to reconcile the amount in disagreement. The City must maintain copies of all documentation concerning the City costs for a period of three years after final billing by the City for the City work and for any longer period required by law, provided that the Tollway completes its audit of the City costs promptly. This provision will survive the termination of this Agreement.

Section 21. ADDITIONAL PROVISIONS

A. No Third-Party Beneficiaries. The City and the Tollway expressly agreed and declare that no third-party beneficiaries are intended to be, or have been, created by this Agreement. The City and the Tollway do not authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

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B. Information Management. The Tollway and the City will honor the written request of the other Party to maintain the confidentiality of specifically designated proprietary or otherwise confidential information, except as otherwise required by law. If a Party receives a subpoena or a request under an applicable freedom of information law for confidential records, data, or documents of the other Party, then the first Party will give notice of the request to the other Party so that the other Party may review the subpoena or request.

C. Force Majeure. Neither party will be liable to the other party for failure or delay in performing its obligations under this Agreement, including timely removal of all Stockpiled Soil from Transfer Parcels, if the failure or delay is due to circumstances beyond its reasonable control, including, but not limited to, Acts of God, war, insurrection, embargo, fire, flood, or strike or other labor disturbance.

D. Dispute Resolution. In the event of a dispute between the Tollway and the City regarding a provision of this Agreement, the Chief Engineer of the Tollway and the Chief Operating Officer of the Chicago Department of Aviation will meet to resolve the issue. If the Chief Engineer and the Chief Operating Officer cannot agree on the resolution of the dispute, then the Executive Director of the Tollway and the Chicago Department of Aviation Commissioner will meet to resolve the issue. It is the intent of the Tollway and the City that each dispute will be resolved under this Subsection C and that litigation will ensue only as a last resort after all reasonable attempts to resolve a dispute without litigation have been exhausted.

E. Applicable Law. This Agreement is subject to and governed by the laws of the State of Illinois.

City: Chicago Department of Aviation 10510 West Zemke Road Chicago, IL 60666 Attention: Commissioner

with copies to:

Chicago Department of Aviation 10510 West Zemke Road Chicago, IL 60666 Attention: General Counsel
and

Chicago Department of Aviation 10510 West Zemke Road Chicago, IL 60666 Attention: Chief Operating Officer

and

City of Chicago - Corporation Counsel
30 N LaSalle, Floor 1400
Chicago, IL 60602
Attention: Real Estate Division

with a copy to:

Tollway: Executive Director	General Counsel
Illinois State Toll Highway Authority	Illinois State Toll Highway Authority
2700 Ogden Avenue	2700 Ogden Avenue
Downers Grove, IL 60515	Downers Grove, IL 60515

Express delivery notices will be deemed to be given on receipt. Postal notices will be deemed to be given three days after deposit with the United States Postal Service.

G. Document Retention. The City and the Tollway will each retain all records related to this Agreement as required by Section 20-65 of the Illinois Procurement Act, 30 ILCS 500/20-65, for a period of not less than three years.

H. No Waiver. A waiver by the non-breaching Party of a breach by the other Party of any covenant or condition of this Agreement will not impair the right of the non-breaching Party to claim any subsequent breach. Any leniency, delay, or failure of the non-breaching Party to insist on strict performance of any provision of this Agreement, or to exercise any right herein given in any one or more instances, will not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

I. Exhibits. Exhibits A through F attached to this Agreement are incorporated into this Agreement as substantive provisions of this Agreement. The exhibits include:

Exhibit A: Transfer Property
Exhibit B: Soil Management Plan
Exhibit C: Future Airport Layout Plan
Exhibit D: Model Deed, Permanent Easement, Temporary Easement,
Temporary Construction Easement
Exhibit E: Depiction of AOA Perimeter Fence and Road Location
Exhibit F: Zone 1 and Zone 2 Stockpiled Soil Areas

J. Survival of Provisions. The following provisions of this Agreement will survive the termination or expiration of this Agreement and remain binding: -Subsections
and Sections as it relates to records created prior
to termination or expiration.

K. All Agreements Incorporated. Each Party represents that it is not relying on any statement or representation not embodied in this Agreement.

L. Counterparts. The Parties may execute this Agreement in four counterparts, each of which will be considered as an original after each party has signed it.

IN WITNESS WHEREOF, the City and the Tollway each have caused this Agreement to be executed by its authorized representatives as of the Effective Date.

CITY OF CHICAGO

By: Ginger S. Evans, Commissioner Chicago
Department of Aviation
Date: 2017

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Approved as to form and legality:

By:
Printed name: Special Assistant Corporation Counsel
Date: 2017

ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By: Greg Bedalov, Executive Director
Date: 2017

By: Michael Colsch, Chief of Finance
Date: 2017

By: David Goldberg, General Counsel
Date: 2017

Approved as to form and Constitutionality:

By: :
Robert T. Lane, Senior Assistant Attorney General Date: ,2017

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[EXHIBITS]

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Exhibit A-1 to Authorizing Ordinance