



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item:	INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF GENEVA, IL AND THE COUNTY OF KANE FOR THE WATERMAIN RELOCATION COSTS ASSOCIATED WITH THE INTERSECTION IMPROVEMENTS OF FABYAN/KIRK		
Presenter & Title:	Brian L. Schiber, P.E. Assistant Director of Public Works/City Engineer		
Date:	April 15, 2020		
Please Check Appropriate Box:			
	Committee of the Whole Meeting		Special Committee of the Whole Meeting
X	City Council Meeting		Special City Council Meeting
	Public Hearing		Other -
Associated Strategic Plan Goal/Objective: SG-IB, EMS-II			
Estimated Cost: \$ 125,000.00	Budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Other Funding? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>If "Other Funding," please explain how the item will be funded:</i>			
Executive Summary:			
<p>Kane County is currently reconstructing the intersection of Fabyan Parkway and Kirk Road to provide additional through lanes, right/left turn lanes, and drainage improvements. To accommodate this intersection work the City of Geneva needed to relocate our watermain and hydrants to move them further away from the widened intersection. We did not want to have our watermain under the widened pavement. Since our watermain was in the County's ROW it was our responsibility to move the watermain at our expense. The Water Dept. has this relocation project included in the current budget. The attached IGA has been reviewed and approved by legal counsel for the City as well as the County of Kane to accommodate this work.</p>			
Attachments: <i>(please list)</i>			
<ul style="list-style-type: none"> • Resolution • IGA 			
Voting Requirements:			
<p><i>This motion requires <u>6</u> affirmative votes for passage.</i></p> <p><i>The Mayor may vote on three occasions: (a) when the vote of the aldermen or trustees has resulted in a tie; (b) when one half of the aldermen or trustees elected have voted in favor of an ordinance, resolution, or motion even though there is no tie votes; or (c) when a vote greater than a majority of the corporate authorities is required by state statute or local ordinance to adopt an ordinance, resolution, or motion.</i></p>			
Recommendation / Suggested Action: <i>(how item should be listed on agenda)</i>			
<p>Recommend approval of a resolution authorizing the Mayor and City Clerk to execute an IGA with Kane County for the watermain relocation necessary for the intersection improvements at Fabyan/Kirk in the not to exceed amount of \$125,000.00.</p>			

RESOLUTION NO. 2020-31

RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF GENEVA, IL AND THE COUNTY OF KANE FOR THE WATERMAIN RELOCATION COSTS ASSOCIATED WITH THE INTERSECTION IMPROVEMENTS OF FABYAN/KIRK

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GENEVA, KANE COUNTY, ILLINOIS, as follows:

SECTION 1: The Mayor and City Clerk are hereby authorized to execute an Intergovernmental Agreement (IGA) with Kane County, on behalf of the City of Geneva, for the watermain relocation costs associated with the intersection improvements of Fabyan/Kirk.

SECTION 2: This Resolution shall become effective from and after its passage as in accordance with law.

PASSED by the City Council of the City of Geneva, Kane County, Illinois, this 20th day of April, 2020

AYES: __ NAYS: __ ABSENT: __ ABSTAINING: __ HOLDING OFFICE: __

Approved by me this ____ day of _____, 2020.

Mayor

ATTEST:

City Clerk

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE COUNTY OF KANE AND THE CITY OF GENEVA**

This Agreement is entered into this _____ day of April 2020, by and between the COUNTY OF KANE, a body corporate and politic of the State of Illinois, hereinafter called the "COUNTY", and the CITY OF GENEVA, a municipal corporation of the State of Illinois, hereinafter called the "CITY". The COUNTY and the CITY are hereinafter sometimes collectively referred to as the "PARTIES" and each individually sometimes referred to as a "PARTY".

WITNESSETH:

WHEREAS, the COUNTY, in order to facilitate the free flow of traffic and ensure safety of the motoring public, desires to reconstruct the intersection of Kane County Highway No. 8 (also known as Fabyan Parkway) and Kane County Highway No. 77 (also known as Kirk Road) by making the following improvements:

Widening and the addition of through lanes and left and right hand turn lanes, raised medians and drainage facilities at or near the intersection in Geneva Township, Kane County, Illinois (hereinafter referred to as the "PROJECT"), and all other work appurtenant thereto and necessary to complete the PROJECT in accordance with the approved plans and specifications as set forth in Illinois Department of Transportation, F.A.P. 360 at F.A.P. 370, Section No.: 11099201-04-CH, Approved August 30, 2018), (hereinafter the "Plans") which are incorporated herein by reference and made a part hereof;

and

WHEREAS, the CITY affirms that it owns certain water main located by COUNTY permit in the right of way of the COUNTY within the limits of the PROJECT which water main is identified in the PROJECT's Plans and which water main has been installed and subsequently maintained by the CITY, (hereinafter the "CITY water main"). As a part of the PROJECT improvements the COUNTY requires the CITY water main to be relocated and adjustments made to the CITY's fire hydrants and valve vaults, which are a part of and appurtenant to the water main (hereinafter collectively the "water main relocation") as depicted in the Plans; and

WHEREAS, the PARTIES by this Agreement, desire to memorialize their respective responsibilities toward permitting, engineering, relocation, construction, construction engineering, funding, and maintenance of the CITY water main and the water main relocation that is part of the PROJECT; and

WHEREAS, the COUNTY, by virtue of its powers as set forth in the Illinois Highway Code 605 ILCS 5/9-113 is authorized and the CITY by virtue of its powers as set forth in the Illinois Municipal Code 65 ILCS 5/1-1-1, et seq., is authorized to enter

into this Agreement. The PARTIES are also authorized to enter into this intergovernmental agreement pursuant to Article VII, Section 10 of the Illinois Constitution and the Intergovernmental Cooperation Act, of the Illinois Compiled Statutes, (5 ILCS 220/1 et seq.).

NOW, THEREFORE, in consideration of the aforementioned recitals and the mutual covenants contained herein, the PARTIES hereto mutually, covenant, agree, and bind themselves as follows; to wit:

I. ENGINEERING

- A.** The COUNTY has performed preliminary and final design engineering, and obtained necessary surveys for the PROJECT, including that necessary for the water main relocation.
- B.** The CITY has reviewed and commented on that part of the Plans relating to the water main relocation, which comments have been incorporated into the Plans by the COUNTY and which Plans have been subsequently approved by the CITY. The approval of the Plans by the CITY means the CITY agrees with all plans and specifications as set forth in the Plans for the water main relocation.
- C.** The COUNTY has assumed overall PROJECT responsibility, including assuring that all permits (U.S. Army Corps of Engineers, Office of Natural Resources, Environmental Protection Agency, etc.) and joint participation and/or force account agreements (County, Township, Municipal, Railroad, Utility, etc.), as may be required for the PROJECT, are secured by the PARTIES in support of general PROJECT schedules and deadlines. The PARTIES hereto agree to cooperate insofar as their individual jurisdictional authority allows with the timely acquisition and clearance of said permits and agreements and in complying with all applicable Federal, State, and local regulations and requirements pertaining to work proposed for the PROJECT.

II. RIGHT OF WAY

- A.** The COUNTY represents and warrants:
 - i)** The COUNTY has performed all survey work and prepared all parcel plats and legal descriptions for all right of way (both permanent and temporary) necessary for the construction of the PROJECT, including those necessary for the water main relocation pursuant to the Plans;
 - ii)** All right of way acquired for construction of the PROJECT or for other improvements to be maintained by the COUNTY has been acquired in the name of the COUNTY by the COUNTY at the expense of the COUNTY;

- iii) Parcel plats and legal descriptions for property required for COUNTY highway right of way or facilities conform to the Kane County Division of Transportation format; and
- iv) The COUNTY shall be solely responsible for all right of way costs for the PROJECT. Right of way costs shall include the purchase price thereof, as well as the costs of negotiations, appraisals, title evidence, relocation assistance payment, property management, and such legal fees and expenses as may be necessary to acquire said right of way.

III. UTILITY RELOCATION

- A. The COUNTY has provided the CITY the locations (existing and proposed) of CITY utility facilities within the existing COUNTY right of way of Fabyan Parkway and Kirk Road which require relocation as part of the PROJECT. For purposes of this Agreement, the CITY's water main is considered a CITY utility facility.
- B. The COUNTY has made all reasonable efforts to minimize the number of relocations and adjustments in the design of the CITY water main and any other CITY utility facility improvements to be adjusted or relocated as part of the PROJECT, if any.
- C. The COUNTY agrees to make arrangements for and issue to the CITY all permits for the water main relocation portion of the PROJECT and cooperate with necessary relocation and adjustments to any existing CITY utility facilities located within existing COUNTY right of way where improvements to COUNTY highways are proposed by the COUNTY to be done in conjunction with the PROJECT. Design and construction engineering and construction of adjustments for and relocation of CITY utility facilities (excluding the CITY's water main) shall initially be at the sole expense of the COUNTY. Notwithstanding anything herein to the contrary, the CITY shall however pay the actual cost of the construction of the CITY water main relocation as hereinafter provided in this Agreement.
- D. At all locations where private or public utility facilities (other than CITY utility facilities are located in COUNTY right of way, which are to be adjusted due to work proposed by the COUNTY for the PROJECT, the CITY agrees to cooperate with the COUNTY in making arrangements with the applicable private or public utilities and issue all necessary permits for the requisite adjustment(s) at no cost to the COUNTY.

IV. CONSTRUCTION

- A. The COUNTY has competitively advertised and received PROJECT bids, and awarded the Project contract(s) to the lowest responsible bidder(s) in

accordance with the Illinois Prevailing Wage Act and other applicable State and federal regulations. The County shall provide construction engineering inspections, and cause the PROJECT to be constructed in accordance with the PROJECT's plans and specifications as set forth in the Plans, subject to reimbursement by the CITY as hereinafter stipulated.

- B.** After COUNTY award of the construction contract(s) for the PROJECT, any proposed changes from the Plans that affect the CITY water main and the water main shall be submitted to the CITY for approval prior to commencing such work. The CITY shall review the proposed changes and indicate its approval or disapproval thereof in writing. If the proposed change to the plans and specifications are not acceptable, the CITY shall detail in writing its specific objections. If the COUNTY receives no written response from the CITY within five (5) calendar days after delivery to the CITY of the proposed change(s), the proposed change shall be deemed approved by the CITY. Any dispute concerning the CITY water main relocation plans and specifications shall be resolved in accordance with Section VII (G) of this Agreement.
- C.** Since the award of the construction contract for the water main relocation the COUNTY has provided notice to the CITY prior to commencing work on the PROJECT and No proposed changes to the Plans that affect the CITY's water main or the water main relocation have been proposed by the CITY.
- D.** The COUNTY shall require its contractor(s) working within the COUNTY's right of way to comply with the indemnification provisions contained in the Standard Specifications for Road and Bridge Construction of the Illinois Department of Transportation (most recent edition).
- E.** The COUNTY, on its own behalf and on the behalf of any entity or individual working on behalf of the COUNTY pursuant to this Agreement, to the extent allowable by law, agrees to defend, indemnify, and hold harmless the CITY and its elected officials, employees, and agents from and against, and shall pay all damages, costs and expenses, including attorneys' fees incurred by the CITY with respect to, any claim arising out of or relating to: (i) bodily injury, including death, or property damage caused by the COUNTY or its contractors', employees', agents', or representatives' acts or omissions in the performance of the COUNTY's obligations pursuant to this Agreement.
- F.** The CITY, on its own behalf and on the behalf of any entity working on behalf of the CITY pursuant to this Agreement, to the extent allowable by law, agrees to indemnify and hold harmless the COUNTY and its officers, directors, employees, and agents from and against, and shall pay all damages, costs and expenses, including attorneys' fees incurred by the COUNTY with respect to, any claim arising out of or relating to bodily injury, including death, or property damage caused by the CITY or its employees', agents', or

representatives' acts or omissions in the performance of the CITY's obligations pursuant to this Agreement.

- G.** Notices required to be delivered by the PARTIES pursuant to this Agreement shall be delivered as indicated in Section VII, N of this Agreement.
- H.** No inspections or approvals of the Plans or of the water main relocation work by the CITY or its elected officials, employees, contractors, representatives, or agents shall relieve the COUNTY's contractor(s) of responsibility and liability for the proper performance of the work as determined by the COUNTY. COUNTY inspections and approvals shall not be considered a waiver of any right the CITY may have pursuant to this Agreement. All CITY communications and correspondence with the COUNTY's contractor(s) or relating to a PROJECT contract shall be through the COUNTY, unless otherwise specifically approved by the Director of Transportation/County Engineer of the COUNTY. In the event the CITY discovers CITY related work that is not being performed or has not been performed in accordance with the Plans, the CITY shall promptly notify in writing the Director of Transportation/County Engineer of the COUNTY or the Director of Transportation/County Engineer's duly designated representative.
- I.** Notwithstanding any provision hereinbefore set forth to the contrary, the CITY shall have the unrestricted right to observe, monitor and object to any construction technique or method employed by a contractor which fails to comply with the Plans or the Project contract. Any deviation from the Plans or Project contract shall be reported to the COUNTY which shall immediately take appropriate corrective action.

V. FINANCIAL

- A.** Except as otherwise identified herein, the COUNTY shall initially pay all PROJECT related costs, including engineering, right of way, construction, engineering and construction costs. Notwithstanding anything contained herein to the contrary, all PROJECT construction costs related exclusively to the water main relocation shall be subject to reimbursement by the CITY as hereinafter stipulated.
- B.** It is mutually agreed by the PARTIES that the estimated total construction cost to the CITY for the water main relocation is \$106,735.40.
- C.** Despite the estimated total construction cost stated in Section V. B above, the CITY will be responsible for the actual total construction cost of the CITY water main relocation up to \$125,000.00.
- D.** The CITY shall pay the actual total construction cost of the water main relocation in a lump sum, upon completion of, and acceptance of the water

main relocation portion of the PROJECT within 45 calendar days of receipt of an invoice therefor from the COUNTY.

- E. The COUNTY shall maintain, for a minimum of three (3) years after the completion of the PROJECT, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this Agreement.

VI. MAINTENANCE - RESPONSIBILITIES

- A. The COUNTY shall continue to have exclusive jurisdiction over Kirk Road and over Fabyan Parkway in their entirety.
- B. After the completion of the water main relocation portion of the PROJECT the CITY agrees to maintain, or cause to be maintained all CITY utility facilities (including but not limited to the CITY water main (including the water main relocation) located within the Kirk Road and Fabyan Parkway right of way, and to relocate the same when requested by the COUNTY, and to be solely responsible for all the costs thereof and otherwise associated therewith.
- C. After completion of the water main relocation portion of the PROJECT, the CITY shall not, except in the case of a bona fide emergency conduct CITY utility or CITY water main work within the right of way of Fabyan Parkway or Kirk Road without a permit duly applied for by the CITY and after review and approval thereof subsequently issued in writing by the COUNTY. The provisions of the Kane County Transportation Permit Regulations as amended from time to time shall apply to any such permit.
- D. It is understood and agreed by the PARTIES hereto that this Agreement shall supersede any and all earlier agreements entered into by the PARTIES regarding maintenance of Kirk Road and Fabyan Parkway or the maintenance of the CITY water main (including the water main relocation) in the limits of Kirk Road and Fabyan Parkway within the limits of this PROJECT.
- E. All items of construction including the water main relocation, which are stipulated in this Agreement to be maintained by the CITY shall upon completion of construction and final inspection, be the sole maintenance responsibility of the CITY.

VII. GENERAL PROVISIONS

- A. It is understood and agreed that this is an intergovernmental agreement between the CITY and the COUNTY.

- B.** It is understood and agreed by the PARTIES that the COUNTY has and shall retain jurisdiction of Kirk Road and Fabyan Parkway. The CITY shall retain jurisdiction of the CITY water main including the water main relocation. For the purpose of this Agreement, jurisdiction shall mean the authority pursuant to a duly issued County permit and obligation to administer, control, construct, maintain, and operate.
- C.** This Agreement does not grant to the CITY any easement on or convey any ownership interest in the right of way of Kirk Road or Fabyan Parkway, but provides a self-executed permit for the establishment, maintenance and repair of the City water main, (including the water main relocation).
- D.** Any use of COUNTY highway right of way permitted hereunder is effective only in so far as the COUNTY's jurisdiction there over or fee simple ownership thereof. This Agreement does not presume to grant any consent or privilege over any part of any highway right of way, which may be under the control of some other jurisdiction, body, entity, or person; nor does it release the CITY from compliance with any of the provisions of any laws or statutes relating thereto.
- E.** Wherever in this Agreement approval or review by any PARTY hereto is provided for, said approval or review shall not be unreasonably delayed or withheld.
- F.** Not later than fourteen (14) calendar days after execution of this Agreement each PARTY shall designate in writing a representative who shall serve as the full time representative of the said PARTY during the carrying out of the construction of the PROJECT. Each representative shall have authority, on behalf of such PARTY, to make decisions relating to the work covered by this Agreement. Representatives may be changed, from time to time, by subsequent written notice. Each representative shall be readily available to the other PARTY.
- G.** In the event of a dispute between the PARTIES in the carrying out of the terms of this Agreement, the Director of Transportation/County Engineer of the COUNTY and the Superintendent of Public Works of the CITY shall meet and resolve the issue.
- H.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.
- I.** The COUNTY certifies that its correct Federal Tax Identification number (FEIN) is 36-6006585 and it is doing business as a governmental entity, whose mailing address is, 41W011 Burlington Road, St. Charles, Illinois 60175.

- J.** This Agreement may only be modified by written amendment hereof approved by the respective governing boards of the Parties and executed by duly an authorized representative of each PARTY.
- K.** This Agreement and the covenants contained herein shall become null and void in the event the contract covering the construction work for the Project contemplated herein is not awarded within three (3) years subsequent to the date of execution of this Agreement.
- L.** This Agreement shall be binding upon and inure to the benefit of the PARTIES and their respective successors and approved assigns.
- M.** It is agreed that the laws of the State of Illinois shall apply to this Agreement and that, in the event of litigation, venue shall lie in Kane County, Illinois.
- N.** All notices shall be in writing and shall be personally delivered or mailed to the following persons at the following addresses:

To the COUNTY: Kane County Division of Transportation
41 W 011 Burlington Road
St. Charles, Illinois 60175.
Attn: Director of Transportation/County
Engineer

To the CITY: City of Geneva
100 N First Street
Geneva, Illinois 60134
Attn: Superintendent of Public Works

- O.** The introductory recitals included at the beginning of this Agreement are agreed to and incorporated into this Agreement.

IN WITNESS THEREOF, the PARTIES have executed this Agreement on the dates indicated.

INTENTIONALLY LEFT BLANK

THE CITY OF GENEVA

By: _____
Kevin Burns
Mayor

Attest: _____
City Clerk

Date: _____

THE COUNTY OF KANE

By: _____
Christopher Lauzen
County Board Chairman

Attest: _____
County Clerk

Date: _____