 ST. CHARLES SINCE 1834		AGENDA ITEM EXECUTIVE SUMMARY													
		Title:		Recommendation to Approve the First Amendment to an Intergovernmental Agreement for Road Construction by and between the City of St. Charles and the City of Geneva (Bricher Road)											
		Presenter:		Christopher Tiedt											
<i>Please check appropriate box:</i>															
	Government Operations				Government Services										
X	Planning & Development (11/10/14)				City Council										
<table border="1" style="width: 100%;"> <tr> <td>Estimated Cost:</td> <td colspan="2">N/A</td> <td>Budgeted:</td> <td>YES</td> <td></td> <td>NO</td> <td></td> </tr> </table>								Estimated Cost:	N/A		Budgeted:	YES		NO	
Estimated Cost:	N/A		Budgeted:	YES		NO									
If NO, please explain how item will be funded:															
Executive Summary:															
<p>In 2001, the City of St. Charles entered into an intergovernmental agreement (IGA) with the City of Geneva for road construction improvements along Bricher Road. This IGA identified the obligations, responsibilities and access locations along Bricher Road for each City.</p> <p>In summer of 2014, St. Charles staff was approached by the City of Geneva requesting a change to the access locations along Bricher Road that were previously identified in the original IGA. This request is due to the recent development activity of the Fisher Farms Commercial Area B, now known as Lincoln Square, which is west of Randall Road in Geneva.</p> <p>The amendment being proposed would change access locations as follows:</p> <ol style="list-style-type: none"> 1. Fisher Farms Commercial B access is amended to allow one access point into this parcel generally located in the center of the parcel, as shown on the exhibit in the attached amendment. 2. On the St. Charles side, Bricher Commons access is amended to allow two full access points along the property's frontage of Bricher Road, but not within the area two hundred seventy (270) feet east of the center line of Fisher Drive. The previous IGA only allowed one full access point located 1,970' west of Randall Road. <p>This amendment is also being presented to Geneva's Council Committee this month as well by Geneva staff members.</p>															
Attachments: <i>(please list)</i>															
- Proposed First Amendment to an Intergovernmental Agreement for Road Construction by and between the City of St. Charles and the City of Geneva (Bricher Road) - 2001 Intergovernmental Agreement for Road Construction by and between the City of St. Charles and the City of Geneva (Bricher Road)															
Recommendation / Suggested Action <i>(briefly explain):</i>															
Staff recommends approval of the First Amendment to an Intergovernmental Agreement for Road Construction by and between the City of St. Charles and the City of Geneva (Bricher Road)															
For office use only:		Agenda Item Number: 3a													

FIRST AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT
FOR ROAD CONSTRUCTION
BY AND BETWEEN
THE CITY OF ST. CHARLES, KANE AND DUPAGE COUNTIES, ILLINOIS,
AND THE CITY OF GENEVA, KANE COUNTY, ILLINOIS

WHEREAS, the CITY OF ST. CHARLES, Kane and DuPage Counties, Illinois (“St. Charles”), and the CITY OF GENEVA, Kane County, Illinois (“Geneva”), are both units of local government as defined in the Illinois Constitution of 1970, and pursuant to said Constitution [Article VII, Section 10] and the Illinois Compiled Statutes [5 ILCS 220/1, et seq.] entered into an intergovernmental agreement on April 16, 2001 (“Agreement”) regarding certain roadway improvements along Bricher Road from its intersection with Illinois State Route 38 and Peck Road; and

WHEREAS, the parties desire to amend the Agreement to modify specific curb cut locations along Bricher Road.

NOW, THEREFORE, in consideration of the mutual promises contained herein and the recitals of facts hereinabove made,

IT IS HEREBY AGREED by and between the CITY OF ST. CHARLES, Kane and DuPage Counties, Illinois, and the CITY OF GENEVA, Kane County, Illinois, as follows:

- A. Adoption of Recitals: The Recitals set forth above are incorporated by reference as if fully set forth in this Paragraph A.
- B. Modifications to Curb Cut locations along Bricher Road: Exhibit “B” of the Agreement, which describes the location of permitted curb cuts along Bricher Road is hereby amended as follows:

1. South side of Bricher Road: Curb cut locations upon the parcel formerly known as Fisher Farms Commercial Area B (now known as Lincoln Square PUD) are depicted upon the preliminary plat of Lincoln Square as shown on Exhibit "A", which is attached hereto and made a part hereof by reference.
2. North side of Bricher Road: The curb cut locations upon the parcel known as Bricher Commons shall be full access street intersections at two (2) locations along the property's frontage, with the final determination on the need for, and design of, intersection improvements based upon a traffic impact study. The City of St. Charles shall provide a copy of the traffic impact study to the City of Geneva for review and comment. The Cities of Geneva and St Charles mutually agree to the completion of a traffic impact study and determination of required improvements prior to approval of final site development plans or final plats of subdivision by St. Charles. Additionally, no curb cuts shall be located within the area two hundred seventy (270) feet east of the center line of Fisher Drive.

C. NOTICES:

All notices required hereunder shall be made in writing and at the following addresses:

CITY OF GENEVA:

Director of Public Works
City of Geneva
1800 South Street
Geneva, Illinois 60134

CITY OF ST. CHARLES:

Director of Public Works
City of St. Charles
Two East Main Street
St. Charles, Illinois 60174.

IN WITNESS WHEREOF, on this _____ day of _____, 2014, A.D., the

parties hereto affix their respective seals.

CITY OF ST. CHARLES, ILLINOIS,
a municipal corporation,

By: _____
Mayor

ATTEST:

CITY CLERK

CITY OF GENEVA, a municipal corporation

By: _____
Mayor

ATTEST:

CITY CLERK

Exhibit “A” Location of curb cuts for Lincoln Square

DRAFT

32 8/27/06

[Stamp: RECEIVED AUG 23 2006 ENGINEERING]

**INTERGOVERNMENTAL AGREEMENT
FOR ROAD CONSTRUCTION
BY & BETWEEN
THE CITY OF ST. CHARLES, KANE & DU PAGE
COUNTIES, ILLINOIS,
& THE CITY OF GENEVA, KANE COUNTY, ILLINOIS**

WHEREAS, the CITY OF ST. CHARLES, Kane and DuPage Counties, Illinois, and the CITY OF GENEVA, Kane County, Illinois, are both units of local government as defined in the Illinois Constitution of 1970, and said Constitution (Article VII, Section 10) and the Illinois Compiled Statutes (5 ILCS 220/1, *et seq.*) authorize units of local government to enter into agreements for intergovernmental cooperation; and

WHEREAS, the CITY OF ST. CHARLES and the CITY OF GENEVA have common boundaries along Bricher Road from its intersection with Illinois State Route 38 to Peck Road, which is in need of roadway improvements and repairs;

NOW, THEREFORE, in consideration of the mutual promises contained herein and the recitals of facts hereinabove made,

IT IS HEREBY AGREED by and between the CITY OF ST. CHARLES, Kane and DuPage Counties, Illinois, and the CITY OF GENEVA, Kane County, Illinois, (hereinafter collectively referred to as the "Cities") as follows:

A. PREVIOUS AGREEMENT:

This Agreement supercedes and nullifies the previous Intergovernmental Agreement for Road Construction by and between the CITY OF ST. CHARLES, Kane and DuPage Counties, Illinois, and the CITY OF GENEVA, Kane County, Illinois dated July 21, 1997, and attached hereto as *Exhibit A* (hereinafter referred to as "The Previous Agreement").

RECEIVED
AUG 23 2006
ENGINEERING

B. BRICHER ROAD IMPROVEMENTS-GENERAL:

The CITY OF ST. CHARLES and the CITY OF GENEVA agree to complete, or cause the completion by and through the obligation of other parties pursuant to various annexation agreements or other development agreements in aid of construction, certain roadway improvements (as hereinafter defined either in the text or exhibits to this Agreement) to Bricher Road from its intersection with Illinois State Route 38 westerly to Peck Road (hereinafter referred to as "GENERAL IMPROVEMENTS").

C. BRICHER ROAD IMPROVEMENTS-"CITIES' ROADWAY IMPROVEMENTS":

1. The Cities shall construct certain roadway improvements to that portion of Bricher Road from its intersection with Blackberry Road (in the City of Geneva) to a point approximately 680 feet east of the centerline of Randall Road (hereinafter referred to as "CITIES' ROADWAY IMPROVEMENTS"). The CITY OF ST. CHARLES will be the "Lead Agency" for the purposes of supervising and directing the CITIES' IMPROVEMENTS, with the responsibility for coordinating engineering design services, advertising for bids, awarding contracts, supervising the work, and all other necessary and customary functions, in accordance with the applicable provisions of the Illinois Municipal Code (65 ILCS et. seq. 1998), to complete said Cities' roadway improvements. The CITY OF ST. CHARLES shall cause the work to be performed and completed in a good and workmanlike manner in accordance with final Plans and Specifications approved by the Cities. Subject to reimbursement by the CITY OF GENEVA of its share thereof, the CITY OF ST. CHARLES shall be responsible for the payment of all costs associated with the performance of the work, including the cost of all engineering design services, and all roadway lighting and drainage improvements and utility relocations.

2. If necessary, the Cities shall retain a real estate consultant to assist in acquiring real estate Rights of Way necessary to accomplish the Cities' roadway improvements (i.e., "land acquisitions"). *The Cities acknowledge that land acquisitions for the Cities' roadway improvements may be necessary and must be*

obtained prior to commencement of the work, including but not limited to the solicitation of construction bids.

All fees, costs and expenses for land acquisition, including but not limited to fees of the real estate consultant, legal fees, and compensation paid to property owners for land acquisitions necessary of fee simple title, permanent easements or temporary easements, shall be paid directly by either the CITY OF GENEVA or the CITY OF ST. CHARLES depending upon the location of the real estate for which interests are acquired; the CITY OF ST. CHARLES shall pay all such fees, costs, and expenses for acquiring interests in land acquisitions located north of the centerline of Bricher Road, and the CITY OF GENEVA shall pay all such costs, fees, and expenses for acquiring land acquisitions located south of the centerline of Bricher Road.

3. Prior to the solicitation of construction bids for the roadway improvement work or the execution of any contract for the work, the CITY OF ST. CHARLES shall present to the CITY OF GENEVA for its review and approval the following: (a) Engineer's Estimate of Cost for the roadway improvement work; (b) Final Engineering Plans and Specifications for the roadway improvement work; and (c) construction solicitation bid package. Prior to soliciting construction bids, the Cities, respectively, shall authorize the solicitation for bids by CITY OF ST. CHARLES (as Lead Agency). Prior to award of a construction contract for the Cities' roadway improvements to the lowest responsible bidder, the Cities shall approve the bid of the lowest responsible bidder and the CITY OF ST. CHARLES then shall deliver to the CITY OF GENEVA an executed copy of the construction contract (the "Contract") with the General Contractor engaged to perform the roadway improvement work (the "Contractor"), which contract shall separately set forth the total cost of the work (the "Contract Price") from any other work to be performed by the Contractor.

The Contract shall include the following provisions:

- a. Except for the negligence of any of the Indemnitees (hereinafter defined), the Contractor shall be required to protect, defend, indemnify and hold harmless the CITY OF GENEVA and its elected and appointed officers, employees, and agents (collectively, sometimes called "Indemnitees"), from and

against all losses, judgements, liens, taxes, claims and expenses, including, but not limited to, reasonable attorneys' fees, court costs, and expenses of collection which may result from the performance of the work. This indemnification shall include, but shall not be limited to, loss or destruction of property, including loss of uses thereof, bodily injury, personal injury, sickness, disease, or death sustained by any person, partnership, corporation, or other entity. Such obligation of the Contractor shall not be limited by the availability, limits, or coverage of insurance carried or required herein, or required by law to be carried.

- b. The Contractor shall indemnify, protect, and save harmless the CITY OF GENEVA from and against any and all mechanic's liens or claims for lien arising out of the performance of the work, including any actions brought or judgements rendered thereof, and from and against any and all loss, damage, liability, costs and expenses, including legal fees and disbursements, which the CITY OF GENEVA may sustain or incur in connection therewith.
 - c. The Contractor shall include the interest of the CITY OF GENEVA as an additional insured on the Contractor's comprehensive general liability insurance policy.
 - d. Contractor shall maintain and supervise at least one (1) lane of traffic restricted to local traffic only during the period of construction of the roadway improvement project, in accordance with Illinois Department of Transportation standards. The Contractor shall also maintain and supervise entrances and side roads restricted to local traffic only along the perimeter of the site of the work.
4. The CITY OF ST. CHARLES shall initially pay the Contractor and other persons entitled to payment for the cost of the roadway improvement work. The cost of the roadway improvement work shall include the cost of engineering services, the Contract Price, and the cost of relocation of gas vaults and other public utilities.

5. The CITY OF ST. CHARLES shall submit reimbursement requests to the CITY OF GENEVA its share of the costs of the Cities' roadway improvements in accordance with the provisions hereinafter set forth. Reimbursement amount shall be Fifty Percent (50%) of the Cities' roadway improvements costs, including design and construction engineering and construction. The cost for utility adjustment (s) shall be paid for 100% by the respective City who owns and operates the utility that is in conflict. The CITY OF ST. CHARLES shall request reimbursement, in writing and shall include with each request a certification from the City Engineer (or other representative designated by the CITY OF ST. CHARLES) that the Contractor is entitled to payment for that portion of the roadway improvement work so certified. The CITY OF GENEVA shall reimburse its share of the costs to the CITY OF ST. CHARLES within thirty (30) days after receipt of each certification. The final request for reimbursement shall include a statement from the City Engineer certifying the total cost of the roadway improvement work in all respects.

6. In the event the CITY OF ST. CHARLES or the Contractor requests changes in the work, the CITY OF ST. CHARLES shall submit to the CITY OF GENEVA, for its review and approval, copies of all requests for change orders. The CITY OF GENEVA shall make a good faith effort to respond promptly to such requests and shall approve or object to such requests for change orders within seven (7) days of receipt of the request if the change order is \$5,000.00 or less, and, if the change order exceeds \$5,000.00, not later than the next City Council meeting. In the event of a request for an on-site field change order that causes no change in the Contract Price, the CITY OF GENEVA's designated representative shall be authorized to approve or object to such requests. The CITY OF GENEVA's designated representative shall be DIRECTOR OF PUBLIC WORKS, or such other person as the CITY OF GENEVA may so designate by written notice to the CITY OF ST. CHARLES.

7. Prior to payout disbursements for the roadway improvement work, the CITY OF ST. CHARLES shall submit copies of sworn General Contractor's statement and lien waivers relating to the requested disbursement

to the CITY OF GENEVA. If the CITY OF GENEVA objects to the adequacy or sufficiency of such statements and waivers, it shall immediately notify the CITY OF ST. CHARLES in writing of its objection, and the CITY OF ST. CHARLES shall make no further disbursements pursuant to this Agreement until satisfied with the sufficiency of such statements and waivers.

8. *Curb Cut Locations.* The Cities acknowledge that Exhibit B attached hereto and incorporated herein by reference, depicts the proposed curb cut locations along Bricher Road, which are, generally, described as follows:

City of Geneva Access

<i>Development Name</i>	<i>Proposed Street Name</i>	<i>Approximate Location</i>
Greenwich Square	Vanderbilt Drive (W)	750' East of Randall Road
Greenwich Square	Vanderbilt Drive (E)	1,250' East of Randall Road
	Blackberry Drive	1,790' East of Randall Road

City of St. Charles Access

<i>Development Name</i>	<i>Proposed Street Name</i>	<i>Approximate Location</i>
Pursuant to development agreement for former Wurlitzer property	Commercial entrance	At Blackberry Drive extended north (per Concept Plan included in St. Charles Ordinance 1997-Z-10, Exhibit C-2)
	Commercial entrance	1,200' East of Randall Road (per Concept Plan included in St. Charles Ordinance 1997-Z-10, Exhibit C-2)
	Commercial entrance	750' East of Randall Road

D. BRICHER ROAD IMPROVEMENTS-“MEIJER STORE ROADWAY IMPROVEMENTS”:

1. The Cities shall cause that portion of Bricher Road from a point approximately 680 feet east of the centerline of Randall Road to a point approximately 1,750 feet west of the centerline of Randall Road to be improved with certain roadway improvements, including but not limited to traffic lane reconstruction and expansion, automated traffic signalization, roadway lighting, and storm water drainage ways (hereinafter referred to as “Meijer Store Roadway Improvements”). The CITY OF ST. CHARLES will act as the Lead Agency for the Meijer Store Roadway Improvements provided, however, the Meijer Store Roadway Improvements; will be performed through the developer of the Meijer Store Parcel. Additionally, any contractor engaged to construct all or a portion of the roadway improvements under the Meijer Store Roadway Improvements project shall comply with all applicable provisions of the subdivision control regulations of the St. Charles Municipal Code, the rules and regulations of the Kane County Division of Transportation, Illinois Department of Transportation, and the requirements of the City of St. Charles’ prevailing wage ordinance in effect at the time of the roadway improvement work.

The lane geometry for roadway improvement work at the intersection of Randall and Bricher Roads is set out at Exhibit B. This intersection roadway improvement work is included and shall be considered a part of the “Meijer Store Roadway Improvements.”

2. If necessary, the City of St. Charles and the City of Geneva within their respective jurisdiction will work cooperatively to provide the Right of Way for “Meijer Store Roadway Improvements.”

3. *Curb Cut Locations.* Exhibit B, as attached incorporates the proposed curb cut locations along Bricher Road as follows:

City of Geneva Access

<i>Development Name</i>	<i>Proposed Street Name</i>	<i>Approximate Location</i>
Arden Court	Private driveway	300' East of Randall Road
Fisher Farm	Right In/Right Out	410' West of Randall Road
Fisher Farm	Commercial entrance	710' West of Randall Road
Fisher Farm	Commercial entrance	1,070' West of Randall Road
Fisher Farm	Commercial entrance	1,390' West of Randall Road
Fisher Farm	Commercial entrance	1,690' West of Randall Road

City of St. Charles Access

<i>Development Name</i>	<i>Proposed Street Name</i>	<i>Approximate Location</i>
Randall Road Commercial properties	Commercial entrance	400' East of Randall Road
Meijer	Right In/Right Out	300' West of Randall Road
Meijer	Commercial entrance	710' West of Randall Road

E. BRICHER ROAD IMPROVEMENTS-“FISHER FARM ROADWAY IMPROVEMENTS”:

1. The Cities shall cause that portion of Bricher Road from a point approximately 1,750 feet west of the centerline of Randall Road to Peck Road to be improved with certain roadway improvements, including but not limited to traffic lane reconstruction and expansion, and storm water drainage ways (hereinafter referred to as “Fisher Farm Roadway Improvements”). The CITY OF GENEVA will act as the Lead Agency for the Fisher Farm Roadway Improvements provided, however, the Fisher Farm Roadway Improvements; will be performed through the developer(s) of the Fisher Farm Planned Development Parcel. Additionally, any contractor engaged to construct all or portion of the roadway improvements under the Fisher Farm Roadway Improvements project shall comply with all applicable provisions of the subdivision control regulations of the Geneva Municipal Code, the rules and regulations of the Illinois Department of Transportation, and the requirements of the City of Geneva’s prevailing wage ordinance, in effect at the time of the roadway improvement work.

2. If necessary, the City of St. Charles and the City of Geneva within their respective jurisdiction will cooperate to provide the Right of Way for “Fisher Farm Roadway Improvements.”

3. *Curb Cut Locations.* Exhibit B as attached incorporates the proposed curb cut locations along Bricher Road as follows:

City of Geneva Access

<i>Development Name</i>	<i>Proposed Street Name</i>	<i>Approximate Location</i>
Fisher Farm	Fisher Drive North	2,610' West of Randall Road
Fisher Farm	Commercial entrance	4,070' West of Randall Road
Fisher Farm	Commercial entrance	4,560' West of Randall Road

City of St. Charles Access

<i>Development Name</i>	<i>Proposed Street Name</i>	<i>Approximate Location</i>
Bricher Commons	Commercial entrance	1,970' West of Randall Road (per Concept Plan dated 5-25-99)

F. REIMBURSEMENT OF COSTS FROM BENEFITED PROPERTIES:

1. *General: Benefited Properties Exhibit. Exhibit C*, attached hereto and incorporated herein by reference, contains a schematic drawing (map) of real properties to be benefited by the proposed roadway improvements described herein. Pursuant to certain existing and outstanding annexation agreements, the CITY OF ST. CHARLES and the CITY OF GENEVA, respectively, shall obtain reimbursement of the costs of the roadway improvements described herein.

2. *Randall Road Intersection Improvements.* The Cities of Geneva and St. Charles shall obtain reimbursement for Bricher and Randall Roads intersection improvements. Bricher and Randall Roads intersection improvements extend along Randall Road from a point approximately 350 feet north of the centerlines of Bricher Road to approximately 420 feet south of the center line of Bricher Road, and along Bricher Road from a point approximately 435 feet east of the centerline of Randall Road to a point approximately 650 feet west of the centerline of Randall Road. The Cities agree the benefit derived from the Randall Road Intersection Improvements is shared among properties based upon a traffic engineering study projecting benefited property traffic passing into the intersection. The Cities shall obtain reimbursements from the following real property owners:

City of St. Charles Benefited Property

Meijer South;

Randall Road Commercial Properties I;

Randall Road Commercial Properties II;

Tri-Cities Plaza Hotel;

Tri-Cities Plaza with proposed expansion, City of St. Charles.

City of Geneva Benefited Property

Fisher Farm Commercial Area A;

Fisher Farm Commercial Area B;

Arden Court;

Greenwich Square;

Dempsey Office Site.

Subject to the foregoing reimbursement of costs being collected, the City of Geneva will forward the reimbursement to the City of St. Charles within 30 days of receipt of the reimbursement.

3. *Bricher Road Improvements (west of Randall Road)*. The Cities agree that the benefit derived from the Bricher Road improvement, as described below, is equally apportioned between the real properties lying adjacent to, and north and south of, Bricher Road. The Bricher Road improvement area is that portion of Bricher Road lying between a point 650 feet west of Randall Road and a point 2,530 feet west of Randall Road. The Cities shall obtain proportionate reimbursements based upon lineal frontage along Bricher Road from the following adjoining real property owners:

City of St. Charles Benefited Property (50%)

Bricher Commons;

Meijer South.

City of Geneva Benefited Property (50%)

Fisher Farm Commercial Area A;

Fisher Farm Commercial Area B;

Fisher Farm Neighborhood 2.

Subject to the foregoing reimbursement of costs being collected, the City receiving the reimbursement will forward it to the Lead Agency for their share of the reimbursement, within 30 days of receipt of the reimbursement.

4. *Bricher Road Improvements (east of Randall Road).* The Cities agree that the benefit derived from the Bricher Road improvement, as described below, is equally apportioned between the real properties lying adjacent to, and north and south of, Bricher Road. The Bricher Road improvement area is that portion of Bricher Road lying between a point 435 feet east of Randall Road and a point 680 feet east of Randall Road. The Cities shall obtain proportionate reimbursements based upon lineal frontage along Bricher Road from the following adjoining real property owners:

City of St. Charles Benefited Property (50%)

City of St. Charles.

City of Geneva Benefited Property (50%)

City of Geneva.

Subject to the foregoing reimbursement of costs being collected, the City of Geneva will forward the reimbursement to the City of St. Charles within 30 days of receipt of the reimbursement.

5 The Cities will enter into Road Reimbursement Agreements in substantially the same form as *Exhibit D*, attached hereto and incorporated herein as a part of this Agreement. Said Road Reimbursement Agreements shall be entered into with each of the Benefited Properties described in *Exhibit C*, which Road Reimbursement Agreements shall define the pro rata or percentage share each of the Benefited Properties shall reimburse to its respective City. Upon ratification of the Road Reimbursement Agreement, each City shall send a copy of the ratified Road Reimbursement Agreement to the other City.

G. NOTICES:

All notices required hereunder shall be made in writing and at the following addresses:

CITY OF GENEVA: Director of Public Works
 1800 South Street
 Geneva, Illinois 60134

With a copy to: City Attorney
 312 West State Street
 Geneva, Illinois 60134

CITY OF ST. CHARLES: Director of Public Works
 Two East Main Street
 St. Charles, Illinois 60174

With a copy to: City Attorney
 Two East Main Street
 St. Charles, Illinois 60174

H. MUNICIPAL RATIFICATION:

The CITY OF ST. CHARLES and the CITY OF GENEVA have authorized, by ordinance, the execution of this Agreement, as an exercise of the respective

intergovernmental cooperation authority under the Constitution of the State of Illinois and the Illinois Compiled Statutes.

- I. Nothing contained in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties hereby and their respective permitted successors and assigns, nor is anything in this Agreement intended to receive or discharge the obligation or liability of any third person to any party to this Agreement nor shall any provisions given any third person any right to subrogation or action over or against any party to this Agreement.
- J. The Agreement represents the entire understanding between the parties and may be modified only by a written document signed by both parties.
- K. Neither of the parties may assign its rights and privileges nor its duties and obligations under the Agreement, without the written consent of the other party.
The Agreement shall inure to the benefit of each party and their respective successors and assigns.
- L. The laws of the State of Illinois shall govern the Agreement.
- M. Whenever possible, each provision of the Agreement shall be interpreted in such manners as to be valid under applicable law, but if any provision of the Agreement shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of the prohibition or invalidation, but shall not invalidate the remainder of such provision or the remaining provisions to the Agreement.

IN WITNESS WHEREOF, on this 16th day of April, 2001, A.D.,

the parties hereto affix their respective seals.

CITY OF ST. CHARLES,
a municipal corporation

By: Susan L. Klinkhamer
SUSAN L. KLINKHAMER, Mayor

ATTEST:

Kristine A. Nephew
CITY CLERK

CITY OF GENEVA,
a municipal corporation

By: Thomas G. Coughlin
THOMAS G. COUGHLIN, Mayor

ATTEST:

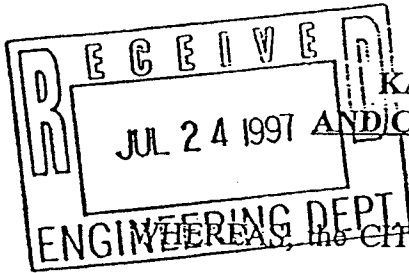
Kenneth A. Habda
CITY CLERK

MWK:cjb

Forms\INTERGOVTL AGREEMNT FisherFrm
REVISED: March 14, 2001

REFER TO:	
MINUTES	7/31/97
PAGE	

INTERGOVERNMENTAL AGREEMENT FOR
ROAD CONSTRUCTION BY AND
BETWEEN CITY OF ST. CHARLES,
KANE AND DuPAGE COUNTIES, ILLINOIS
AND CITY OF GENEVA, KANE COUNTY, ILLINOIS



WHEREAS, the CITY OF ST. CHARLES, Kane and DuPage Counties, Illinois, and the CITY OF GENEVA, Kane County, Illinois, are both non-home rule units of local government as provided in the 1970 Illinois Constitution, and said Constitution (Article VII Section 10) and the Illinois Revised Statutes, 1987, Ch.127, Sec.741 provides authority for Intergovernmental cooperation; and

WHEREAS, the CITY OF ST. CHARLES and the CITY OF GENEVA have common boundaries along Bricher Road, which is in need of roadway improvements and repairs;

Now, therefore, in consideration of the mutual promises contained herein and the recitals of facts herein above made, it is hereby agreed by and between the CITY OF ST. CHARLES, Kane and DuPage Counties, Illinois, and the CITY OF GENEVA, Kane County, Illinois, as follows:

A. PREVIOUS AGREEMENT:

This agreement supercedes and nullifies the previous agreement between the City of St.Charles and the City of Geneva dated September 5, 1989 and attached hereto as Exhibit "A" (hereinafter referred to as "Previous Agreement").

Exhibit A

expenses for acquiring interests in real estate located north of the center line of Bricher Road, and the CITY OF GENEVA shall pay all such costs, fees and expenses for acquiring necessary real estate located south of the center line of Bricher Road.

3. Prior to the solicitation of bids for the work or the execution of any contract for the work, the CITY OF ST. CHARLES shall present to the CITY OF GENEVA the following: (a) Engineer's estimate of cost for the work; (b) Final Engineering Plans and Specifications for the work and (c) Bid package. Prior to soliciting bids for the work, the Cities, respectively, shall authorize the solicitation for bids by ST. CHARLES. Prior to award of a contract to the lowest responsible bidder, the CITY OF ST. CHARLES and the CITY OF GENEVA shall approve said bid and ST. CHARLES then shall deliver to the CITY OF GENEVA an executed copy of the construction contract with the General Contractor engaged to perform the work (the "Contractor"), who is the lowest responsible bidder after open, competitive bidding which contract shall separately set forth the total cost of the work (the "Contract price") from any other work to be performed by the Contractor, and shall include the following provisions:

a. Except for the negligence of any of the Indemnitees (hereinafter defined), the Contractor shall be required to protect, defend, indemnify and hold harmless the CITY OF GENEVA and its elected and appointed officers, employees and agents, (collectively, sometimes called "Indemnitees") from and against all loss, claims and expenses, including, but not limited to, reasonable attorneys' fees, court costs and expenses of collection which may result from the performance of the work. This indemnification shall include, but not be limited to, loss or destruction of property, including loss of use thereof, bodily injury, personal injury, sickness, disease, or death sustained by any person. Such obligation of the Contractor shall not be limited

equal to 50% of the amount certified within 30 days after receipt of said certification. The final request for disbursement shall include a statement from the City Engineer certifying the total cost of the work in all respects.

6. In the event the CITY OF ST. CHARLES or the Contractor requests changes in the work, the CITY OF ST. CHARLES shall submit to the CITY OF GENEVA, for its review and approval, copies of all requests for change orders. The CITY OF GENEVA shall endeavor to respond promptly to such requests and shall approve or object to such requests for change orders within seven (7) days of receipt of the request if the change order is \$5,000 or less and not later than the next City Council Meeting if greater than \$5,000. In the event of a request for a field change, the CITY OF GENEVA's designated representative shall be authorized to approve or object such requests. The CITY OF GENEVA's designated representative shall be THOMAS TALSMAN, or such other person as the CITY OF GENEVA may so designate by written notice to the CITY OF ST. CHARLES.

7. Prior to pay-out disbursements for the work, the CITY OF ST. CHARLES shall submit copies of sworn General Contractor's statement and lien waivers relating to the requested disbursement to the CITY OF GENEVA. If the CITY OF GENEVA is not satisfied with the adequacy or sufficiency of such statements and waivers, it shall notify the CITY OF ST. CHARLES in writing of its objection and the CITY OF ST. CHARLES shall make no further disbursements pursuant to this Agreement until satisfied with the sufficiency of such statements and waivers.

8. All notices required hereunder shall be made in writing and at the following addresses:

City of Geneva: Thomas Talsma
 Director of Public Works
 1800 South Street

With a copy to:

Timothy D. O'Neil
City Attorney
Eight East Galena Boulevard, Suite 202
Aurora, Illinois 60507-5030

C. The Cities of ST. CHARLES and GENEVA have authorized, by Ordinance, the execution of this Agreement, as an exercise of their respective intergovernmental cooperation authority under the Constitution of the State of Illinois.

IN WITNESS WHEREOF on this 21st day of July, 1997, A.D., the parties hereto fix their respective seals.

CITY OF ST. CHARLES, ILLINOIS

By: Susan L. Klunkhane
Mayor

ATTEST:

Kristi G. Lark
City Clerk

CITY OF GENEVA, ILLINOIS

By: Thomas A. Campbell
Mayor

ATTEST:

Norris A. Galula
City Clerk

PDM:jv/cb

INTERGOVERNMENTAL AGREEMENT FOR (Exhibit A)
ROAD CONSTRUCTION BY AND
BETWEEN CITY OF ST. CHARLES,
KANE AND DuPAGE COUNTIES, ILLINOIS
AND CITY OF GENEVA, KANE COUNTY, ILLINOIS

WHEREAS, the CITY OF ST. CHARLES, Kane and DuPage Counties, Illinois, and the CITY OF GENEVA, Kane County, Illinois, are both non-home rule units of local government as provided in the 1970 Illinois Constitution, and said Constitution (Article VII Section 10) and the Illinois Revised Statutes, 1987, Ch.127, Sec.741 provides authority for Intergovernmental co-operation; and

WHEREAS, the CITY OF ST. CHARLES and the CITY OF GENEVA have common boundaries along Bricher Road and along Division Street, both of which streets are in need of roadway improvements and repairs; and

WHEREAS, both the CITY OF ST. CHARLES and the CITY OF GENEVA have reviewed and approved the plans for the roadway improvements to Bricher Road, which are attached hereto as Exhibit A; and

WHEREAS, both the CITY OF ST. CHARLES and the CITY OF GENEVA have reviewed and approved the plans for the improvements to Division Street, a copy of which are attached hereto as Exhibit B;

Now, therefore, in consideration of the mutual promises contained herein and the recitals of facts hereinabove made, it is hereby agreed by and between the CITY OF ST. CHARLES,

accomplish the Work (i.e., "necessary land acquisition"). The parties acknowledge that right of way acquisitions for the work must be obtained prior to commencement of the work, including solicitation of bids therefore. All fees, costs and expenses for necessary land acquisition, including but not limited to fees of the real estate consultant, legal fees, and payments to property owners for necessary acquisition of fee simple title, permanent easements or temporary easements, shall be paid directly by the CITY OF GENEVA or the CITY OF ST. CHARLES according to the location of the real estate for which interests are acquired; the CITY OF ST. CHARLES shall pay all such fees, costs and expenses for acquiring interests in real estate located north of the center line of Bricher Road, and the CITY OF GENEVA shall pay all such costs, fees and expenses for acquiring necessary real estate located south of the center line of Bricher Road.

3. Prior to the solicitation of bids for the work or the execution of any contract for the work, the CITY OF ST. CHARLES shall present to the CITY OF GENEVA the following: (a) Engineer's estimate of cost for the work; (b) Plans and Specifications for the work and (c) bid package. Prior to soliciting bids for the work, the Cities, respectively, shall authorize the solicitation for bids by ST. CHARLES. Prior to award of a contract to the lowest responsible bidder, the CITY OF ST. CHARLES and CITY

b. The Contractor shall indemnify, protect and save harmless the CITY OF GENEVA from and against any and all mechanic's liens or claims for lien arising out of the performance of the Work, including any actions brought or judgments rendered thereof, and from and against any and all loss, damage, liability, costs and expenses, including legal fees and disbursements, which the CITY OF GENEVA may sustain or incur in connection therewith.

c. The Contractor shall include the interest of the CITY OF GENEVA as an additional insured on the Contractor's comprehensive general liability insurance policy.

d. Contractor shall maintain at least one lane of traffic during construction of the project. The Contractor shall also maintain entrances and side roads along the perimeter of the site of the work.

4. The CITY OF ST. CHARLES shall initially pay the Contractor and other persons entitled to payment for the cost of the Work. The cost of the Work shall include the Contract Price and shall include the cost of relocation of gas vaults and other public utilities.

5. The CITY OF ST. CHARLES shall thereafter request the CITY OF GENEVA to reimburse it for 50% of each payment in accordance with the provisions hereinafter set forth. The CITY OF ST. CHARLES shall request each

7. Prior to payout disbursements for the work, the CITY OF ST. CHARLES shall submit copies of sworn General Contractor's statement and lien waivers relating to the requested disbursement to the CITY OF GENEVA. If the CITY OF GENEVA is not satisfied with the adequacy or sufficiency of such statements and waivers, it shall notify the CITY OF ST. CHARLES in writing of its objection and the CITY OF ST. CHARLES shall make no further disbursements pursuant to this Agreement until satisfied with the sufficiency of such statements and waivers.

B. DIVISION STREET:

1. The CITY OF GENEVA and the CITY OF ST. CHARLES agree to complete the roadway improvements to Division Street from Kirk Road west to East Side Drive/7th Street described in the Plans and Specifications prepared by Hampton, Lenzini & Renwick, Inc. dated July 26, 1989 in Exhibit B hereto, and to equally share in the cost of the work. The CITY OF GENEVA will be the "Lead Agency" for the purposes of supervising and directing the Division Street improvements, with responsibility for advertising for bids, awarding contracts, supervising the work, and all other necessary and customary functions to complete said improvements. The CITY OF GENEVA shall cause the Work to be performed and completed in a good and workmanlike manner, in accordance with said Plans and Specifications. The CITY OF

against all loss, claims and expenses, including, but not limited to, reasonable attorneys' fees, court costs and expenses of collection which may result from the performance of the Work. This indemnification shall include, but not be limited to, loss or destruction of property, including loss of use thereof, bodily injury, personal injury, sickness, disease, or death sustained by any person. Such obligation of the Contractor shall not be limited by the availability, limits, or coverage of insurance carried or required herein, or required by law to be carried.

b. The Contractor shall indemnify, protect and save harmless the CITY OF ST. CHARLES from and against any and all mechanic's liens or claims for lien arising out of the performance of the Work, including any actions brought or judgments rendered thereof, and from and against any and all loss, damage, liability, costs and expenses, including legal fees and disbursements, which the CITY OF ST. CHARLES may sustain or incur in connection therewith.

c. The Contractor shall include the interest of the CITY OF ST. CHARLES as an additional insured on the Contractor's comprehensive general liability insurance policy.

d. Contractor shall maintain at least one lane of traffic during construction of the project. The

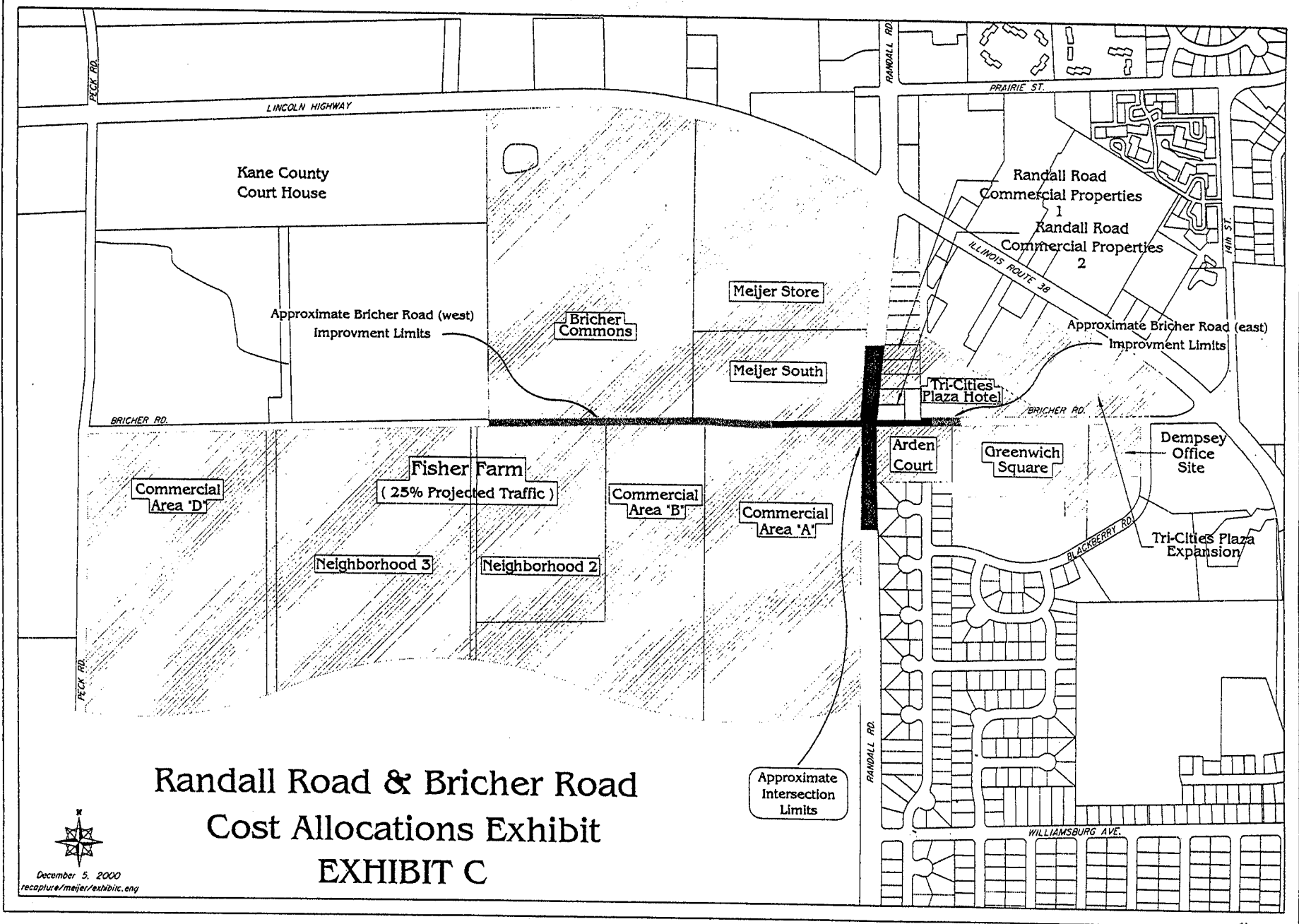
such requests and shall approve or object to such requests for change orders within seven (7) days of receipt of the request if the change order is \$4,000 or less and not later than the next City Council Meeting if greater than \$4,000. In the event of a request for a field change, the CITY OF ST. CHARLES' designated representative shall be authorized to approve or object to such requests. The CITY OF ST. CHARLES' designated representative shall be MARK KOENEN, or such other person as the CITY OF ST. CHARLES may so designate by written notice to the CITY OF GENEVA.

6. Prior to payout disbursements for the work, the CITY OF GENEVA shall submit copies of sworn General Contractor's statement and lien waivers relating to the requested disbursement. If the CITY OF ST. CHARLES is not satisfied with the adequacy or sufficiency of such statements and waivers, it shall notify the CITY OF GENEVA in writing of its objection and shall make no further disbursements pursuant to this Agreement until satisfied with the sufficiency of such statements and waivers.

C. All notices required hereunder shall be made in writing and at the following addresses:

City of Geneva: Thomas Talsma
 Director of Public Works
 1800 South Street
 Geneva, Illinois 60134

With a copy to: Charles A. Radovich
 312 West State Street
 Geneva, Illinois 60134



Randall Road & Bricher Road Cost Allocations Exhibit EXHIBIT C



December 5, 2000
recapture/meijer/exhibitc.eng

RECEIVED
MAY - 3 2001
ENGINEERING DEPT.