

Illinois Route 19
State Section: _____
City Section: _____
County Section: _____
DuPage County
Job No. _____
AGREEMENT No.: JN-104-512

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ILLINOIS,
ILLINOIS STATE TOLL HIGHWAY AUTHORITY, THE CITY OF CHICAGO AND
THE COUNTY OF DUPAGE FOR ENGINEERING SERVICES RELATING TO
PROPOSED RELOCATION OF THE INTERSECTION OF ILLINOIS ROUTE 19
(IRVING PARK ROAD) AND YORK ROAD**

THIS INTERGOVERNMENTAL AGREEMENT is entered into this ___ day of _____, 2004 A.D., by and between the **STATE OF ILLINOIS**, acting by and through its **DEPARTMENT OF TRANSPORTATION** (“DEPARTMENT”), the **ILLINOIS STATE TOLL HIGHWAY AUTHORITY**, an instrumentality and administrative agency of the State of Illinois (“ISTHA”), the **CITY OF CHICAGO**, Illinois, a municipal corporation acting by and through its Department of Aviation (“CITY”), and the **COUNTY OF DUPAGE**, Illinois, a body corporate and politic, acting by and through its Division of Transportation, (“COUNTY”).

RECITALS

WHEREAS, the DEPARTMENT, the CITY, and the COUNTY are public agencies within the meaning of such term in the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*); and

WHEREAS, Article VII, Section 10, of the 1970 Constitution of the State of Illinois encourages and provides for units of local government to contract and otherwise associate with each other to exercise, combine or transfer any power or function; and

WHEREAS, the purpose of the Intergovernmental Cooperation Act and Article VII, Section 10 of the 1970 Constitution of the State of Illinois includes fostering cooperation among units of local governments in planning and providing exceptional services to their citizens at the lowest possible cost;

1. **NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the sufficiency of which is agreed to by the parties, and the preambles stated above which are specifically incorporated herein, the parties hereto covenant, bind themselves and agree that the DEPARTMENT, CITY, and COUNTY, in order to facilitate the free flow of traffic and insure safety to the motoring public, are desirous of improving and modernizing the intersection of Illinois Route 19 (Irving Park Road) and York Road in the Village of Bensenville, DuPage County, Illinois, along with accommodating for Western Access and Bypass traffic, and the adjacent Canadian Pacific and Union Pacific Rail Road tracks (collectively referred to hereafter as “INTERSECTION”) by preparing a Phase I Engineering Report for the INTERSECTION.

2. The COUNTY agrees to use a DEPARTMENT pre-qualified engineering firm to provide preliminary engineering and planning services for the Phase I Engineering Report for the INTERSECTION. The COUNTY shall provide to the CITY, and DEPARTMENT for review and comment a copy of the proposed scope of work and proposed contract with the selected firm for the contract for the Phase I Engineering Report for the INTERSECTION. Prior to contract award, the scope of work for the contract is subject to approval by the CITY and DEPARTMENT. The COUNTY shall provide to the CITY, ISTHA and DEPARTMENT for review and comment as and when received by the COUNTY copies of all submittals of work product relating to the Phase I Engineering Report for the INTERSECTION. The CITY, ISTHA and DEPARTMENT will provide all necessary comments within fourteen (14) days of receipt of

any contracts or plans. The CITY, DEPARTMENT and COUNTY shall have ownership rights in the Phase I Engineering Report for the INTERSECTION and shall each be legally entitled to use the Phase I Engineering Report for the INTERSECTION for their own purposes.

3. It is mutually agreed by all parties that the estimated cost for the Phase I Engineering Report for the INTERSECTION is ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1.2 million). The COUNTY agrees that the compensation payable under the contract for the Phase I Engineering Report for the INTERSECTION will be structured so that payments under the contract will not exceed the percentage of the total contract price equal to the percentage of the total work required to complete the Phase I Engineering Report for the INTERSECTION satisfactorily completed on the dates of such invoices.

4. It is further agreed by all parties that after execution of this AGREEMENT by all parties, and after the COUNTY awards a contract to a pre-qualified engineering firm, the COUNTY will submit an invoice to the CITY for portions of the total due, initially from the CITY, commensurate with negotiated thirty percent (30%), sixty percent (60%), ninety percent (90%) and Final Study milestones as follows:

(a) Thirty percent (30%) of the total negotiated price of the Phase I Engineering Report and Feasibility Study; said invoice to be paid within sixty (60) days of receipt by the CITY.

(b) An additional thirty percent (30%) of the total negotiated price of the Phase I Engineering Report and Feasibility Study; said invoice to be paid within sixty (60) days of receipt by the CITY.

(c) An additional thirty percent (30%) of the total negotiated price of the Phase I Engineering Report and Feasibility Study; said invoice to be paid within sixty (60) days of receipt by the CITY.

(d) An additional ten (10%) percent of the total negotiated price of the Phase I Engineering Report and Feasibility Study; said invoice to be paid within sixty (60) days of receipt by the CITY.

5. It is also understood and agreed by all parties that upon completion of the Phase I Engineering Report for the INTERSECTION and receipt of an invoice from the CITY, the DEPARTMENT and the COUNTY will each pay to the CITY one-third (1/3) of the final cost of the Phase I Engineering Report for the INTERSECTION within sixty (60) days of the receipt of such invoice. In the event that the final cost of the Phase I Engineering Report for the INTERSECTION is less than the amount paid by the CITY to the COUNTY, the COUNTY will also refund to the City the amount paid by the CITY to the COUNTY in excess of the final cost of the Phase I Engineering Report for the INTERSECTION.

6. The COUNTY agrees to supply the DEPARTMENT and the CITY with ten (10) copies each of the approved Phase I Engineering Report.

7. The COUNTY, DEPARTMENT and the CITY shall maintain, for a minimum of six (6) years after the approval of the Phase I Engineering Report for the INTERSECTION, adequate books, records, and supporting documents to verify the amounts, recipients, uses and disbursements of all funds passing in conjunction with this AGREEMENT. All books, records, and supporting documents related to the Phase I Engineering Report for the INTERSECTION shall be available for review and audit by the Auditor General and other DEPARTMENT Auditors and by the CITY. The COUNTY agrees to cooperate fully with such audits conducted

by the Auditor General and other DEPARTMENT Auditors and by the CITY and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this paragraph shall establish a presumption in favor of the DEPARTMENT and the CITY for the recovery of any funds paid by the DEPARTMENT or the CITY under this AGREEMENT for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

8. The COUNTY agrees to comply with all applicable Executive Orders and Federal Highway Acts pursuant to the Equal Employment Opportunity and non-discrimination regulations required by the DEPARTMENT.

9. The COUNTY agrees that in the event any work is performed by other than COUNTY employees, contractors, sub-contractors or sub-recipients, the provisions of “an act regulating wages of laborers, mechanics and other workers employed in public works by the State, County or any public body or any political subdivision or by any one under contract for public works,” (820 ILCS 130/1) shall apply.

10. All of the requirements listed in paragraphs 11 through 27 are included by requirement of the DEPARTMENT for federally funded agreements.

11. **Certification Regarding Lobbying.** The CITY and the COUNTY (collectively referred to hereafter as the “GOVERNMENTAL BODIES”) certify their respective compliance with Section 319 of Public Law 101-102 covering government-wide restrictions on lobbying, which provides that no federal appropriated funds have been paid or will be paid, by or on behalf of the GOVERNMENTAL BODIES, to any person for influence or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any

federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

12. The GOVERNMENTAL BODIES further certify that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this contract, grant, loan or cooperative agreement, the GOVERNMENTAL BODIES shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

13. The certification in paragraph 11 is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite to making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code, as amended. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

14. The GOVERNMENTAL BODIES also agree that they shall require that the language of this certification will be included in all lower tier subcontracts and that all subcontractors, will certify and disclose accordingly.

15. **Civil Rights.** As required by 49 U.S.C. 5332, as amended, (which prohibits discrimination on the basis of race, color, creed, national origin, sex or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d) and United States Department of Transportation ("U.S. DOT")

regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,” 49 CFR part 21 at 21.7, the GOVERNMENTAL BODIES assure that they will comply with all requirements of 49 CFR part 21, as amended; FTA Circular 4702.1, “Title VI Program Guidelines for Federal Transit Administration Recipients,” and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the GOVERNMENTAL BODIES receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(a) The GOVERNMENTAL BODIES assure that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332, as amended, and 49 CFR part 21, as amended, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(b) The GOVERNMENTAL BODIES assure that they will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332, as amended, and 49 CFR part 21, as amended.

(c) The GOVERNMENTAL BODIES assure that they will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related

services or benefits may be filed with the U.S. DOT or FTA. Upon request by the U.S. DOT, FTA or the DEPARTMENT, each of the GOVERNMENTAL BODIES assures that it will submit the required information pertaining to its compliance with these requirements.

(d) The GOVERNMENTAL BODIES assure that they will make any changes in its 49 U.S.C. 5332, as amended, and Title VI implementing procedures as the U.S. DOT, FTA or the DEPARTMENT may request.

(e) As required by 49 CFR 21.7(a)(2), as amended, the GOVERNMENTAL BODIES will include in each third party contract or sub-agreement, provisions to invoke the requirements of 49 U.S.C. 5332, as amended, and 49 CFR part 21, as amended, and include provisions to invoke those requirements in deeds and instruments recording the transfer of real property, structures, improvements. Transfer shall include a covenant running with the land assuring nondiscrimination for the period during which the property is used for the purpose for which Federal financial assistance is extended.

16. **Control of Property.** GOVERNMENTAL BODIES certify that the control, utilization and disposition of property or equipment acquired using federal funds are maintained according to the provisions of A-102 Common Rule.

17. **Cost Principles.** The cost principles of this AGREEMENT are governed by the cost principles found in Title 48, Code of Federal Regulations, subpart 31, as amended; and all costs included in this AGREEMENT are allowable under Title 48, Code of Federal Regulations, and part 31, as amended.

18. **Debarment.** GOVERNMENTAL BODIES shall comply with Debarment provisions as contained in 49 CFR, Part 29, including Appendices A and B, as amended. GOVERNMENTAL BODIES certify that to the best of their respective knowledge and belief, GOVERNMENTAL BODIES and GOVERNMENTAL BODIES' principals:

(a) Are not presently debarred, suspended, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency.

(b) Within a three-year period preceding this AGREEMENT have not been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (B), above.

(d) Have not within a three-year period preceding this AGREEMENT had one or more public transactions (federal, state or local) terminated for cause or default.

19. The inability of the prospective GOVERNMENTAL BODIES to certify to the certification in paragraph 18 will not necessarily result in denial of participation in this AGREEMENT. The respective GOVERNMENTAL BODIES shall submit an explanation of

why it cannot provide the certification in this section. This certification is a material representation of fact upon which reliance was placed when the DEPARTMENT determined whether to enter into this transaction. If it is later determined that respective GOVERNMENTAL BODIES knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the DEPARTMENT may terminate this AGREEMENT for cause. The respective GOVERNMENTAL BODIES shall provide immediate written notice to the DEPARTMENT if at any time the respective GOVERNMENTAL BODIES learn that its respective certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this Part shall have the meaning set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.

20. The GOVERNMENTAL BODIES agree that they shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized, in writing, by the DEPARTMENT. The GOVERNMENTAL BODIES agree that they will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” provided by the DEPARTMENT, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. The GOVERNMENTAL BODIES may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless GOVERNMENTAL BODIES know

the certification is erroneous. GOVERNMENTAL BODIES may respectively decide the method and frequency by which they determine the eligibility of its principals. The respective GOVERNMENTAL BODIES may, but are not required to, check the Non-procurement List. If the respective GOVERNMENTAL BODIES knowingly enter into a lower tier covered transaction with a person who is suspended, debarred, and ineligible or voluntarily excluded from participation, in addition to other remedies available to the federal government, the DEPARTMENT may terminate this AGREEMENT for cause or default.

21. Nothing contained in this section shall be construed to require establishment of a system of records in order to render in good faith the certification required by this section. The knowledge and information of the GOVERNMENTAL BODIES are not required to exceed that which a normally prudent person would possess in the ordinary course of business dealings.

22. **Single Audit.** The Single Audit Act of 1984 (Public Law 98-502) and the Single Audit Amendments of 1996 (P.L. 104-156) require the following:

a. State or local governments that receive \$300,000 or more a year in federal financial assistance shall have an audit made in accordance with the Office of Management and Budget (OMB) Circular No. A-133.

b. State or local governments that receive less than \$300,000 a year shall be exempt from compliance with the Act and other federal requirements.

c. Nothing in this paragraph exempts state or local governments from maintaining records of federal financial assistance or from providing access to such records to federal Agencies, as provided for in federal law or in Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations."

d. A copy of the audit report must be submitted to the DEPARTMENT within 30 days after completion of the audit, but no later than one year after the end of the GOVERNMENTAL BODIES's fiscal year.

23. **Drug-Free Workplace.** The GOVERNMENTAL BODIES shall comply with the federal Drug-Free Workplace Act, as contained in 42 United States Code Section 702, as amended, and 49 Code of Federal Regulations, Part 29, Subpart F and Appendix C, as amended.

24. **Disadvantaged Business Enterprise Assurance.** In accordance with 49 CFR 26.13(a), as amended, the GOVERNMENTAL BODIES assure that they shall not discriminate on the basis of race, color, national origin, or sex in the implementation of the project and in the award and performance of any third party contract, or sub-agreement supported with Federal assistance derived from the U.S. DOT or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR part 26, as amended. The GOVERNMENTAL BODIES assure that they shall take all necessary and reasonable steps set forth in 49 CFR part 26, as amended, to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with Federal assistance derived from the U.S. DOT. This AGREEMENT shall be administered under the provisions of the DEPARTMENT's approved DBE program. The GOVERNMENTAL BODIES agree to comply and administer this AGREEMENT under the DEPARTMENT's approved DBE program. The DEPARTMENT's DBE program, as required by 49 CFR part 26, as amended, will be incorporated by reference and made a part of this AGREEMENT for any Federal assistance awarded by FTA or U.S. DOT. Implementation of this DBE program is a legal obligation of the GOVERNMENTAL BODIES, and failure to carry out its terms shall be treated as a violation of this AGREEMENT. Upon notification by the Federal Government or the DEPARTMENT to the

respective GOVERNMENTAL BODIES of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 CFR part 26, as amended, and may in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, as amended, and/or the Program Fraud Remedies Act, 31 U.S.C. 3801 et seq., as amended. In the absence of a U.S. DOT-approved DBE program or on DEPARTMENT awarded contracts, this AGREEMENT shall be administered under the provisions of the DEPARTMENT'S U.S. DOT-approved Disadvantage Business Enterprise Program.

25. **Assurance of Nondiscrimination on the Basis of Disability.** As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, as amended, the GOVERNMENTAL BODIES assure that as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The GOVERNMENTAL BODIES assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 *et seq.*, as amended, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, as amended, and implementing U.S. DOT regulations at 49 CFR parts 27, 37 and 38, as amended, and any applicable regulations and directives issued by other Federal departments or agencies.

26. **Procurement Compliance Certification.** The GOVERNMENTAL BODIES certify that its respective procurement systems will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, “Third Party Contracting Requirements,” as amended and revised, as well as other requirements FTA may issue. The GOVERNMENTAL BODIES certify that they will include in their contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each sub-recipient and each contractor will also include in its sub-agreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

27. **Intelligent Transportation Systems Program.** In compliance with Section VII of FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” at 66 Fed. Reg. 1459, January 8, 2001, in the course of implementing an ITS project, the GOVERNMENTAL BODIES assure that they will comply, and require their respective third party contractors and sub-recipients to comply with all applicable requirements imposed by Section V (Regional ITS Architecture) and Section VI (Project Implementation) of that Notice.

28. Under penalties of perjury, the COUNTY certifies that its correct Federal Tax Identification Number is 36-6006551 and it is doing business as a GOVERNMENTAL ENTITY, whose mailing address 421 North County Farm Road, Wheaton, Illinois, 60187.

29. Under penalties of perjury, the CITY certifies that its correct Federal Tax Identification Number is 36-6005820 and it is doing business as a GOVERNMENTAL ENTITY, whose mailing address is 30 N. LaSalle Street, Suite 1230, Chicago, IL 60602.

30. Obligations of the DEPARTMENT, the CITY, and the COUNTY will cease immediately without penalty or further payment being required if, in any fiscal year, the Illinois

General Assembly or Federal Funding source fails to appropriate or otherwise make available funds for this contract.

31. This AGREEMENT and the covenants contained herein shall be null and void in the event that the contract covering the Phase I Engineering Report for the INTERSECTION is not awarded within the three (3) years subsequent to execution of this AGREEMENT.

32. No modification or amendment to this AGREEMENT shall be effective until approved by the parties in writing.

33. The laws of the State of Illinois as to both interpretation and performance shall govern this AGREEMENT.

34. The parties mutually agree that time is of the essence throughout this AGREEMENT.

35. This AGREEMENT shall be binding upon and to the benefit of the parties hereto, and shall not be assigned without the written consent of the other parties.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the date first written above.

COUNTY OF DUPAGE

Attest:

By: _____
County Clerk
(SEAL)

By: _____
Chairman, DuPage County Board

Date: _____

CITY OF CHICAGO

By: _____
Executive Director,
O'Hare Modernization Program

Date: _____

**STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION**

By: _____
Secretary

By: _____
Director-Finance & Administration

Date: _____

Date: _____

By: _____
Director-Division of Highways

By: _____
Chief Counsel

Date: _____

Date: _____

ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By: _____
Chairman

Date: _____

Approved as to form and constitutionality

By: _____
Illinois Attorney General

Date: _____