

**INTERGOVERNMENTAL COOPERATION AGREEMENT (IGA)
FOR THE METROPOLITAN PLANNING ORGANIZATION
IN THE DEKALB URBANIZED AREA OF DEKALB COUNTY, IL**

Article I Purpose

This intergovernmental agreement (“IGA”) is designed to provide the framework for multiple government entities to cooperatively carry out the responsibilities of a Metropolitan Planning Organization (MPO) for areas within the DeKalb Urbanized Area of DeKalb County. In accordance with applicable Federal and State laws, policies and procedures, and with the cooperation and assistance of MPO members and the US and Illinois Departments of Transportation, the goal is to provide continuing, cooperative, and comprehensive transportation and transit planning processes for the designated MPO area, as may be amended from time to time. The MPO contemplated herein is the DeKalb Sycamore Area Transportation Study (“DSATS”), the governance of which is controlled by the terms of this Agreement.

Article II General Organization

- A. This MPO shall consist of a Policy Committee who shall act as the Governing Body.
- B. As the Governing Body, the Policy Committee shall be the recognized decision-making body for the MPO and shall guide and approve all planning activities and projects, unless specific items are reserved for a higher authority.
- C. The Policy Committee may adopt By-Laws or revisions thereto to govern their operation, but no By-Law may change or be in conflict with provisions of this Intergovernmental Agreement.
- D. DSATS constitutes a public body for purposes of the Illinois Open Meetings Act, 5 ILCS 120/0.01, *et. seq.*, as do all subsidiary public committees thereof, including but not limited to the Policy Committee. All meetings of DSATS or any committee thereof shall be conducted as open meetings, unless all or some portion thereof is eligible for discussion in a properly convened executive session. DSATS and all committees thereof shall adopt an annual meeting schedule and shall otherwise comply with the above-referenced Act. It is acknowledged that DSATS shall employ one or more full-time employees and the Policy Committee shall designate one such employee as its officer for purposes of complying with the Open Meetings Act and the Freedom of Information Act, 5 ILCS 140/0.01, *et. seq.*
 - 1. Information in regard to the duties and activities under this agreement may be considered public records, subject to the exceptions of disclosure as provided for in the Illinois Freedom of Information Act (5 ILCS 140/1, *et seq.*). As such, each member agrees to respond to any requests by the MPO to provide necessary FOIA responsive documentation in relation to the MPO’s activities in a timely manner after receiving a request to do so.
- E. The members acknowledge that at some point in time, it may prove advantageous to convert from provision of public transit services in the fashion they are currently configured (with such services being coordinated through the City of DeKalb), to providing such services through a

newly created Mass Transit District. Until a Mass Transit District or similar governing organization is established for transit operations, the Policy Committee will serve in an advisory capacity to transit operations in DeKalb County, as indicated in Article VIII(A)(3) below.

- F. The Policy Committee may establish such other Committees and Task Forces as deemed appropriate for the effective and efficient operation of this MPO, in compliance with applicable laws. No such committee or task force may operate in a fashion that alters or diminishes the membership and voting rights of each of the member entities as contemplated herein.

Article III Membership & Voting

- A. Membership will consist of five entities, with some entities having multiple seats and with each seat granted one vote: City of DeKalb (3), the City of Sycamore (2), DeKalb County Government (2), Northern Illinois University (1), and the State of Illinois acting by and through the Illinois Department of Transportation (1) for a total of 9 membership seats and votes. The addition of new entities or the modification of member entity seats or votes may only be accomplished through the approval of an amendment to this IGA, approved by all then-current member entities.
- B. The governing body (or chief elected official, or chief executive official, as the rules for each entity so determine), of each member organization will appoint persons to fill the various seats for terms determined by each individual entity. Appointments for alternate members may also be made to serve when the primary appointment(s) cannot serve. All appointments shall be made in writing to the chairman of the Policy Committee.
- C. A quorum for a Policy Committee meeting shall be a majority of the membership (i.e. 5 of 9 seats) and all action items approved by the Policy Committee shall be by a simple majority vote of the members present, unless otherwise stated.
- D. Members of the Policy Committee shall not receive a salary from DSATS.
- E. The Policy Committee may offer voice to other individuals and entities as deemed appropriate, but voting rights are reserved as stipulated in this document. The right of the public to participate in such meetings shall be as provided by law with regard to public entities.

Article IV Budget and Finances

- A. It is acknowledged that one of the primary purposes of DSATS is to serve as the MPO and render local and regional services and projects eligible for receipt of state and federal funding. Many of those eligible projects require the payment of a local share or local match of funding as a component of grant or reimbursement eligibility. The members of DSATS, as identified herein, shall adhere to the requirements of this Agreement with regard to their individual obligation to fund local shares of DSATS' expenses.

1. On an annual basis and based upon a calendar, the Policy Committee shall propose a budget for DSATS which projects anticipated projects, expenditures and

revenues, as well as projecting anticipated local share of such expenses (the “Local Share”).

2. The Local Share shall be divided into shares for each member of DSATS. This share for each entity will be based on the percent of voting members each entity is allowed to have on the Policy Committee, except the State of Illinois will not be factored into that calculation (with the figure calculated herein being referred to as the “Proportionate Share”).
3. The Policy Committee shall apply each member’s Proportionate Share against the anticipated Local Share and determine the funding due from each member for the proposed budget, which funding shall be referred to herein as the Member Contribution. In the event that there is funding available from any other source to apply against the Local Share (whether a voluntary contribution from the State of Illinois, a grant, or funding from any other source), such third party funding shall be applied to reduce the Local Share, and thus to proportionately reduce each member’s Member Contribution.
4. The Policy Committee shall provide the Member Contribution requirements to each member prior to adoption of the proposed DSATS budget. Each member agrees that it shall, in accordance with the terms of this Agreement, budget or appropriate sums adequate to satisfy their Member Contribution obligations. Each member shall memorialize this obligation in form acceptable to the Policy Committee, and the Policy Committee may thereafter adopt the proposed DSATS budget.
5. In the event that any member fails or refuses to fund its Member Contribution in whole or in part, then: 1) the Policy Committee may elect to revise the proposed budget to reduce funding to a level that can be accommodated by the Member Contribution commitments of each party; 2) this Agreement may be amended on terms and conditions acceptable to all of the then-current members, including but not limited to a revision of membership or voting rights allocations afforded hereunder; or, 3) this Agreement may be terminated (although termination shall not serve to impair or reduce any member’s obligation to contribute all portions of their previously obligated Member Contribution from previous years’ budgets).
6. In the event that, during the course of the DSATS fiscal year, the Local Share calculation is revised, projects are altered, or Member Contributions are proposed to increase, the Policy Committee shall immediately notify all members and provide them with the opportunity to approve of or reject a revision in their respective Member Contributions. In the event that any member fails or refuses to provide the additional required funding, then the remedies described in the preceding subsection shall be utilized.
7. From time to time, DSATS may bring forward a project that has a unique benefit afforded to one or more of the member entities. By agreement of the Policy Committee and the affected member entities, the affected member entities may bear a disproportionate share of the expense of such project (e.g. payment for a local share of a construction project that is funded through state or federal funds

that DSATS is eligible for). Such projects and their funding shall be accounted for in DSATS' budget, whether by inclusion in the annual budget or through a budget amendment.

- B. Notwithstanding any contrary provision of this Agreement, nothing contained herein shall obligate any member organization to expend funds in excess of those funds that they have budgeted or appropriated for a specified purpose. No member may be compelled to provide additional funding without its consent.
- C. The Policy Committee may incur expenses as necessary to fulfill the mission of the MPO provided that funding is available. It is recognized, and allowed, that some funding may be derived on a reimbursement basis (i.e. incurring an eligible expense for later reimbursement). This shall be permitted where DSATS has adequate funding in order to cover the expense pending reimbursement.
- D. The Policy Committee is not authorized to make any contractual commitments which could become an unfunded financial liability to the member entities.
- E. No debt other than contractual engagements that are within the then-current approved budget and for which all required Member Contributions towards the Local Share have been pledged may be incurred without the express written authorization of each individual entity that has membership on the MPO Policy Committee.

Article V Providing for Financial, Legal, and Personnel Services

- A. The parties acknowledge that DSATS does not manage its own financial, legal or personnel services, but rather makes use of a member to provide such services. The member so designated shall be referred to herein as the Fiscal Agent.
 - 1. The Fiscal Agent responsibilities shall include the collection and disbursement of funds (including Member Contributions), payroll and benefit services, producing periodic financial statements, complying with all auditing requirements, technology services, and administrative support. The Fiscal Agent shall be the grant recipient.
 - 2. The Fiscal Agent shall be the recipient of any Federal or State Planning funds and the responsibilities that go therewith.
 - 3. The Fiscal Agent shall also serve as the employer of any personnel paid for with or through DSATS funds (as contemplated by the approved annual DSATS budget), and for providing legal and financial services to DSATS (subject to reimbursement as contemplated by the then-approved DSATS budget). The Fiscal Agent shall be responsible for all personnel compensation, benefits or associated liabilities arising out of or relating to their employment, and said personnel shall be considered to be employees of the Fiscal Agent and subject to its personnel policies, benefits and compensation. DSATS shall not, itself, have any employees or serve as an employer, and DSATS' obligation relative to the employees funded through its budget shall be limited to the provision of funding in accordance with the then-approved budget.

4. The Fiscal Agent shall be responsible for ensuring that DSATS complies with all applicable laws, rules, statutes, ordinances or other binding regulations.

Article VI Assurances

- A. The Policy Committee and any other committee or subcommittee of DSATS shall operate in compliance with all Federal and State regulations as may be in effect from time to time, and the terms and conditions of this IGA. DSATS shall take all reasonable actions to ensure that the citizens being served are informed, do not experience unlawful discrimination, and are free to address concerns without unlawful retaliation.
- B. The member entities agree to comply with all applicable federal, state and local laws and regulatory requirements and to secure such licenses as may be required for their employees or to conduct business in the state, municipality, county and location. Such obligations include, but are not limited to, environmental laws, civil rights laws, prevailing wage and labor laws.
- C. The member entities, their officers, employees, and agents agree to not permit unlawful discrimination and agree to comply with all applicable provisions of the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Section 504 of the Federal Rehabilitation Act, and all other applicable rules and regulations.

Article VII Amendments & Severability

- A. This Agreement shall be construed in accordance with the law and Constitution of the State of Illinois. If any one or more of the provisions of this Agreement is declared unconstitutional or contrary to law, the validity of the remainder of the Agreement shall not be affected thereby.
- B. This Agreement represents the entire Agreement between the member entities as to the subject matter hereof, and there are no other promises or conditions in any other Agreement whether oral or written that serve as the base agreement governing the composition of DSATS or the Policy Committee. This Agreement supersedes any prior written or oral agreements between the entities and may not be modified except in writing acknowledged by all named entities.
- C. The member entities agree that the venue for any legal proceedings between them shall be the Circuit Court of DeKalb County, Illinois, Twenty-Third Judicial Circuit, State of Illinois, except with regard to those claims against Northern Illinois University that are subject to exclusive jurisdiction in the Illinois Court of Claims.

Article VIII Transition Provisions

- A. Introduction: Member organizations may from time to time propose to serve as the Fiscal Agent for the respective Transportation and Transit functions. Serving as a Fiscal Agent involves both fiscal and legal responsibilities to administer the assigned programs. The following provisions are outlined to facilitate the implementation of a current Fiscal Agent and future transitions as may be necessary.

1. Transportation Fiscal Agent, 2019-2021. DeKalb County Government shall serve as the Fiscal Agent for transportation planning for the period of January 1, 2019 through December 31, 2021 and shall perform all obligations associated with that position pursuant to the terms of this IGA and applicable laws.

The City of DeKalb, who has been the Fiscal Agent for transportation planning up until the effective date of this amended agreement, is empowered to close out the fiscal year ending December 31, 2018 with regard to transportation planning business on behalf of DSATS. The member entities acknowledge that this closeout will be ongoing for several months, likely until the 2018 fiscal year is audited. The City of DeKalb and County of DeKalb shall collaborate on such closeout and transfer process.

The Parties acknowledge that the City of DeKalb presently has one full-time MPO staff member dedicated to transportation planning. Such employee shall be paid through the City of DeKalb for salary and benefits as of December 31, 2018, at which time his employment by the City shall terminate. At the time of his termination, said employee will become an employee of the DeKalb County Government, as Fiscal Agent. The employee will serve under the direction and authority of the DeKalb County Engineer. Said employee shall be employed by the DeKalb County Government as of January 1, 2019, with the same salary as he had been paid by the City as of December 31, 2018 plus the County's 2019 COLA increase. Said employee shall also be entitled to the same benefit programs in place for full-time DeKalb County employees. The City shall compensate the employee for any accumulated paid time off to which he is entitled upon his separation from employment by the City, which expense shall be reimbursed by DSATS to the City as a component of the City's service as Fiscal Agent.

Any existing assets including equipment and licenses dedicated to transportation planning, which have any remaining book value and were purchased solely using transportation grant funds and are in possession of the City of DeKalb, will become the possession of DeKalb County Government as of December 31, 2018. In the event an asset was purchased jointly by the City of DeKalb and DSATS, and the asset retains any book value, the City of DeKalb will be given the opportunity to purchase the interest held by DSATS based on the book value of the asset. If the City chooses not to purchase the interest held by DSATS of a jointly purchased asset, it will become the possession of DeKalb County Government as of December 31, 2018. In the event, an asset does not have any remaining book value, the City of DeKalb will retain possession of the asset.

2. Transportation Fiscal Agent, 2022 and after: The Policy Committee shall designate a lead agency to serve as Fiscal Agent, after seeking proposals for these services, for the term beginning January 1, 2022 and thereafter. The Policy Committee shall establish periods of service for the position of Fiscal Agent and shall select the Fiscal Agent from the member entities. The Policy Committee shall designate each successive Fiscal Agent, and their respective term of service, via adopted resolution. Any member entity may nominate itself to serve as Fiscal

Agent, and the term of service as Fiscal Agent may be extended from time to time with the approval of the Policy Committee. Determinations regarding the employment of any Fiscal Agent personnel who serve as DSATS/MPO staff members and the appropriate disposition of DSATS property, if any, shall be made by the Policy Committee and the Fiscal Agent whose term of service is ending, at the time of such transition.

3. Transit Fiscal Agent: The City of DeKalb shall continue to be the Fiscal Agent for transit operations. The member entities acknowledge that with regard to transit operations, the City directly serves as grant recipient and Fiscal Agent, and directly provides the certifications and assurances necessary to continue the receipt of grant funding for transit. With regard to transit, DSATS and the Policy Committee serve in a non-binding advisory role only and transit operations shall be managed through the City.
- B. Transportation related Planning Documents, Contracts, and Budgets related to transportation planning in place on December 31, 2018 that extend beyond that date will be managed by DeKalb County Government after the transition described in Article VIII(A)(1) above. If contractual financial payouts to third party vendors are required, the City of DeKalb and DeKalb County Government are authorized to work out mutually agreeable arrangements for the handling, reporting and distribution of those funds.
 - C. The Policy Committee shall establish the level of compensation provided to the Fiscal Agent to cover its DSATS/MPO transportation planning related operational costs, which compensation shall not exceed the amounts budgeted for such purposes within the then-current approved DSATS budget, and which shall not exceed the actual costs incurred.

Article IX Ratification & Termination

- A. This IGA shall become effective upon the later of January 1, 2019 or the approval by all signatory parties including the Governor or his designee.
- B. DSATS and the member entities shall comply with the provisions and objectives contained herein. This IGA shall constitute an agreement between the jurisdictions heretofore mentioned, to cooperate in the continuing, cooperative, and comprehensive transportation planning process for this MPO in the DeKalb Urbanized Area of DeKalb County.
- C. This Agreement shall remain in force through December 31, 2038. The agreement may be renewed prior to the termination date for an additional twenty years if all parties to this agreement approve such action by June 30, 2038.
- D. Any party to this Agreement may withdraw by giving written notice to the Chairman of the Policy Committee, not less than one hundred and eighty (180) days prior to the later of the effective date of termination or the written notice to the Chairman of the Policy Committee. Termination from this agreement shall not relieve the withdrawing party from compliance with Federal or State requirements for cooperative transportation planning and programming, nor relieved from any financial obligations incurred as of the termination effective date.

- E. This Agreement may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be an original and both of which shall constitute one and the same Agreement.
- F. The entities each hereby warrant and represent that their respective signatures set forth below have been and are on the date of this Agreement duly authorized by all necessary and appropriate corporate and/or governmental action to execute this Agreement.

Article X Lead Agency Security

- A. The entities acknowledge the limitation on liability of each of the member entities as described above, that being their liability for payment of Member Contributions, plus any approved unique local share obligation under Article IV(A)(7). The entities further acknowledge that they shall not be held liable, directly or indirectly, for any expense in excess of the approved sum, and that they shall not be obligated to waive any defense, privilege or right otherwise available to them.
- B. The Fiscal Agent shall ensure that any contract or agreement pertaining to DSATS projects or utilizing funding administered through DSATS shall include appropriate language (in a format acceptable to the Fiscal Agent and the Policy Committee) which acknowledges the limitation on liability described herein, and which provides for appropriate insurance, indemnification and defense of each of the member entities and, to the extent permitted by law, DSATS itself. The Fiscal Agent shall require any parties contracting with DSATS to procure and provide insurance naming the Fiscal Agent, DSATS and each of the member agencies as additional primary and non-contributory insured with a waiver of right of subrogation, on forms of coverage and with policy limits acceptable to the Policy Committee. Such policies shall name the member entities and their respective elected and appointed officials, employees, and related parties.
- C. The member entities acknowledge that the Fiscal Agent, by virtue of its role as Fiscal Agent, holds certain contracts and accrues certain potential liabilities or obligations on behalf of DSATS. The member entities thereby agree that the Fiscal Agent shall be permitted to procure such insurance, performance guarantees, sureties or other financial instruments (collectively, "Fiscal Agent Security") as shall be required to adequately secure and protect the Fiscal Agent's interests against any claims arising out of or relating to its role as Fiscal Agent. Such Fiscal Agent Security shall be subject to approval of the Policy Committee, and the costs thereof that are strictly attributable to the Fiscal Agent's role on behalf of DSATS shall be funded by DSATS through the approved annual budget. Where possible, the Fiscal Agent Security shall also name each of the member entities as an appropriately secured party (e.g. additional primary insured, etc.)
- D. Each of the member entities shall be responsible for their respective Member Contributions and any individual member entity liabilities arising out of their individual activities on behalf of or with respect to DSATS.
- E. DSATS agrees that it shall, to the fullest extent of available funds, applicable insurance coverage or other available security, indemnify, defend and hold harmless the member entities, including the Fiscal Agent, from any and all claims, damages, liabilities or other obligations whatsoever arising out of the conduct of DSATS or the employment of personnel

by DSATS or the Fiscal Agent on behalf of DSATS, provided that this obligation shall be subordinate to the limitation on member entity liability as described in Article X(A) above.

- F. The Fiscal Agent agrees that it shall indemnify, defend and hold harmless the other member entities from any claims, damages or allegations arising out of or relating to the Fiscal Agent's violation of any applicable law or regulatory standard, any provision of this IGA, or any breach of its obligations to the other member entities.

Article XI Miscellaneous Provisions

A. This Agreement and the rights of the parties hereunder may not be assigned without consent of all of the member entities, and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties and their respective successors and assignees, any rights, remedies, obligations or liabilities under or by reason of such agreements. There are no intended or implied third-party beneficiaries of this Agreement. Nothing in this Agreement shall be intended, nor shall it be interpreted, to waive any or all statutory or common law privileges and/or immunities of any of the member entities. The waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

B. Any notice required or permitted to be given pursuant to this IGA shall be duly given if sent by certified mail or courier service and received. As such, all notices required or permitted hereunder shall be in writing and may be given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and certified with the return receipt requested.

(List addresses)

C. This IGA shall be interpreted and enforced under the laws of the State of Illinois.

D. This IGA shall inure to the benefit of, and be binding upon the member entities and their successors, grantees, and assigns, provided that such successors and assigns are public entities.

E. This IGA may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be an original and both of which shall constitute one and the same Agreement. Each member entity hereby warrants and represents that its respective signatures set forth below have been, and are on the date of this Agreement, duly authorized by all necessary and appropriate corporate and/or governmental action to execute this Agreement.

Article XII Authorized Signatures

Mark Pietrowski, Jr., County Board Chairman

Date Signed

Jerry Smith, City of DeKalb Mayor

Date Signed

Curt Lang, City of Sycamore Mayor

Date Signed

Russell C. Stokes, Town of Cortland Mayor

Date Signed

Lisa C. Freeman, NIU President

Date Signed

Kevin Marchek, IDOT Region 2, Dist. 3 Engineer

Date Signed

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