

INTERGOVERNMENTAL AGREEMENT

between the
City of Aurora
and the
Village of Sugar Grove
relating to the
Aurora Municipal Airport

This Agreement, made this ____ day of _____, ~~2017~~2018 in duplicate original, by and between the City of Aurora, a Municipal Corporation ("Aurora") and the Village of Sugar Grove, a Municipal Corporation, ("Sugar Grove"), both bodies being hereafter referred to collectively as "Parties."

—WHEREAS, Aurora is a home rule ~~municipality within~~unit as defined by Article VII, Section ~~6A paragraph 11-139-26~~ of the ~~Illinois~~ Constitution; of the State of Illinois ("Constitution") and may exercise any power and perform any function pertaining to except as limited in the manner set forth by the Constitution; and

—WHEREAS, Sugar Grove is not a home rule ~~municipality within~~ Article VII, Section ~~6A~~ of the ~~Illinois~~ Constitution, and therefore pursuant to those ~~unit and possesses the~~ powers granted to it under Chapter 24, paragraph 11-139-2 of Illinois compiled statutes; and them by the Constitution and laws of Illinois and those which may be necessarily inferred from such powers; and

—WHEREAS, Article VII, Section X of the Constitution ~~of the State of Illinois~~ authorizes units of local government to enter into contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance; and

WHEREAS, the Illinois Intergovernmental Agreements; and Cooperation Act further defines such intergovernmental cooperation;

—WHEREAS, Aurora and Sugar Grove previously entered into an Intergovernmental Cooperation Agreement dated July 14, 1998 ("ICA"), and a Water Agreement dated September 5, 1989 and amended on August 25, 2009 ("WA"); and

—WHEREAS, Aurora owns and operates an airport facility known as the Aurora Municipal Airport (“Airport”), and that said airport is located within and adjacent to Sugar Grove along Illinois Route 30, and

—WHEREAS, Sugar Grove owns and operates a Water System that distributes potable water to the Airport.

—WHEREAS, the Airport established an Airport Layout Plan (“ALP”), in 1988 whereby the boundaries for the Airport were established, which are depicted on Exhibit “A” attached hereto and incorporated into this Agreement; and

—NOW, THEREFORE, upon the consideration of the mutual promises contained herein, and upon further consideration of the recitals herein set forth, it is hereby agreed between the parties to this agreement as follows:

1. This Agreement shall ~~supercede~~supersede and replace the ICA and WA.
2. This initial term of this Agreement shall run for a period of twenty (20) years commencing on the date first written above and shall automatically be renewed for recurring terms of five (5) years thereafter, unless either party provides written notice to terminate no later than ninety (90) days prior to the expiration of any term.
3. Aurora shall develop the Airport in accordance with the ALP.
4. Sugar Grove shall consider airport operations when planning and implementing land uses near the Airport.
5. Both Parties will support the development of the Airport and Sugar Grove as planned and notify each other of any pending changes to the uses or long range plans of their respective entities.
6. Aurora and Sugar Grove shall agree to support the development of the Airport, including efforts to secure Federal and State funds for the Development of the Airport, as depicted on Exhibit “A”.
7. Aurora and Sugar Grove shall agree to support improvements to the Sugar Grove owned Water System that benefit the Airport, including efforts to secure Federal and State funds for the Development of the Water System.
8. Sugar Grove shall not unreasonably withhold access points for future development areas of the Airport that front roadways within the control of Sugar Grove.
9. Aurora shall not acquire land adjacent to or nearby the Airport outside the ALP.
10. Aurora shall make every reasonable effort ~~to facilitate the sale of the recreational area~~

~~identified on Exhibit "B" attached hereto, to the Sugar Grove Park District and~~ to facilitate the sale of any owned lands adjacent to or nearby, but outside the ALP to Sugar Grove.

11. Sugar Grove shall have no monetary responsibility for any development or operation of the Airport.
12. Aurora agrees to minimize the impact of noise resulting from Airport operations on Sugar Grove residents through the use of noise abatement procedures and other measures. Aurora will prohibit the maintenance runups of aircraft engines between the hours of 10:00 p.m. and 6:00 a.m., except for those aircraft preparing for takeoff. Aurora and Sugar Grove agree that the uses of the Airport shall not include any scheduled Air Carrier service employing the type and size aircraft that seat more than 30 people.
- ~~13.~~ 13. Sugar Grove shall provide police patrol services to the Airport. Aurora shall pay Sugar Grove, no later than September 30, 2018 and not later than June 30th of each year in subsequent calendar years, the amount of \$10,000 as payment for these services. Either party may cancel this provision at any time subject to a 180 day written notice to the other party.
14. Sugar Grove shall provide water to the Airport of the same quality as provided to customers within the corporate limits of Sugar Grove. Water provided shall be considered available and delivered at the primary main located on Airport property and running parallel to Route 30.
15. Distribution of water from the point of delivery to areas throughout the Airport shall be the responsibility of Aurora.
16. The availability of water furnished to the Airport at the point of delivery shall be at not less than 3,000 gallons per minute at 50 pounds per square inch for a period of three hours.
17. Any future mains or lines constructed for purposes of providing water on the airport proper, within the perimeter of the Airport, shall be paid for by Aurora or any facility requesting same.
18. Prior to any construction of water mains or lines, by Aurora or any other person or entity, all engineering plans for construction of same must be provided to Sugar Grove and approved by Sugar Grove and such approval should not be unreasonably withheld. Sugar Grove shall respond to such request for approval of plans for extension of water mains within 30 days of submittal of said plan. Upon completion of such construction "as built" plans in a suitable electronic form must be provided to Sugar Grove. Sugar Grove shall have reasonable rights of entry on to Aurora's property for purposes of inspection and maintenance of all water mains, service lines, and meters In the event such maintenance should become necessary.

19. Aurora shall maintain all water mains and lines located on its property. Said maintenance shall be in accordance with the then applicable codes. - All repair work to be done on said mains or lines shall be done within a reasonable period of time. In the event that the repair is necessary due to a water leak or break in a main, line or apparatus connected thereto the repair must be made immediately. If Aurora fails to make any repairs arising from a water leak or break or stop such leak or break within one business day Sugar Grove may make any and all repairs necessary to correct the problem. The cost of any such work performed by Sugar Grove shall be charged back to Aurora and added to any charges accruing by Aurora as if they were direct water charges incurred Aurora for water use.
20. Sugar Grove, at its sole discretion, may have a representative at the site of any construction or repair work for purposes of witnessing such work for conformance with Sugar Grove ordinances. - Aurora shall not obstruct or impair such representatives' access to any construction or repair site.
21. Sugar Grove may submit application to Aurora to tap the water mains contained on Aurora's Property for purposes of Sugar Grove constructing water mains to extend Sugar ~~Groves water~~Grove's Water System to areas around and adjacent to ~~Aurora's~~Aurora's property. - Aurora agrees to grant to Sugar Grove all reasonable easements for purposes of construction and maintenance of such water main extensions of Sugar Grove which permission shall not be unreasonably be withheld. Sugar Grove shall design and construct such water mains so as to cause the least infringement on operation of the Airport as possible. Aurora shall not unreasonably impair the placement of such lines.

~~operation of the Airport as possible Aurora shall not unreasonably impair such lines.~~

- ~~22.~~ 22. Aurora may submit application for additional taps to the Sugar Grove ~~water~~Water System at points along Dugan and Wheeler roads. Approval of such taps shall not be unreasonably withheld.
23. No connection fees or tap on fees will be charged to any government facility located on or to be located on the airport property. Government facilities shall include Federal, State and Local Governmental buildings being used for governmental purposes and will not include governmental purposes that are proprietary in nature. All facilities on the airport owned, leased, or used by any person or entity for purposes other than governmental shall pay the applicable connection fee or tap on fee as characterized by Sugar Grove ordinances. All facilities shall purchase meters from Sugar Grove and no other entity and shall pay the then current rate charged to others for meters.
24. In the event that it becomes necessary for Sugar Grove to limit its delivery of water to its customers Aurora shall be entitled to receive during such a period of scarcity its pro-rata share of water available as determined by the proportion which the volume of water used by Aurora during the last preceding six (6) month period bears to the volume of water used by the other customers of Sugar Grove for the same period.
25. In the event that it becomes necessary for Sugar Grove to limit the use of water by its water customers, by imposing lawn and sprinkling restrictions, or otherwise, Aurora shall

upon notification by Sugar Grove ~~shall~~ impose the same water use restrictions and limitations on water customers connected to its system served by Sugar Grove water, and shall make reasonable effort to publicize and shall enforce such limitations and restrictions until notified by Sugar Grove that service limitations and restrictions may be removed.

26. Sugar Grove agrees to furnish water to the Airport on a continuing uninterrupted basis during the term of this Agreement so long as the terms of this Agreement are not violated and all charges generated pursuant to this Agreement are paid and current. In no event shall services to the Airport be terminated without ~~90 days~~ 12 Month written notice to Aurora. Said notice to be written and sent by certified mail, return receipt requested to the then Mayor of Aurora. Service may be interrupted on a temporary basis of reasonable and appropriate duration for construction and repair.
27. Water for any purposes, provided to any facility or entity may be terminated for non-payment of water bills or any other legal reason. If any facility or entity, being billed, fails to pay any bill for water charges or is to be terminated for any other lawful reason or becomes subject to termination of water services, Sugar Grove shall utilize the same notification and shut off procedures as utilized for other customers.
28. Aurora shall not resell any water at a rate or amount greater than that charged to it by Sugar Grove nor cause a surcharge or any additional charge to be added to the rates charged to Aurora for water provided pursuant to this agreement. This paragraph is not to be construed as a bar to Aurora from being reimbursed by any tenants it may on the Aurora property for costs of water. All water provided pursuant to this agreement is for use and consumption at the Aurora Municipal Airport property and shall not be used or transported to any other property or location.

~~Airport property and shall not be used or transported to any other property or location.~~

29. Each and every facility that connects to the water mains or lines on the Airport shall become a customer of Sugar Grove with respect to the Sugar Grove ~~water systems~~ Water System and shall be individually metered. Sugar Grove shall read all meters or cause them to be read according to the then present Sugar Grove practice and shall bill ~~Aurora~~ each customer for all water used unless otherwise notified by Aurora. The amount charged for water consumed on the airport shall be not more than twice the residential rate for homes in Sugar Grove in effect at the time of billing.
30. Aurora agrees to be bound and abide by all ordinances of Sugar Grove in effect at any time during the term of this Agreement which are applicable to water delivery systems including but not limited to construction, maintenance, connection fees, rates or other item directly related to water and water delivery systems except as they may be amended by this Agreement and will be applicable to the supply side of the water meter. - In the event the Sugar Grove ordinances applicable to water delivery systems are in opposition with the most current building codes regarding same, said building code shall be applicable. - Sugar Grove agrees that it shall not pass any ordinances with respect to construction, maintenance, connection fees and rates which are discriminatory in nature or apply to the Airport exclusively and not to the other users with regard to water delivery

systems. In the event a dispute arises as to construction code interpretation the parties agree that the Kane County inspections department shall arbitrate the issue and its decision shall be final except that either party may, at its discretion, file appropriate appeals or an action for judicial review of said decision.

31. Aurora represents to Sugar Grove that there is presently existing on the airport property ~~_____one~~ water ~~wellswell~~ which ~~are~~is presently serving the needs of the airport.- In addition to the one existing water well serving the needs of the airport, Aurora represents that there also presently exists one water well that is used by the Illinois State Water Study (ISWS), for monitoring purposes. It is agreed between the parties that Aurora and the ISWS shall be permitted to maintain and operate said wells during the term of this Agreement or an extension thereof except as otherwise provided herein. It is further agreed between the parties that Aurora shall not drill any wells now or in the future on airport property as it is presently configured or shall be configured, unless there is a need for water at a facility which does not have an existing water main within 500 feet of such facility.- Any wells which presently exist on any property which hereafter becomes a part of the Aurora Municipal Airport property through purchase or otherwise shall not be utilized beyond their present level of use.- At such time as any such wells cease to be used in their present capacity, Aurora agrees to fill and cap such wells in accordance with the Illinois Department of Public Health and EPA requirements. At such time as water mains or lines are constructed within 500 feet of an such facility being serviced by such wells, Aurora agrees to and shall shut down such well or wells and connect such facility to the water system on the Airport to the water system off of the Airport which ever condition occurs first or is closer. Aurora further represents that there is presently one existing well that is not in use for any purpose. Aurora agrees to fill and cap said well in accordance with the Illinois Department of Public Health and EPA requirements within 180 days of approval of this Agreement.

~~31.~~

32. All facilities located on the Airport, or which locate during the term of this Agreement, which are not aviation businesses any part of which property is located within 100 feet of the Sugar Grove corporate boundaries as amended from time to time shall annex into Sugar Grove as a condition of receiving water service. Such facilities, or Aurora on their behalf, must petition and comply with appropriate statutes and ordinances regarding annexation of lands into municipalities. Annexation must be complete before water is supplied to the site, and annexation will cause such property or entity to pay Sugar Grove rates versus out of Sugar Grove rates.

33. In the event that the area upon which such facility is located is not immediately contiguous to the corporate limits of Sugar Grove, Aurora shall annex along with such facility enough airport property sufficient in character, size, and configuration to allow annexation of such facility.

34. It is the intent of the parties that the type of businesses to be annexed include but are not limited to Hotels/Motels, restaurants, entities requiring liquor licenses and those having no direct relationship to aviation.

35. Aurora and Sugar Grove shall cooperate fully and work toward the passage of legislation causing sales tax generated on Airport property, but not within the corporate boundaries

of Sugar Grove, to be paid to Aurora and further to execute an intergovernmental agreement between the parties causing the sharing of said sales tax revenues between the parties on a 50/50 basis payable not less than quarterly.

36. In consideration of Sugar Grove's enhancement of the existing ~~water~~Water System, ~~so~~ as and in order to assure water availability; Aurora agrees to pay to Sugar Grove a monthly fee for water readiness for fire protection of the Airport property. ~~That fee shall~~ be set by ordinance and be no greater than the amounts paid by business or industry within the Corporate limits of Sugar Grove based upon an equivalent square footage.

37. Should it be necessary to institute legal action for collection of water charges accrued by Aurora, Aurora agrees to pay all costs plus attorney's fees in an amount not less than 33% of the amount adjudged to be owed. Aurora shall only be liable for fees associated with its water accounts with Sugar Grove, and shall not be liable for any fees accrued by any other Sugar Grove water customer.

~~37.~~

38. Airport shall be defined as any area of land or water which is used or intended for use for the landing and taking off of an aircraft, and any appurtenant areas or related structures which are used or intended for use for airport buildings or other airport facilities, access or right of way including all necessary taxi-ways, aircraft storage and tie-down areas, navigational aids, hangars and other necessary buildings including open spaces and clear area or clear zones.

39. It is recognized that the Sugar Grove building permit process authority is superseded as to runways and other Airport construction and facilities as defined in section #38. The parties agree that as to other buildings which are located within the corporate limits of Sugar Grove, the Sugar Grove building permit process shall be controlling.

40. Aurora shall have control of all building permits and governing authority of the Aurora Municipal Airport not within the corporate limits of Sugar Grove pursuant to Aurora's codes and ordinances with the exception that Sugar Grove ordinances governing water and water service shall apply up to the supply side of the water meter at each facility that attaches to the System

41. Recitals stated in this agreement are hereby incorporated into and made a part of this agreement as if fully set forth in the body hereof.

~~42.~~

42. Indemnification. The parties agree to indemnify and hold harmless each other as follows: The parties each agree to indemnify, defend and hold harmless the other party to this agreement and its respective employees, officers, agents, legal representatives, successors and assigns, from and against any and all claims, actions, proceedings, judgments, damages (including consequential damages), fines, costs, liabilities, injuries, losses, costs and expenses (including but not limited to attorneys' fees and costs) arising from or related to any actions performed hereunder by the indemnifying party, its employees, agents, contractors or subcontractors, or anyone claiming by through or under any of them, or any breach of this Agreement, except to the extent that any such claim, action, proceeding, judgment, damage, fine, cost, liability, injury, loss, cost and expense, or part thereof, is attributable to the negligence or willful misconduct of the other party, its

employees, agents or contractors. The foregoing indemnity shall survive the termination of this Agreement. This paragraph constitutes a tort liability agreement between two local public entities to allocate or share liability as authorized and contemplated by Article VII of the Local Governmental and Governmental Employees Tort Immunity Act.

43. Notice. Any notice required by this agreement shall be sent to Village of Sugar Grove, 10 S. Municipal Drive Sugar Grove, IL 60554, with copy to Mickey, Wilson, Weiler, Renzi & Andersson, P.C., 140 S. Municipal Drive Sugar Grove, IL 60554, and to the City of Aurora, 44 East Downer Place, Aurora, IL 60507 (Attention: ~~Legal~~Law Department).

~~43.~~

44. Complete Agreement. This agreement constitutes the sole and complete agreement as to the subject matter herein between the parties and cannot be changed except by written amendment. No representation or promise not included in this agreement or any written amendment will be binding on the parties.

45. Severability. Should any provision of this agreement be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and effect the same as if the invalid provision has not been a part of this agreement.

46. Approvals, Continuing Cooperation. This agreement shall be in full force and effect upon passage, approval by both parties and upon execution by the approved representatives of the parties. The officials and staff of the parties are hereby authorized to take such steps and execute such additional documents as are necessary to further effectuate and achieve the goals, rights and duties provided for herein. The parties hereto covenant, warrant, and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the parties pursuant to this Agreement.

47. Time is of the essence of this Agreement, and of each and every provision herein.

48. This Agreement, and the covenants and undertakings made hereunder, are performable in Kane County, Illinois, and shall be governed by the laws of the State of Illinois. Any legal proceeding of any kind arising from this Agreement shall be filed in the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois

49. This Agreement has been negotiated by the parties hereto and their respective attorneys. The language in this Agreement shall not be construed for or against either party, based on any rule of construction favoring the non-drafting party, but shall be interpreted liberally to effect the intent of the parties. Words used in the masculine, feminine, or neuter shall apply to either gender or neuter, as appropriate.

50. This Agreement, together with the exhibits attached hereto, may be amended only by the written agreement of the parties, and execution of all required motions, resolutions or ordinances and after provided public notice as provided by law.

51. Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

52. This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on the parties hereto even though each party is not a

signatory to the original or the same counterpart.

[SIGNATURE PAGE TO FOLLOW]

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