

AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH DEKALB TOWNSHIP REGARDING THE OWNERSHIP AND MAINTENANCE OF THE ROUNDABOUT AT PEACE ROAD AND GURLER ROAD, DEKALB, ILLINOIS.

WHEREAS, the City of DeKalb (the "City") is a home rule unit of local government which may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*, authorizes cooperative agreements between Illinois units of local government; and

WHEREAS, the City has completed new roadway improvements which fall partially within the jurisdiction of the DeKalb Township Roadway District (the "District"); and

WHEREAS, the District's approval of said improvements is contingent upon the approval and execution of an intergovernmental agreement between the City and the Township in the same or substantially similar form as Exhibit A attached hereto and incorporated herein (the "IGA"); and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: The recitals to this Resolution are true, material, adopted, and incorporated herein as Section 1 to this Resolution.

SECTION 2: The City's Corporate Authorities authorize and approve the IGA in the same or substantially similar form as Exhibit A attached hereto and incorporated herein, and further direct the Mayor to execute the IGA and to take all other acts which may be necessary to effectuate the IGA.

SECTION 3: This Resolution and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such resolution should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the Corporate Authorities of the City of DeKalb that to the extent that the terms of this resolution should be inconsistent with any non-preemptive state law, that this resolution shall supersede state law in that regard within its jurisdiction.



SECTION 4: That the City Clerk or Executive Assistant of the City of DeKalb, Illinois, be authorized and directed to attest the Mayor's signature and that this Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 28th day of September 2020 and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Morris, Finucane, Smith, Perkins, McAdams, Verbic, Faivre, Mayor Smith. Nay: None.

ATTEST:



RUTH A. SCOTT, Executive Assistant

JERRY SMITH, Mayor

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF DEKALB AND DEKALB ROAD DISTRICT
FOR IMPROVEMENTS ON PEACE ROAD**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made as of the 28th day of September 2020 (the “Effective Date”), by and between the CITY OF DEKALB, (the “City”), an Illinois municipal corporation, and the DEKALB ROAD DISTRICT, (the “Road District”), a body politic and corporate of DeKalb County, Illinois.

RECITALS

WHEREAS, the City and the Road District are public bodies enabled with certain authority under the laws of the State of Illinois, including the authority to enter into intergovernmental agreements pursuant to 5 ILCS 220, et seq and Article VII, Section 10 of the Constitution of the State of Illinois, for the mutual assistance and well-being of the citizens therein; and

WHEREAS, the City has committed funding to design and construct certain improvements to Peace Road, including a roundabout, and other aspects outlined in plans submitted by Kimley-Horn and Associates to the City, formally known as KHA Project #168248003 (collectively the “Improvements”), and which are incorporated herein to this Agreement as Exhibit A; and

WHEREAS, the Improvements will impact portions of Peace Road under the jurisdiction and control of both the City and the Road District, and accordingly, the City and the Road District wish to cooperate on the design and construction of the Improvements; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and with the foregoing recitals being incorporated herein and made a part hereof, the parties agree as follows:

SECTION 1

A. City’s Responsibilities

1. The City has completed, at its own cost, all surveying, design engineering, pre-construction work, and inspection for the Improvements.
2. The City has obtained the services of a contractor (“the Contractor”) through the legal bidding process to construct all components of the Improvements as outlined on the plans incorporated herein as Exhibit A.
3. The City has required the Contractor to adequately insure the Improvements against all claims which may arise from construction of the Improvements, and shall require the Contractor to indemnify and hold harmless the Road District regarding the Improvements and/or include the Road District as an additional insured on all relevant insurance coverages for the Improvements and add the Road District as an additional protected party on all payment and performance bonds required of the Contractor.

4. The City shall notify the Road District when/if the plans incorporated herein as Exhibit A are changed or amended. Any proposed changes or amendments which would cause the Improvements not to be built in substantial accordance with the approved plans shall be submitted to the Road District for prior written approval, which shall not be unreasonably withheld by the Road District.
5. The City shall notify the Road District in writing upon the completion of construction of the Improvements, and that correspondence shall indicate the construction is to the City's satisfaction.

B. Road District's Responsibilities

1. The Road District will not unreasonably interfere during construction of the Improvements, but the Highway Commissioner and/or his designee(s) shall have all reasonable rights of inspection during the construction of the Improvements.
2. The Road District agrees to maintain all portions of Peace Road currently under its jurisdiction and control, absent subsequent action by the City (e.g., annexation).

SECTION 2

- A. **Term.** This Agreement shall remain in effect for two (2) years from the Effective Date of the Agreement or until the completion of construction of Improvements, whichever is earlier. However, the indemnification provision of this Agreement shall survive the termination of this Agreement to the fullest extent allowed under Illinois law.
- B. **Conflicts with Prior Agreements.** This Agreement shall not supersede any previous, acting agreements between the parties regarding Peace Road unless specific terms in this Agreement are deemed to be in conflict with those prior agreements by a Court of competent jurisdiction. In the instance of a conflict, the terms of this Agreement shall control and govern the parties.
- C. **Remedies.** Upon violation of any of the terms of this Agreement that is not cured within 30 days of written notice thereof from one party to another, the aggrieved party or parties shall have all rights and remedies afforded to it under the law, including the termination of this Agreement.
- D. **Amendments.** This Agreement may be amended, but only in writing, and said writing shall be executed by the parties by their duly authorized representative(s).
- E. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to person or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision hereof shall be deemed valid and enforced to the fullest extent permitted by law.
- F. **Notices.** All notices, approvals, demands and other documents required or permitted under this Agreement, other than routine communication necessary for the day-to-day operation of this facility, shall be deemed properly given if hand delivered or sent by United States mail, postage prepaid, to the following:

AS TO THE CITY: City Engineering Department
City of DeKalb
1216 Market Street
DeKalb, IL 60115

WITH A COPY TO: City Attorney
City of DeKalb
164 E. Lincoln Hwy.
DeKalb, IL 60115

AS TO THE ROAD DISTRICT: Highway Commissioner
DeKalb Township Road District
2323 S. Fourth Street
DeKalb, IL

WITH A COPY TO: John M. Redlingshafer
Mescher, Rinehart &
Redlingshafer, P.C.
108 S. Wood Street
Washington, IL 61571

- G. Indemnification and Hold Harmless. City agrees that it will, at all times after the Effective Date, hold harmless and indemnify the Road District, its officers and agents, from and against any and all costs, claims, liabilities, expenses, and damages, including reasonable attorneys' fees, arising from or related in any way to the construction of the Improvements, including all responsibilities, acts or omissions related to the City's obligations under this Agreement, as well as the negligence or willful and wanton misconduct of the City related to this Agreement. The Road District agrees that it will, at all times after the Effective Date, hold harmless, defend, and indemnify the City, its officers and agents from and against any and all costs, claims, liabilities, expenses, and damages, including reasonable attorneys' fees, arising from or related in any way to the action or inaction of the Road District with respect to the performance of its obligations under the terms of this Agreement, maintenance of the roads under its jurisdiction and control, and the negligence or willful and wanton misconduct of the Road District related to the Improvements.
- H. Insurance. The City and Road District agree that each shall maintain comprehensive general liability and other insurance in amounts determined to be appropriate by their respective corporate authorities. The parties agree that they shall cooperate in the defense of any alleged claim arising out of the mutual or joint conduct of the parties.
- I. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. In the event of litigation between the parties, venue shall lie in the Circuit Court of DeKalb County, Illinois.
- J. Waiver. This waiver of any term or provision of this Agreement shall not constitute a waiver of any other term or provision of this Agreement, nor shall the right to require any enforcement of any term or provision of this Agreement be permanently waived, if a continuing breach of any such term or provision arises.

K. Counterpart. This Agreement may be executed in any number of counterparts, each of which shall be an original, with the main effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date above first written, and those signing below acknowledge and affirm they have the authority to execute this Agreement on behalf of their public body.

CITY OF DEKALB

DEKALB TOWNSHIP ROAD DISTRICT


BY:


Jerry Smith, Mayor

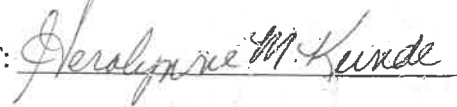
BY:


Highway Commissioner

ATTEST:


Ruth A. Scott, Executive Assistant

ATTEST:


Road District Clerk

for reference
only

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF DEKALB AND DEKALB ROAD DISTRICT
FOR IMPROVEMENTS ON PEACE ROAD**

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RECITALS

WHEREAS, the City and the Road District are public bodies enabled with certain authority under the laws of the State of Illinois, including the authority to enter into intergovernmental agreements pursuant to 5 ILCS 220, et seq and Article VII, Section 10 of the Constitution of the State of Illinois, for the mutual assistance and well-being of the citizens therein; and

WHEREAS, the City has committed funding to design and construct certain improvements to Peace Road, including a roundabout, and other aspects outlined in plans submitted by Kimley-Horn and Associates to the City, formally known as KHA Project #168248003 (collectively the “Improvements”), and which are incorporated herein to this Agreement as Exhibit A; and

WHEREAS, the Improvements will impact portions of Peace Road under the jurisdiction and control of both the City and the Road District, and accordingly, the City and the Road District wish to cooperate on the design and construction of the Improvements; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and with the foregoing recitals being incorporated herein and made a part hereof, the parties agree as follows:

SECTION 1

A. City’s Responsibilities

1. The City has completed, at its own cost, all surveying, design engineering, pre-construction work, and inspection for the Improvements.
2. The City has obtained the services of a contractor (“the Contractor”) through the legal bidding process to construct all components of the Improvements as outlined on the plans incorporated herein as Exhibit A.
3. The City has required the Contractor to adequately insure the Improvements against all claims which may arise from construction of the Improvements, and shall require the Contractor to indemnify and hold harmless the Road District regarding the Improvements and/or include the Road District as an additional insured on all relevant insurance coverages for the Improvements and add the Road District as an additional protected party on all payment and performance bonds required of the Contractor.

4. The City shall notify the Road District when/if the plans incorporated herein as Exhibit A are changed or amended. Any proposed changes or amendments which would cause the Improvements not to be built in substantial accordance with the approved plans shall be submitted to the Road District for prior written approval, which shall not be unreasonably withheld by the Road District.
5. The City shall notify the Road District in writing upon the completion of construction of the Improvements, and that correspondence shall indicate the construction is to the City's satisfaction.

B. Road District's Responsibilities

1. The Road District will not unreasonably interfere during construction of the Improvements, but the Highway Commissioner and/or his designee(s) shall have all reasonable rights of inspection during the construction of the Improvements.
2. ~~After receiving notice from the City that construction of the Improvements is completed and to the City's satisfaction, t~~The Road District agrees to ~~resume maintain~~enance of allay portions of Peace Road currently under its jurisdiction and control, absent subsequent action by the City (i.e.g., annexation). ~~However, this obligation is subject to the City's indemnification of the Road District regarding the Improvements as outlined in this Agreement.~~

SECTION 2

- A. Term. This Agreement shall remain in effect for two (2) years from the Effective Date of the Agreement or until the completion of construction of Improvements, whichever is earlier. However, the indemnification provision of this Agreement shall survive the termination of this Agreement to the fullest extent allowed under Illinois law.
- B. Conflicts with Prior Agreements. This Agreement shall not supersede any previous, acting agreements between the parties regarding Peace Road unless specific terms in this Agreement are deemed to be in conflict with those prior agreements by a Court of competent jurisdiction. In the instance of a conflict, the terms of this Agreement shall control and govern the parties.
- C. Remedies. Upon violation of any of the terms of this Agreement that is not cured within 30 days of written notice thereof from one party to another, the aggrieved party or parties shall have all rights and remedies afforded to it under the law, including the termination of this Agreement.
- D. Amendments. This Agreement may be amended, but only in writing, and said writing shall be executed by the parties by their duly authorized representative(s).
- E. Severability. If any term of provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to person or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision hereof shall be deemed valid and enforced to the fullest extent permitted by law.
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facility, shall be deemed properly given if hand delivered or sent by United States mail, postage prepaid, to the following:

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City of DeKalb
1216 Market Street
DeKalb, IL 60115

WITH A COPY TO: City Attorney
City of DeKalb

~~200 South Fourth Street~~ 164 E. Lincoln Hwy.
DeKalb, IL 60115

AS TO THE ROAD DISTRICT: Highway Commissioner
DeKalb Township Road District
2323 S. Fourth Street
DeKalb, IL

WITH A COPY TO: John M. Redlingshafer
Mescher, Rinehart &
Redlingshafer, P.C.
108 S. Wood Street
Washington, IL 61571

- G. Indemnification and Hold Harmless. City agrees that it will, at all times after the Effective Date, hold harmless and indemnify the Road District, its officers and agents, from and against any and all costs, claims, liabilities, expenses, ~~tax liabilities~~ and damages, including reasonable attorneys' fees, arising from or related in any way to the construction of the Improvements, including all responsibilities, acts or omissions related to the City's obligations under this Agreement, as well as the negligence or willful and wanton misconduct of the City related ~~in any way~~ to this Agreement. The Road District agrees that it will, at all times after the Effective Date, hold harmless, defend, and indemnify the City, its officers and agents from and against any and all costs, claims, liabilities, expenses, ~~tax liabilities~~ and damages, including reasonable attorneys' fees, arising from or related in any way to the action or inaction of the Road District with respect to the performance of its obligations under the terms of this Agreement, maintenance of the roads under its jurisdiction and control, or ~~and~~ the negligence or willful and wanton misconduct of the Road District related to the Improvements.
- H. Insurance. The City and Road District agree that each shall maintain comprehensive general liability and other insurance in amounts determined to be appropriate by their respective corporate authorities. The parties agree that they shall cooperate in the defense of any alleged claim arising out of the mutual or joint conduct of the parties.
- I. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. In the event of litigation between the parties, venue shall lie in the Circuit Court of DeKalb County, Illinois.

- J. Waiver. This waiver of any term or provision of this Agreement shall not constitute a waiver of any other term or provision of this Agreement, nor shall the right to require any enforcement of any term or provision of this Agreement be permanently waived, if a continuing breach of any such term or provision arises.
- K. Counterpart. This Agreement may be executed in any number of counterparts, each of which shall be an original, with the main effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date above first written, and those signing below acknowledge and affirm they have the authority to execute this Agreement on behalf of their public body.

CITY OF DEKALB

DEKALB TOWNSHIP ROAD DISTRICT

BY: _____
Mayor

BY: _____
Highway Commissioner

ATTEST: _____

ATTEST: _____
Road District Clerk