

## SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

This Agreement (the "Second Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the by and between the **VILLAGE OF BOLINGBROOK**, Will and DuPage Counties, Illinois (hereinafter referred to as "Bolingbrook"), the **VILLAGE OF ROMEOVILLE**, Will County, Illinois (hereinafter referred to as "Romeoville") and the **VILLAGE OF PLAINFIELD**, Will County, Illinois (hereinafter referred to as "Plainfield").

### WITNESSETH:

WHEREAS, Bolingbrook, Romeoville and Plainfield are municipal corporations duly organized and existing under the laws of the State of Illinois; and

WHEREAS, Article VII, Section 10 of the Illinois Constitution of 1970 and 5 ILCS 220/1 *et seq.* authorize units of local government to contract or otherwise associate among themselves to obtain or share services, to exercise, combine or transfer any power or function, in any manner not prohibited by law, to use their credit, revenues and other reserves to pay costs and to service debt related to intergovernmental activities; and

WHEREAS, Bolingbrook and Romeoville have heretofore entered into an intergovernmental agreement dated as of August 25, 2009, (the "Agreement"), setting forth various terms and conditions pursuant to which Bolingbrook and Romeoville would share engineering costs relating to the Phase I engineering of the proposed new or

expanded interchanges at Airport Road and Illinois Route 126 (collectively, the "Interchange Projects") and cause the completion of such Phase I engineering for the Interchange Projects; and

WHEREAS, by an amendment to the Agreement dated as of July 18, 2011 (the "Amendment"), Plainfield became party to the Agreement, and the parties have thereafter shared Phase I engineering costs for the Interchange Projects as set forth in the Amendment; and

WHEREAS, having been advised of an increase in the Phase I engineering costs for the Interchange Projects, Bolingbrook, Romeoville and Plainfield desire to further amend the Agreement to memorialize the manner in which the parties shall share the increase in the Phase I engineering costs for the Interchange Projects.

NOW, THEREFORE, pursuant to statutory authority and their powers of intergovernmental cooperation, and in consideration of the mutual promises and covenants and conditions hereinafter set forth, it is agreed by and between the parties hereto as follows:

#### ARTICLE I. PREAMBLES

The foregoing recitals are by this reference fully incorporated into and made a part of this Amendment.

#### ARTICLE II. AMENDMENT OF AGREEMENT

##### 2.1 Amendment of Article 2.2 of Amendment.

Bolingbrook, Romeoville, and Plainfield hereby amend the provisions of Article 2.2 of the Amendment to read as set forth below:

“2.2 Reallocation of Engineering Cost Responsibility.

Upon the execution of this Agreement, Romeoville shall continue to pay invoices generated by engineering firms or consultants after the date of this Amendment in connection with the provision of services as generally contemplated by Article 2.2 of the Agreement, provided, however, that upon Romeoville’s receipt of IDOT reimbursement of such invoices as contemplated herein, Bolingbrook shall pay to Romeoville an amount equal to thirty-five percent (35%) of the balance of any invoice not reimbursed by IDOT-administered grant funds, and Plainfield shall pay to Romeoville an amount equal to thirty-seven percent (37%) of the balance of any invoice not reimbursed by IDOT-administered grant funds, whether such unreimbursed balance results from the ordinary administration of the grant funds, denial of reimbursement of all or part of an invoice by IDOT, or the exhaustion of the available grant funds. Exhibit B to this Amendment, a copy of which is attached hereto and incorporated herein, applies the foregoing percentages to the costs to be incurred in connection with the Phase I Engineering for the Interchange Projects to establish the dollar amount of each party’s obligation with respect to such costs, and adds a five percent (5%) allowance thereto for contingencies. The parties acknowledge that the provisions of this Article 2.2 shall apply to engineering firm or consultant invoices generated prior to the date of this Amendment but which have not been reimbursed by IDOT or billed to the parties as of the date of this Amendment.”

For purposes of construing the foregoing amendment to Section 2.2 of the Amendment, the reference therein to “the date of this Amendment” shall mean and refer to the date of this Second Amendment.

2.2 Amendment of Exhibit B to Amendment.

Bolingbrook, Romeoville, and Plainfield hereby substitute the Exhibit B attached to and incorporated into this Second Amendment as and for the Exhibit B referenced in the Amendment, as the same is amended by this Second Amendment. The parties acknowledge that this Second Amendment intentionally omits reference to and does not include an Exhibit A.

### ARTICLE III. MISCELLANEOUS

#### 3.1 Cooperation and Consultation.

Romeoville, Bolingbrook and Plainfield shall cooperate and consult with each other to facilitate the expeditious completion of the Phase I engineering for the Interchange Projects.

#### 3.2 Indemnification; Waiver.

Plainfield, Bolingbrook and Romeoville each agree to protect, indemnify, save, defend and hold harmless each other, as well as their respective officers, officials, volunteers, employees, attorneys, representatives, and agents, from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including reasonable attorney's fees, which the other parties and their respective officers, officials, volunteers, employees, attorneys, representatives and agents may become obligated by reason of any accident injury or death of persons or loss of or damage to property (collectively, "Claims") arising indirectly or directly in connection with or under, or as a result of the Agreement as amended by the Amendment and this Second Amendment, caused solely by virtue of any negligent or grossly negligent act or omission of the negligent party and/or its officers, officials, volunteers, employees, attorneys, representatives, and/or agents.

The insurance company, self-insurance pool or similar entity of the party providing the indemnification shall be allowed to raise on behalf of the parties any and all defenses statutory and/or common law to such Claim which the other parties might have raised, including but not limited to any defense contained within the Illinois Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq.

Plainfield, Romeoville and Bolingbrook, on behalf of themselves and their respective officers, officials, volunteers, employees, attorneys, representatives, and agents, hereby waive, release and forever discharge any and all existing or future Claims that any of them may have against the other than now or may in the future exist, which Claims arise from, relate to, or are connected with the Agreement as amended by the Amendment and this Second Amendment , except Claims relating to the breach thereof.

### 3.3 Entire Agreement.

The Agreement as amended by the Amendment and this Second Amendment incorporate the full and complete understanding of the parties to the exclusion of any terms or provisions not expressly set forth herein. In the event of any conflict between the Agreement as amended by the Amendment and the provisions of this Second Amendment, the provisions of this Second Amendment shall control.

### 3.4 Exhibits.

Exhibits attached to this Second Amendment are, by this reference incorporated into and made a part of this Second Amendment.

### 3.5 Amendments.

This Second Amendment may be amended from time to time upon the mutual written agreement of the parties hereto. Any such amendment shall be in writing and shall not become effective except upon the enactment of an ordinance or resolution of each of the respective governing authorities of the parties, authorizing the execution of the proposed amendment.

3.6 Waivers.

No term or condition of this Second Amendment shall be deemed waived by any party unless the term or condition to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of such party. No waiver by any party of any term or condition of this Second Amendment shall be deemed or construed as a waiver of any other term or condition of this Second Amendment, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or different provisions of this Second Amendment.

3.7 Notices.

Notices or other writings which either party is required to or may wish to serve upon the other party in connection with this Second Amendment shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Romeoville:

Village of Romeoville  
1050 W. Romeo Road  
Romeoville, Illinois 60446

Attention: Village Manager

If to Bolingbrook:

Village of Bolingbrook  
375 West Briarcliff Road  
Bolingbrook, Illinois 60440

Attention: Director of Public Works and Engineering

If to Plainfield:

Village of Plainfield  
24401 W. Lockport Street  
Plainfield, Illinois 60544

Attention: Village Manager

or to such other address as any party may from time to time designate in a written notice to the other party.

3.8 Enforcement.

It is agreed that the parties hereto may in law or in equity, by suit, action, mandamus or any other proceeding, including specific performance, enforce or compel the performance of this Second Amendment, provided, however, the parties agree that the rights of the parties shall not include the right to recover a judgment for monetary damages against any elected or appointed official thereof for any breach of any of the terms of this Amendment.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be duly executed by their respective officers pursuant to the express authorization of their respective boards, as of the date first above written.

**VILLAGE OF BOLINGBROOK**

**Mayor:** \_\_\_\_\_

ATTEST: \_\_\_\_\_

Village Clerk

**VILLAGE OF ROMEOVILLE**

Village President: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Village Clerk

**VILLAGE OF PLAINFIELD**

Village President: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Village Clerk