

**RESOLUTION 2019-097**

**PASSED: JUNE 10, 2019**

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE DEKALB TOWNSHIP ROAD DISTRICT FOR MAINTENANCE ON RICH ROAD AND COLTONVILLE ROAD, DEKALB, ILLINOIS.**

**BE IT RESOLVED BY THE CITY COUNCIL** of the City of DeKalb, Illinois, as follows:

**SECTION 1:** That the Mayor of the City of DeKalb be authorized and directed to enter into an Intergovernmental Agreement, attached hereto as Exhibit A, with the DeKalb Township Road District in a form acceptable to him with the recommendation of the City Manager.

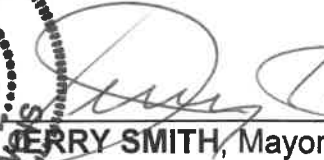
**SECTION 2.** That the City Clerk of the City of DeKalb be authorized and directed to attest to the Mayor's signature.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 10<sup>th</sup> day of June 2019 and approved by me as Mayor on the same day. Passed by a 7-0-1 roll call vote. Aye: Morris, Finucane, Smith, Fagan, McAdams, Faivre, Mayor Smith. Nay: None. Absent: Verbic.

**ATTEST:**

  
LYNN A. FAZEKAS, City Clerk



  
JERRY SMITH, Mayor

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF DEKALB AND THE DEKALB TOWNSHIP ROAD DISTRICT FOR MAINTENANCE ON RICH ROAD AND COLTONVILLE ROAD, DEKALB, ILLINOIS.**

This Agreement (the "Agreement") is entered into between the DEKALB TOWNSHIP ROAD DISTRICT, a unit of local government of DeKalb County (the "Road District"), and the City of DeKalb, an Illinois municipal corporation of DeKalb County (the "City"). The Road District and City are hereinafter sometimes individually referred to as a "Party" and collectively referred to as "Parties."

**WITNESSETH:**

**WHEREAS**, the Parties have traditionally enjoyed a collaborative relationship whenever possible, especially when cooperation is in the best interests of their collective taxpayers; and

**WHEREAS**, the Parties have jurisdiction and control of different portions of Rich Road and/or Coltonville Road; and

**WHEREAS**, the Parties have agreed it to be mutually advantageous to each other to negotiate and enter into a formal agreement regarding the maintenance of Rich Road and Coltonville Road in a manner that they deem to be efficient and in the best interests of their collective taxpayers; and

**WHEREAS**, the Parties may negotiate and execute this Agreement consistent with Article VII, Section 10 of the 1970 Illinois Constitution, and the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, et seq.).

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual covenants and agreements contained herein, and all other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

1. **Incorporation of WHEREAS Clauses.** The WHEREAS clauses set forth above, are deemed to be an integral part of this Agreement and are therefore incorporated herein and considered part hereof.
2. **Maintenance of Rich Road and Coltonville Road.** The Parties agree that as of the Effective Date of this Agreement, the Road District shall provide the following maintenance, at its cost and expense, on those portions of Rich Road and Coltonville Road as reflected on the attached Exhibit A, adopted and incorporated herein as part of this Agreement. For the purposes of this Agreement "Maintenance" shall be defined as:
  - a. Providing snow removal and ice control;

- b. Maintaining all signage to Illinois Department of Transportation standards;
- c. Repainting traffic striping on a biannual schedule in a manner consistent with Illinois Department of Transportation standards;
- d. Maintaining shoulder gravels;
- e. A one-time repaving project involving at a minimum of two (2) inch overlay within fifteen (15) years of the Effective Date; and
- f. Providing reasonable weed and grass control to the rights-of-way.

Other than the above Maintenance, the Parties shall be responsible, at their own cost and expense, for all other duties, obligations, and responsibilities along those portions of Rich Road and Coltonville Road under their jurisdiction and control. At no time shall this Agreement be considered a request by any Party to the other Party for the formal jurisdictional transfer of any portion of Rich Road or Coltonville Road.

3. **Right of Entry.** The City agrees to grant the Road District, its officers, agents, employees, consultants, and contractors, the right to enter upon their respective portions of Rich Road and Coltonville Road for any Maintenance, and any related surveying, engineering, designing, and construction contemplated by this Agreement. This Agreement shall be in lieu of any approvals, permits or licenses otherwise required by the City for entry upon rights-of-way.
4. **Impact of City Annexation Upon Agreement.** Should the City commence any action to annex any additional real property contiguous to Rich Road and/or Coltonville Road not currently incorporated into the City, the City agrees to provide notice of said action to the Road District consistent with the relevant law and this Agreement. Further, the Parties agree that upon the date of any final approval by the City (or a Court with jurisdiction) of the annexation(s), the City shall assume Maintenance for the portion(s) of Rich Road and/or Coltonville Road contiguous to said annexation(s), including any repaving project that has not been performed by the Road District at the time of the final approval. For the purposes of this paragraph, the Parties agree "contiguous" shall have the same meaning as that found in 65 ILCS 5/7-1-1.
5. **Indemnification of City by Road District.** The Road District shall indemnify and hold harmless the City, its officers, agents, and employees, from and against any and all losses, claims, injuries, and deaths, including, but not limited to, attorneys' fees, costs and expenses of litigation, claims and judgments in connection with any and all claims for damages of any kind which arise out of the Maintenance contemplated in this Agreement, including the actions or conduct of Road District employees, agents, independent contractors or assigns, except to the extent caused by the gross negligence or willful conduct of the City and/or its officers, employees, agents, independent contractors or assigns.

6. **Indemnification of Road District by City.** The City shall indemnify and hold harmless the Road District and its officers, agents, and employees (including DeKalb Township) from and against any and all losses, claims, injuries, and deaths, including, but not limited to, attorneys' fees, costs and expenses of litigation, claims and judgments in connection with any and all claims for damages of any kind which arise out of the acts or omissions of the City and/or its officers, agents, and employees, required of it under this Agreement, or for any other actions that occur outside the scope of this Agreement involving Rich and/or Coltonville Roads, except to the extent caused by the gross negligence or willful conduct of the Road District and/or its officers, employees, agents, independent contractors, or assigns.
  
7. **Defenses.** This Agreement is entered into for the benefit of the Parties, and not for the benefit of any third party. Nothing contained in this Agreement shall constitute a waiver of any privileges, defenses or immunities which any Party may have under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/) with respect to any claim brought by a third party.
  
8. **Notices.** Notices or other writings which a Party is required to, or may wish to, serve upon the other Party in connection with this Agreement shall do so in writing, to be delivered personally or sent by registered or certified mail, return receipt requested, postage prepared, and addressed as follows:

**ROAD DISTRICT**

DeKalb County Road District  
Highway Commissioner Craig Smith  
2323 S. Fourth Street  
DeKalb, Illinois 60115

with a copy to:

John M. Redlingshafer, Esq.  
Mescher Law Offices  
108 S. Wood Street  
Washington, Illinois 61571

**CITY OF DEKALB**

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

with a copy to:

Rosenthal, Murphey, Colblentz & Donahue  
30 N. La Salle Street, Ste. 1624  
Chicago, Illinois 60602

or to such other address, or additional individuals/entities, as a Party may from time to time designate in a written notice to the other Party. Service by certified mail shall be deemed given on the third day following mailing of said notice, and service by personal delivery shall be deemed given upon actual delivery.

9. **Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitute one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies or PDF copies of executed copies of this Agreement shall be treated as originals.
10. **Entire Agreement.** This Agreement contains the entire understanding between the Parties. There are no representations, agreements, arrangement or understandings, oral or written, between and among the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.
11. **Effective Date.** This Agreement shall be deemed dated and become effective on the date on which the last Party executes this Agreement as set forth below.
12. **Modifications and Amendments.** No amendment changes or modification to this Agreement will be valid unless in writing and signed by the Parties or their counsel.
13. **Breach.** In the event this Agreement is breached by any Party, the other Party may serve notice in writing of said breach whereupon the breaching party shall have five (5) business days to cure the alleged breach, or such reasonable time as necessary in diligently proceeding to cure such breach. In the event the breaching party failed to cure the breach within the time contemplated herein, the non-breaching Party may either cause the breach to be cured at the breaching Party's expense or terminate this Agreement upon ninety (90) business days' written notice.
14. **Governing Law and Venue.** This Agreement shall be interpreted and construed according to the laws of the State of Illinois. Venue for any action arising from this Agreement shall be the Circuit Court of DeKalb County, Illinois.
15. **Term.** This Agreement shall be in full force and effect for a period of fifteen (15) years from and after the Effective Date and shall automatically be renewed for consecutive one (1) year periods unless either Party furnishes at least ninety (90) business days' advance Notice, in writing, of its intent to cancel this Agreement.
16. **Construction and Interpretation.** Neither the Parties nor any of the Parties' respective attorneys will be deemed the drafter of this Agreement for purposes of interpreting any provision in this Agreement. This Agreement has been, and must be

construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

**17. Parties Represented by Counsel.** The Parties acknowledge that they have been represented by counsel of their own choosing during the negotiation and preparation of this Agreement; they have read this Agreement and are fully aware of its contents, and their respective counsel fully explained to them the Agreement and its legal effect. The Parties executed this Agreement voluntarily and without duress or undue influence.

**18. Authorization.** The Parties represent that they have all necessary power and authority to enter into this Agreement and to carry out such Party's obligations hereunder. Each signatory below represents that he or she is fully entitled and duly authorized to enter into this Agreement on whose behalf he or she is signing.

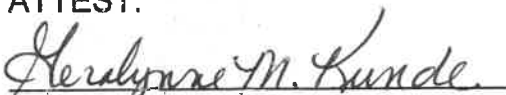
**IN WITNESS WHEREOF**, the DeKalb Township Road District, pursuant to authority granted to its Highway Commissioner under Illinois law, has caused this Agreement to be executed by him and attested by its Clerk; and the City of DeKalb, pursuant to authority by the adoption of a Motion or Resolution by its City Council, has caused this Agreement to be executed by its Mayor and attested by its Clerk.

**DEKALB TOWNSHIP ROAD DISTRICT**


  
\_\_\_\_\_  
Highway Commissioner

Date: June 21, 2019

ATTEST:

  
\_\_\_\_\_  
Road District Clerk

**CITY OF DEKALB**

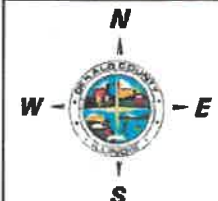
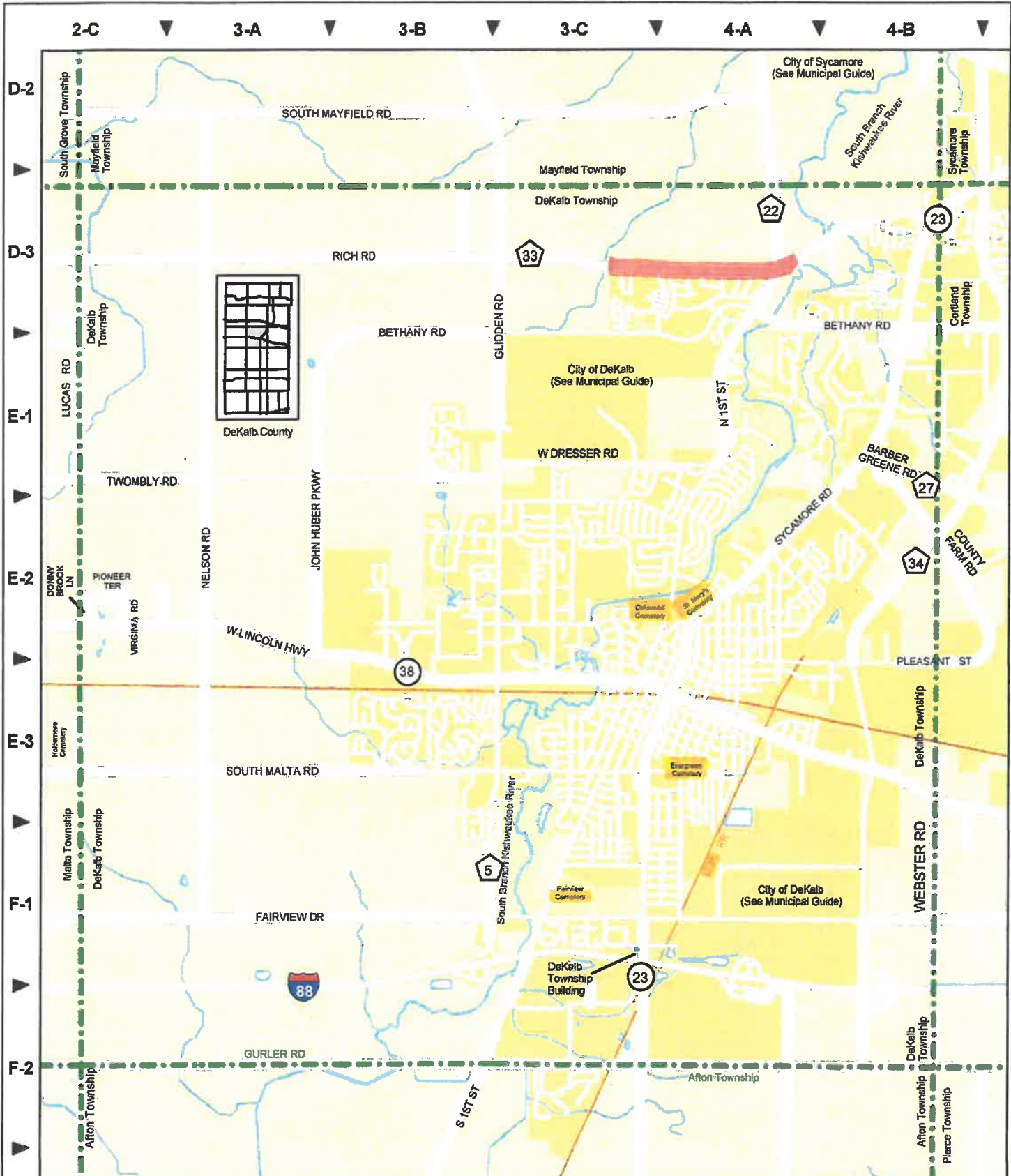
  
\_\_\_\_\_  
Mayor

Date: June 21, 2019

ATTEST:

  
\_\_\_\_\_  
City Clerk

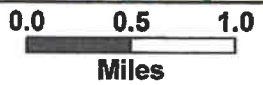




DeKalb County Government  
 Information Management Office  
 200 North Main Street  
 Sycamore, IL 60178  
 815-895-1643  
 view at [www.dekalbcounty.org](http://www.dekalbcounty.org)

# DeKalb Township

Pop. 46,781



Miles  
 Population data is from the  
 2010 U.S. Census.  
 Updated: May 2014 BH  
 Printed: May 2014