

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE TOWN OF YORKTOWN
AND DELAWARE COUNTY FOR
STREETS AND ROADS MAINTENANCE AND IMPROVEMENTS**

THIS INTERLOCAL COOPERATION AGREEMENT (hereinafter "Agreement") is entered into on this _____ day of _____, 2018 but effective as of January 1, 2019 by and between the Town of Yorktown, Indiana ("Town") and the Board of Commissioners of the County of Delaware, Indiana ("County").

WITNESSETH THAT:

WHEREAS, IC 36-1-7 provides for the joint exercise of governmental powers and entering into voluntarily an agreement providing for such powers; and

WHEREAS, pursuant to IC 36-1.5 et seq., Mount Pleasant Township and the Town adopted mirror resolutions and an ordinance, effective June 23, 2011 ("Plan of Reorganization"), to reorganize their respective units into the Town ("Reorganization"); and

WHEREAS, the Plan of Reorganization adopted by Mt. Pleasant Township and the Town was approved by the respective voters of each unit on November 8, 2011; and

WHEREAS, the Plan of Reorganization contemplates and Indiana law requires an Interlocal Cooperation Agreement in order to evidence any agreements on duties and responsibilities for streets and road maintenance and improvements.

NOW, THEREFORE, pursuant to IC 36-1-7-2 and in consideration of the mutual promises and consideration contained herein, the parties hereby agree as follows:

ARTICLE 1. TERM

1.01 The term of this Agreement shall be from January 1, 2019 until December 31, 2022. This Agreement shall automatically renew for additional four (4) year terms upon the expiration of the then current term. However, either party may avoid automatic renewal of this Agreement by providing the other with written notice of termination at least ninety (90) days prior notice to the other party.

ARTICLE 2. PURPOSE

2.01 In addition to the background described in the recitals set forth above, the Town and the County desire to cooperate in the reorganization of the Town, with respect to providing street and road services in the Rural District of the reorganized Town. Representatives of Mt. Pleasant Township and the Town have served on the Transition Committee and have met with representatives of the County to discuss, plan and agree upon the terms of working cooperatively in allocating which governmental body shall provide road and street services in the Rural District following the Effective Date of the Reorganization. It is the understanding, intent, and agreement of the Town and the County to work cooperatively toward continuing to provide similar levels of road and street services in and to the Town and Rural Districts, as such services have been and are currently being provided in such areas prior to the Effective Date of the Reorganization. As the provision of road and street services are governed by Indiana law in IC Title 8, each of the Town and the County shall continue to observe and comply with Indiana law relative to providing road and street services to their respective areas of jurisdiction within the reorganized Town.

ARTICLE 3. SERVICES

- 3.01 The Town and the County each have reviewed, agreed upon and adopted the district map attached hereto as "Exhibit A", which map delineates the Town District and the Rural District within the reorganized Town corporate boundaries as of the Effective Date. As of the Effective Date of this Agreement, the roads and streets within the Town District shall constitute the Arterial street system and local streets of the Town, as defined in IC 8-14-2, and the Town currently provides resurfacing, restoration and rehabilitation, maintenance, and snow removal to the roads and streets included within the Town District, and the roads and streets within the Rural District shall constitute the Arterial road system and the local roads of the County, as defined in IC 8-14-2, and the County currently provides the same services to the roads and streets included within the Rural District. There is and shall remain a general exclusion from the Arterial street system and Arterial road system for those roads and streets that are private or are in subdivisions that contract separately for snow removal or any other of these services, which this Agreement does not alter any such contracts. The Delaware County Highway Department Superintendent shall not be required to attend Town Council meetings as a result of this Agreement.
- 3.02 Upon and following the Effective Date, the County covenants and agrees to continue to maintain and service the Arterial road system and local county roads on the road and street map attached hereto as "Exhibit B" in the ordinary course of operations of the Delaware County Highway Department and subject to annual budgeting, appropriations, and funding levels and its other operational considerations. The County shall provide the services of snow plowing and salting, resurfacing, maintenance, restoration and rehabilitation, and signage installation and maintenance pursuant to the Manual on Uniform Traffic Control Devices, published by the Federal Highway Administration under 23 CFR Part 655, for all such roads and streets, all in accordance with State law and the county's current maintenance schedule for providing such services.
- 3.03 The Arterial road system and local county roads (as defined in IC 8-14-2-1) currently located in the Rural District and under the jurisdiction of the County will continue within such jurisdiction after the Effective Date. The Arterial street system and local streets (as defined in IC 8-14-2-1) currently located in the Town District and under the jurisdiction of the Town will continue within such jurisdiction after the Effective Date.
- 3.04 Each of the County and the Town will receive, budget and appropriate the motor vehicle highway account, local road and street account, county motor vehicle excise surtax, county vehicle tax, income tax, and state gas and special fuel tax distributions allocable to the road mileage for their respective inventory of road and streets in the Rural or Town District and shall be used pursuant to State law.
- 3.05 In the event that, at any time, areas are reclassified from the Rural District to the Town District, the respective road and street inventories included in the Rural District and the Town District shall be adjusted concurrently with the reclassification of such area and such roads and streets transferred to the Arterial street system and local streets inventory of the Town. Upon the reclassification of an area from Rural to Town District, the Town shall thereafter provide such service. Whichever party provides the service shall receive all of the applicable funding allocable to such road and street mileage inventory to be serviced. The County and the Town shall utilize and follow the provisions of IC 8-23-4-12 for any other transfers between them of roads or streets from their respective service districts in the Town.
- 3.06 All roads and streets in the reorganized Town proposed to be constructed or expanded in the Rural District shall be submitted to the Town for review and approval in accordance with the Town's planning and development process. New roads constructed in the Rural District shall be allocated to and included in the Arterial road system or local roads inventory for the Rural District to be serviced by the County. Additionally, the Town shall be responsible for the provision of street and road services for any and all roads lying in whole or in part on the boundary between the Town and the Rural District or any other district or area for which the County is otherwise responsible for the provision of street and road services.

- 3.07 The County shall not issue any bonds primarily to finance road, street or thoroughfare projects in the Rural District without the prior concurrence and approval of the Town, to be evidenced by a duly adopted resolution of the Town Council.
- 3.08 Regarding any and all projects, whatever their nature, which are anticipated to affect the maintenance, operation, or structure of roads within the Rural District, the County shall retain authority for permitting purposes, except for those boundary roads for which the Town will provide street and road services, pursuant to section 3.06.

ARTICLE 4. CONSIDERATION

- 4.01 There shall not be any separate or additional consideration paid by either party to the other for this Agreement. Each of the Town and the County covenants and agrees to make good faith efforts to budget and appropriate the funds received from the sources described herein pursuant to and in compliance with Indiana state law for the purposes of this Agreement.

ARTICLE 5. FUNDS

- 5.01 The Clerk-Treasurer of the Town and the Disbursing Officer of the County shall retain their respective duties to receive, disburse and account for all of the monies they respectively receive with respect to funds allocated, budgeted and appropriated for their respective services and duties described in Article 2 hereof.
- 5.02 It is the understanding of the Town and County that under no circumstances shall the County be obligated to provide services in the Rural District the cost of which is in excess of funds received by the County for that purpose.

ARTICLE 6. DEFAULT

6.01 Default

If any party hereto fails to make a good-faith effort to comply with the terms of this Agreement, then it shall be considered in default hereunder.

6.02 Remedies

In addition to any specific remedies expressly identified herein, each party shall have all rights and remedies at law or in equity to enforce the terms of this Agreement in the event of breach hereof by the other party.

6.03 Indemnity and Attorneys' Fees

Town and County shall each indemnify and hold the other harmless from and against all costs and damages (including reasonable attorneys' fees and court costs) incurred as a result of any breach of any covenant, representation or warranty herein by it. Except as set forth herein, each party shall bear its own costs and attorneys' fees in connection with the negotiation and execution of this Agreement. In the event litigation is needed to enforce this Agreement, the prevailing party, whether by lawsuit or whether by settlement before or after any lawsuit is filed, shall be entitled to recover from the non-prevailing party its costs, expenses, and reasonable attorneys' fees incurred in the enforcement of this Agreement, including enforcing it as a defense.

ARTICLE 7. MISCELLANEOUS

7.01 Amendments

This Agreement *may be* amended only by written instrument signed by all of the parties hereto.

7.02 Financial Statements

Throughout the term of this Agreement, each of Town and County shall provide regular financial status reporting comparing expenses to budgeted funds to the other party, not less frequently than annually.

7.03 Written Notice

Written notice shall be considered served when delivered in person or sent by certified mail, return receipt requested, to County or to Town, or to the last business address of such known to the person who serves the notice, or to a subsequent address given by either party in writing pursuant to this provision.

Notice shall be sent as follows:

Town: Town of Yorktown, Indiana c/o Town Manager
 9800 W. Smith Street
 Yorktown, IN 47396

County: Board of Commissioners of Delaware County, Indiana
 100 W. Main St. #309
 Muncie, IN 473057.04 Severability and Waiver

In the event that any clause or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any other provision of this Agreement. Failure of either party to insist on strict compliance with any provision of this Agreement shall not constitute waiver of that party's right to demand later compliance with the same or other provisions of this Agreement.

7.05 Approval

This Agreement is subject to approval by the fiscal bodies of each of the Town and the County. The fully executed Agreement shall be recorded in the Delaware County Recorder's Office, and filed with the Delaware County Auditor, the President of the Town Council, and the Auditor of the State of Indiana. The Clerk-Treasurer of the Town and the Disbursing Officer of the County shall each file a copy of this Agreement with the State Board of Accounts within sixty days of the Effective Date.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed this _____ day of _____, 2018, but effective as of _____.

TOWN OF YORKTOWN, INDIANA

By: _____

Printed: _____

Title: _____

THE BOARD OF COMMISSIONERS OF DELAWARE
COUNTY, INDIANA:

James King

Sherry Riggin

Shannon Henry

ATTEST:

Delaware County Auditor

Delaware County Council

Scott Alexander

Larry Bledsoe

Mary Chambers

Jane Lasater

Chris Matchett

Jessica Piper

Ron Quakenbush

ATTEST:

Delaware County Auditor