

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE JOLIET REGIONAL
PORT DISTRICT AND THE VILLAGE OF ROMEOVILLE**

THIS AGREEMENT made and entered into this ____ day of May, 2021, by and between the Joliet Regional Port District, a body politic and Illinois municipal corporation (hereinafter referred to as "District"), and the Village of Romeoville, an Illinois home rule municipal corporation (hereinafter referred to as "Village").

W I T N E S S E T H:

WHEREAS, the District and the Village are, respectively, a body politic and Illinois municipal corporation and an Illinois home rule municipal corporation, both duly and lawfully organized under the laws of the State of Illinois; and

WHEREAS, the District and Village may contract or otherwise associate with each other pursuant to the provisions of Article VII, Section 10 of the Illinois Constitution of 1970 and 5 ILCS 220/1 *et seq.*, which authorize units of local government (including the District and the Village) 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, pursuant to Article VII, Section 6(a) of the Illinois Constitution of 1970, the Village possesses home rule powers and authority; and

WHEREAS, District is in the process of constructing an air traffic control tower (the "Control Tower") and associated accessory structures including a fire pump and standby power accessory structure (the "Fire Pump/Standby Structure") on its property, and is ready to commence construction of the Control Tower upon the issuance of a building permit by the Village; and

WHEREAS, the Control Tower is to be constructed on a portion of the District's property that is in close proximity to an existing Village public utility easement recorded as Document No.

R2018-031150 (the “Public Utility Easement”) which contains a Village water main (the “Water Main”) that will among other things provide water service to the Control Tower; and

WHEREAS, the plans submitted by the District for the Control Tower indicate that the Fire Pump/Standby Structure is located within the limits of the Public Utility Easement and within approximately 4 to 6 feet of the location of the Water Main, and as a consequence thereof, the Village as of the date of this Agreement has been unable to issue the building permit for the Control Tower applied for by the District; and

WHEREAS, both parties support and desire the construction of the Control Tower, and have engaged in discussions to facilitate the issuance of the building permit for the Control Tower as soon as possible while at the same addressing the Village’s concerns over future maintenance and liability concerns arising from the proximity of the Water Main to the Fire Pump/Standby Structure and the location of the Fire Pump/Standby Structure; and

WHEREAS, as a result of the parties’ discussions pertaining to the issuance of the Control Tower building permit and the encroachment of the Fire Pump/Standby Structure within the Public Utility Easement and the proximity of the Fire Pump/Standby Structure to the Water Main, the parties desire to establish terms and conditions under which the Control Tower Building Permit can be issued in substantial accordance with the submittals made to the Village by the District as of the date of this Agreement without the necessity of relocating the Control Tower and the Fire Pump/Standby Structure , and which provide for the future maintenance and repair of the Water Main, all as more fully hereinafter set forth.

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 Agreement.

ARTICLE II. CONTROL TOWER BUILDING PERMIT; CONTROL TOWER LOCATION

2.1 Applicable Plans/Submittals. District and Village acknowledge that the District has applied for a building permit to construct the Control Tower and accessory structures including the Fire Pump/Standby Structure pursuant to certain plans and submittals prepared by Michael Baker International and bearing a last revision date of April 21, 2021 (the “Control Tower Plans”), and that copies of the Control Tower Plans are now on file with the Village.

2.2 Issuance of Control Tower Building Permit. Upon the Village’s receipt of a fully executed copy of this Agreement that has been duly approved by the District’s Board and by the Corporate Authorities of the Village, the Village shall thereafter issue District a building permit to construct the Control Tower and accessory structures including the Fire Pump/Standby Structure pursuant to and in accordance with the Control Tower Plans, and in accordance with all other applicable laws, regulations or ordinances of governmental bodies having jurisdiction thereof. District acknowledges that its submittal of the Control Tower Plans to the Village has not provided the Village with sufficient time to complete its ordinary civil engineering/fire protection review thereof, and that the issuance of the building permit for the Control Tower contemplated herein is being provided as an accommodation to the construction timetable and schedule communicated to the Village; accordingly, the District releases, waives and discharges the Village and its officers, officials, employees and agents of and from any and all liability for any claims of any nature or kind whatsoever arising from or in any way relating to the issuance of the Control Tower building permit as contemplated herein. Furthermore, the District acknowledges that in the event that it commences construction of the Control Tower pursuant to the aforementioned building permit to be issued under this Agreement prior to the Village’s completion of its civil engineering/fire

protection review of District's submittals, it is doing so at its sole risk, it being understood by the District that the Village's approval and issuance of the Control Tower building permit under this Agreement does not include approval of the District's civil engineering and fire protection submittals made in support of its Control Tower building permit application, and District shall be responsible at its sole cost and expense to take such corrective actions or to make such other changes in its work as may be necessary to comply with the applicable ordinances of the Village to obtain the Village's approval of such civil engineering and fire protection submittals.

2.3 Effect of Issuance of Control Tower Building Permit. Subject to the District's ongoing compliance with the provisions of this Agreement, the Village's issuance of the building permit for the Control Tower as contemplated herein shall serve as the Village's grant of permission for the encroachment of the Fire Pump/Standby Structure into the Public Utility Easement as depicted in the Control Tower Plans. District acknowledges that it shall at all times use and operate the Control Tower and accessory structures including the Fire Pump/Standby Structure in accordance with all applicable laws and regulations, and further acknowledges that the permission granted herein by the Village shall not become the basis of any prescriptive right, easement or title in and to the Public Utility Easement, and shall in no way be construed as the Village's release, reduction, termination or modification of the Public Utility Easement or any portion thereof.

ARTICLE III. WATER MAIN LOCATION; MAINTENANCE, REPAIR AND
REPLACEMENT RESPONSIBILITIES; RELOCATION OF WATER MAIN AND
GRANT/VACATION OF PUBLIC UTILITY EASEMENT

3.1 Depiction of Water Main Locations and Limits. Village and District acknowledge that the Water Main is described and depicted in Exhibit A attached hereto and incorporated herein, and further acknowledge that the Water Main consists of that length of Village water main located

and existing between the two valves depicted on Exhibit A, but that such valves shall be considered separate from and not to be part of the Water Main as defined herein.

3.2 Water Main Ownership and Authority. District acknowledges that the Village is the owner and operator of the Village water system including the Water Main that provides service to the Control Tower and other water users throughout the Village, and that as such, it shall at all times retain all right, power and authority to perform any and all maintenance work, repair work, emergency repair work or work required by applicable law or regulations, notwithstanding the District's responsibilities under this Agreement as hereinafter provided. Nothing in the preceding sentence shall relieve the District of its responsibilities for Water Main repairs, maintenance and replacement as hereinafter set forth, nor shall any exercise of the Village's right to perform repair, emergency repair, maintenance or replacement of the Water Main operate in any way to waive or release the District of these responsibilities.

3.3 District Responsibilities for Water Main Maintenance, Repair and Replacement. In consideration of the Village's issuance of the building permit for the Control Tower as contemplated herein and its permission of the encroachment of the Fire Pump/Standby Structure within the limits of the Public Utility Easement as likewise contemplated herein, District shall, at its sole cost and expense, assume all responsibility for the performance of any and all maintenance, repair work, emergency repairs or replacement of the Water Main that may become necessary from time to time to ensure that the Water Main remains fully operational and in compliance with all applicable laws, regulations and ordinances to which the Village may be subject in connection with its ownership and operation of the Water Main. District's responsibilities under this Article 3.3 shall terminate upon the satisfaction of the conditions set forth in Article 3.6 of this Agreement.

3.4 District Assumption of Risk and Release of Claims. District and Village acknowledge that District is assuming the responsibility for the future maintenance, repair,

emergency repair and replacement of the Water Main due to the encroachment of the Fire Pump/Standby Structure into the Public Utility Easement and its proximity to the location of the Water Main. District further acknowledges that the encroachment and such proximity may result in additional expense and difficulty with respect to the performance of such work, and that the encroachment and such proximity may present an increased risk of subsidence of the foundation of the Fire Pump/Standby Structure in the event of a failure or break in the Water Main, and assumes all risks associated therewith, and with the performance of the future maintenance, repair, emergency repair and replacement of the Water Main. By its assumption of these risks and its entry into this Agreement, the District forever releases, waives and discharges the Village and its officers, officials, employees and agents of and from any and all liability for any claims of any nature or kind whatsoever arising from or in any way relating to the Water Main, the maintenance, repair, emergency repair or replacement thereof, or the encroachment of the Fire Pump/Standby Structure into the Public Utility Easement or its proximity to the Water Main. District's responsibilities for any maintenance, repair, emergency repair or replacement of the Water Main under this Article 3.4 shall terminate upon the satisfaction of the conditions set forth in Article 3.6 of this Agreement.

3.5 General Procedures for Performance of Water Main Repairs, Emergency Repairs, Maintenance or Replacement.

A. Either the District or the Village may determine that the Water Main is in need of maintenance, repair, emergency repair or replacement, and upon either party making such a determination, the determining party shall so notify the other as promptly as possible.

B. Upon a determination being made that the Water Main is in need of maintenance, repair, emergency repair or replacement and the issuance and receipt of notice thereof, the

Village shall thereafter use the valves depicted in Exhibit A to shut off the Water Main and isolate it from the remainder of the Village water supply system.

C. Once the Village has shut off and isolated the Water Main, the District shall at its sole cost and expense then take all such steps as may be required of it to cause the performance of the necessary maintenance, repair, emergency repair or replacement of the Water Main, all in accordance with applicable laws, regulations and ordinances. Village shall have the right to have members of its Public Works Department and/or personnel from its retained engineering consulting firms observe the performance of all such work by District and/or its contractors.

D. Upon District's completion of the relevant maintenance, repair, emergency repair or replacement of the Water Main then at issue, District shall notify Village, and the Village shall then inspect the same for compliance with all applicable laws, regulations and ordinances. Upon the Village's determination that the work performed by District on the Water Main is in compliance with all applicable laws, regulations and ordinances, Village shall so notify District, and District shall thereafter take the necessary steps in cooperation with the Village to flush and disinfect the Water Main, whereupon the Village shall use the valves depicted in Exhibit A to turn on the Water Main and reconnect it to the balance of the Village water supply system.

E. In the event that either the Village or the District determines as hereinabove provided that the Water Main is in need of maintenance, repair, emergency repair or replacement, and the District thereafter fails to timely and diligently perform such maintenance, repair, emergency repair or replacement, the Village at any time and at its sole discretion may upon notice to District elect to perform the maintenance, repair, emergency repair or replacement work at issue, all at the sole risk, cost and expense of the District. Upon the Village's completion of the maintenance, repair, emergency repair or replacement work then at issue, it shall so notify the District by invoicing the District for the costs incurred by the Village in

connection therewith, which invoice shall be due and payable to the Village within thirty (30) days thereafter. No election or elections of the Village made from time to time to perform maintenance, repair, emergency repair or replacement work shall operate or be construed as a waiver or release of the District's responsibilities to perform such work at its cost and expense as otherwise herein provided.

F. District's responsibilities under this Article 3.5 shall terminate upon the satisfaction of the conditions set forth in Article 3.6 of this Agreement.

3.6 Relocation of Water Main and Certificate of Occupancy for Control Tower.

As a condition to any obligation of the Village to issue a certificate of occupancy upon the completion of construction of the Control Tower, and prior to any actual use, occupancy or operation by the District of the Control Tower for its intended purpose, the District shall at its cost and expense take all actions necessary (including but not limited to engineering, construction and obtaining all necessary permits) to relocate the Water Main as it presently exists and to grant a new or revised Public Utility Easement, all in such a manner as to eliminate any encroachment of any building or structure of the District (including but not limited to the Fire Pump/Standby Structure or the Control Tower) from within the new or revised Public Utility Agreement to be granted for the relocated Water Main. The Village shall have the right to review and approve the proposed new location (estimated by the Village and the District to be 200 feet of water main at a cost of \$20,000.00 to \$30,000.00) of the Water Main, the form and location of the new or revised Public Utility Easement, and the engineering design for the relocation of the Water Main, and shall additionally have the right to have Village representatives present to observe the actual construction work for the relocation of the Water Main. Upon the completion of the work to relocate the Water Main, the inspection and approval of such work by the Village, and the recordation of a new or revised Public Utility Easement that

reflects the relocated location of the Water Main, the Village shall take all actions necessary to vacate that portion of the Public Utility Easement as it presently exists that will no longer be used or necessary after the completion of the relocation of the Water Main as contemplated herein, and the District shall thereafter be released from any further obligation to perform any work related to the Water Main as set forth in Articles 3.3, 3.4 and 3.5 of this Agreement. The District shall retain right to use the new easement for its own pavements, sidewalks and related site improvements, and underground data and communication ducts/wiring, and other future utility lines, that will not unduly obstruct Village access to the Water Main for maintenance, repair, emergency repair or replacement purposes by the use of the Village's usual and customary means and methods for such purposes, as reasonably determined and approved by the Village.

ARTICLE IV. INDEMNIFICATION AND INSURANCE

4.1. Indemnification; Waiver.

District agrees to protect, indemnify, save, defend and hold harmless the Village, as well as the Village's 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, for which the Village or its 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 this Agreement 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 indemnification set forth herein shall apply without regard to the availability of insurance coverage or coverage under a self-insurance pool or similar arrangement.

The insurance company, self-insurance pool or similar entity of the District shall be allowed to raise any and all defenses statutory and/or common law to such Claim which the Village 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.

District on behalf of itself and its respective officers, officials, volunteers, employees, attorneys, representatives, and agents, hereby waives, releases and forever discharges any and all existing or future Claims that it may have against the Village or that now or may in the future exist, which Claims arise from, relate to, or are connected with this Agreement, except Claims relating to the Village's breach of this Agreement.

4.2. Insurance.

District represents that it currently maintains insurance coverage. During the term hereof, District shall continue to maintain such coverage and shall obtain written endorsements naming the Village as additional insureds with respect to Claims arising out of this Agreement.

ARTICLE V. LEGAL RELATIONSHIPS AND REQUIREMENTS

5.1. Entire Agreement.

This Agreement incorporates the full and complete understanding of the parties to the exclusion of any terms or provisions not expressly set forth herein.

5.2. Exhibits.

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

5.3. Amendments.

This Agreement 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.

5.4. Waivers.

No term or condition of this Agreement 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 Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, 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 Agreement.

5.5. Notices.

Notices or other writings which either party is required to or may wish to serve upon the other party in connection with this Agreement 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 Village:

Village of Romeoville
Attn: Village Manager
1050 W. Romeo Road
Romeoville, IL 60446

If to District:

Joliet Regional Port District
Attn.: Director of Aviation
1 Executive Terminal
George Michas Drive
Romeoville, IL 60446

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

5.6. 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 Agreement, provided, however, the parties agree that the rights of the parties shall not include the right to recover a judgment for monetary damages against either party or any elected or appointed official thereof for any breach of any of the terms of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement 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 Romeoville

By: _____
John D. Noak, Its President

Attest: _____
Dr. Bernice Holloway, Its Clerk

Joliet Regional Port District

By: _____
David J. Silverman, Its Chairman

Attest: _____
Steve Bixenmann, Its Secretary