

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY
AND
THE VILLAGE OF BENSENVILLE**

This INTERGOVERNMENTAL AGREEMENT ("AGREEMENT"), effective upon the last dated signature below, by and between THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY, an instrumentality and administrative agency of the State of Illinois, ("ILLINOIS TOLLWAY"), and THE VILLAGE OF BENSENVILLE, a municipal corporation of the State of Illinois, ("VILLAGE"), individually referred to as "PARTY", and collectively referred to as "PARTIES".

WITNESSETH:

WHEREAS, the ILLINOIS TOLLWAY in order to facilitate the free flow of traffic and ensure safety to the motoring public, has improved the existing Elgin O'Hare Expressway, extended the expressway from its eastern terminus at Rohlwing Road (Illinois Route 53) to Illinois Route 83, known in its entirety as Illinois Route 390, and intends to further extend Illinois Route 390 to O'Hare International Airport ("O'Hare Airport") and construct I-490 connecting the Jane Addams Memorial Tollway (I-90) with the Tri-State Tollway (I-294) along the west side of O'Hare Airport (sometimes referred to as Elgin O'Hare Western Access "EOWA"), and included in multiple ILLINOIS TOLLWAY construction contracts ("PROJECT"). The ILLINOIS TOLLWAY will implement, operate and maintain the mainline improvements as tolled facilities (sometimes referred to as "Toll Highway");

WHEREAS, the ILLINOIS TOLLWAY acquired and owns real property associated with Parcel WA-1D-12-022/PIN 03-24-201-013 and 03-24-201-014, formerly occupied by the Aaron Equipment Company (hereinafter referred to as "ORIGINAL PARCEL"), for purposes of construction of the PROJECT improvements along Green Street within the VILLAGE jurisdictional limits;

WHEREAS, the VILLAGE and ILLINOIS TOLLWAY are PARTY to a separate Letter of Understanding ("LOU") executed December 18, 2018 that describes the ILLINOIS TOLLWAY's intent to provide the VILLAGE the right of first refusal to acquire the portion of the ORIGINAL PARCEL determined to be excess;

WHEREAS, the ILLINOIS TOLLWAY has determined that a portion of the ORIGINAL PARCEL is unnecessary for construction of the PROJECT;

WHEREAS, the VILLAGE requests that the ILLINOIS TOLLWAY convey the portion of the ORIGINAL PARCEL that is unnecessary for (i) construction of the PROJECT, or (ii) Toll Highway maintenance, operations or future construction improvements, which portion is comprised of 24.983 acres (1,088,253 square feet) and is depicted on the location map ("EXHIBIT A") and Parcel Plat ("EXHIBIT B") attached hereto ("PARCEL"), to the VILLAGE for redevelopment purposes;

WHEREAS, it is in the best interest of the PARTIES that the ILLINOIS TOLLWAY transfer the PARCEL to the VILLAGE;

WHEREAS, an appraisal of the ORIGINAL PARCEL was prepared by a licensed appraiser and the parties subsequently agreed that the value of the ORIGINAL PARCEL was \$17.18 per square foot or a total of \$19,000,000, which is the price at which the ILLINOIS TOLLWAY purchased the ORIGINAL PARCEL;

WHEREAS, the ILLINOIS TOLLWAY agrees that the 24.983 acre (1,088,253 square foot) PARCEL is not required for construction of the PROJECT or for Toll Highway maintenance, operations or future construction improvements and therefore considers the PARCEL excess to the needs of the ILLINOIS TOLLWAY;

WHEREAS, the PARTIES agree that the value of the PARCEL totals \$18,696,186.54;

WHEREAS, the ILLINOIS TOLLWAY and the VILLAGE by this instrument, which shall be known for ILLINOIS TOLLWAY recording purposes as #002020-07, desire to determine and establish their respective responsibilities toward the right of way transfer proposed herein;

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

WHEREAS, the VILLAGE 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;

WHEREAS, a cooperative Intergovernmental Agreement is appropriate and such an Agreement is authorized by Article VII, Section 10 of the Illinois Constitution and the Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*

NOW, THEREFORE, in consideration of the aforementioned recitals and the mutual covenants contained herein, the PARTIES agree as follows:

I. TRANSFER OF OBLIGATIONS

- A. The VILLAGE agrees to accept conveyance from the ILLINOIS TOLLWAY of the PARCEL, which is identified above and depicted on the location map ("EXHIBIT A") and Parcel Plat ("EXHIBIT B").
- B. The PARCEL has the following parcel number: WA-1D-12-022.EX. *See* EXHIBIT B.
- C. The PARTIES agree to cooperate in preparing any documents that may be necessary and convenient to complete the conveyance of the PARCEL.

II. CONSIDERATION

- A. The PARTIES agree that the conveyance is made based upon the agreed value of the ORIGINAL PARCEL, specifically, \$17.18 per square foot, which will be paid by the VILLAGE to the ILLINOIS TOLLWAY in total \$18,696,186.54; and the VILLAGE agrees to assume and accept the responsibilities and duties associated with the ownership of the PARCEL including, but not limited to maintenance.
- B. Should the VILLAGE convey any portion of the PARCEL to a private party, the VILLAGE shall reimburse the ILLINOIS TOLLWAY for any portion of the sale proceeds in excess of the \$17.18 per square foot (psf.) the ILLINOIS TOLLWAY paid to acquire the property. For example, if the VILLAGE sells the PARCEL to Prologis, L.P. at a rate of \$17.31 psf, the VILLAGE shall pay the ILLINOIS TOLLWAY \$0.13 psf or \$141,472.89.

III. CONVEYANCE OF PARCELS

- A. The VILLAGE agrees to accept conveyance of the PARCEL from the ILLINOIS TOLLWAY via a Special Warranty Deed.
- B. The ILLINOIS TOLLWAY shall convey the PARCEL to the VILLAGE, provided, however, that:
 - 1. In the event any portion of the PARCEL is conveyed, sold or vacated, the VILLAGE will provide the ILLINOIS TOLLWAY with advance written notice.
 - 2. The Special Warranty deed from the ILLINOIS TOLLWAY to the VILLAGE shall contain the following covenant: "Pursuant to Tollway's Excess Real Property Declaration and Disposal Policy dated November 2015, the Grantee, their successors and assigns agree not to build or cause to be built or erected upon the subject property any advertising sign or structure directed, whether in whole or part, to users or patrons on the adjacent toll highway or any structure that in the opinion of the Chief Engineering Officer of The Illinois State Toll Highway Authority, Grantor, would in any way interfere with the safe operation of The Illinois State Toll Highway Authority system."
 - 3. With the sole exception of the covenant required by Section III.B.2. of this AGREEMENT, the ILLINOIS TOLLWAY shall not, and does not intend to, retain any right, title or easement in the PARCEL or the real property owned by the VILLAGE surrounding the PARCEL after its conveyance of the PARCEL to the VILLAGE.

IV. GENERAL PROVISIONS

- A. It is understood and agreed that this is an AGREEMENT between the Village of Bensenville and The Illinois State Toll Highway Authority.
- B. It is understood and agreed that this AGREEMENT constitutes the complete and exclusive statement of the agreement of the PARTIES relative to the subject matter hereof and supersedes all previous oral and written proposals, negotiations, representations or understandings concerning such subject matter.
- C. In the event of a dispute between the VILLAGE and the ILLINOIS TOLLWAY in the carrying out of the terms of this AGREEMENT, the Chief Engineering Officer of the ILLINOIS TOLLWAY and the Village Manager of the VILLAGE shall meet and resolve the issue. In the event that they cannot mutually agree on the resolution of a dispute concerning the carrying out of the terms of this AGREEMENT, the decision of the Chief Engineering Officer of the ILLINOIS TOLLWAY shall be final.
- D. In the event there is a conflict between the terms contained in this AGREEMENT and the attached Exhibit(s), the terms included in this AGREEMENT shall control.
- E. This AGREEMENT may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.
- F. This AGREEMENT may only be modified by written modification executed by duly authorized representatives of the PARTIES.
- G. This AGREEMENT shall be binding upon and inure to the benefit of the PARTIES hereto and their respective successors and approved assigns.
- H. The failure by the ILLINOIS TOLLWAY or the VILLAGE to seek redress for violation of or to insist upon the strict performance of any condition or covenant of this AGREEMENT shall not constitute a waiver of any such breach or subsequent breach of such covenants, terms, conditions, rights and remedies. No provision of this AGREEMENT shall be deemed waived by the ILLINOIS TOLLWAY or the VILLAGE unless such provision is waived in writing.
- I. It is agreed that the laws of the State of Illinois, except conflict of law principles, shall apply to this AGREEMENT and that, in the event of litigation, venue shall lie in DuPage County, Illinois.
- J. All written reports, notices and other communications related to this AGREEMENT shall be in writing and shall be personally delivered or mailed via certified mail, overnight mail delivery, or electronic mail delivery to the following persons at the following addresses:

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


To the VILLAGE: The Village of Bensenville
12 South Center Street
Bensenville, Illinois 60106
Attn: Village Manager

- K. The VILLAGE agrees to maintain books and records related to the performance of this AGREEMENT and necessary to support amounts charged to the ILLINOIS TOLLWAY and/or the VILLAGE under the AGREEMENT for a minimum of five (5) years from the last action on the AGREEMENT. The VILLAGE further agrees to cooperate fully with any audit and to make its books and records, and books and records within its custody or control, available to the Illinois Attorney General, the Illinois Auditor General, the ILLINOIS TOLLWAY Inspector General, the ILLINOIS TOLLWAY Department of Internal Audit, the ILLINOIS TOLLWAY or any other governmental agency or agent thereof that is authorized to audit or inspect such books and records.
- L. The VILLAGE also recognizes that, pursuant to Section 8.5 of the Toll Highway Act (605 ILCS 10/8.5), the Inspector General of the Illinois State Toll Highway Authority ("OIG") has the authority to conduct investigations into certain matters including but not limited to allegations of fraud, waste and abuse and to conduct reviews. The VILLAGE will fully cooperate in any OIG investigation or review and shall not bill the ILLINOIS TOLLWAY for time relating to its cooperation. Cooperation includes (i) providing access to all information and documentation related to the performance of this AGREEMENT, and (ii) disclosing and making available all personnel involved or connected with, or having knowledge of, the performance of this AGREEMENT.
- M. The introductory recitals included at the beginning of this AGREEMENT are agreed to and incorporated into this AGREEMENT.


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

THE VILLAGE OF BENSENVILLE

By: 
Frank Cassone
Village President

Date: October 13, 2020

Attest: 
Corey Williamsen
Deputy Village Clerk
(Please Print Name)

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By: Willard S. Evans, Jr.
Willard S. Evans, Jr. (Jun 2, 2021 15:09 EDT)
Willard S. Evans, Jr.
Chairman & Chief Executive Officer

Date: 06/02/2021

By: Cathy R. Williams
Cathy R. Williams (Jun 1, 2021 15:16 CDT)
Cathy R. Williams
Chief Financial Officer

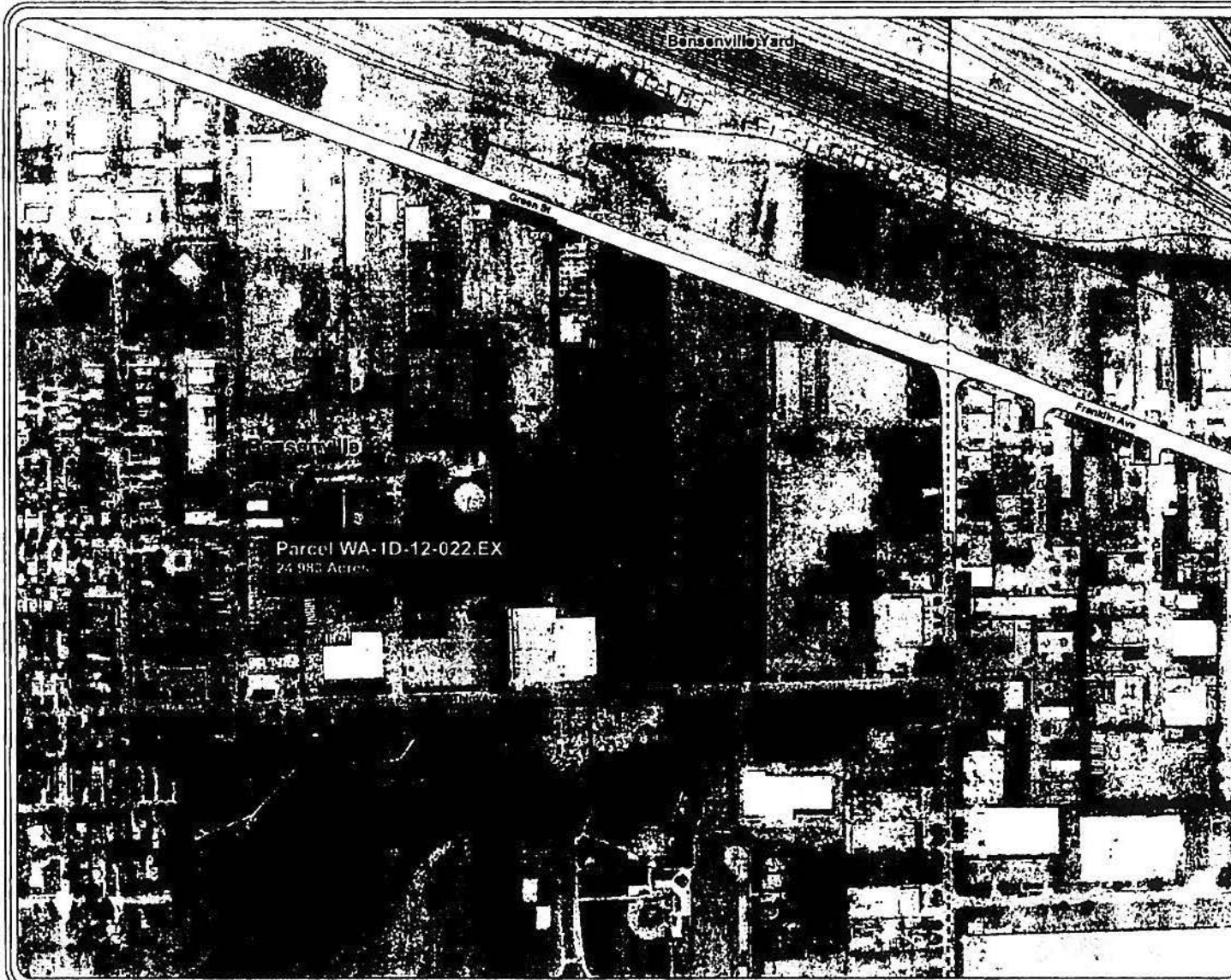
Date: 06/01/2021

By: Kathleen R. Pasulka-Brown
Kathleen R. Pasulka-Brown (May 28, 2021 09:55 CDT)
Kathleen R. Pasulka-Brown
General Counsel

Date: 05/28/2021

Approved as to Form and Constitutionality

 05/28/2021
Lisa M. Conforti, Assistant Attorney General



Elgin O'Hare Western Access Project

LEGEND

- Excess ROW Parcel to be Conveyed to the Village of Bensenville
- EOWA Project Improvements
- Municipal Boundary
- County Boundary
- Railroad
- Street

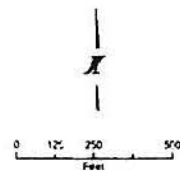
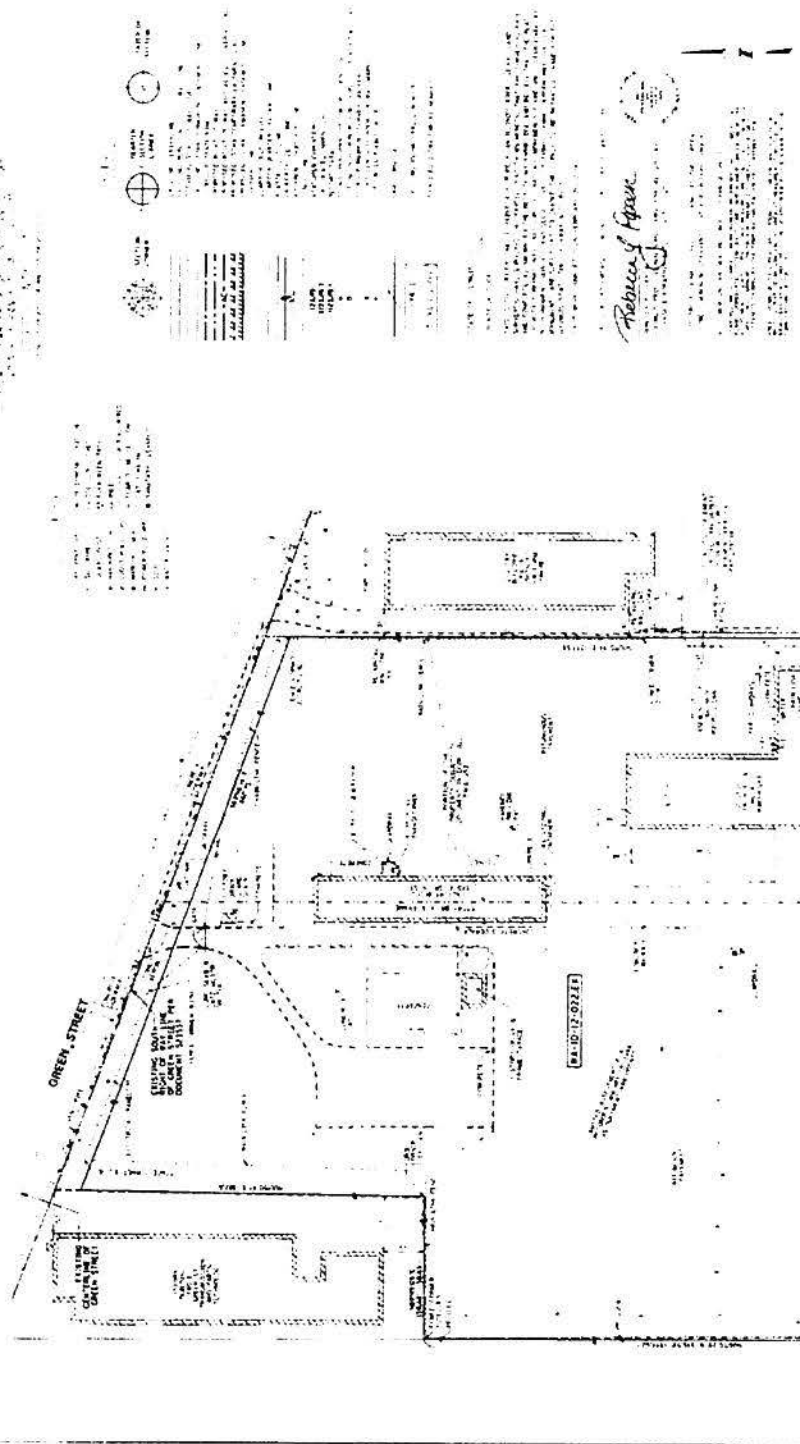


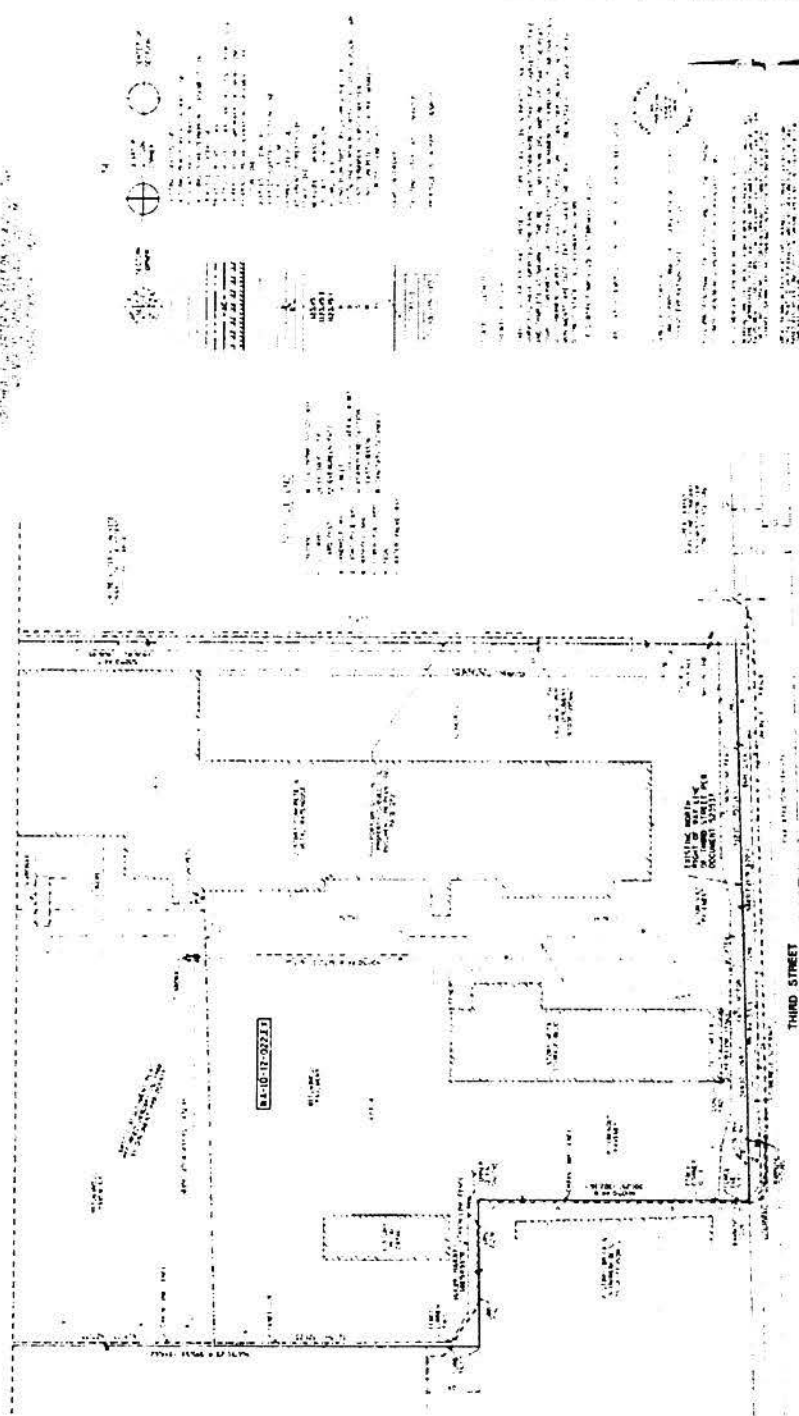
Exhibit A
Elgin O'Hare Western Access
Village of Bensenville Excess
Right of Way (Aaron Equipment)
Location Map

July 2020

EXCESS PARCEL PLAT



EXCESS PARCEL PLAT



20. Survey No. 100 21. Section No. 100 22. Township No. 100 23. Range No. 100	 ILLINOIS STATE TOLL HIGHWAY AUTHORITY UNIVERSITY OF ILLINOIS JOURNAL OF LAW, MEDICINE & ETHICS	24. Date of Survey 25. Date of Plat 26. Date of Record	27. Name of Surveyor 28. Name of Recorder 29. Name of Auditor
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09/17/20

6.3/2

RESOLUTION NO. 22099

Background

For purposes of constructing I-490, The Illinois State Toll Highway Authority ("Tollway") acquired and now owns real property in the Village of Bensenville ("Village") that formerly was owned and occupied by Aaron Equipment Company ("Parcel"). The Tollway acquired the Parcel at fair market value. Approximately 24.983 acres, (1,088,253 square feet) of the Parcel is not required for Tollway construction, future operations or maintenance purposes and has been declared excess to the Tollway needs ("Excess Parcel"). In a December 18, 2018 Letter of Understanding between the Tollway and the Village, the parties agreed that the Tollway would provide the Village a right of first refusal to acquire, at fair market value, any portion of the Parcel declared excess. The Tollway notified the Village of the foregoing declaration, and the Village opted to purchase the portion of the Excess Parcel for \$17.18 per square foot (the same price the Tollway paid for the property), for a total of approximately \$18,696,186.54. It is in the best interests of the Tollway to sell the Excess Parcel to the Village and to enter into an Intergovernmental Agreement with the Village to memorialize the transaction.

Resolution

The Chief Engineering Officer and the General Counsel are authorized to negotiate and prepare an Intergovernmental Agreement between The Illinois State Tollway Highway Authority and the Village of Bensenville in substantially the form attached to this Resolution. The Chairman and Chief Executive Officer of the Tollway, subject to the approval of the Chief Financial Officer, is authorized to execute said agreement.

Approved by: 
Chairman