

**INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF
GENEVA AND GENEVA COMMUNITY UNIT SCHOOL DISTRICT NO. 304
REGARDING THE GENEVA FOX RIVER REDEVELOPMENT PROJECT AREA**

THIS AGREEMENT is made as of the ____ day of _____, 2016, by and between CITY OF GENEVA, an Illinois municipal corporation (the “City”) and GENEVA COMMUNITY UNIT SCHOOL DISTRICT NO. 304, a school district of the State of Illinois. Collectively, the City and the School District shall be referred to as the “Parties” and individually as a “Party”.

WHEREAS, the Parties are vested with certain authority pursuant to their intergovernmental cooperation powers under Article VII, Section 10 of the Illinois Constitution of 1970, and Section 1 *et seq.* of the Intergovernmental Cooperation Act [5 ILCS 220/1 *et seq.*], and pursuant to the provisions of the Illinois Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.* (the “Act”); and

WHEREAS, the City has initiated the process of creating within the School District’s boundaries a tax increment financing (“TIF”) district under the Act and in connection therewith has prepared a Redevelopment Plan and Project known as the Geneva Fox River Redevelopment Plan (the “Plan”) and will consider designation of a redevelopment project area (the “Project Area”) on land legally described in the Plan, and adoption of tax increment financing for the Project Area by ordinances duly passed by the City Council of the City; and

WHEREAS, the Plan is designed to facilitate and encourage the redevelopment of the area generally depicted in the map set forth in the Plan; and

WHEREAS, the School District recognize the long-term benefits and importance of development and redevelopment in the City; and

WHEREAS, the City anticipates that it will not be required to expend all Incremental Revenues (as defined herein) on redevelopment project costs and, thus, intends to declare a surplus pursuant to Section 11-74.4-7 of the Act; and

WHEREAS, the Parties desire to enter into an intergovernmental agreement for their mutual benefit and the benefit of the citizens and taxpayers of each of the Parties, and to resolve any differences over the adoption of the Plan, designation of the Project Area, and adoption of tax increment financing therefor and, through this Agreement, mutually provide for the best interests of their communities and constituents; and

WHEREAS, the City will commit to making certain payments to the School District and other overlapping taxing districts pursuant to the terms of this Agreement provided the School District will commit to waive any claims or objections relating to the City's desire to avail itself of tax increment financing, the designation of the Project Area, adoption of the Plan, the adoption of tax increment financing for the Project Area, and other matters set forth herein..

NOW, THEREFORE, in consideration of the mutual promises of the City and the School District, the Parties agree as follows:

1. Incorporation of Preambles. The preambles set forth above are hereby incorporated in this Agreement as though set forth in this Section 1.

2. Waiver of Objections. The School District hereby: (a) waives all objections to the Plan, the Project Area, and tax increment financing for the Project Area (“Geneva Fox River TIF District”) and, (b) agrees not to initiate or participate, directly or indirectly, in any challenge to the designation of the Project Area, the adoption of the Plan for the Project Area, the approval of tax increment financing for the Project Area, and the approval of any redevelopment

agreement(s) related to development within the Project Area (so long as such agreements do not conflict with the terms of this Agreement) or other actions taken by the City in respect thereto.

3. Annual Surplus Payments.

a. If the City adopts the Plan, it agrees, for each year of the Plan, to declare a “surplus” of all incremental taxes generated by the properties described as: 12-02-351-026 and 12-03-432-005 (the “Surplus Property”).

b. “Incremental Taxes” shall mean, the portion of the *ad valorem* real estate taxes arising from levies upon the Surplus Property by taxing districts that is attributable to the increase in the current equalized assessed value of the Surplus Property over the initial equalized assessed value of the Surplus Property as determined in accordance with Section 5/11-74.4-9 of the Act which has been paid to the Treasurer of the City for deposit by the Treasurer into the special tax allocation fund (“STAF”) of the Geneva Fox River TIF District established to pay redevelopment project costs and obligations incurred. Upon receipt of all Incremental Taxes for a given year from Kane County, the City shall annually declare a surplus based upon the Incremental Taxes generated by the Geneva Fox River TIF District before the payment or transfer of any funds from the STAF for any other purpose, and net of any refunds to the Kane County Treasurer.

c. In the event that the City Council approves a Redevelopment Agreement for all or a portion of the Surplus Property, this Section shall null and void as to that portion of the Surplus Property being redeveloped.

4. Assessment appeals. The City and the School District shall communicate with each other regarding the defense of any assessment appeal from a property located within the boundaries of the Geneva Fox River TIF District so as to preserve incremental EAV for the

operation of Geneva Fox River TIF District and the payment of surplus amounts, as described above. In the event in any year an assessment appeal results in a real estate tax refund for any portion of the Surplus Property, the amount of said refund shall be deducted from the surplus declared by the City for next ensuing year or years following the refund.

5. Authority and Drafting. Each Party agrees not to raise lack of authority as a defense in any action brought by the other or any third party regarding this Agreement. Each Party and its counsel have participated in the drafting of this Agreement and, therefore, none of the language contained herein shall be presumptively construed in favor of or against either Party.

6. Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

7. Further Performance. Each Party shall, at the request and expense of the other, execute and deliver any further documents and do all acts and things as each Party may reasonably require to carry out the true intent and meaning of this Agreement.

8. Final Payments. Subject to Sections 3 and 4, payments made under this Agreement shall be final and non-refundable.

9. Writing Requirement. No waiver of any term or condition of this Agreement shall be binding or effective for any purpose unless expressed in writing and signed by the Party making the waiver, and then shall be effective only in the specific instances and for the purpose given.

10. Default. In the event of a default, the non-defaulting Party shall be entitled to recover any and all reasonable attorney's fees and costs incurred by the non-defaulting Party in enforcing the terms of this Agreement against the defaulting Party.

11. Complete Agreement. This Agreement expresses the complete and final understanding of the Parties with respect to its subject matter and may not be amended or modified except by a written agreement executed by the Parties. This Agreement supersedes all prior agreements, negotiations, and discussions relative to the subject matter hereof and fully integrates the agreement of the Parties.

12. Effective Date. The effective date of this Agreement as reflected above shall be the date that the last of the Parties executes the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officials as of the date of the Agreement herein set forth

GENEVA COMMUNITY UNIT SCHOOL
DISTRICT NO. 304, Kane County, Illinois

CITY OF GENEVA, Kane County,
Illinois

By: _____
President

By: _____
Mayor

Attest: _____
Secretary

Attest: _____
City Clerk

Date: _____

Date: _____