

2013-0-13

**AN ORDINANCE AMENDING AN ORDINANCE PROVIDING FOR A FEASIBILITY STUDY FOR THE PROPOSED TRIANGLE AREA TAX INCREMENT ALLOCATION FINANCING DISTRICT**

*WHEREAS*, the Village of Wauconda (the "Village") is studying the possible designation of certain real property, as described in this Ordinance, located within the Village (the "Property") as a "redevelopment project area" as that term is defined in the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq. (the "Act"); and

*WHEREAS*, the boundaries of the Property are to be determined, and defined through professional consulting assistance and in furtherance of proposing a "Redevelopment Plan and Project"; a general map of the subject Properties is attached hereto as Exhibit "A"; and

*WHEREAS*, on January 15, 2013 the Corporate Authorities passed "An Ordinance Providing for a Feasibility Study for the Proposed Triangle Area Tax Increment Allocation Financing District" and said ordinance being designated as Ordinance No. 2013-0-01; and

*WHEREAS*, the Corporate Authorities have determined that the study area described in Ordinance No. 2013-0-01 should be enlarged to include adjacent and nearby other properties within the description of the Property to be studied; and

*WHEREAS*, the general purpose or purposes of the desired "Redevelopment Plan and Project" pertaining to the Property shall be developed consistent with the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq. and as described in the Exhibit "B" which was attached to Ordinance 2013-0-01 and by this reference is hereby incorporated into this Ordinance as Exhibit "B"; and

*WHEREAS*, a the general description of tax increment allocation financing under the Act was attached to Ordinance 2013-0-01 as Exhibit "C" and by this reference is hereby incorporated into this Ordinance as Exhibit "C"; and

*WHEREAS*, it is in the best interests of the Village to take the actions set forth below.

***NOW, THEREFORE, BE IT ORDAINED*** by the President and Board of Trustees of the Village of Wauconda, Lake County, Illinois, as follows:

**SECTION I:** The statements set forth in the preamble to this Ordinance are found to be true and correct and are adopted as part of this Ordinance.

**SECTION II:** The Village hereby accepts the May 29, 2013 revised "Proposal for Tax Increment Financing (TIF) District Review and Approval Services" and authorizes and directs Rolf Campbell and Associates, a division of Manhard Consulting, to prepare a feasibility study to include the enlarged study area, redevelopment plan and housing study and further authorizes the Village's appointed professional officers to assist in the development and implementation of the study. Pursuant to Section 11-74.4-4.1 of the Act, the feasibility study shall be a preliminary report to assist the Village in determining whether or not tax increment allocation financing is

appropriate for effective redevelopment of the proposed redevelopment project area as hereby enlarged.

**SECTION III:** The Village hereby designates its Director of Planning and Zoning, Mr. Chris Miller, as the municipal officer who shall manage and coordinate the administrative details attendant to the development of the reports, studies and other matters preliminary to a Redevelopment Project and Plan and the person who can be contacted for additional information about the proposed redevelopment project area and who should receive all comments and suggestions regarding the redevelopment of the areas to be studied.

**SECTION IV:** The Village Director of Planning and Zoning and his/her designee is authorized and directed to immediately send a copy of this Ordinance to all taxing districts that would be affected by the designation of the Property as a redevelopment project area.

**SECTION V:** To the extent any provision of this Ordinance conflicts with any provision of Ordinance 2013-0-01, then the provisions of this Ordinance shall prevail and to the extent of such conflict said Ordinance 2013-0-01 is hereby amended. If any provision of this Ordinance is held to be invalid by a court of competent jurisdiction, then that provision shall be stricken from this Ordinance and the remainder of this Ordinance shall continue in full force and effect to the extent possible.

**SECTION VI:** This Ordinance shall be in full force and effect from and after its passage in the manner provided by law.

**SECTION VII:** Nothing in this Ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action arising, acquired or existing under any act or ordinance or portion thereof hereby repealed or amended by this ordinance; nor shall any just or legal right, claim, penalty or remedy of any character of the corporate authority existing on the effective date hereof be lost, impaired or affected by this Ordinance.

**SECTION VIII:** This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as required by law.

**SECTION X:** That the costs for establishing the TIF District, as revised, are not to exceed a total of \$110,500.00 as shown on Exhibit "D" attached hereto and incorporated herein.

**SECTION XI:** To the fullest extent allowed and provided by law, the Village general revenue fund shall be reimbursed for the Village's qualifying expenses from the incremental revenue fund of the TIF District if and when such fund is established and revenues are available therefrom.

Passed this 18<sup>th</sup> day of June, 2013.

| Ayes:                | Nays: | Absent/Abstain: |
|----------------------|-------|-----------------|
| Lincoln F. Knight    | ✓     | _____           |
| John F. Barbini Ed.D | ✓     | _____           |
| Teri Burke           | ✓     | _____           |
| Linda Starkey        | ✓     | _____           |
| Ken Arnsward         | ✓     | _____           |
| Chuck Black          | ✓     | _____           |

APPROVED:

By: [Signature] Date: 25JUN13  
FRANK A. BART, Mayor

ATTEST:

By: [Signature]  
GINA STRELECKI, Village Clerk

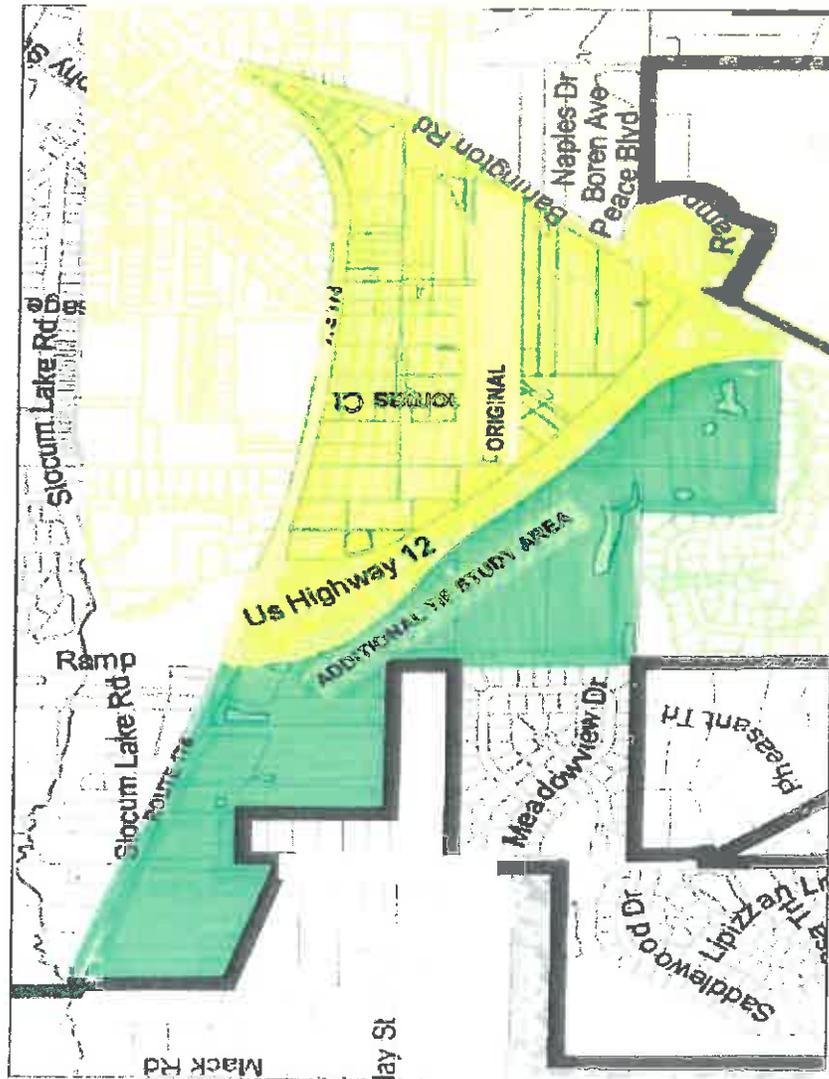
Presented and read, or reading having been waived, at a duly convened meeting of the Corporate Authorities on June 18, 2013.

I hereby certify that the above ordinance was published in pamphlet form on June 18, 2013 as provided by law.

[Signature]  
GINA STRELECKI, Village Clerk



**EXHIBIT "A"**  
**REVISED MAP OF GENERAL AREA TO BE STUDIED**



## EXHIBIT "B"

### PURPOSES OF PROPOSED REDEVELOPMENT PLAN AND PROJECT

#### The Redevelopment Plan:

The Village recognizes the need for implementation of a strategy to revitalize properties within the boundaries of the RPA and to stimulate and enhance private development. Commercial and retail development is a key component of the strategy. The needed private investment will be possible only if Tax Increment Financing (TIF) is adopted pursuant to the terms in the Tax Increment Allocation Redevelopment Act, Illinois Compiled Statutes, chapter 65, Section 5/11-74.4-1 et. seq., as amended. Incremental property tax revenue generated by the development will play a decisive role in encouraging private development. Site conditions that may have precluded intensive private investment in the past will be eliminated. Ultimately, the implementation of the Redevelopment Plan and Project will benefit the Village and all the taxing districts, which encompass the RPA in the form of a significantly expanded tax base.

## EXHIBIT "C"

### GENERAL DESCRIPTION OF TAX INCREMENT ALLOCATION FINANCING:

Tax Increment Financing (TIF) allows municipalities to carry out redevelopment activities on a local basis. The technique is used to pay for the public improvements and other services needed to prepare the Redevelopment Project Area for private investment. Through TIF, a community captures the increase in local real estate taxes, which result from the Redevelopment Project Areas. This increase in taxes may be used to pay for the public cost involved in the project.

Under TIF, the current equalized assessed valuation of all taxable real estate within the designated area is "frozen" at that level. This is the base EAV. Taxes which are levied on the base EAV in the Redevelopment Project Area, including the County, school districts, township, etc.; however, the growth in property tax revenues as a result of the private investment in the Redevelopment Project Area (the tax increment) is put into a special "tax allocation fund." These funds are then used to pay for the public investment and/or reimburse private investment made in the Redevelopment Project Area.

**EXHIBIT "D"**  
**ESTIMATED COSTS**



**EXHIBIT "D"**

To: Mayor Bart and Village Trustees  
Village of Wauconda

Fr: Chris Miller, Director of Planning & Zoning

Date: June 11, 2013

Re: Economic Development Incentives  
Tax Increment Finance District (TIF)  
**Amended Costs to form a TIF District**

Pursuant to discussions held at the June 4, 2013 Joint Economic Development and Building & Zoning Committee Meeting the Village is proposing to expand the TIF Study area to include property west of Route 12 and along the south side of Route 176. Costs associated with expanding the TIF Study area is estimated at approximately \$13,000 including the following:

- RCCA Services – \$9,500.00 (Amend Feasibility Study, Housing Impact Study, Redevelopment Plan and including research and data collection)
- RHMG Services - \$3,000.00 (Amend TIF Area Survey and Legal Description)
- Postage - \$500.00 (estimated allowance)

The following table provides a total cost estimated in forming the TIF District:

| Studies / Costs   | Original Study Area<br>Estimated Costs | Expanded Study Area<br>Estimated Costs |
|---|--|--|
| Feasibility Study, Re-Development Plan,<br>& Housing Impact Study<br>(RCCA/MCL 12/6/12 Proposal)<br>(RCCA/MCL 5/29/13 Proposal) | \$39,000 to \$45,000                   | \$9,500                                |
| Legal Services  | \$24,000 to \$27,000                   | -                                      |
| Engineering Services  | \$5,000 to \$10,000                    | \$1,000                                |
| Legal Description and Survey  | \$3,500 to \$4,500                     | \$2,000                                |
| Notices / Publications  | \$1,000 to \$3,000                     | \$500                                  |
| Village Staff Time  | \$6,000 to \$8,000                     | -                                      |
| Sub-total of Estimated Costs  | \$78,500 to \$97,500                   | \$13,000                               |
| <b>Total Cost Estimate</b>  | <b>\$110,500</b>                       |  |



May 29, 2013

Mr. Chris Miller, Director of Planning  
 Village of Wauconda  
 101 N. Main Street  
 Wauconda, Illinois 60084

**RE: PROPOSAL FOR EXPANDED STUDY AREA OF PREVIOUSLY APPROVED STUDY AREA FOR TAX INCREMENT FINANCING (TIF) DISTRICT REVIEW AND APPROVAL SERVICES**

Dear Chris:

Pursuant to our review meeting on May 29 at the Village Hall, Rolf C. Campbell & Associates, a Division of Manhard Consulting, Ltd., (RCCA/Manhard) is pleased to submit this revised Proposal to provide services for assisting in the review and approval process for the establishment of a new tax increment financing district (TIF) for a previously approved study area with an additional new expanded study area portion in the Village of Wauconda (Village; Client). The previously approved TIF District study area included the roughly triangular area bound by IL. Route 176 (Liberty Street) on the north, Barrington Road on the southeast, and U.S. Highway 12 on the southwest, which consists of approximately ninety tax parcels on approximately 120 acres including adjacent right-of-way areas, and the new expanded study area includes the area west of U.S. Route 12 in general fronting along U.S. Route 12 and IL. Route 176, approximately twenty-six tax parcels on approximately 100 acres. Phase IA - Expansion Addendum outlines the additional scope of services for this revised proposal.

Per our discussions, Village Staff would like to coordinate Village Staff versus Village Consultant assignments in order to moderate costs of the TIF review and approval process and Village staff may be able to take an active part in some of the research and documentation associated with the process. As such, an initial step will be to review with Village Staff the distribution of labor on various task and research items. Within that context, RCCA/Manhard offers to provide the following services on an hourly not to exceed basis to assist with completing the listed task:

### Scope of Services:

#### Phase IA - Expanded Study Area Portion

1. To the extent necessary the services from Phase I will be briefly reviewed with Village Staff to confirm that the TIF policies from the previously approved study area are also applicable to the expanded study area portion and the following specific services will be completed for the expanded study area portion.
  - A. Review and revise Eligibility Study for the inclusion of an additional 26 PINs west of U.S. Route 12 (approximately 100 acres).
  - B. Review and revise Housing Impact Study to include analysis of housing units potentially located on the 26 PINs west of U.S. Route 12 (approximately 100 acres).



- C. Review and revise Redevelopment Plan to include the 26 PINs west of U.S. Route 12 (approximately 100 acres).
- D. Provide support and assistance to Village staff and consultants resulting in expansion of the study area.

**Phase I (Previously Approved Study Area) -  
Eligibility Study, Housing Impact Study, & Redevelopment Plan**

These Phase I services have been substantially completed in draft form and have been reviewed by Village Staff and have been submitted to the Village Attorney with the Village Attorney's review in process.

The following items are for informational only purposes reviewing the steps completed for the previously approved study area and the general review steps needed to be completed and applied to the newly expanded study area portion.

**1. Initial Meetings:**

- A. RCCA/Manhard will attend an initial meeting with Village Staff and other Village Consultants to outline a proposed work schedule, review necessary information and data, outline and assign tasks, and other initial project steps.
- B. As requested, assist Village staff with meetings with other governmental taxing bodies located in the TIF District to review the process and goals for seeking to establish a TIF District.

**2. Eligibility Study:**

- A. Outline and create field review inventory map and worksheets for documenting eligibility criteria.
- B. Setup initial database to record findings and map location of eligibility criteria.
- C. Gather, review, analyze, and request data available from other sources including, but not limited to, the Village, other Village Consultants, County, Township, and other such sources.
- D. Conduct field work to document eligibility criteria on a lot by lot basis.
- E. Analyze and synthesize field work findings with other reviewed data.
- F. Draft Eligibility Study documenting analysis and findings.
- G. Review with Village Staff Draft Eligibility Study.
- H. Conduct one (1) set of revisions to finalize Eligibility Study.
- I. Document will be provided in PDF format for the Village's use and ability to publish.

**3. Housing Impact Study:**

- A. Outline data items to verify in conjunction with field inventory review.
- B. Research, review, and/or request data from Village or other governmental jurisdictions in regards to types of dwelling units, number and types of rooms in dwelling units, occupancy of dwelling units, and racial and ethnic composition of dwelling unit residents.
- C. Review with Village Staff potential TIF policies with respect to dwelling units to be removed/relocated, and possible type and extent of resident relocation assistance.
- D. Review and identify replacement housing alternatives in terms of type, location, and cost.
- E. Draft a Housing Impact Study documenting analysis and findings.
- F. Review with Village Staff Draft Housing Impact Study.



- G. Conduct one (1) set of revisions to finalize Housing Impact Study.
- H. Document will be provided in PDF format for the Village's use and ability to publish.

**4. Redevelopment Plan:**

- A. Provide a map to the Village for it to obtain a legal description for the area to be designated as a TIF District as determined by the Eligibility Study. Note that the area of the TIF District and its legal description are subject to further changes per review of the Joint Review Board and Public Hearing meeting processes.
- B. Review with Village Staff goals and objectives for the proposed TIF District.
- C. Review and research the Village Comprehensive Plan and other planning documents for elements to include in the Redevelopment Plan.
- D. Review with Village Staff and Village Consultants possible redevelopment costs and projects and possible funding methods.
- E. Develop maps and exhibits outlining finalized TIF District with PINs and conformance with the Comprehensive Plan and generalized land uses.
- F. Research and outline support concerning "But For" section of the redevelopment plan.
- G. Research and outline assessment of financial impact of the potential TIF District plans and programs on any taxing district.
- H. Assist with documenting most recent equalized assessed valuation of the TIF District and projecting equalized assessed valuation.
- I. Draft a Redevelopment Plan containing the require statutory elements.
- J. Review with Village Staff Draft Redevelopment Plan.
- K. Conduct one (1) set of revisions to finalize Redevelopment Plan per Village staff review.
- L. Conduct one (1) set of revisions to finalize Redevelopment Plan per Joint Review Board comments.
- M. Conduct one (1) set of revisions to finalize Redevelopment Plan per Public Hearing comments.
- N. Document will be provided in PDF format for the Village's use and ability to publish.

**Phase II - Meetings, Review, and Approval**

Applies to the previously approved study area and the newly expanded study area portions.

**1. Noticing, Meeting Facilitation, and Overall Coordination:**

- A. Per our discussions, the Village via Village Staff intends to review, research, perform, and pay for all required noticing and announcements for the TIF District approval process. As applicable, RCCA/Manhard will assist with mapping and review of notices as requested.
- B. RCCA/Manhard will assist Village Staff with creating a timeline for meetings and required notices.

**2. Housing Impact Study Meeting:**

- A. Review meeting objectives with Village Staff and assist with agenda. Meeting may be in either a standard meeting format or open house format.
- B. Prepare information and items to communicate the need and plan for the TIF District and the findings of the Housing Impact Study.
- C. Review for and present at meeting.



3. **Joint Review Board Meeting:** (Note may require multiple meetings)
  - A. Review and assist Village Staff in identifying and notifying Joint Review Board Members made up of the TIF District area taxing districts and a public member.
  - B. Review with Village Staff objectives for meeting and assist with agenda.
  - C. Prepare brief presentation regarding Eligibility Study, Housing Impact Study, & Redevelopment Plan.
  - D. Attend and present information and analysis regarding proposed TIF District and assist with meeting facilitation.
  
4. **Public Hearing** (Note may require continued Public Hearing meetings)
  - A. Review with Village Staff objectives for meeting and assist with agenda.
  - B. Revise presentation, as may be appropriate, from Joint Review Board regarding Eligibility Study, Housing Impact Study, & Redevelopment Plan.
  - C. Attend and present information and analysis regarding proposed TIF District and assist with meeting facilitation.

**Phase III - Post-Approval**

1. **Finalization & Reporting of Documents:**
  - A. Finalize documents as described in Phase I and provide PDF format of documents to Village Staff for recording TIF District as necessary.
  - B. Assist Village Staff with completing any required forms as may be necessary.
  
2. **Continuing Implementation:**

Provide continuing technical assistance on planning, zoning, economic development, and other services as requested on the implementation and development of the TIF District.

**Cost of Services:**

To complete the above outlined Scope of Services, the following represents our estimated total fees: Note Phase I, II, & III were previously approved by the Village on January 15, 2013 and only Phase IA are added as an additional cost at this time.

| Phases  | Cost   |
|---|--|
| Phase I - Eligibility Study, Housing Impact Study, & Redevelopment Plan | \$33,000 - \$37,000                              |
| Phase IA - Expanded Study Area Portion                                  | \$9,500  |
| Phase II - Meetings, Review, and Approval                               | \$ 6,000 - \$ 8,000<br>(Estimated Range of Fees) |
| Phase III - Post Approval   | Per Hourly Rates                                 |

The listed fees for Phase I and Phase IA represent an upper end "not to exceed" fee. The listed fees for Phase II represent our estimated range of fees based on a routine, unchallenged, and non-lengthy approval process, and if RCCA/Manhard perceives exceeding this amount, we will notify and meet with Village Staff to review the conditions and arrangements associated with any greater expenditures. As discussed in the introduction portion of this Proposal, RCCA/Manhard will work



with Village Staff to distribute tasks between Village Staff and RCCA/Manhard to moderate costs of the TIF District review and approval process as practical.

The outlined fees will be billed monthly at the following hourly rates as follows:

| Position                           | Hourly Rate |
|------------------------------------|-------------|
| Director of Community Development: | \$ 110.00   |
| Senior Planner:                    | \$ 95.00    |
| Associate Planners & Designers:    | \$ 75.00    |

In addition to RCCA/Manhard's costs, the Village needs to recognize that it will occur additional costs in terms of Village Staff time and expenditures related to Village Attorney, Engineer, and other Consultant services, noticing costs, legal description preparation, publication costs, and other similar costs necessary to review and approve the TIF District.

**Project Timeline:**

Per our discussion, it is our understanding that it is a Village objective to attempt an expedited approval process for the proposed TIF District with a timeline as determined in conjunction with Village staff. As we have discussed, typically TIF Districts require approximately one year to be fully reviewed and approved due to statutory timing requirements and the required participation of other tax districts and various other parties. Per the Scope of Services, an initial task item will be to work with Village Staff to create a proposed timeline for the review and approval process. RCCA/Manhard commits to meet this proposed timeline with respect to the items outlined in the above listed Scope of Services.

The terms of the attached "General Terms & Conditions" dated March 1, 2010, which Client hereby acknowledges receiving, are incorporated and made a part of this Proposal. Billing will be on an hourly basis consistent with the Cost of Services. If the above is acceptable, please have this Proposal executed. We will begin work as soon as we receive an executed copy of this Proposal. This Proposal will be null and void if not accepted by July 15, 2013.

Thank you again for the opportunity to submit this proposal. Should you have any questions, please do not hesitate to contact us.

Yours truly,

ROLF C. CAMPBELL & ASSOCIATES, A DIVISION OF MANHARD CONSULTING, LTD.

Al Maiden  
Al Maiden, AICP  
Director of Community Development

Jeremiah Yeksa  
Jeremiah Yeksa, AICP  
Senior Planner

AM/JY

The undersigned is the authorized agent of the municipality.

ACCEPTED: VILLAGE OF WAUCONDA

By: [Signature]  
(Authorized Representative)  
Title: PRESIDENT  
Date: 26 JUN 13

## GENERAL TERMS AND CONDITIONS

March 1, 2010

1. **ONE INSTRUMENT/INCONSISTENCIES** – These GENERAL TERMS AND CONDITIONS, and the RCCA/Manhard PROPOSAL to which these terms are attached (collectively this "Agreement") shall be deemed one instrument. Wherever there is a conflict or inconsistency between the provisions of these GENERAL TERMS AND CONDITIONS, the PROPOSAL, and any plans or specifications, as applicable, the provisions provided for in these GENERAL TERMS AND CONDITIONS shall, in all instances, control and prevail. These GENERAL TERMS AND CONDITIONS shall apply to the work provided in the PROPOSAL to which this is attached or an amendment or modification, including an AGREEMENT FOR ADDITIONAL SERVICES.
2. **ENTIRE AGREEMENT** – These GENERAL TERMS AND CONDITIONS, the PROPOSAL, and any plans or specifications represent the entire Agreement between the Parties and supercedes any and all prior oral or written understandings between the Parties. Changes to these GENERAL TERMS AND CONDITIONS shall only be binding when in writing and agreed to by both parties.
3. **MEDIATION** – All disputes between relating to this Agreement or the Project (as defined in the Proposal) shall first be submitted to mediation with a mediator selected by the Parties. The costs of the mediator shall be split evenly between Client and RCCA/Manhard. If the Client and RCCA/Manhard cannot agree on a mediator, then each of Client and RCCA/Manhard shall nominate a mediator and the two nominated mediators shall select the ultimate mediator. Client and RCCA/Manhard shall include a similar mediation provision in all of their respective agreements with other parties regarding the Project and will require all such other persons or entities to include a similar mediation provision in all agreements with their respective subcontractors, subconsultants, suppliers and fabricators. Such mediation shall be a condition precedent to a party filing any judicial or other proceeding against the other, except with regard to delinquent fees owed to RCCA/Manhard.
4. **AUTHORIZATION TO SIGN** – The person signing this Agreement represents and warrants that he/she is signing this Agreement on behalf of the Client and is authorized to enter into this Agreement on the Client's behalf.
5. **BREACH AND COST OF COLLECTION** – In the event Client breaches the terms of this Agreement, RCCA/Manhard shall be entitled, in addition to the specific remedies provided for in this Agreement, to pursue all remedies available at law or in equity. Client further agrees that RCCA/Manhard shall be entitled to recover all costs incurred in enforcing any provision of this Agreement, including court costs and reasonable attorney's fees. All payments received from the Client will be credited first to interest, then to the cost of enforcement, and then to the amount due to RCCA/Manhard.
6. **CHANGES IN REGULATORY ENVIRONMENT** – The services provided by RCCA/Manhard under this Agreement were determined based upon the applicable municipal, county, state and/or federal regulations, codes, laws and requirements that were in existence on the date of this Agreement. Any material additions, deletions or changes in the regulatory environment, which require an increase in the scope of services to be performed, will be an Additional Service.
7. **CONTROLLING LAW** – This Agreement is to be governed by the laws of the State of Illinois.
8. **CURE PERIOD** – If during the project term, Client observes or becomes aware of any improper service which has been provided by RCCA/Manhard, Client agrees to immediately notify RCCA/Manhard of the same, in writing. RCCA/Manhard shall then have five working days to cure, or begin to cure in a diligent manner, such improper service before Client may exercise its rights under any default and remedy provision provided for in this Agreement, including the right to take corrective action prior to the termination of the cure period. If Client fails to notify RCCA/Manhard of any defects within thirty (30) working days of learning of the defects, any objections to RCCA/Manhard's work shall be waived. RCCA/Manhard will not accept any backcharges unless Client has complied with the foregoing and allowed RCCA/Manhard the opportunity to cure any problem.
9. **DELAYS** – Client agrees that RCCA/Manhard shall not be responsible for damages arising directly from any delays for causes beyond RCCA/Manhard's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes, severe weather disruptions or other natural disasters; fires, riots, war or other emergencies or acts of God; failure of any government agency to act in a timely manner; failure of performance by the Client or the Client's contractors or consultants; or discovery of any hazardous substances or differing site conditions. In addition, if delays resulting from any such causes increase the cost or time required by RCCA/Manhard to perform its services in an orderly and efficient manner, RCCA/Manhard shall be entitled to an equitable adjustment in schedule and/or compensation.
10. **ENGINEER'S OPINION OF PROBABLE COST** – RCCA/Manhard's Opinions of Probable Cost provided for herein, if applicable, are to be made on the basis of RCCA/Manhard's experience and qualifications and represents RCCA/Manhard's judgment as an experienced and qualified professional engineer generally familiar with the construction industry. However, because RCCA/Manhard has no control over the cost of labor, materials, equipment or services furnished by others, the Contractor's methods of determining prices, or competitive bidding or market conditions, RCCA/Manhard cannot and does not warrant, represent or guarantee that proposals, bids or actual construction cost will not vary from RCCA/Manhard's Opinions of Probable Cost. If Client wishes greater assurance as to probable construction cost, Client shall employ an independent cost estimator.
11. **INDEMNITY** – To the fullest extent permitted by law, the Client shall waive any right of contribution and shall indemnify and hold harmless RCCA/Manhard, its agents, employees and consultants from and against all claims, damages, losses and expenses, including but not limited to, attorneys' fees, arising out of or resulting from or in connection with the performance of the work which results from Client's negligence or the negligence of Client's agents. This indemnity shall not require the Client to indemnify RCCA/Manhard for the negligent acts of RCCA/Manhard or its agents.
12. **CLIENT'S INSURANCE COVERAGE** – The Client shall obtain, before work is commenced on the site, and maintain throughout the duration of the projects, insurance in a company or companies acceptable to RCCA/Manhard that will indemnify RCCA/Manhard from all claims of bodily injury or property damage that may occur at the site during the project or arising out of the work, including, at a minimum, the following coverages:
  - a. Workmen's compensation and occupational disease insurance covering all employees in statutory limits who perform any obligations assumed under Contract.
  - b. Public liability and property damage liability insurance covering all operations under Contract; the limits for bodily injury or death not less than \$2,000,000 for each accident; for property damage, not less than \$500,000 for each accident.

- c. Automobile liability insurance on all self-propelled vehicles used in connection with the Project, whether owned, non-owned or hired; public liability limits of not less than \$1,000,000 for each accident.
- d. RCCA/Manhard shall be named as an additional insured on all comprehensive general liability and automotive liability policies. These policies shall further state: The coverage afforded the additional insured shall be primary insurance for the additional insured with respect to claims arising out of operations performed on the project. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the company's liability under this insurance policy shall not be reduced by the existence of such other insurance.
- e. All certificates must state that the coverage will not be terminated or reduced without 30 days advanced notice by certified mail to RCCA/Manhard
- f. The Client shall supply RCCA/Manhard with a Certificate of Insurance evidencing compliance with the above requirements prior to beginning construction.

13. **RCCA/MANHARD'S INSURANCE COVERAGE** – Before work is commenced on the site, and throughout the duration of the project, RCCA/Manhard shall maintain the following insurance coverage so as to indemnify Client from all claims of bodily injury or property damage that may occur from RCCA/Manhard's negligence:

- a. Workmen's compensation and occupational disease insurance covering all employees in statutory limits who perform any obligations assumed under Contract.
- b. Public liability and property damage liability insurance covering all operations under contract; the limits for bodily injury or death not less than \$2,000,000 for each accident; for property damage, not less than \$500,000 for each accident.
- c. Automobile liability insurance on all self-propelled vehicles used in connection with the Project, whether owned, non-owned or hired; public liability limits of not less than \$1,000,000 for each accident.

At the Client's request, RCCA/Manhard shall (i) provide a Certificate of Insurance evidencing RCCA/Manhard's compliance with the above requirements, and (ii) include Client as an "additional insured" on the insurance policy.

14. **LIMITATION OF RCCA/MANHARD'S LIABILITY** – In recognition of the relative risks of the Project to the Client and RCCA/Manhard, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of RCCA/Manhard and RCCA/Manhard's consultants to Client, to Contractor and any Subcontractors on the Project and to those claiming by or through Client for any and all claims, losses, costs, damages or claim expenses from any cause or liability of RCCA/Manhard's or RCCA/Manhard's consultants to all of those named herein with respect to the Project shall not exceed \$50,000.00 or the agreed upon professional services fee, whichever is greater. Should Client desire a greater limitation of liability it is available for an additional fee as agreed to in writing by Client and RCCA/Manhard

Client acknowledges and understands that RCCA/Manhard's liability exposure for potential claims related to its performance of services is being specifically limited by this Agreement, and that Client's potential recovery in a claim situation is limited to the amount herein. Client agrees that based upon RCCA/Manhard's fee and services, it is unreasonable to hold RCCA/Manhard responsible for liability exposure greater than the set limit.

15. **INFORMATION TO BE PROVIDED TO RCCA/MANHARD** – Client agrees to provide RCCA/Manhard with such site information as may be needed to enable RCCA/Manhard to perform its services. Such information may include but shall not be limited to: latest plat of record; current title report and the documents contained therein; previous reports; title search report/chain-of-title documents; copies of environmental permits, registrations, liens, or cleanup records for the property; building plans and specifications; location, elevation and sizes of existing gas, telephone, electrical, street lighting and cable television lines on-site and off-site; boundary survey; wetland delineation; soil borings; archaeological phase 1 survey; first floor foundation plan and such other information as may be requested by RCCA/Manhard, from time to time. Client shall not be responsible for providing site information which RCCA/Manhard has specifically agreed to provide in its Proposal.

16. **RCCA/MANHARD'S RELIANCE ON INFORMATION PROVIDED** – RCCA/Manhard may rely on the accuracy and completeness of any information furnished to RCCA/Manhard by or on Client's behalf. Furthermore, Client agrees to hold RCCA/Manhard harmless from any engineering errors, including but not limited to, grading, earthwork analysis and off-site stormwater outlets, resulting from inaccurate site information which is provided by Client, including topographical surveys which have been prepared by consultants other than RCCA/Manhard

17. **PAYMENT** – Invoices are due within thirty days of rendering. Within thirty days of receipt of invoice, Client shall examine the invoice in detail to satisfy themselves as to its accuracy and completeness and shall raise any question or objection that Client may have regarding the invoice within this thirty-day period. After sixty (60) days from receipt of invoice, Client waives any question or objection to the invoice not previously raised. If Client fails to make any payment due RCCA/Manhard for services and expenses within thirty days after receipt of RCCA/Manhard's invoice therefore, the amounts due RCCA/Manhard will be increased at the rate of 1.0 percent per month (or the maximum rate of interest permitted by law, if less), from said thirtieth day. In addition, RCCA/Manhard may, after giving notice to Client, suspend services under this Agreement until RCCA/Manhard has been paid in full all amounts due for services, expenses and charges. In the event RCCA/Manhard elects to suspend its services, and after receipt of payment in full by Client, RCCA/Manhard shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for RCCA/Manhard to resume performance. In addition, prior to commencing such services, RCCA/Manhard shall have the right, from time to time, to require Client to provide a retainer payment for services to be rendered. RCCA/Manhard shall have no liability to Client for any costs or damages incurred as a result of such suspension that is caused by Client.

18. **PERMITS AND FEES** – Unless the Proposal specifically provides otherwise, Client shall be responsible for paying all application and permit fees and obtaining all permits. RCCA/Manhard does not warrant, represent or guarantee that the permits or approvals will be issued.

19. **RIGHTS-OF-WAY & EASEMENTS** – Client shall be responsible for obtaining (or vacating) all right-of-way, easements, real covenants and/or agreements necessary for the proper development of the property, including but not limited to right-of-way and easements which may be necessary for roadway and access improvements; stormwater conveyance and detention; sanitary sewer collection, pumping and treatment facilities; water distribution, treatment or storage facilities; and temporary construction access.

20. **REIMBURSABLES** – Reimbursable expenses shall mean one hundred eighteen percent (118%) of all costs incurred by RCCA/Manhard relative to the Project, including without limitation all outside consultants' fees, reproduction costs, messenger or special mail service, and other Project-related expenses.

21. **SEVERABILITY** – If any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.
22. **STANDARD OF CARE** – RCCA/Manhard will strive to perform its services in accordance with a manner consistent with the level of care and skill ordinarily exercised by other Design Professionals in the same locale.
23. **TERMINATION** – This Contract shall terminate at the time RCCA/Manhard has completed its services for Client, or prior to that time, if one party provides to the other party written notice, whereby such termination date shall be effective seven (7) days after receipt of such notice. Client agrees to pay for all services, expenses and charges, as agreed, which have been incurred by RCCA/Manhard through the date of termination.
24. **THIRD PARTY BENEFICIARY** – If Client is a contractor for the owner of the property, the parties acknowledge that RCCA/Manhard is intended to be a third party beneficiary of the construction contract entered into between owner and Client.
25. **USE OF DOCUMENTS AND ELECTRONIC DATA** – All documents (including drawings and specifications) as well as electronic data (including designs, plans or data stored in machine readable form) that are provided to Client are instruments of service with respect to the Project. Client agrees not to reuse or make any modification to the documents without the prior written authorization of RCCA/Manhard. The authorized reproduction of the documents/electronic data from RCCA/Manhard's system to an alternate system cannot be accomplished without the introduction of inaccuracies, anomalies and errors, and therefore, RCCA/Manhard cannot and does not make any representations regarding such compatibility. With respect to such reproduction or unauthorized use, Client agrees to indemnify and hold RCCA/Manhard harmless from all claims, damages, losses and expenses, including reasonable attorneys' fees and costs, arising from Client's unauthorized use, misuse, modification or misinterpretation of the documents or electronic data.
26. **WAIVER OF CONSEQUENTIAL DAMAGE** – Client and RCCA/Manhard mutually agree to waive all claims of consequential damages arising from disputes, claims or other matters relating to this Agreement.
27. **RCCA/MANHARD'S SITE VISITS** – If requested by Client or as required by the Proposal, RCCA/Manhard shall visit the site at intervals appropriate to the various stages of construction as RCCA/Manhard deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of contractor's work. Construction staking or survey control staking is not considered a site visit. Such visits and observations by RCCA/Manhard are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve inspections of the work beyond the responsibilities specifically assigned to RCCA/Manhard in this Agreement, but rather are to be limited to spot checking, and similar methods of general observation of the work based on RCCA/Manhard's exercise of professional judgment. Based on information obtained during such visits and such observations, RCCA/Manhard shall endeavor to determine in general if such work is proceeding in accordance with the contract documents and RCCA/Manhard shall keep Client informed of the progress of the work.

The purpose of RCCA/Manhard's visits to the site will be to enable RCCA/Manhard to better carry out the duties and responsibilities assigned to and undertaken by RCCA/Manhard hereunder including, but not limited to, visits during the Construction Phase and the Surveying Phase. RCCA/Manhard shall not, during such visits or as a result of such observations of work in progress, supervise, direct or have control over the work, nor shall RCCA/Manhard have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by contractor(s), for safety precautions and programs incident to the work, for any failure of contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to the furnishing and performing the work or authority to stop the work. Accordingly, RCCA/Manhard neither guarantees the performance of any contractor(s) nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract documents. Should the Client determine that such service is necessary, RCCA/Manhard will provide such services as the resident project representative as an Additional Service.

RCCA/Manhard shall not have the authority to instruct any contractor to suspend or terminate its work on the Project. RCCA/Manhard shall not be responsible for the acts or omissions of any contractor(s), or of any subcontractor(s), any supplier(s), or of any other person or organization performing or furnishing any of the work.

28. **DESIGN WITHOUT CONSTRUCTION ADMINISTRATION** – It is understood and agreed that RCCA/Manhard's basic services under this Agreement do not include project observation or review of the Client's performance or any other construction phase services, and that such services will be provided for by the Client. The Client assumes all responsibility for interpretation of any contract documents and for construction observation, and the Client waives any claims against RCCA/Manhard that may be in any way connected thereto. In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless RCCA/Manhard, its officers, directors, employees and subconsultants (collectively, RCCA/Manhard) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to any contract documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of RCCA/Manhard. If the Client requests in writing that RCCA/Manhard provide any specific construction phase services and if RCCA/Manhard agrees in writing to provide such services, then RCCA/Manhard shall be compensated for Additional Services as provided in Exhibit A.