RESOLUTION 2015-090  

PASSED: JULY 27, 2015

AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE DEKALB PARK DISTRICT FOR APPROVAL OF THE PLACEMENT OF A HISTORICAL MARKER TO BE FACILITATED BY THE DEKALB AREA AGRICULTURAL HERITAGE ASSOCIATION AT MEMORIAL PARK, 101 EAST LINCOLN HIGHWAY, DENOTING THE LOCATION OF THE DEVELOPMENT OF THE FLYING EAR OF CORN LOGO.

WHEREAS, the City of DeKalb is a home rule unit as defined in Article VII, Section 6(a) of the 1970 Illinois Constitution and has jurisdiction over matters pertaining to its government and affairs; and

WHEREAS, the City of DeKalb would benefit from an Intergovernmental Agreement with the DeKalb Park District to post a historical marker denoting the location of the creation of the flying ear of corn logo; and

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

Section 1: That the City Council of the City of DeKalb hereby authorizes the City Manager to enter into one or more intergovernmental agreements and amendments thereto with the DeKalb Park District ("Park District") on terms and conditions acceptable to her, for the purpose of determining an agreed-upon location for the historical marker and determining the responsibility of maintenance of the marker.

Section 2: That this Resolution shall become effective immediately upon its passage and recording.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 27th day of July, 2015 and approved by me as Mayor on the same day. Passed by Omnibus roll call vote of 8-0 on the Consent Agenda. Aye: Jacobson, Finucane, Marquardt, Snow, Norciko, Baker, O’Leary, Rey. Nay: None. Absent: None.

ATTEST:

JENNIFER JEEP JOHNSON, City Clerk

JOHN A. REY, Mayor
AGREEMENT FOR HISTORICAL MARKER

THIS AGREEMENT, by and between the City of DeKalb, hereinafter referred to as the "City," the DeKalb Park District, hereinafter referred to as the "Park District," and "DeKalb Area Agricultural Heritage Association, Inc." hereinafter referred to as the "Agency," with the City, the Park District and the Agency agreeing as follows

A. Scope

Agency shall install and subsequently maintain a historical marker ("the Marker") at Memorial Park, 101 E. Lincoln Highway, DeKalb. The intended property for the marker is owned by the City and maintained by the Park District. The Marker shall generally conform to the depiction included in Exhibit A. Prior to installation of the Marker, the Agency shall confer with the City of DeKalb Director of Public Works or his/her designee and the DeKalb Park District Executive Director or his/her designee on the selection of an appropriate location for the Marker at the Site. Upon selection of a suitable site, Agency shall complete a JULIE locate for underground facilities and shall avoid all such underground facilities.

B. Term

This Agreement shall remain in full force and effect until the first to occur of: 1) termination for cause or convenience by either party; or, 2) the passage of ten (10) years from the date of execution. Termination for cause or convenience shall occur in writing, with not less than thirty days notice of termination provided (unless the City terminates on the basis of a urgent public need, in which case as much notice as is practical shall be provided). This Agreement shall not be construed as a lease and shall not confer or convey any interest in the Site to the Agency. This Agreement shall, upon its termination, automatically renew for up to three (3) successive ten (10) year terms.

C. Consideration

The consideration offered by the City and the Park District with regard to this matter shall be providing the Agency with access to the Site to install and maintain the Marker. The Park District anticipates that it shall continue its ordinary maintenance/mowing of the Site, but is not obligated to do so.

The consideration offered by the Agency shall be installation and maintenance of the Marker, and the related public educational benefit afforded thereby. The Agency shall maintain the Marker in a first class, attractive condition and shall ensure that there is a safe, accessible means for the public to view the same. Any site modifications or improvements (including plans for installation of the Marker) require the advanced, written approval of the DeKalb City Manager and the DeKalb Park District Executive Director. Upon conclusion or termination of this Agreement, the Agency shall be responsible for all costs of removal of the Marker and restoration of the Site to its pre-installation condition. Additionally, if the City and/or the Park District determine that they require the relocation of the Marker, the Agency shall be responsible for all costs of removal and relocation. The Agency shall not interrupt or interfere with City/Park District operations at the Site at any time, for any reason. Upon the failure of the Agency to perform any obligation contemplated herein, the City/Park District may remove the Marker and restore the Site to its pre-installation condition at any time.

The City, the Park District and the Agency acknowledge the receipt and adequacy of such consideration.
D. Prevailing Wage Act / Other Applicable Laws

The Agency shall fully comply with the requirements of the Prevailing Wage Act in that all laborers, mechanics and other workers performing work under this Agreement which is subject to the Prevailing Wage Act shall be paid not less than the general prevailing rate of hourly wage as provided for in 820 ILCS 130/1 et seq. The Agency certifies that it shall comply with all applicable provisions of the Prevailing Wage Act, and further certifies that it is not in violation of said Act. A copy of the most recent available list of prevailing wages is attached hereto or has been provided to the Agency. The Agency is responsible for regularly updating said list as new prevailing wage rates are made available by the City or by the Illinois Department of Labor. The Illinois Department of Labor posts regular updates to prevailing wage rates on its official website, which is currently www.illinois.gov/idol. This notice is given pursuant to 820 ILCS 130/4 and the balance of the Illinois Prevailing Wage Act, which is incorporated herein by reference as if fully restated. The Agency acknowledges that it shall treat the construction and maintenance of the Marker as the construction or maintenance of a Public Work for purposes of the Act, and shall pay prevailing wages for the same, where required based upon the type of work completed.

The Agency further certifies that it has and will comply with all other applicable laws, regulations, ordinances or restrictions applicable to any component of the bidding process, agreement, or any services or materials provided in connection therewith. The Agency acknowledges that it is responsible for identifying and complying with all applicable laws, ordinances, rules and regulations, and that it shall indemnify and hold harmless the City of DeKalb and the DeKalb Park District from any claim, liability or damages arising out of the failure to identify or comply with any such applicable legal restriction.

E. Ownership of Records and Documents

The Agency agrees to keep and maintain all books and records and other recorded information required to comply with any applicable laws, including but not limited to the Prevailing Wage Act.

F. Governing Law

This contract shall be governed and construed in accordance with the laws of the State of Illinois. Venue and jurisdiction for any legal action arising out of or related to this Agreement shall be exclusively fixed in the DeKalb County Circuit Court, DeKalb County, Illinois.

G. Independent Contractor

Agency shall have sole control over the manner and means of providing the work and services performed under this agreement. The Agency shall be solely responsible for withholding of taxes, providing employee benefits, or otherwise complying with applicable laws relating to its employees or contractors.

The Agency acknowledges that neither it nor its personnel shall be acting as an employee or official representative of the City for purposes of being offered any protection or coverage under City insurance policies for tort immunity or other legal purposes.

H. Indemnification

The Agency shall indemnify and hold harmless the City and Park District and the City’s/Park District’s agents, servants, and employees against all loss, damage, taxes, liabilities, charges or expense, including but not limited to attorneys fees and court costs, which the City or Park
District may sustain or for which it may become liable on account of injury to or death of persons, or on account of damage to or destruction of property resulting from the performance of work under this agreement by the Agency or its Subcontractors, due to or arising in any manner from the intentional or wrongful act or negligence of Agency or its Subcontractors of any employee of any of them, or otherwise arising out of this Agreement, the Agency or any public access to the Site or Marker or the Agency’s performance of services under this Agreement.

The Agency shall be responsible for any and all damages to property or persons arising out of an error, omission, and/or negligent act in the prosecution of the work or failure to prosecute the work and shall indemnify and hold harmless the City and the Park District and their officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting therefrom. The Agency shall assume all restitution and repair costs arising out of an error, omission and/or negligence. Additionally, the Agency acknowledges that it shall be responsible for the repair, replacement or removal of the Marker even if damage to the Marker is caused by the City, the Park District or by a third party.

I. Insurance

The Agency shall obtain insurance, or maintain equivalent self-insurance, of the types and in the amounts listed below:

A. Commercial General and Umbrella Liability Insurance.

Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than $2,000,000 for each occurrence.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form GG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The City and the Park District shall be included as additional insureds under the CGL, using ISO additional insured endorsement CG 20 11 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the City and/or the Park District.

B. Workers Compensation Insurance.

If applicable, the Agency shall maintain workers compensation and employees liability insurance. The commercial umbrella and/or employers liability limits shall not be less than $1,000,000 for each accident for bodily injury by accident or $1,000,000 for each employee for bodily injury by disease.

C. Personal Property Replacement Insurance

The Agency shall maintain Personal Property Replacement Insurance in amounts sufficient to cover the full replacement value of the Marker.

1. Evidence of Insurance.

Prior to the effective date of this Agreement, the Agency shall furnish the City and the Park District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days’ written notice to the other party prior to the cancellation or material change of any insurance referred to therein.

The City and the Park District shall have the right, but not the obligation, to prohibit Agency from installing the Marker until such certificates, or other evidence that insurance has been placed in complete compliance with these requirements, is received and approved by the City and the Park District.

Failure to maintain the required insurance may result in termination of this Agreement and the License herein granted, at the non-defaulting party’s option.

The Agency shall provide certified copies of all insurance policies required above within 10 days of the other party’s written request for said copies.

2. Acceptability of Insurers.

For insurance companies, which obtain a rating from A.M. Best, a policy rating shall be no less than an A-, and the financial rating shall be no less than VII, using the most recent edition of the A.M. Best Key Rating Guide. If the Best rating is less than an A-; VII or a Best’s rating is not obtained, the Park District has the right to reject insurance written by an insurer it deems unacceptable.


If the liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. No Waiver.

Failure of the City or the Park District to demand any certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of a party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Agency’s obligation to maintain such insurance. Under no circumstances shall any party be deemed to have waived any of the insurance requirements of this Agreement by any action or omission, including but not limited to:

(a) allowing any work to commence before receipt of certificates of insurance;

(b) failing to review any certificates of insurance;
(c) failing to advise the other party that any certificate of insurance fails to contain all the required insurance provisions, or is otherwise deficient in any manner.

The parties agree that the obligation to provide the insurance required by these documents is a requirement which cannot be waived by any conduct, action, inaction or omission by any party.

J. Licensure and Intellectual Property

The Agency agrees and warrants that it has procured all licenses, permits or other official permissions required by any applicable law to perform the services contemplated herein, that it will procure all additional licenses, permits or other official permissions hereafter required by law during the term of this Agreement, and that it will keep all such licenses in effect during the term of this Agreement. The Agency shall provide a copy of any such licenses or permits upon request. All such insurance and licensure shall be provided at the Agency’s sole expense. Agency also warrants that it has complete ownership or authorization/entitlement to any intellectual property, software, images or other such items used in the performance of its work under this Agreement.

K. Additional Terms or Modification

The terms of this agreement shall be further modified as provided on the attached Exhibit A. Except for those terms included on Exhibit A, no additional terms are included as a part of this agreement. All prior understandings and agreements between the parties are merged into this agreement, and this agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

L. Notices

All notices required to be given under the terms of this License shall be given mail, addressed to the parties as follows:

For the Park District:

Executive Director
DeKalb Park District
1403 Sycamore Road
DeKalb, IL 60115

For the City:

City Manager
City of DeKalb
200 S. Fourth Street
DeKalb, IL 60115

For the Agency:

DeKalb Area Agricultural Heritage Assn, Inc.
111 S. 2nd Street, Suite 204
DeKalb, IL 60115

Any of the parties may designate in writing from time to time substitute addresses or persons in connection with required notices.
M. Subcontractors and Third Parties

Agency shall not assign or subcontract for the performance of any obligation under this Agreement, except with the express, written preapproval of the City and the Park District, which consent may be withheld in the sole and absolute discretion of the Park District and the City.

Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall it inure to the benefit of any third party.

Agreed to this 27th day of July, 2015.

City of DeKalb

[Signature]
City Manager

[Signature]
City Clerk

DeKalb Park District

[Signature]
Board President

[Signature]
Board Secretary

DeKalb Area Agricultural Heritage Association, Inc.

[Signature]
Board President
Exhibit A:

Description of Marker

The marker will be erected at eye level at a location agreed upon between the City of DeKalb, the DeKalb Park District and the DeKalb Area Agricultural Heritage Association. The marker will include the following text and images.

**Marker Text:**

**Winged Ear Logo**

The DEKALB® brand winged ear logo is perhaps one of the most widely-recognized agricultural trademarks in the world. Over the years it has undergone many design enhancements from the original concept. But the same iconic image of a flying ear of corn, first conceived in 1935 here in DeKalb, remains.

The original concept behind the logo is credited to DeKalb Agricultural Association founder Tom Roberts Sr. He believed that the increased yields from newly-developed DEKALB® hybrid corn would help “lift” farmers’ mortgages, even as dairy cows and hogs had done earlier. When employee Ken Kramer suggested putting wings on an ear of corn, Roberts immediately approved. The basic design of the company’s logo was thus born. The first appearance of the winged ear with the words “DEKALB Quality Hybrid Will Be Your Mortgage Lifter” was in October 1935 on company letterhead.

An enhanced version of the logo was legally registered with the U.S. Patent Office as the company’s trademark on August 25, 1936 and assigned registration number 337,915. The new logo was first used in an advertisement which appeared in the Prairie Farmer magazine dated October 24, 1936. In 1938, the first winged ear signs appeared in farmers’ fields.

In 1998 Monsanto purchased DEKALB Genetics Corporation and now proudly owns the DEKALB® brand and the famed winged ear logo that represents it. Today the DEKALB® brand and the winged ear logo are legally registered as trademarks of Monsanto in more than 90 countries worldwide.

Sponsored by DeKalb Area Agricultural Heritage Association, Inc. (www.DAAHA.org) and the Illinois State Historical Society – June 2015
Amendment to Historical Marker Agreement

WHEREAS, the City of DeKalb ("City"), the DeKalb Park District ("Park District") and DeKalb Area Agricultural History Association ("DAAHA"; collectively, "the Parties") have previously entered into a certain Intergovernmental Agreement, a copy of which is attached hereto as Exhibit A, for the placement and location of a historical marker ("the Marker"), previously proposed to be located in Memorial Park, and said parties hereby wish to amend said Agreement; now therefore be it agreed as follows:

1) Monument to be Relocated: The Park District shall relocate the Marker from Memorial Park to a location in DeKalb Square that is mutually acceptable to the staff of the City, the Park District and DAAHA. Said relocation shall be performed by the Park District, at its sole expense.

2) Subsequent Maintenance and Agreement: All other terms of the original Intergovernmental Agreement between the Parties shall remain in full force and effect.

Entered and Agreed to this 15th day of October, 2015.

[Signatures]

City of DeKalb

[Signature]

DeKalb Park District

[Signature]

DeKalb Area Agricultural Historical Association