



VILLAGE OF BENSENVILLE

Village Board
President
Frank Soto

Trustees
Morris Bartlett
Robert "Bob" Jarecki
Martin O'Connell
Oronzo Peconio
JoEllen Ridder
Henry Wesseler

Village Manager
Michael Cassady

Village of Bensenville, Illinois BOARD OF TRUSTEES MEETING AGENDA

6:30 P.M. Tuesday, June 28, 2011

Bensenville Village Hall, 12 S. Center Street, Bensenville IL 60106

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. PUBLIC COMMENT (3 minutes per person with a 30 minute meeting limitation)
- V. APPROVAL OF MINUTES

June 14, 2011 – Village Board of Trustees

- VI. WARRANT – June 28, 2011 #11/13 - \$1,217,721.10

VII. CONSENT AGENDA – CONSIDERATION OF AN “OMNIBUS VOTE”

1. *Resolution Authorizing the Execution of a Contingent Fee Professional Services Agreement with Azavar Audit Solutions, Inc. for Professional Computer, Data Audit, Compliance Management and Management Consulting Services*
2. *Resolution Authorizing an Intergovernmental Agreement Between the Village of Bensenville and Bensenville Elementary School District No. 2*
3. *Resolution Approving Execution of a Contract Between the Village of Bensenville and Chad Norris for Video Production Services*
4. *Resolution Authorizing the Annual Membership Dues Payment to DuPage Mayors and Managers Conference Association*
5. *Ordinance Amending Articles XXIII and XXIV of the Zoning Ordinance of the Village of Bensenville for the C-4 Zoning District*
6. *Ordinance Granting a Planned Unit Development to Roesch Ford at 333 West Grand Avenue, Bensenville, Illinois*
7. *Ordinance Authorizing the Execution of an Economic Incentive Agreement Between the Village of Bensenville and BCR Automotive Group, LLC*

VIII. REPORTS OF STANDING COMMITTEES

- A. Community and Economic Development Committee – No Report
- B. Infrastructure and Environment Committee
 - 1. *Resolution Authorizing the Execution of a Purchase Order and Contract for Vehicle Purchases to Roesch Ford*
 - 2. *Resolution Authorizing the Execution of Amendment #2 to the Design Engineering Contract with Christopher B. Burke Engineering Ltd. for Engineering Services Related to the Northern Business District Reconstruction Project*
 - 3. *Resolution Authorizing the Execution of a Purchase Order and Contract for Salt Dome Construction to Bulk Storage, Inc.*
- C. Administration, Finance and Legislation Committee – No Report
- D. Public Safety Committee – No Report
- E. Recreation and Community Building Committee – No Report
- F. Technology Committee – No Report

IX. INFORMATION ITEMS

- A. PRESIDENT'S REMARKS
- B. VILLAGE MANAGER'S REPORT
- C. VILLAGE ATTORNEY'S REPORT

X. UNFINISHED BUSINESS

XI. NEW BUSINESS

XII. EXECUTIVE SESSION

- A. Review of Executive Session Minutes [5 ILCS 120/2 (C)(21)]
- B. Personnel [5 ILCS 120/2(C)(1)]
- C. Collective Bargaining [5 ILCS 120/2 (C)(2)]
- D. Property Acquisition [5 ILCS 120/2(C)(5)]
- E. Litigation [5 ILCS 120/2(C)(11)]

XIII. MATTERS REFERRED FROM EXECUTIVE SESSION

XIV. ADJOURNMENT

Village of Bensenville
Board Room
12 South Center Street
Bensenville, Illinois 60106
Counties of DuPage and Cook

MINUTES OF THE VILLAGE BOARD OF TRUSTEES MEETING
June 14, 2011

CALL TO ORDER: 1. President Soto called the meeting to order at 6:40 p.m.

ROLL CALL: 2. Upon roll call by Deputy Village Clerk, Corey Williamsen, the following Board Members were present:

Jarecki, O'Connell, Peconio, Ridder, Wesseler

Absent: Bartlett

A quorum was present.

Motion: Trustee Ridder made a motion to appoint Deputy Village Clerk, Corey Williamsen as Acting Village Clerk for the Village of Bensenville. Trustee O'Connell seconded the motion.

All were in favor. Motion carried.

**PUBLIC
COMMENT:**

Gerry Kopf – 111 David Drive

Ms. Kopf addressed the Village Board regarding flooding in her area on David Drive. The flooding occurred two weeks ago during a heavy rain.

Trustee Wesseler

Trustee Wesseler addressed flooding on the streets by Lyons Park. He asked Village Staff to address the issue.

**APPROVAL OF
MINUTES:**

3. The May 24, 2011 Village Board Meeting Minutes were presented.

Motion: Trustee O'Connell made a motion to approve the minutes as presented. Trustee Wesseler seconded the motion.

All were in favor. Motion carried.

WARRANT NO.

11/12: 4. President Soto presented **Warrant No. 11/12** in the amount of \$612,190.31.

Motion: Trustee Peconio made a motion to approve the warrant as presented. Trustee Jarecki seconded the motion.

ROLL CALL:

AYES: Jarecki, O'Connell, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

Resolution No.

R-62-2011:

5. President Soto gave the summarization of the action contemplated in **Resolution No. R-62-2011** entitled **A Resolution Authorizing the Approval of Amendment #1 to the Design Engineering Service Contract with Bollinger Lach and Associates, Inc. for the Jefferson Street Sidewalk Project in the amount of \$5,033.00 for and Amended Contract amount of \$19,933.00.**

Motion: Trustee Wesseler made a motion to approve the resolution as presented. Trustee O'Connell seconded the motion.

ROLL CALL:

AYES: Jarecki, O'Connell, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

Ordinance No.

39-2011:

6. President Soto gave the summarization of the action contemplated in **Ordinance No. 39-2011** entitled **A Limited Area Groundwater Ordinance Prohibiting the use of Groundwater as a Potable Water Supply by Installation or use of Potable Water Supply Wells or by any other Method in a Designated Area in and around 101 W. Irving Park Road of the Village of Bensenville, Illinois.**

Motion: Trustee Peconio made a motion to adopt the ordinance as presented. Trustee Ridder seconded the motion.

ROLL CALL: AYES: Jarecki, O'Connell, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

**Ordinance No.
40-2011:**

7. President Soto gave the summarization of the action contemplated in **Ordinance No. 40-2011** entitled **A Limited Area Groundwater Ordinance Prohibiting the use of Groundwater as a Potable Water Supply by Installation or use of Potable Water Supply Wells or by any other Method in a Designated Area in and around 4 W. Irving Park Road of the Village of Bensenville, Illinois.**

Motion: Trustee Wesseler made a motion to adopt the ordinance as presented. Trustee O'Connell seconded the motion.

ROLL CALL: AYES: Jarecki, O'Connell, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

Motion: Trustee Wesseler made a motion to waive Rule 6 of the first reading of the proposed ordinance entitled **An Ordinance and Providing for the Issue of \$17,975,000 General Obligation Bond (Alternate Revenue Source), Series 2011A, of the Village of Bensenville, DuPage and Cook Counties, Illinois, for the purpose of Financing Capital Improvements in Certain Redevelopment Project Areas Heretofore Designated by the Village, Prescribing the Details of Said Bonds and Providing for the Opposition of Taxes Sufficient to Pay the Same and for the Collection Segregation and Application of Certain Village Revenues to Pay Said Bonds.** Trustee Ridder seconded the motion.

ROLL CALL: AYES: Jarecki, O'Connell, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

Ordinance No.

41-2011:

8. President Soto gave the summarization of the action contemplated in **Ordinance No. 41-2011** entitled **An Ordinance and Providing for the Issue of \$17,975,000 General Obligation Bond (Alternate Revenue Source), Series 2011A, of the Village of Bensenville, DuPage and Cook Counties, Illinois, for the purpose of Financing Capital Improvements in Certain Redevelopment Project Areas Heretofore Designated by the Village, Prescribing the Details of Said Bonds and Providing for the Opposition of Taxes Sufficient to Pay the Same and for the Collection Segregation and Application of Certain Village Revenues to Pay Said Bonds.**

Motion:

Trustee O'Connell made a motion to adopt the ordinance as presented. Trustee Jarecki seconded the motion.

ROLL CALL:

AYES: Jarecki, O'Connell, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

Resolution No.

R-63-2011:

9. President Soto gave the summarization of the action contemplated in **Resolution No. R-63-2011** entitled **A Resolution Authorizing the Execution of an Amendment to the Intergovernmental Agreement with the City of Chicago for the O'Hare Noise Compatibility Commission.**

Motion:

Trustee Ridder made a motion to approve the resolution as presented. Trustee Wesseler seconded the motion.

ROLL CALL:

AYES: Jarecki, O'Connell, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

Resolution No.

R-64-2011:

10. President Soto gave the summarization of the action contemplated in **Resolution No. R-64-2011 entitled A Resolution Amending the Non-Exclusive license Agreement with Robert Morris University: Redmond Soccer Field.**

Motion:

Trustee Peconio made a motion to approve the resolution as presented. Trustee Ridder seconded the motion.

ROLL CALL:

AYES: Jarecki, O'Connell, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

Resolution No.

R-66-2011:

11. President Soto gave the summarization of the action contemplated in **Resolution No. R-66-2011 entitled A Resolution Approving the Entry into a Sales Agreement with FieldTurf USA, Inc to Supply and Install Replacement Artificial Turf in Redmond Park.**

Motion:

Trustee Ridder made a motion to approve the resolution as presented. Trustee Wesseler seconded the motion.

ROLL CALL:

AYES: Jarecki, O'Connell, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

Resolution No.

R-67-2011:

12. President Soto gave the summarization of the action contemplated in **Resolution No. R-67-2011 entitled A Resolution Authorizing the Execution of an Agreement with Tyler Technologies for MUNIS Inventory and Work Orders, Fleet & Facility Management.**

Motion:

Trustee Peconio made a motion to approve the resolution as presented. Trustee Jarecki seconded the motion.

ROLL CALL:

AYES: Jarecki, O'Connell, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

**PRESIDENT'S
REMARKS:**

President Soto thanked Director of Special Events, Gary Thorsen, for his work with Robert Morris University for the resurfacing of the field at Redmond Park.

President Soto thanked Trustee Bartlett, Trustee Wesseler and Village Manager, Michael Cassady for their time served in the Military. President Soto encourages all Residents to thank Veterans during Welcome Home Week 201.

President Soto read a proclamation into the record for Honoring Veterans during "Welcome Home Week 2011."

**Resolution No.
R-68-2011:**

13. Trustee Wesseler gave the summarization of the action contemplated in **Resolution No. R-68-2011 entitled A Resolution Honoring Ray Soden, World War II Veteran and Public Servant.**

Motion:

Trustee Ridder made a motion to approve the resolution as presented. Trustee Jarecki seconded the motion.

ROLL CALL:

AYES: Jarecki, O'Connell, Peconio, Ridder, Wesseler

NAYS: None

All were in favor. Motion carried.

**MANAGERS
REPORT:**

Village Manager, Michael Cassady, gave an update to the Village Board regarding the Customer Service Cards. Mr. Cassady encourages all Residents to fill the cards out after dealing with Village Staff.

NEW BUSINESS:

Trustee Ridder announce that Village Staff will participate in a Blood Drive on Wednesday, June 22, 2011.

**EXECUTIVE
SESSION:**

Village Attorney, Pat Bond, called for an Executive Session for the purpose of discussing pending, probable, or imminent litigation, acquisition of real estate property, personnel, and collective negotiating matters. No action will take place as a result of the discussions.

Motion:

Trustee Peconio made a motion adjourn the meeting and go into executive session. Trustee O'Connell seconded the motion.

All were in favor.

Motion carried.

President Soto adjourned the meeting at 7:25 p.m.

Corey Williamsen
Acting Village Clerk

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville this _____ day, June 2011

Minutes of the Village Board Meeting
June 14, 2011 Page 8

VILLAGE OF BENSENVILLE

TYPE: Resolution **SUBMITTED BY:** Tim Sloth **DATE:** June 28, 2011

DESCRIPTION: A resolution authorizing the execution of a contingent fee professional services agreement with Azavar Audit Solutions, Inc. for professional computer, data audit, compliance management and management consulting services.

SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:

Financially Sound Village
 Quality Customer Oriented Services
 Safe and Beautiful Village

Enrich the lives of Residents
 Major Business/Corporate Center
 Vibrant Major Corridors

COMMITTEE ACTION: Approved AFL 7-0

DATE: 5/17/2011

BACKGROUND: The Village is always looking for ways to reduce costs or maximize revenues (without increasing taxes or fees). To that affect we have looked into 2 companies that perform Municipal Revenue Audit, Franchise Audit and a Utility Cost Auditing services. A brief summary of these services is listed below:

- Utility Cost Audit – A utility and telecom cost audit is performed to determine if monthly costs are in line with what should be spent on service providers.
- Franchise Audit – A contract and franchise fee revenue audit uncovers all the fees that may be due Bensenville from cable providers.
- Municipal Revenue Audit – This audit results in a comprehensive analysis of all tax receivables remitted to Bensenville by various service providers including Utility Taxes, Telecommunications Taxes, Cable Franchise Fees, Sales Taxes, Hotel / Motel Taxes and Local Use Taxes and Fees.

Based on our analysis of these two proposals we believe Azavar Audit Solutions is the clear winner based primarily on price. While both companies charge based on a contingency fee basis, Azavar only charges 40% for 30 months while the other firm charged 50% for 36 months.

The other distinguishing factor is that Azavar assists in recovering of lost revenue. The other firm only looked forward and did not go after lost revenue.

KEY ISSUES: Maximizing existing revenue sources / reducing costs.

ALTERNATIVES: Board discretion

RECOMMENDATION: Approve resolution.

BUDGET IMPACT: The budget could be positively impacted if these audits uncover additional revenue or reduced costs.

ACTION REQUIRED: Motion approving resolution.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTINGENT FEE
PROFESSIONAL SERVICES AGREEMENT WITH AZAVAR AUDIT
SOLUTIONS, INC FOR PROFESSIONAL COMPUTER, DATA AUDIT,
COMPLIANCE MANAGEMENT AND MANAGEMENT CONSULTING
SERVICES**

WHEREAS, the VILLAGE OF BENSENVILLE (hereinafter "VILLAGE") is a municipal corporation established and existing under the laws of the State of Illinois pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

WHEREAS, the VILLAGE is empowered to make all agreements and contracts and to undertake other acts as necessary in the exercise of its statutory powers; and

WHEREAS, it is sometimes necessary, in furtherance of its statutory functions, for the VILLAGE to contract for various services required by the VILLAGE; and

WHEREAS, the VILLAGE believes it beneficial to have audit services to verify proper remittance to the VILLAGE of utility taxes and franchise and service fees; and

WHEREAS, Azavar Audit Solutions, INC. can provide such audit services; and

WHEREAS, the VILLAGE has therefore determined that it is reasonable, necessary, and desirable to approve the Contingent Fee Professional Services Agreement for such service, which is attached hereto as Exhibit "A" and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

SECTION ONE: The recitals set forth above are incorporated herein and made a part hereof.

SECTION TWO: The Village President is hereby authorized and directed to execute on behalf of the Village of Bensenville, and the Village Clerk is hereby

authorized to attest thereto, the Contingent Fe Professional Services Agreement attached hereto and incorporated herein by reference as Exhibit "A."

SECTION THREE: All resolutions and enactments inconsistent with this Resolution are hereby repealed to the extent of such inconsistency.

SECTION FOUR: This Resolution shall take effect immediately upon its passage and approval as provided by law.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, this 28th day of June, 2011.

APPROVED:

Frank Soto, Village President

ATTEST:

Corey Williamsen, Deputy Village Clerk

Ayes: _____

Nays: _____

Absent: _____

CONTINGENT FEE PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made and entered into by and between Azavar Audit Solutions, Incorporated, an Illinois corporation having its principal place of business at 234 South Wabash Avenue, Sixth Floor, Chicago, Illinois 60604 ("Azavar"), and The Village of Bensenville, an Illinois municipal corporation having its principal place of business at 12 South Center Street, Bensenville, Illinois 60106 ("Customer").

1. SCOPE OF SERVICES

1.1 Subject to the following terms and conditions, Azavar shall provide professional computer, data audit, compliance management, and management consulting services ("Services") in accordance with the below statement of work. Azavar will render the services provided under this Agreement in a workmanlike manner in accordance with industry standards. The services and work provided shall be provided in substantial accordance with the below statements:

- (a) As part of the Municipal Tax Audit Program Azavar shall separately audit each utility tax, taxpayer, franchise fee, and utility service fee / expense imposed within the Customer's corporate boundaries including, but not limited to the Electric, Gas, Cable, and Telecommunications ("Utility Taxpayers") on behalf of the Customer. Azavar shall also audit during the course of its work for the Customer addresses and databases relating to local sales/use taxes;
- (b) The purpose of each audit is to determine past, present, and future taxes, franchise fees, service fees, or any other monies or revenue owed to the Customer that were not properly attributed to the Customer or were not properly paid or collected and to determine future taxes, franchise fees, and other monies owed to the Customer not previously counted so that Customer can collect these past, present, and future monies. Federal and Illinois state law, the Customer's own local ordinances and databases, and the franchise agreements and contracts between Customer and Utility Taxpayers and franchisees are used to conduct these audits and make final audit and tax determinations.
- (c) Azavar will require full access to Customer records and utility taxpayer records to complete these audits and Customer will use its authority as necessary to provide information and procure data from taxpayers;
- (d) Customer agrees to cooperate with Azavar, provide any necessary documentation, and will engage in necessary meetings with utilities;
- (e) During the course of each audit, Azavar may find that rather than being owed past due funds, the Customer owes funds erroneously paid to the Customer. In this case, Azavar will immediately terminate its participation for that specific utility audit at no cost to the Customer and will document the error and provide the Customer with information necessary to correct the error. Azavar shall have no liability for these errors or actions arising from knowledge thereof.
- (f) Customer understands that each utility taxpayer is a separate entity that is not controlled by Azavar and therefore Azavar cannot predict all the steps or actions that a utility taxpayer will take to limit its responsibility or accountability during the audit.

(g) The first audit start date is expected to be within no later than thirty (30) days from the date of this Agreement unless changed and approved by the Customer Primary Contact and Liaison;

(h) Each audit is expected to last at least six (6) months. Each subsequent audit will begin after payment terms and obligations have been met from previously completed audits however overlapping audit work may take place at the discretion of Azavar. Audit timelines are set at the discretion of Azavar and Azavar reserves the right to terminate any audit at its discretion;

(i) Audit status updates/meetings will be held regularly via phone, email, or in person throughout the course of the audits between Azavar and the Customer Primary Contact and will occur approximately every month;

(j) Jason Perry, Azavar Municipal Tax Audit Program Manager, and Azavar specialists will be Auditors under this agreement. All Azavar staff shall be supervised by the said Jason Perry. This Agreement has been entered into by Customer based upon the representations that all of Azavar's services under this Agreement will be performed by or under the direction and supervision of Jason Perry.

1.2 Customer agrees to provide reasonable facilities, space, desks, chairs, telephone and reasonably necessary office supplies for Consultants working on Customer's premises as may be reasonably required for the performance of the Services set forth in this Agreement and in any Exhibit hereto. Customer will assign and designate an employee to be the Audit Primary Contact and Liaison. The Customer's Audit Primary Contact will be the final decision maker for the Customer as it relates to this audit and will meet with Azavar staff on a regular basis as necessary. Lack of participation of Customer staff, especially at critical milestones during an audit, will adversely affect the audit timeline and successful recovery of funds. While Azavar strives to provide turn-key audit programs that require little Customer staff time, it is important that the Customer's staff be reasonably available for meetings and participation with utilities to properly verify tax records and recover funds. However, Customer shall not be required to make Customer's staff or facilities available to Azavar outside of Customer's regular business hours. Azavar agrees to comply with all of Customer's reasonable security measures and regulations governing the operation of its facilities when performing the services at Customer's facilities.

2. INDEPENDENT CONTRACTOR. Azavar acknowledges and agrees that the relationship of the parties hereunder shall be that of independent contractor and that neither Azavar nor its employees shall be deemed to be an employee of Customer for any reason whatsoever. Neither Azavar nor Azavar's employees shall be entitled to any Customer employment rights or benefits whatsoever. Customer shall designate Azavar as an agent for the purposes of authorizing Azavar to work with the Illinois Department of Revenue when necessary.

3. PAYMENT TERMS.

3.1 Customer shall compensate Azavar the fees set forth in this agreement on a professional services and contingency basis. If applicable, Azavar shall submit an invoice to Customer on a monthly basis detailing the amounts charged to

Customer pursuant to the terms of this Agreement. Customer shall remit payment to Azavar within thirty (30) days of the date of each invoice. Failure to pay any fee or part thereof when due will incur interest fees (12% per annum), and collection action. Azavar is entitled to recover all costs of collection including, but not limited to, reasonable attorney's fees, court costs, and collection service fees. This Agreement is governed by the Local Government Prompt Payment Act. If Customer should default on any payment not being contested for a period greater than thirty (30) days from the billing date, Azavar, at its discretion, may accelerate all payments due under this agreement and seek recovery of the entire contingency fee. Contingency payment terms are outlined below. If Customer negotiates, abates, cancels, amends, or waives, without Azavar's written consent, any tax determination that was allowed under the law at the time the tax determination was made, Customer shall pay to Azavar applicable contingency fees for the total said tax determination at the rates set forth below. If Customer later implements any action Customer initially declined based on Azavar programs, including overall utility audits included herein, Azavar will be entitled to its portion of the savings and/or recoveries at the contingency fee rates set forth below.

3.2 Customer shall pay Azavar an amount equal to forty (40) percent of funds recovered per account, per taxpayer for the Initial Term and any Renewal Terms, but not to exceed thirty (30) consecutive months ("Payment Period"), following when funds on an individual account begins to be properly remitted to the Customer. In the event Azavar is able to recover any retroactive fund or any credits at any time, Customer will pay Azavar an amount equal to fifty (50) percent of any retroactive funds, savings, and fair market value for any other special consideration or compensation recovered for and/or by the Customer from any audited taxpayer. All revenue after the Payment Period for each account individually will accrue to the sole benefit of the Customer.

3.3 As it pertains to utility service bill cost audits, Customer shall pay Azavar an amount equal to forty (40) percent of savings approved by Customer for Payment Period following the date savings per utility are implemented by Azavar or Customer. In the event Azavar is able to recover any refunds or any credits at any time, Customer will pay Azavar an amount equal to fifty (50) percent of said refunds or credits. All savings after the Payment Period or each service provider individually will accrue to the sole benefit of the Customer.

3.4 Customer shall have no obligation to spend additional funds not outlined in this Agreement for legal, administrative, other enforcement action to recover funds identified through an audit as owing the Customer.

4. CONFIDENTIAL INFORMATION

4.1 Each party acknowledges that in the performance of its obligations hereunder, either party may have access to information belonging to the other which is proprietary, private and highly confidential ("Confidential Information"). Each party, on behalf of itself and its employees, agrees not to disclose to any third party any Confidential Information to which it may have access while performing its obligations hereunder without the written consent of the disclosing party which shall be executed by an officer of such disclosing party. Confidential Information does not include: (i) written information legally acquired by either party prior to the negotiation of this Agreement, (ii) information which is or becomes a matter of public knowledge, and (iii) information which is or becomes available to the recipient party from third

parties where such third parties have no confidentiality obligations to the disclosing party.

4.2 Azavar agrees that any work product or any other data or information that is provided by Customer in connection with the Services shall remain the property of Customer, and shall be returned promptly upon demand by Customer, or if not earlier demanded, upon expiration of the Services provided under the Statement of Work hereto.

5. INTELLECTUAL PROPERTY

5.1 No work performed by Azavar or any Consultant with respect to the Services or any supporting or related documentation therefor shall be considered to be a Work Made for Hire (as defined under U.S. copyright law) and, as such, shall be owned by and for the benefit of Azavar. In the event that it should be determined that any of such Services or supporting documentation qualifies as a "Work Made for Hire" under U.S. copyright law, then Customer will and hereby does assign to Azavar, for no additional consideration, all right, title, and interest that it may possess in such Services and related documentation including, but not limited to, all copyright and proprietary rights relating thereto. Upon request, Customer will take such steps as are reasonably necessary to enable Azavar to record such assignment. Customer will sign, upon request, any documents needed to confirm that the Services or any portion thereof is not a Work Made for Hire and/or to effectuate the assignment of its rights to Azavar.

5.2 Under no circumstance shall Customer have the right to distribute any software containing, or based upon, Confidential Information of Azavar to any third party without the prior written consent of Azavar which must be executed by a senior officer of Azavar.

5A. FREEDOM OF INFORMATION ACT

Azavar acknowledges and agrees that Customer, as a public body of the State of Illinois, is subject to the requirements of Freedom of Information Act ("FOIA"), 5 ILCs 140/1 et seq. Accordingly, Azavar understands and agrees that the provisions in Section 4 and 5 above and elsewhere in this Agreement respecting confidentiality are subject to the requirements of FOIA and that the determination of whether information claimed by Azavar as confidential shall be disclosed pursuant to FOIA shall be exclusively Customer's.

6. DISCLAIMER. AZAVAR SHALL CONDUCT THE SERVICES PROVIDED FOR IN THIS AGREEMENT IN ACCORDANCE WITH GENERALLY ACCEPTED INDUSTRY STANDARDS. OTHERWISE, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AZAVAR DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED UNDER THIS AGREEMENT OR THE RESULTS OBTAINED FROM AZAVAR'S WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6A. INSURANCE/INDEMNIFICATION. Azavar shall provide the insurance coverages and indemnify and hold harmless Customer and its officials, agents, and employees, as set forth in Exhibit "A," attached hereto, which is incorporated herein by reference as if fully set forth.

7. TERMINATION

7.1 Unless earlier terminated in accordance with Section 7.2 below, this Agreement shall be effective from the date first written above, and shall remain in effect for a period of twenty-one (21) months (the "Initial Term"). This

Agreement shall automatically renew on an annual basis (the "Renewal Terms") and shall continue thereafter until terminated upon 60 days written notice by Customer or Azavar. In the event Customer terminates this Agreement before all payments are made in accordance with Section 3 of this Agreement, payments to Azavar shall be accelerated and paid prior to termination.

7.2 Termination for any cause or under any provision of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

7.3 The provisions set forth above in Section 3 (Payment Terms), Section 4 (Confidential Information), and Section 5 (Intellectual Property) and below in Section 9 (Assignment), and Section 10 (Use of Customer Name) shall survive termination of this Agreement.

8. NOTICES. Any notice made in accordance with this Agreement shall be sent by certified mail or by overnight express mail:

If to Azavar

General Counsel
Azavar Audit Solutions, Inc.
234 South Wabash Avenue, Sixth Floor
Chicago, Illinois 60604

If to Customer

Village Manager
Village of Bensenville
12 South Center Street
Bensenville, Illinois 60106

With copy to:

Bond, Dickson & Associates, P.C.
400 South Knoll Street, Unit C
Wheaton, Illinois 60187

9. ASSIGNMENT/SUBCONTRACTING. Neither party may assign this Agreement nor any of its rights hereunder without the prior written consent of the other party hereto, except Azavar shall be entitled to assign its rights and obligations under this Agreement in connection with a sale of all or substantially all of Azavar's assets. In the event that a subcontractor is used by Azavar, Azavar shall notify Customer in writing. If a subcontractor does not perform the duties assigned in accordance with this Agreement, Customer shall provide written notice of such non-performance to Azavar. Upon receipt of such written notice, Azavar shall take all reasonable action necessary to correct such non-performance. In the event Azavar is unable to promptly correct such non-performance, Azavar shall immediately replace the non-performing subcontractor.

10. USE OF CUSTOMER NAME. Customer hereby consents to Azavar's use of Customer's name in Azavar's marketing materials; provided, however, that Customer's name shall not be so used in such a fashion that could reasonably be deemed to be an endorsement by Customer of Azavar unless such an endorsement is provided by customer.

11. COMPLETE AGREEMENT. This Agreement, along with each Statement of Work attached hereto from time to time, contains the entire Agreement between the parties hereto with respect to the matters specified herein. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof. This Agreement shall not be amended except by a written amendment executed by the parties hereto. No delay, neglect or forbearance on the part of either party in enforcing against the other any term or condition of this Agreement shall either be, or be deemed to be, a waiver or in any way prejudice any right of that party under this Agreement. This Agreement shall be construed in accordance with the laws of the

State of Illinois and the parties hereby consent to the jurisdiction of the courts of the State of Illinois and that venue shall lie in the Circuit Court of the Eighteenth Judicial Circuit, Wheaton, DuPage County, Illinois.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives as of the date set forth below.

AZAVAR AUDIT SOLUTIONS, INC.

CUSTOMER VILLAGE OF BENSENVILLE, IL

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

TYPE: RESOLUTION SUBMITTED BY: Chief Frank Kosman **DATE:** 6/22/11

DESCRIPTION: Resolution to Approve an Intergovernmental Agreement between the Village of Bensenville and Bensenville Elementary School District No. 2

SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:

<input checked="" type="checkbox"/>	<i>Financially Sound Village</i>	<input type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input checked="" type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input type="checkbox"/>	<i>Vibrant Major Corridors</i>

COMMITTEE ACTION: Unanimous vote to approve at the Public Safety Committee Meeting on 06/21/11

DATE: 6-28-11

BACKGROUND

Bensenville School District #2 will be meeting in reference to the attached intergovernmental agreement with the Village for having a school resource officer assigned to the district for the upcoming school year. The intergovernmental agreement is the same as last year's except that the personnel costs have been updated and instead of just referring to Blackhawk Middle School the duties refer to the officer providing services at all the schools.

KEY ISSUES:

In summary, the intergovernmental agreement includes the following provisions:

- The agreement would be for one year and could be cancelled by either party with a 60-day notice.
- The officer would be assigned as the resource officer for the School District for days that the schools are in session or about 179 days per year.
- The officer's shift will be 8 hours per day usually during the school day but could be adjusted as required.
- The school district will be responsible for 70% of the officer's annual salary and benefits.
- The school district will be responsible for 70% of the officer's annual equipment costs.
- In total, District 2's reimbursement cost to the Village is \$72,138 for the upcoming school year.

ALTERNATIVES:

1. Approve a Resolution to Authorize the Intergovernmental Agreement.
2. Discretion of the Board.

RECOMMENDATION:

The school and the police department have been satisfied with the Officer Kevin Banks' performance in this role these past 3 years. Both staffs recommend that he fill this position for the upcoming school year.

BUDGET IMPACT:

When not assigned to the school, the officer would be assigned to either patrol or investigations depending on what best met the needs of the department at that time. The position was included in this fiscal year's budget.

ACTION REQUIRED:

Approval of a resolution authorizing the Village President to execute the Intergovernmental Agreement.

INTERGOVERNMENTAL COOPERATION AGREEMENT BETWEEN
THE VILLAGE OF BENSENVILLE AND BENSENVILLE
ELEMENTARY SCHOOL DISTRICT No. 2

This agreement is made and entered into this _____ day of _____, 2011, by and between the VILLAGE OF BENSENVILLE, DuPage and Cook Counties, Illinois (“the Village”), and the BOARD OF EDUCATION OF BENSENVILLE ELEMENTARY SCHOOL DISTRICT NO. 2, DuPage County, Illinois (“the School District”).

WITNESSETH:

WHEREAS, Article VII, Section 10 of the Illinois Constitution provides that units of local government and school districts may contract to share services through intergovernmental agreements; and

WHEREAS, the Illinois Intergovernmental Cooperation Act (5/ILCS 220/1, et seq.) provides that public agencies may share powers through intergovernmental agreements; and

WHEREAS, the Village is a unit of local government (as defined in Article VII, Section 10 of the Illinois Constitution) and a public agency (as defined in Section 2 of the Illinois Intergovernmental Cooperation Act), and the School District is a school district (as identified in Article VII, Section 10 of the Illinois Constitution) and a public agency (as defined in Section 2 of the Illinois Intergovernmental Cooperation Act); and

WHEREAS, the School District desires to have a police officer (hereinafter referred to as a “Resource Officer”) posted at the School District’s schools during the school year; and

WHEREAS, the Village has determined it to be appropriate to provide the services of a Resource Officer at the School District’s schools;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Village and School District agree as follows:

1. Payment:

- a. The School District hereby agrees to reimburse the Village for 70% of the annual salary and benefits of one Resource Officer, and the School District hereby agrees to reimburse the Village for 70% of the annual equipment costs of one Resource Officer, as itemized in attached Exhibit A. The annual salary, benefits, and equipment costs hereinafter are collectively referred to as “Annual Costs.”

- b. The School District agrees to submit payment for its reimbursement obligations relating to Annual Costs, as follows: During each school year, said payment for the school year shall be made in advance, in four equal installments, on September 1, November 1, January 1, and March 1.
 - c. In addition, the School District hereby agrees to reimburse the Village for the following additional expenditures, as itemized in the attached Exhibit B: (1) 70% of the cost of the Resource Officer's annual uniform allowance. Uniform costs are hereinafter referred to as "Additional Expenditures."
 - d. Additional Expenditures shall be invoiced to the School District by the Village. Upon receipt by the School District of an invoice for an Additional Expenditure, the School District shall reimburse the Village within 30 (thirty) days of receipt of said invoice.
- 2. SERVICES: The Village shall assign one Resource Officer to the School District's schools during the scheduled school year. The Resource Officer shall be assigned to the School District's schools from 9:00 AM until 5:00 PM on all days of student attendance and three additional in-service days, for a total of 179 days. If the School District needs the Resource Officer adjust his or her hours to meet a specific need such as to testify at student discipline or expulsion hearings, the Resource Officer's hours shall be adjusted accordingly. There shall be no additional charge to the School District for the change.
- 3. INDEMNIFICATION:
 - a. The Village agrees to indemnify, defend, and hold harmless the School District and its board members, employees, volunteers, and agents, from and against any claims, demands, complaints, judgments, fines, damages, penalties, liabilities, costs and expenses (including reasonable attorney fees), arising from or caused by, in whole or in part, the intentional or negligent acts or omissions of the Village or the Resource Officer or any other employee, volunteer or agent of the Village, except to the extent that such claims, demands, complaints, judgments, fines, damages, penalties, liabilities, costs and/or expenses arise from or are caused by the intentional or negligent acts or omissions of the School District or its employees, volunteers or agents.
 - b. The School District agrees to indemnify, defend, and hold harmless the Village and its board members, employees, volunteers, and agents, from and against any claims, demands, complaints, judgments, fines, damages, penalties, liabilities, costs and expenses (including reasonable attorney fees), arising from or caused by, in whole or in part, the intentional or negligent acts or omissions of the School District or any other employee, volunteer or agent of the School District, except to the extent that such claims, demands, complaints, judgments, fines, damages, penalties, liabilities, costs and/or expenses arise from or are caused by the intentional or negligent acts or omissions of the Village or the Resource Officer or any other employee, volunteer or agent of the Village.
 - c. The Village and the School District are not limiting or waiving any rights or available defenses, including those under the Tort Immunity Act.

4. PURPOSE/EMPLOYMENT: The overall purpose of the Resource Officer shall be to assist other school officials in maintaining a proper educational environment for the School District's students. However, the Resource Officer is and shall remain an employee of the Village, and shall be supervised through the Police Department. All activities of the Resource Officer shall be undertaken as an employee of the Village, pursuant to all applicable laws and Police Department rules and regulations.
5. ADDITIONAL SERVICES: The posting of a Resource Officer does not relieve the Village from providing such police protection or police services as may be necessary from time to time in exercise of its police power for protection of health, safety, and welfare of the public.
6. ENTIRE AGREEMENT: This instrument contains the entire Agreement between the parties, and no statements, promises, or inducements made by either party that is not contained within the body of this written Agreement shall be valid or binding; and this Agreement may not be modified or amended, except in writing signed by the parties and endorsed hereon.
7. NOTICES: For purposes of notice, the addresses of the parties are as follows:

With copies to: Chief of Police
Bensenville Police Department
100 N. Church Rd.
Bensenville, IL 60106

If to the School District: Superintendent
Bensenville Elementary School
District No. 2
210 S. Church Rd..
Bensenville, IL 60106

With Copies to: Dawn M. Hinkle
Canna and Canna, Ltd.
10703 West 159th St.
Orland Park, IL 60467

8. GOVERNING LAW: It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Illinois, both as to interpretation and performance.
9. SEVERABILITY: It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Illinois, the validity of the remaining portion

or provisions shall not be affected and the rights and obligations of the parties shall be enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

10. EFFECTIVE DATE/TERMINATION: This Agreement shall take effect on the _____ day of _____, 2011, and shall continue in force and govern all transactions between the parties hereto for one (1) year or until cancelled or terminated by either party; but it is agreed that either party shall have the privilege to cancel and annul this Agreement for any reason or no reason sixty (60) days after providing the other party by written notice by registered mail or personal delivery of notice to the other party evidencing the intention to terminate this Agreement.

IN WITNESS WHEREOF, the Village and the School District have caused this Agreement to duly executed on the dates set forth below.

VILLAGE OF BENSENVILLE

BY: _____ DATE: _____
Village President, Frank Soto

Attest:

Acting Village Clerk, Corey Williamsen

BOARD OF EDUCATION OF BENSENVILLE
ELEMENTARY SCHOOL DISTRICT NO. 2

BY: _____ DATE: _____

ATTEST:

EXHIBIT A

COST OF RESOURCE OFFICER

2011-2012 Annual Salary and Benefits of Resource Officer - \$95,788

70% of Annual Salary and Benefits of Resource officer - \$67,052

2011-2012 Annual Equipment Cost (squad car) of Resource Officer - \$6666

70% of Equipment Cost for Resource Officer - \$4,666

EXHIBIT B

ADDITIONAL EXPENDITURES FOR RESOURCE OFFICER

2011 –2012 Uniform Cost for Resource Officer - \$600

70% of Uniform Cost for Resource Officer: \$420

RESOLUTION NO. R-

**AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE
VILLAGE OF BENSENVILLE AND BENSENVILLE ELEMENTARY SCHOOL
DISTRICT No. 2**

BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, Counties of Du Page and Cook, Illinois, as follows:

That the Village President is authorized to execute and the Village Clerk or Deputy Clerk to attest to an intergovernmental agreement, as attached hereto, between the Village of Bensenville and the Bensenville Elementary School District No. 2 for the assignment of one police officer to the School District 2 schools during the 2010/2011 school year.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, this _____ day of June, 2011.

APPROVED:

Frank Soto
Village President

ATTEST:

Corey Williamsen
Deputy Village Clerk

AYES: _____

NAYS: _____

ABSENT: _____

VILLAGE OF BENSENVILLE

TYPE: Resolution **SUBMITTED BY:** Mike Cassady **DATE:** June 23, 2011

DESCRIPTION A resolution approving a contract with the Village of Bensenville and Chad Norris for video production services.

SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:

<input checked="" type="checkbox"/>	<i>Financially Stable Government</i>	<input type="checkbox"/>	<i>Safe Place to Live</i>
<input checked="" type="checkbox"/>	<i>Cost Effective Services Responsive to Citizens</i>	<input type="checkbox"/>	<i>Downtown as a Community Focal Point</i>
<input checked="" type="checkbox"/>	<i>Open Government w/ Involved Citizens</i>	<input type="checkbox"/>	<i>Regional Partnerships</i>

COMMITTEE ACTION: Admin Finance & Legislation on
06/21/11 Vote: Unanimous

DATE: 06/28/11

BACKGROUND

Chad Norris has been providing video production services to the Village. A need for continuation of these services has been determined. The proposed contract would be retroactive from January 1, 2011 through December 31, 2011.

KEY ISSUES:

The Village's current needs for video production services must be maintained. Currently, full-time employment is necessary to continue with the level of programming and department back-up.

ALTERNATIVES:

1. Reduce programming.

RECOMMENDATION: Staff recommends approval of the resolution approving the retroactive contract with Chad Norris, Video Specialist for the period ending December 31, 2011 at a cost not-to-exceed \$25 hour, paid bi-weekly.

BUDGET IMPACT: Annually \$41,600.00

ACTION REQUIRED: The approval of the resolution approving the contract for professional video services between the Village of Bensenville and Chad Norris.

VIDEO PRODUCTION SPECIALIST CONTRACT
Avid / Final Cut HD Editor, Studio Production, Motion Graphics Artist
& Camera Operator

THIS AGREEMENT, made and entered into this 1st day of January, 2011, by and between the Village of Bensenville, an Illinois municipal corporation, hereinafter called "Village," as party of the first part, and **Chad Norris**, hereinafter called "Contractor," as party of the second part, both of whom understand and agree as follows:

RECITALS

WHEREAS, the Village desires to retain Contractor to provide for the Village those certain services as specified and described below; and

WHEREAS, Contractor desires to provide said services for the Village; and

WHEREAS, it is the desire of the Village and Contractor to establish the terms and conditions of the contractual relationship established hereby, all as specified and provided below.

TERMS AND CONDITIONS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SECTION I. RECITALS

The foregoing recitals are hereby incorporated by reference and reaffirmed as if fully recited and reaffirmed herein.

SECTION II. DUTIES

The Village hereby retains Contractor to provide for the Village those certain services specified as follows: *Providing Video Editing, Studio Production, and Camera work for the Cable Access Show Spotlight, as well as the recording of Village Board Meetings and assisting in cable promotional segments for Three (4) days of each week or equivalent of 32 hours each week.* **Any additional services required beyond the contracted three days a week will be billed at \$25.00 an hour and need pre-approval from the Village Manager.**

SECTION III. TERM

This Agreement shall be in full force and effect from and after January 1, 2011, and shall be effective through to December 31, 2011

Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of either party to terminate this Agreement at any time, for any or no reason, in such party's sole and absolute discretion, subject only to fourteen (14) calendar days advance written notice to the other party of any such termination.

SECTION IV. CONTRACT RATE OF PAY

For services rendered by Contractor pursuant hereto, the Village agrees to pay to Contractor, and Contractor agrees to accept from the Village, a total contract payment in the not-to-exceed amount of **\$ 41,600.00**, which not-to-exceed contract amount shall be paid in the following installments:

Installment Payment Amount

\$1600.00 Bi- Weekly
(32 hours a week @ \$25.00 per/hr)

Date of Installment Payment

January 1 - December 31, 2011

SECTION V. RELATIONSHIP OF THE PARTIES

It is expressly understood, acknowledged and agreed that it is not the intention or purpose of the parties for this Agreement to create, nor shall the same be construed as creating, any type of an employment relationship between the parties. That is, the Contractor is, and at all times shall be, considered to be an independent contractor of the Village, and in no way an agent or employee of the Village.

Except for those contract payments specified in Section IV above, Contractor shall not be entitled to receive any other payments, remuneration, insurance coverage (life, health or otherwise), disability benefits, retirement benefits, workman's compensation benefits, or any other employment benefits of any kind or type. Further, Contractor shall be responsible for the filing and payment of any and all state, local and/or federal taxes incurred by Contractor and arising by reason of this Agreement.

Except as may be otherwise provided herein, Contractor may not and shall not bind the Village to any obligation without the Village's prior written consent.

SECTION VI. NOTICES

Notices pursuant to this Agreement shall be given by hand delivery, or by deposit in the custody of the United States Postal Service, postage prepaid, return receipt requested, and addressed as follows:

(1) Village: Village Manager
Village of Bensenville
12 S. Center Street
Bensenville, Illinois 60106

(2) Contractor: ***Chad Norris***
2858 Brown St.
Portage, Indiana 46368
219-916-2474 phone

Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION VII. ADDITIONAL PROVISIONS

The text herein shall constitute the entire agreement between the parties.

This Agreement may be amended or modified only by written instrument signed by both the Village and Contractor.

If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the Village of Bensenville has caused this Agreement to be signed and executed on its behalf by its Village Manager, and ***Chad Norris*** has signed and executed this Agreement, both in duplicate, the day and year first above written.

Mike Cassady, Village Manager

Chad Norris, Video Production Specialist

RESOLUTION NO.

**A RESOLUTION APPROVING EXECUTION OF A
CONTRACT WITH CHAD NORRIS FOR VIDEO PRODUCTION SERVICES**

WHEREAS, the VILLAGE OF BENSENVILLE (hereinafter "VILLAGE") is a municipal corporation established and existing under the laws of the State of Illinois pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

WHEREAS, the VILLAGE is empowered to make all agreements and contracts and to undertake other acts as necessary in the exercise of its statutory powers; and

WHEREAS, the VILLAGE is in need of additional Video Production Services; and

WHEREAS, Chad Norris has the experience and expertise to provide said services; and

WHEREAS, the VILLAGE has determined that it is reasonable, necessary, and desirable to enter into a contract with Chad Norris per the terms set forth in the contract document attached hereto as Exhibit "A" in the amount not to exceed \$41,600.00 annually.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, DuPage and Cook Counties, Illinois, as follows:

SECTION ONE: The recitals set forth above are incorporated herein and made a part hereof.

SECTION TWO: The Village Manager is hereby authorized and directed to execute on behalf of the Village of Bensenville, and the Acting Village Clerk is hereby authorized to attest thereto, a contract with Chad Norris in the amount not to exceed \$41,600.00 annually for the services as set forth in the contract document attached hereto as Exhibit "A"

SECTION THREE: This Resolution shall take effect immediately upon its passage and approval as provided by law.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, this 28th day of June, 2011.

APPROVED:

Frank Soto, Village President

ATTEST:

Corey Williamsen, Acting Village Clerk

Ayes: _____

Nays: _____

Absent: _____

TYPE: Resolution **SUBMITTED BY:** Village Manager **DATE:** June 23, 2011

DESCRIPTION: Consider a Resolution authorizing membership payment for the DuPage Mayors and Managers Association in the amount of \$21,991.20.

SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:

<input checked="" type="checkbox"/>	<i>Financially Stable Government</i>	<input type="checkbox"/>	<i>Enrich the lives of Residents</i>
<input checked="" type="checkbox"/>	<i>Quality Customer Oriented Services</i>	<input type="checkbox"/>	<i>Major Business/Corporate Center</i>
<input type="checkbox"/>	<i>Safe and Beautiful Village</i>	<input type="checkbox"/>	<i>Vibrant Major Corridors</i>

COMMITTEE ACTION: AF&L 06/21/11 **Vote:** Unanimous **DATE:** 06/28/11

BACKGROUND

The Village is a member of the DuPage Mayors and Managers Conference. This budgeted membership is now due for payment. The costs include dues in the amount of \$18,384.26 and debt service for capital expenses in the amount of \$3,606.94. The total expense totals \$21,991.20.

KEY ISSUES:

Membership in this regional center of government provides technical and leadership training for elected officials and staff. It also creates a forum to build intergovernmental relationships and services collaboration to best serve our stakeholders. Key this year was the Conference response to threats of curtailing or reducing the local government share of the Distributive Fund. This action would have been disastrous to many local governments already experiencing severe financial pressure.

ALTERNATIVES:

1. Motion to approve the Resolution.
2. Discretion of the Committee.

RECOMMENDATION:

Staff recommends approval of the Resolution. The DuPage Mayors and Managers Conference adds depth and value to our organization. The top ten list of important services provided to members is attached for your information.

BUDGET IMPACT: \$21,991.20 for 2011-2012.

ACTION REQUIRED: Motion to approve the Resolution supporting membership in the DuPage Mayors and Managers Conference.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE ANNUAL MEMBERSHIP DUES PAYMENT
TO DUPAGE MAYORS AND MANAGERS CONFERENCE ASSOCIATION**

BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois, as follows:

That the Village Manager is authorized to execute a payment to the DuPage Mayors and Managers Conference Association for the annual membership dues 2011-2012 in the not to exceed amount of \$21,991.20

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, _____, 2011.

APPROVED:

Frank Soto, Village President

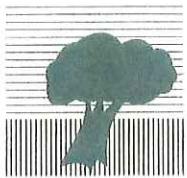
ATTEST:

Corey Williamsen, Acting Village Clerk

Ayes: _____

Nays: _____

Absent: _____



DUPAGE MAYORS AND MANAGERS CONFERENCE

1220 OAK BROOK ROAD
OAK BROOK, IL 60523-2203
(630) 571-0480
FAX (630) 571-0484

Customer ID.: BENSEN

Invoice No.: 6685

May 11, 2011

VILLAGE OF BENSENVILLE
12 S. CENTER STREET
BENSENVILLE, IL 60106

DESCRIPTION	TOTAL
2011 - 2012 Conference Membership Dues	18,384.26
2011 - 2012 Debt Service	3,606.94

RECEIVED
5/11/11

Total Invoice Amount \$21,991.20

Detach and Return with Remittance

Please Remit To:

DuPage Mayors and Managers Conference
1220 Oak Brook Road
Oak Brook, IL 60523-2203

Customer ID.: BENSEN

Invoice No.: 6685

Invoice Date: May 11, 2011

Amount Due: 21991.20

Due Date: 6/10/11

TYPE: Ordinance

SUBMITTED BY: S. Viger

DATE: 06.28.11

DESCRIPTION:

1. Staff has drafted a Text Amendment to the C – 4 Regional Destination Commercial District that would allow uses permitted in the I – 2 Light Industrial District to be allowed a Conditional Uses in C – 4.
2. The amendment does contain a ten year amortization period at which time the industrial uses would need to cease operation. Businesses could seek an extension from the Village Board.

SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:

<input checked="" type="checkbox"/> <i>Financially Sound Village</i>	<input type="checkbox"/> <i>Enrich the lives of Residents</i>
<input type="checkbox"/> <i>Quality Customer Oriented Services</i>	<input checked="" type="checkbox"/> <i>Major Business/Corporate Center</i>
<input type="checkbox"/> <i>Safe and Beautiful Village</i>	<input checked="" type="checkbox"/> <i>Vibrant Major Corridors</i>

COMMITTEE ACTION: Community & Economic Development

DATE: 06.07.11 & 06.21.11

BACKGROUND:

1. The Village created the C – 4 District approximately seven years ago to capitalize on the area's proximity to O'Hare and the transportation improvements of the Elgin O'Hare Expressway / Western Bypass.
2. To date there has not been much commercial development along the N. York Road corridor as envisioned back in 2004.
3. The Village has had a number of meetings with interested industrial users of properties in the corridor.
4. Several of the buildings in the corridor are vacant and the existing non- conforming status has been abandoned. This makes the properties very difficult to lease and / or sell.

KEY ISSUES:

1. Can the Village create a vehicle to allow productive use of vacant buildings on North York Road while maintaining the vision of the C – 4 Regional Destination Commercial Zoning District?
2. By allowing industrial uses for a specific time period the properties bolster our business base but should not distract from the overall long term vision.
3. Is the plan beneficial to the community?

ALTERNATIVES:

1. Approve the text amendment as presented.
2. Approve the text amendment with revisions.
3. Remand the request back to the CDC for further review.

RECOMMENDATION:

Staff respectfully recommends approval of the draft text amendment.

At their 06.13.11 Public Hearing the Community Development Commission voted (5 - 0) to recommend approval of the text amendment as presented.

At their 06.21.11 meeting the Community & Economic Development Committee voted (6-0) unanimously voted to approve the text amendment.

BUDGET IMPACT:

N/A

ACTION REQUIRED:

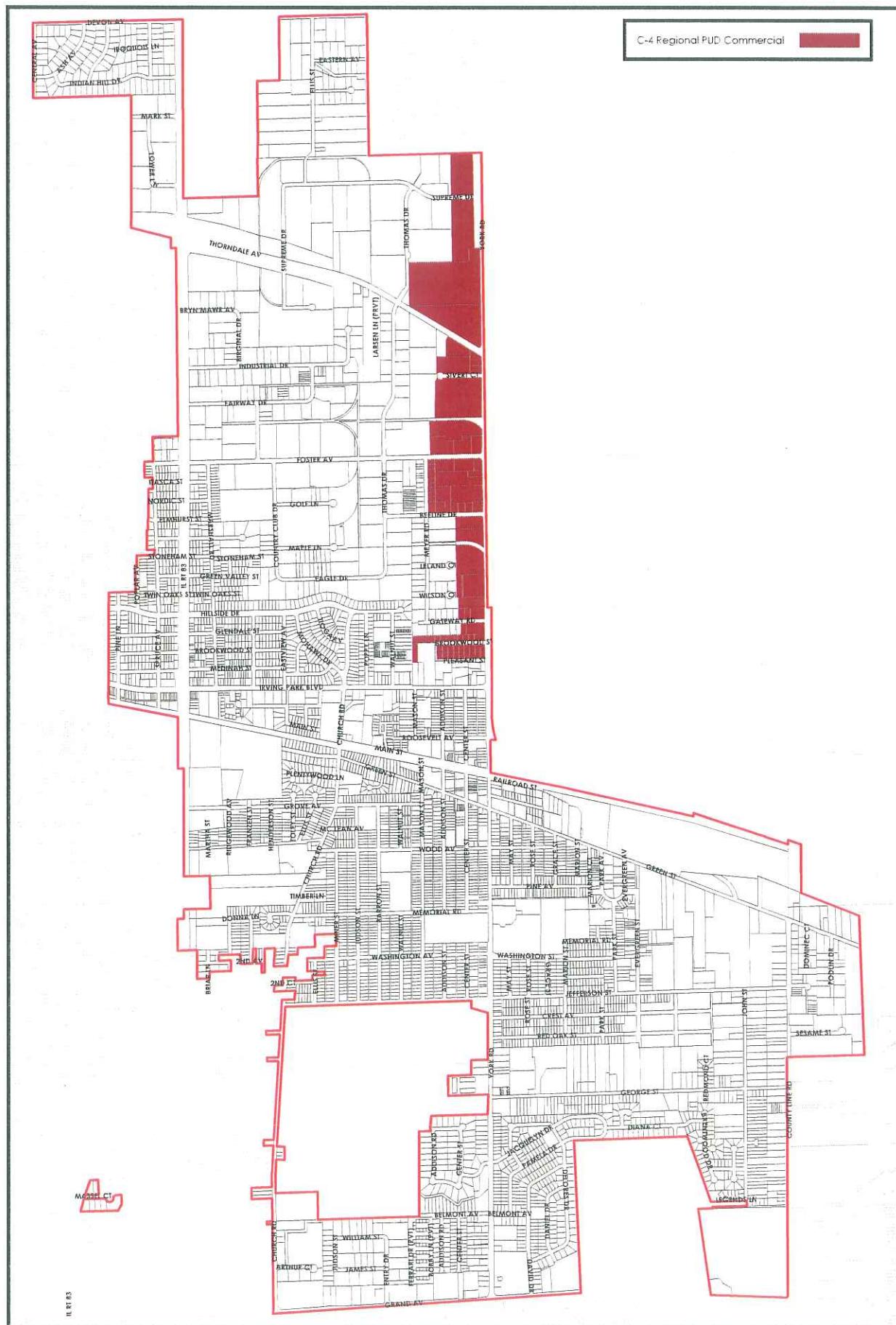
Approval of the text amendment Ordinance.



Village of Bensenville

2010 Zoning Map

C-4 Regional PUD Commercial



ORDINANCE NO. ____

**AN ORDINANCE AMENDING ARTICLES XXIII AND XXIV
OF THE ZONING ORDINANCE OF THE VILLAGE OF BENSENVILLE**

WHEREAS, the Village of Bensenville is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

WHEREAS, the Village of Bensenville is authorized and empowered, under the Municipal Code and the Code of Ordinances of the Village of Bensenville, to regulate properties located within the municipal boundaries of the Village; and

WHEREAS, in furtherance of this authorization, the Village of Bensenville has adopted a Zoning Ordinance, to among other purposes set forth in the Zoning Ordinance, effectuate the Village's planning program and to regulate individual property use by establishing use districts, building site requirements, setback, density, parking and height regulations, and by specifying external impact standards for noise, smoke, odor, glare and vibration; and

WHEREAS, in 2004, the Village amended the Zoning Ordinance to provide for a new zoning district referred to as the C-4 Regional Destination PUD Zoning District; and

WHEREAS, at the same time, the Village rezoned all properties in this District from then existing zoning to the C-4 Regional Destination PUD Zoning; and

WHEREAS, this zoning district is intended to provide locations for primarily medium to large scale, integrated commercial, office, lodging, entertainment, recreation, and development that serves not only Bensenville residents and the western suburbs but also are destinations serving the entire region; and

WHEREAS, current economic conditions have slowed the redevelopment in the new C-4 zoned area, and properties which are available for sale are impacted by the owner's inability to market their property for continued industrial use; and

WHEREAS, in recognition of the Village's desire to work with business owners on the continued viability of business operating in the C-4 district, but to recognize efforts to encourage uses in keeping with C-4 Zoning, the Village Staff has recommended that the Zoning Ordinance of the Village of Bensenville be amended to allow, as a conditional use in the C-4 Zoning District, for a period of ten (10) years from the date of adoption of this Ordinance, those uses which are permitted in the I-2 Light Industrial District.

WHEREAS, on _____, 2011, the Community Development Commission held a public hearing on the proposed text amendment, following the necessary publication of said

text amendment as required by law; and

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE BOARD OF THE VILLAGE OF BENSENVILLE, COOK AND DUPAGE COUNTIES, ILLINOIS, as follows:

SECTION ONE: The recitals set forth above are incorporated herein and made a part hereof.

SECTION TWO: That the Zoning Ordinance of the Village of Bensenville, as amended from time to time, be and the same is amended hereby as follows:

ARTICLE D. C-4 REGIONAL DESTINATION PUD COMMERCIAL DISTRICT

10-7D-2: PLANNED UNIT DEVELOPMENT REQUIRED:

Due to the size and visibility of sites in the C-4 district, all development shall require a conditional use permit for a planned unit development and be subject to the planned unit development provisions of chapter 10, "Planned Unit Developments", of this title and the site design guidelines included in section 10-7D-3 of this article.

Accessory uses to conditional uses, ~~except accessory outdoor storage~~, shall not be permitted. Accessory outdoor sales and display shall be subject to section 10-14-8, "Accessory Outdoor Seasonal Sales", of this title or permanent outdoor sales and display of this section.

Air rights development.

Amusement establishments.

Antique shops.

Appliance stores, including radio, television, stereo, lighting, clock and music stores.

Art shops or galleries, but not including auction rooms.

Assisted living facility.

Athletic facilities, indoor/outdoor.

Banquet halls.

Beauty shops and barbershops.

Bookstores, including periodicals, magazines, and newspapers.

Camera and photographic supply stores.

Card and gift stores.

Catering establishments.

China and glassware stores.

Clothing stores.

Collectibles sales, such as coins, stamps, comic books and the like.

Computer and business machine sales.

Convention and exhibit halls.

Custom dressmaking establishments.

Department stores.

Drugstores.

Dry cleaner and laundry drop off stations.

Financial institutions, including automated teller machines.

Florist shops.

Food stores, grocery stores and meat markets.

Furniture stores, including upholstery when conducted as part of the retail operations and secondary thereto.

Hardware stores.

Health clubs.

Healthcare centers, including medical and dental health clinics.

Hobby and craft shops.

Home and garden retail stores (no outdoor sales and display except in accordance with section 10-14-8, "Accessory Outdoor Seasonal Sales", of this title or permanent outdoor sales and display of this section).

Hospitals.

Hotels and motels.

Insurance sales offices.

Jewelry and watch sales and repair stores.

Leather goods and luggage stores.

Medical, dental and optometry offices.

Meeting and union halls

Motor vehicle repair, minor, only accessory to a retail sales establishment or shopping center that exceeds one hundred thousand (100,000) square feet in gross floor area or accessory to a motor vehicle sales and/or rental establishment in accordance with the standards below.

Motor vehicle sales and/or rental that meets the following standards:

A. The only motor vehicles that may be sold, leased and/or displayed outdoors are passenger motor vehicles including, but not limited to, automobiles, recreational vehicles, boats, utility trailers, motorcycles, snowmobiles, and other vehicles that do not exceed eight thousand (8,000) pounds in gross weight. The sale, leasing or display of large scale and commercial vehicles that exceed eight thousand (8,000) pounds in gross weight, including, but not limited to, construction and farm equipment, semitractors and/or semitrailers, large trucks, manufactured homes, buses, or other vehicles that exceed eight thousand (8,000) pounds in gross weight is prohibited in the C-4 district.

B. The permanent outdoor sales and display area shall be located on the same zoning lot with a principal building that is constructed with an automobile sales showroom with a minimum floor area of ten thousand (10,000) square

feet as an integral part of the building. In addition to the ten thousand (10,000) square feet of floor area devoted to the showroom, the motor vehicle sales and/or rental establishment building(s) may also include floor area devoted to accessory indoor repair and service, car wash, detailing, financial and other related services. Establishments with more than one building shall be subject to the requirements of section 10-14-2 of this title.

- C. The outdoor sales and display areas must be paved and shall meet all yard requirements for the C-4 district.

Nightclubs/taverns.

Office, administrative and corporate.

Office, stationery, school and art supply stores.

Offices: business, professional, governmental, political, institutional.

Optician sales, retail.

Outdoor sales and display areas, permanent as an accessory use, that meets the following standards:

- A. The items permitted to be offered for sale or lease in the permanent outdoor sales area include, but are not limited to, building or garden supplies for retail sale, nursery plants, machinery or equipment for household use, and other household items that are typically used and/or stored outdoors. Permanent outdoor sales and display area for motor vehicle sales and/or rental establishments shall be subject to the requirements for "motor vehicles sales and rental" of this section.
- B. The permanent outdoor sales and display area shall not exceed ten percent (10%) of the gross lot area.
- C. The outdoor sales and display areas must be paved and shall meet all yard requirements for the C-4 district.
- D. All items that are sold, leased or displayed outdoors must be contained

within a designated outdoor sales and display area that does not obstruct driveways, parking areas, sidewalks, and landscaped yards. If the outdoor sales and display area is secured with a fence, it shall be either a decorative wooden, masonry, or wrought iron type fence.

Outdoor seasonal sales and display areas as accessory uses, provided that they meet the requirements of section 10-14-8, "Accessory Outdoor Seasonal Sales", of this title.

Parking, off street, as a principal use.

Pet shops.

Phonograph record, tape, compact disk, and sheet music stores.

Photo processing stores.

Photography studios, including development of film when conducted as part of the business.

Post offices.

Real estate sales or leasing offices.

Recreational institutions.

Repair, rental, servicing, sales and showrooms (indoors) of any items produced or sold on the premises as an allowable use.

Restaurants, delicatessens, retail bakeries, donut shops and convenience markets.

Secretarial services.

Shoe stores.

Sporting goods stores.

Stadiums/arenas.

Studios: art, music, craft, interior design, or photography.

Tax preparation offices.

Theaters, indoor.

Ticket offices.

Toy stores.

Training centers, business.

Travel bureaus

Video stores.

Uses that are not allowable or conditional uses in any other district and are similar, in the judgment of the director of community development, to allowable uses in the applicable district under subsection 10-3-9E of this title. (Ord. 30-2004, 4-20-2004)

10-7D-2A: I-2 LIGHT INDUSTRIAL USES IN THE C-4 DISTRICT

1. **Uses:** All permitted uses in the I-2 Light Industrial District shall be allowed as conditional uses in the C-4 District for a period of ten (10) years from the date of adoption of this amendment to the C-4 Zoning District, pursuant to section 2.

2. **Amortization:** It is the intent of the Village to allow the provisions of section 10-7D-2A to exist as an amendment to the C-4 Zoning District for a period of ten (10) years from the date of adoption of amendment. Any conditional use permit issued under the provisions of section 10-7D-2A shall be deemed non-conforming as of July 1, 2021, and the conditional use permit granted shall so state. As of July 2, 2021, all non-conforming use of the property shall cease, and the use of the property shall be brought into compliance with the provisions of the C-4 Zoning District, as then stated, unless otherwise extended by the Village. Upon application from a petitioner for an extension, which the extension shall not exceed one (1) two (2) year period.

...

SECTION THREE: In all other respects the provisions of the C-4 Zoning District shall remain in full force and effect.

SECTION FOUR: All other ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance, are, to the extent of such conflict, expressly repealed.

SECTION FIVE: This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

PASSED AND APPROVED by the President and Board of Village Trustees of the Village of Bensenville this ____ day of ____ 2011.

Frank Soto, Village President

ATTEST:

Deputy Village Clerk

AYES: _____

NAYS: _____

ABSENT: _____

TYPE: Ordinance

SUBMITTED BY: S. Viger

DATE: 06.28.11

DESCRIPTION:

The applicant is seeking approval to allow three freestanding signs in lieu of one, a maximum sign height of 42' - 1" in lieu of eight, a maximum square footage of 165 square feet in lieu of 50 square feet and allowing pole signs rather than monument type signs. Under Section 10 - 18 - 14 the maximum allowable variance is 10% therefor after consultation with municipal staff it was determined that a Planned Unit Development is the appropriate review mechanism for this request.

SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:

<input checked="" type="checkbox"/> Financially Sound Village	Enrich the lives of Residents
<input type="checkbox"/> Quality Customer Oriented Services	<input checked="" type="checkbox"/> Major Business/Corporate Center
<input type="checkbox"/> Safe and Beautiful Village	<input checked="" type="checkbox"/> Vibrant Major Corridors

COMMITTEE ACTION: Community & Economic Development
Voted 6 - 0 to Approve

DATE: 06.21.11

BACKGROUND:

1. Roesch Ford has recently opened at the site of the former Larry Roesch Chevrolet.
2. Larry Roesch Chevrolet had a large freestanding sign typical of General Motors dealerships that has been removed. Roesch Ford acquired the three Elmhurst Ford signs and has applied to erect the signs. The three signs are "pole" signs and exceed the maximum height and area allowable under the variance provisions of the Zoning Ordinance.

KEY ISSUES:

1. In the "auto - row" environment where the City of Elmhurst allows signs significantly taller and larger, our Bensenville dealers will be at a competitive disadvantage if the sign standards were strictly enforced.
2. The strict application of the Zoning Ordinance creates a problem for the applicant and would create a barrier to the Village realizing its Strategic Plan Goals (Financially Sound Village, Major Business & Corporate Center & Vibrant Major Corridors).

ALTERNATIVES:

1. Approve the Ordinance as presented.
2. Approve the Ordinance different or additional conditions.
3. Deny the Ordinance.
4. Remand the request back to the Community Development Commission for additional review.

RECOMMENDATION:

Staff respectfully recommends approval of the Planned Unit Development.

At their 06.13.11 Public Hearing the Community Development Commission voted (5-0) to recommend approval of the Planned Unit Development.

At their 06.21.11 meeting the Community & Economic Development Committee voted (6-0) unanimously to approve the Planned Unit Development.

BUDGET IMPACT:

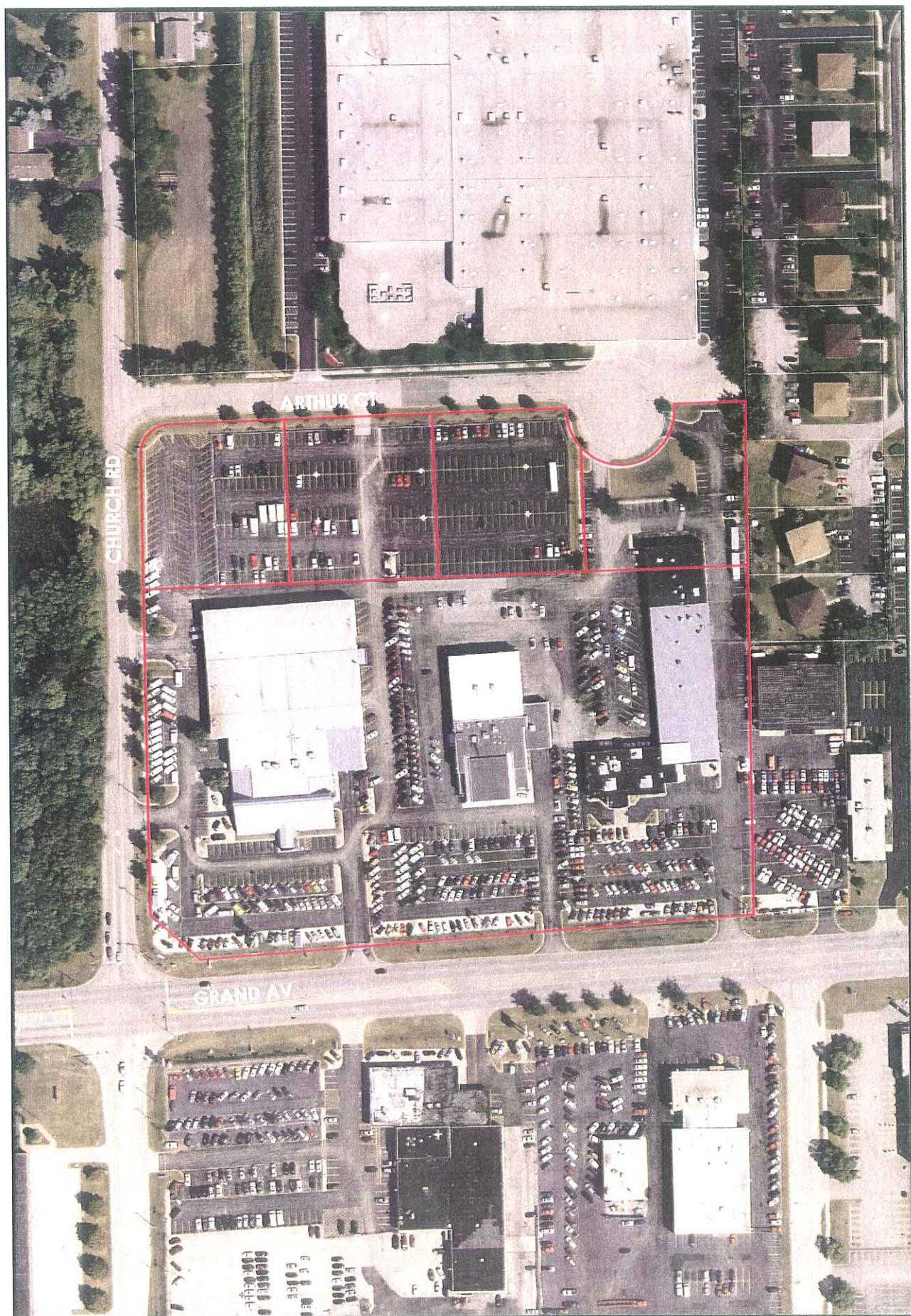
N/A

ACTION REQUIRED:

Approval of the draft text amendment as presented.

Village of Bensenville

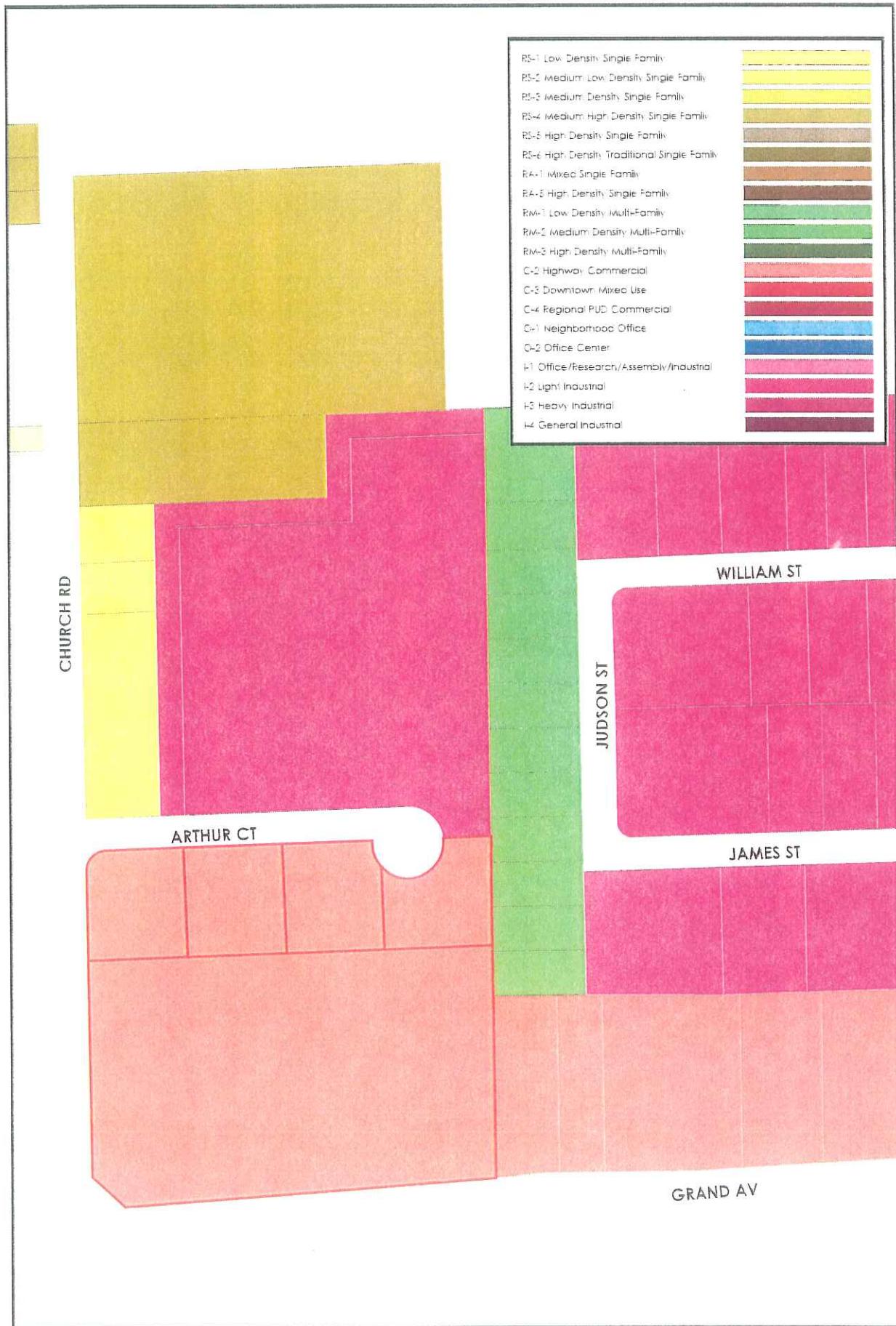
333 W. Grand Av.





Village of Bensenville

333 W. Grand Av. Zoning Map



Ordinance # _____
Exhibit "A"
Legal Description

THAT PART OF THE NORHTWEST 1/4 OF SECTION 26, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF GRAND AVENUE WITH THE CETERLINE OF CHURCH ROAD; THENCE NORTH 00 DEGREES 36 MINUTES 42 SECONDS WEST, ON THE CETER LINE OF CHURCH ROAD, A DISTANCE OF 839.32 FEET (AS MEASURED ALONG THE CETER LINE OF CHURCH ROAD) SOUTH OF THE NORTH LINE OF SAID SECTION 26; THENCE NORTH 88 DEGREES 06 MINUTES 20 SECONDS EAST, PARALLEL WITH THE NORTH LINE OF SAID SECTON 26, A DISTANCE OF 183 FEET; THENCE NORTH 00 DEGREES 36 MINUTES 42 SECONDS WEST, PARALLEL WITH THE CENTERLINE OF CHURCH ROAD, A DISTANCE OF 618.82 FEET TO A POINT WHICH IS 168.5 FEET (AS MEASURED WITH THE CENTER LINE OF CHURCH ROAD) SOUTH OF THE NORTH LINE OF SAID SECTION 26; THENCE NORTH 88 DEGREES 06 MINUTES 20 SECONDS EAST, PARALLEL WITH THE NORTH LINE OF SECTION 26, A DISTANCE OF 345.7 FEET; THENCE NORTH 00 DEGREES 36 MINUTES 42 SECONDS WEST, A DISTANCE OF 168.5 FEET TO THE NORTH LINE OF SAID SECTION 26; THENCE NORTH 88 DEGREES 06 MINUTES 20 SECONDS EAST, ALONG THE NORTH LINE OF SECTION 26, A DISTANCE OF 324.42 FEET TO THE NORTHWEST CORNER OF WHITE PINES CENTER FOR BUSINESS AND INDUSTRY; THENCE SOUTH 00 DEGREES 36 MINUTES 14 SECONDS EAST, ALONG THE WEST LINE OF WHITE PINES CENTER FOR BUSINESS AND INDUSTRY, A DISTANCE OF 1595.13 FEET TO THE CENTER LINE OF GRAND AVENUE; THENCE SOUTH 85 DEGREES 58 MINUTES 15 SECONDS WEST, ON THE CENTERLINE OF GRAND AVENUE, A DISTANCE OF 854.21 FEET TO THE POINT OF BEGINNING, EXCEPT THAT PART FALLING IN GRAND-CHURCH SUBDIVISION RECORDED DECEMBER 26, 1989 AS DOCUMENT R89-161527 AND ALSO EXCEPTING THAT PART TAKEN BY THE DEPARTMENT OF PUBLIC WORKS AND BUILDING OF THE STATE OF ILLINOIS IN CONDEMNATION CASE NO. C68-820. AND ALSO EXCEPTING THAT PART THEREOF DESCRIBED AS BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF GRAND AVENUE AS DESCRIBED BY CONDEMNATION CASE NO. C68-820, WITH A LINE 33.0 FEET EAST OF AND PARALLEL WITH THE CENTER LINE OF CHURCH ROAD; THENCE NORTH ON SAID LINE BEING 33.0 FEET EAST OF AND PARALLEL WITH THE CENTER LINE OF CHURCH ROAD, A DISTANCE OF 65.0 FEET, THENCE SOUTHEASTERLY TO A POINT ON THE SAID NORTH LINE OF GRAND AVENUE, SAID POINT BEING A DISTANCE OF 65.0 FEET EAST OF THE POINT OF BEGINNING; THENCE WEST 65.0 FEET TO THE POINT OF BEGINNING, IN DU PAGE COUNTY, ILLINOIS.



COMMUNITY DEVELOPMENT COMMISSION

STAFF REPORT

HEARING DATE: June 13, 2011
CASE #: 2011- 03
PROPERTY: 333 W. Grand Avenue
PROPERTY OWNER: Grand & Church Inc.
APPLICANT: Roesch Ford / BCR Automobile Group LLC
ACREAGE: Approximately 8.88 Acres
PIN NUMBERS: 03-26-102-031
REQUEST: Planned Unit Development

SURROUNDING LAND USE:

	Zoning	Land Use	Jurisdiction
Site	C - 2	Commercial	Bensenville
North	C - 2	Commercial	Bensenville
South	C - 3	Commercial	Elmhurst
East	C - 2	Commercial	Bensenville
West	R - 4	Open Space / Forest Preserve	DuPage County

SUMMARY:

The property in question is the former home of Larry Roesch Chevrolet. Unfortunately, the dealership was lost in the General Motors restructuring of a few years ago. The petitioners have acquired the Elmhurst Ford dealership and have relocated the dealership here to Bensenville. They are desirous of relocating three existing pole signs from the former location in Elmhurst to the Grand Avenue property. Our Zoning Ordinance does not permit pole signs which necessitate the Planned Unit Development as a tool to consider the request.

DEPARTMENT COMMENTS:

Public Works: No objections.

Finance: No concerns.

Police: No concerns.

Engineering: No objections.

Community & Economic Development:

Economic Development

1. Our Strategic Plan challenges us all to create a "Financially Sound Village." Flourishing automobile dealerships play a large part in achieving this important goal.
2. Successful auto dealerships are an important part of the village's commercial tax base.
3. The long term viability of the shared (with Elmhurst) Grand Avenue "auto row" is a to-be, sought after goal.
4. Staff has concern that the significantly smaller signs permitted under the strict application of Bensenville's Zoning Ordinance places the Bensenville dealers at a competitive disadvantage to the Elmhurst dealerships directly across the street.

Inspectional Services

1. A full annual inspection was performed in conjunction with the business license application.
2. No comments or concerns.

Building

1. No concerns at this time.
2. If PUD is approved, all three signs will also require sign permits and all the necessary inspections.

Community Development

1. Grand Avenue is one of the Village's primary commercial corridors. Our strategic plan calls for "Vibrant Commercial Corridors." Protecting and enhancing our automobile dealerships is an important piece in our strategy.
2. There are four auto dealerships in town along Grand Avenue; Roesch Ford, Larry Roesch VW, Grand Mitsubishi and Grand Subaru.
3. Larry Roesch VW and Grand Mitsubishi currently have freestanding pole signs that far exceed the maximum allowable height of 8'.
4. Grand Subaru has a monument sign that complies with the current sign ordinance as a variance for a pole sign that was denied several years ago.
5. The former Larry Roesch Chevrolet that occupied the subject property until this past year did have a "standard" GM pole sign that was 36' in height and approximately 125 square feet in area.

This sign was erected in 1994 and was removed when the Chevrolet dealership closed.

6. The property in question has a frontage of over 800' on Grand Avenue and approximately 550' on Church Road.
7. All three proposed pole signs are on the Grand Avenue frontage. Staff does not object to the placement of the signs on Grand Avenue.
8. The large amount of frontage on Grand Avenue will minimize the potential "visual clutter" of more than one pole sign on the property.
9. The City of Elmhurst (the south side of Grand Avenue) allows pole signs of up to 35' in height and 144 square feet in area.
10. The auto dealerships in Elmhurst all have large freestanding signs. Howard Buick/GMC is believed to be 35' in height. Honda has a 30' high sign and a Used Car sign of 29.98' and the Suzuki dealer had three freestanding signs totaling 444 square feet in area. These signs were removed with the closing of the dealership.
11. Staff believes that the three signs proposed are acceptable and are necessary for the long term viability of the new Ford dealership here in Bensenville.
12. The Zoning Ordinance mandates that the base of all freestanding signs should be landscaped. Staff believes that attractive, low height landscaping is appropriate for this installation and should be required.
13. The Village has received written notice from the Forest Preserve District of DuPage County that they do not have any comments at this time (copy attached).

APPROVAL PROCESS AND CRITERIA:

The Community Development Commission shall review the Planned Unit Development using the following criteria:

1. Superior Design: The PUD represents a more creative approach to the unified planning of development and incorporates a higher standard of integrated design and amenity than could be achieved under otherwise applicable regulations, and solely on this basis modifications to such regulations are warranted.

The PUD allows the Village to consider the three pole signs and allows site plan control now and more importantly in the future.

2. Meet PUD Requirements: The PUD meets the requirements for planned unit developments set forth in this Title, and no

modifications to the use and design standards otherwise applicable are allowed other than those permitted herein.

Staff believes this to be accurate.

3. **Consistent With Village Plan:** The PUD is generally consistent with the objectives of the Village general development plan as viewed in light of any changed conditions since its adoption.

The installation of the pole signs is consistent with the Village's overall and strategic plans.

4. **Public Welfare:** The PUD will not be detrimental to the public health, safety or general welfare.

The property in question is on a major commercial corridor segregated from residential neighborhoods. The installation of the three pole signs will not be detrimental to the public health, safety or general welfare.

5. **Compatible With Environs:** Neither the PUD nor any portion thereof will be injurious to the use and enjoyment of other properties in its vicinity, seriously impair property values or environmental quality in the neighborhood, nor impede the orderly development of surrounding property.

If approved the development will not be injurious to the use of other properties. The only non - commercial adjacent use is the DuPage County Forest Preserve District site to the west. Staff has received written confirmation that the Forest Preserve does not object.

6. **Natural Features:** The design of the PUD is as consistent as practical with preservation of any natural features such as flood plains, wooded areas, natural drainageways or other areas of sensitive or valuable environmental character.

There are no natural drainage ways or sensitive environmental areas on the subject property.

7. **Circulation:** Streets, sidewalks, pedestrianways, bicycle paths and off-street parking and loading are provided as appropriate to planned land uses. They are adequate in location, size, capacity and design to ensure safe and efficient circulation of automobiles, trucks, bicycles, pedestrians, fire trucks, garbage trucks and snow

plows, as appropriate, without blocking traffic, creating unnecessary pedestrian-vehicular conflict, creating unnecessary through traffic within the PUD or unduly interfering with the safety or capacity of adjacent streets.

The proposal does not alter any pedestrian ways nor do the proposed signs negatively affect the safety or capacity of Grand Avenue or Church Road.

8. Open Spaces And Landscaping: The quality and quantity of common open spaces or landscaping provided are consistent with the higher standards of design and amenity required of a PUD.

Open space between all buildings is adequate to allow for light and air, access by fire-fighting equipment, and for privacy where walls have windows, terraces or adjacent patios. Open space along the perimeter of the PUD is sufficient to protect existing and permitted future uses of adjacent property from adverse effects from the development.

No substantive changes to the existing buildings or hard surfaces are proposed.

9. Covenants: Adequate provision has been made in the form of deed restrictions, homeowners or condominium associations or the like for:

a. The presentation and regular maintenance of any open spaces, thoroughfares, utilities, water retention or detention areas and other common elements not to be dedicated to the Village or to another public body.

b. Such control of the use and exterior design of individual structures, if any, as is necessary for continuing conformance to the PUD plan, such provision to be binding on all future ownerships.

No covenants are necessary. The architectural style of the signage proposed is of a high quality.

10. Public Services: The land uses, intensities and phasing of the PUD are consistent with the anticipated ability of the Village, the school system and other public bodies to provide and economically support police and fire protection, water supply, sewage disposal, schools and other public facilities and services without placing undue burden on existing residents and businesses.

There are adequate public services to adequately service the property. The approval of the PUD will not increase the demand or stress the Village's public services.

11. Phasing: Each development phase of the PUD can, together with any phases that preceded it, exist as an independent unit that meets all of the foregoing criteria and all other applicable regulations herein even if no subsequent phase should ever be completed.

The provision and improvement of public or common area improvements, open spaces and amenities, or the provision of financial sureties guaranteeing their improvement, is phased generally proportionate to the phasing of the number of dwelling units or amount of nonresidential floor area. (Ord. 07-99, 2-23-1999)

There is no phasing proposed.

RECOMMENDATIONS:

Staff recommends the approval of the above Findings of Fact and also recommends the Community Development Commission recommend approval of the requested Planned Unit Development, subject to the following conditions:

1. The property to be developed in substantial compliance with the plans, submitted as a part of this PUD application prepared by Express Sign and Lighting Maintenance and dated 04.13.11
2. The "Ford" sign be reduced in height to no more than 35'.
3. The base of all three signs shall be landscaped in accordance with Bensenville Code. The Landscape Plan shall be submitted to and approved by the Community & Economic Development Department.

Respectfully Submitted,

Department of Community
& Economic Development



Forest Preserve District of DuPage County

35580 Naperville Road • Wheaton, IL 60189-8761 • 630.933.7200 • Fax 630.933.7204 • TTY 800.526.0857

June 6, 2011

Mr. Scott R. Viger A.I.C.P.
Director
Community and Economic Development
Village of Bensenville
12 South Center
Bensenville, Illinois 60106

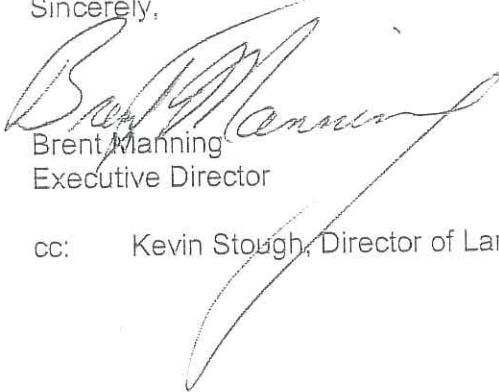
Re: Public Hearing Notice on Roesch Ford property
Public Hearing No. 2011-03

Dear Mr. Viger:

The Forest Preserve District of DuPage County recently received notice of a request for approval of a Planned Unit Development for the Roesch Ford property located at 313 W. Grand Avenue. We appreciate receiving timely notification of such requests that may have an impact on our nearby property, and thank you for the opportunity to comment.

District Staff has reviewed the public hearing notice and the request, and does not have any comments at this time. Please call me at (630) 933-7215 if you have any questions.

Sincerely,



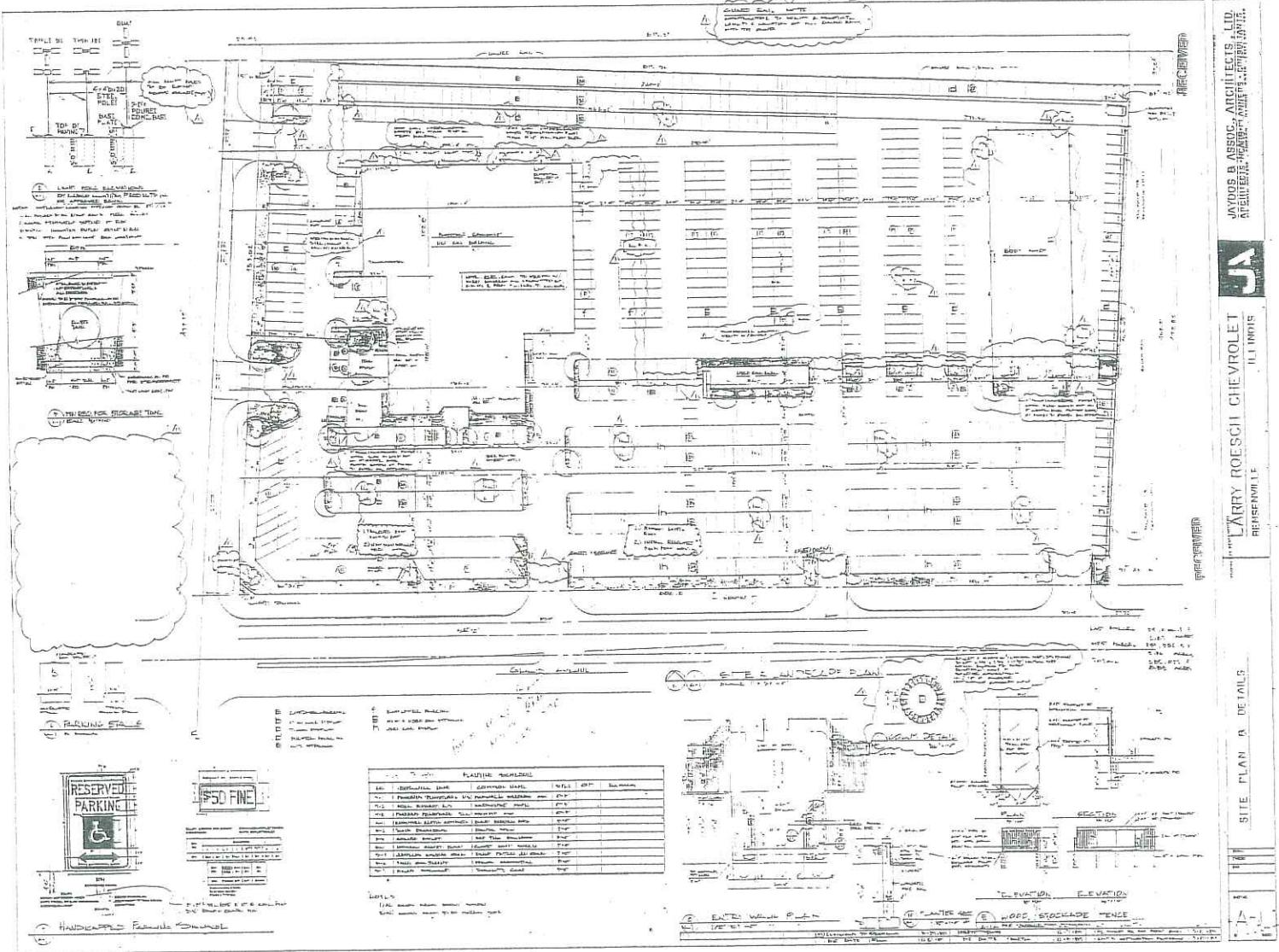
Brent Manning
Executive Director

cc: Kevin Stough, Director of Land Preservation

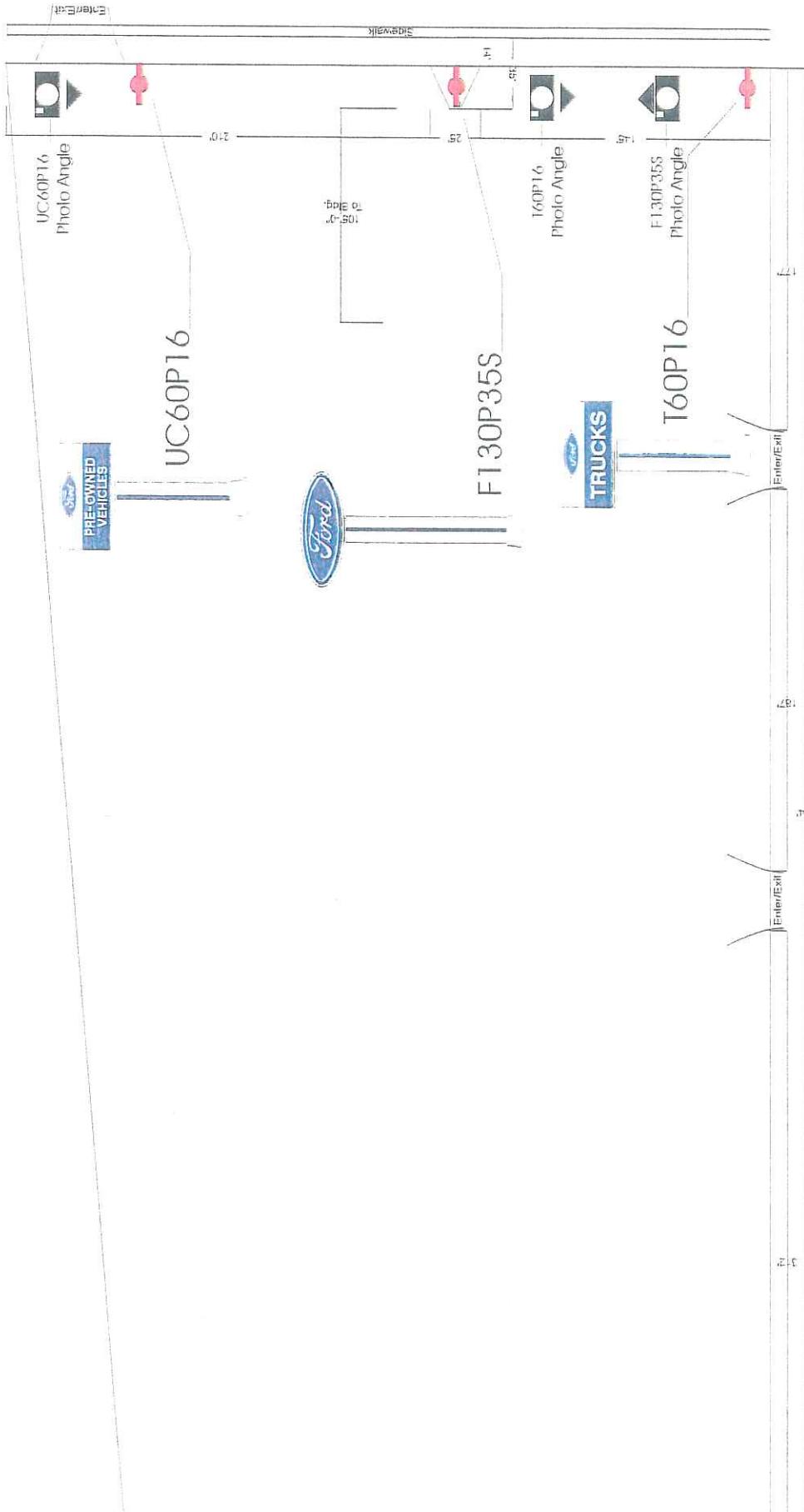
RECEIVED

JUN - 7 2011

COMMUNITY DEVELOPMENT



Grand Ave



Church Rd.

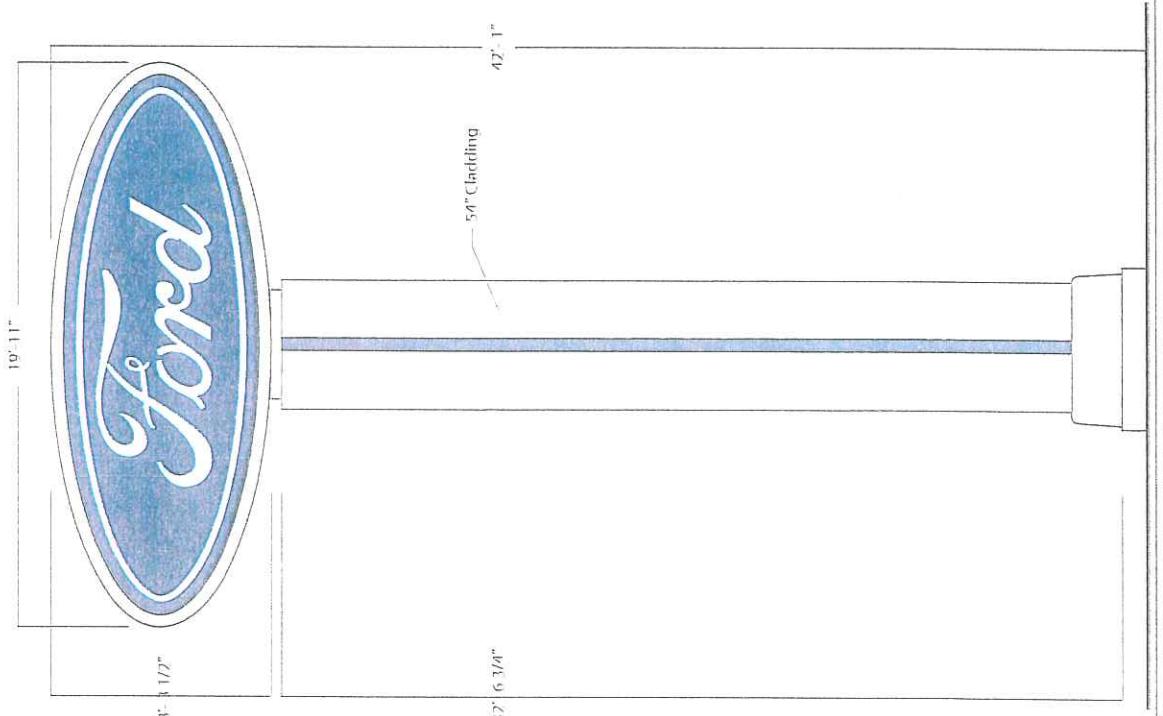
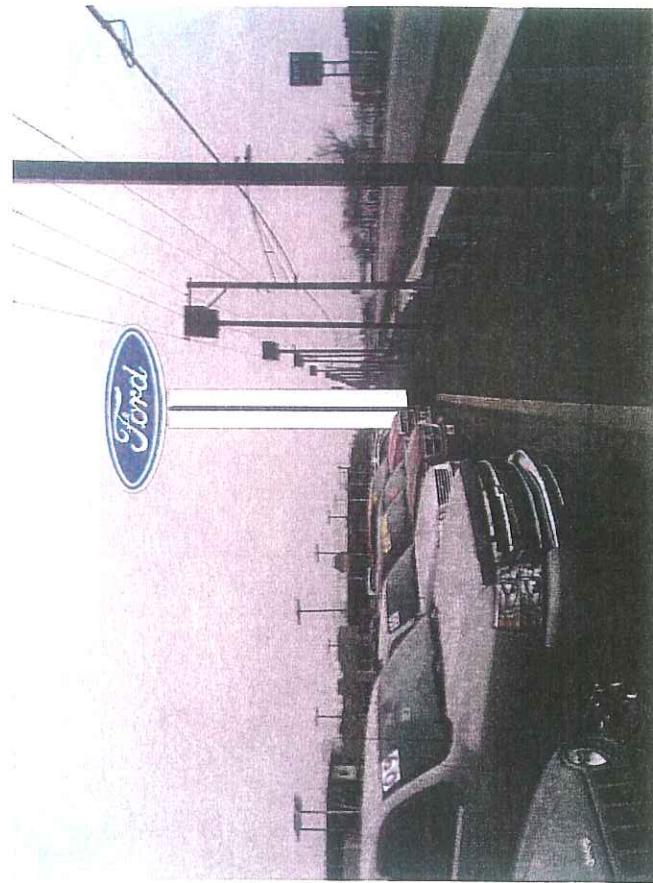
Client: Roest Ford Site Plan	Date: 4/13/11	Phone: 815.725.9740	Approved By:
Scalia, NSS	Attn: Sales, Ford	Fax: 815.725.7543 Email: signs@empsigns.com	

Client: Roest Ford Site Plan	Date: 4/13/11	Phone: 815.725.9740	Approved By:
Scalia, NSS	Attn: Sales, Ford	Fax: 815.725.7543 Email: signs@empsigns.com	

Client: Roest Ford Site Plan	Date: 4/13/11	Phone: 815.725.9740	Approved By:
Scalia, NSS	Attn: Sales, Ford	Fax: 815.725.7543 Email: signs@empsigns.com	

Sign Details:
 Relocate existing interior illuminated sign
 Size of Cabinet: 8'-3 1/2" h x 19'-1" w
 Mounted to 10" pole with
 4'-6" w pole cover
 Overall Height: 42'-1"

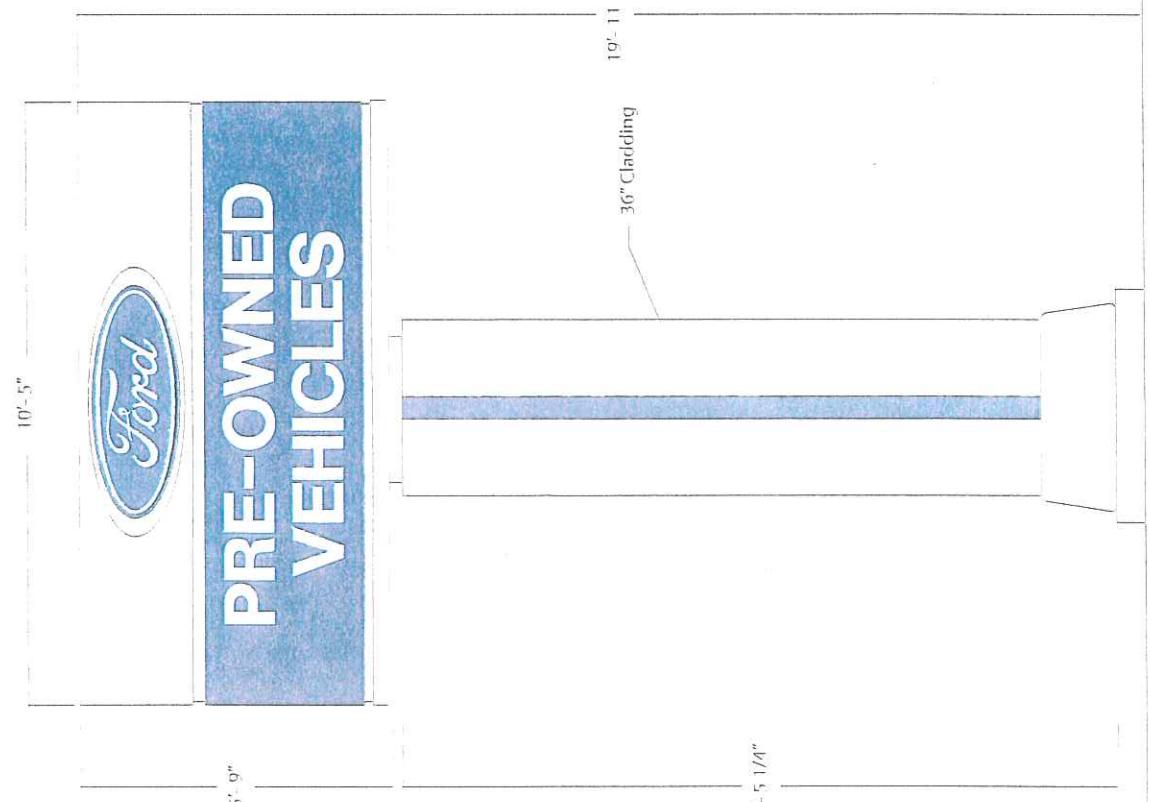
Total Sq Ft: 165



Client: Rossini Ford F130P355	Date: 4/13/11	Notes: This drawing is the property of Express Signs and is to only be used in conjunction with work performed by Express Signs. It is otherwise illegal to use this drawing for any other purpose.
Scale: NTS	Sheet: E-1	Approved By:  Express Signs Representative Phone: 815-725-9000 Fax: 815-725-7543 Email: signs@expresssigns.com
Attn: KS		

Sign Details:
Relocate existing interior illuminated sign
Size of Cabinet: 5' 9" h x 10' 5" w
Mounted to 10" pole with
3' 0" w pole cover
Overall Height: 19' 11 3/4"

Total Sq Ft: 60

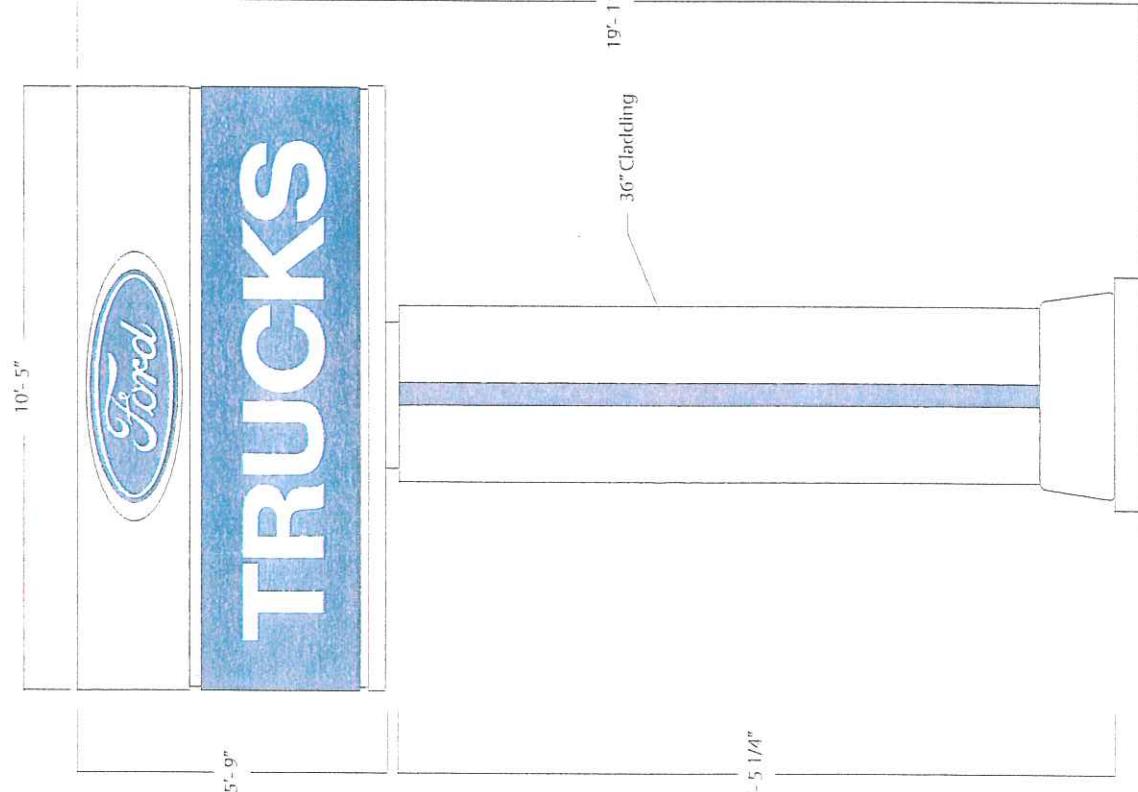


Client: Rosesh Ford UCG&GP16	Date: 4/13/11	Phone: 815.725.9000	Approved by:
Scope: NIS	Sales: ES	Fax: 815.267.5433 signs@esdesigns.com	Signs & Graphics MHN INC

Phone: 815.725.9000	Approved by:
Fax: 815.267.5433 signs@esdesigns.com	

Sign Details:
Relocable existing interior illuminated sign
Size of Cabinet: 5'-9" h x 10'-5" w
Mounted to 10" pole with
3'-0" w pole cover
Overall Height: 19'-11 3/4"

Total Sq Ft: 60



Client: Roshi Ford K60P16 Date: 8/13/11 Sales, *RJL*
Scsles, *NIS* Artist, *KS*

Approved By:
Signarama
SIGNARAMA
ROUTE 130
MOUNTAIN
ROUTE 130
Phone: 815.725.9000
Fax: 815.725.7543
signarama.com

Grand Avenue Car Dealership Signage

Bensenville

Elmhurst



Subaru

Chrysler, Jeep, Dodge



Volkswagen



Mitsubishi



Honda



Buick, GMC

Buick, GMC

TYPE: Ordinance **SUBMITTED BY:** Village Manager **DATE:** June 28, 2011

DESCRIPTION: Consider a Resolution authorizing an Economic Incentive Agreement with BCR Automotive Group, LLC (Roesch Ford in Bensenville)

SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:

<input checked="" type="checkbox"/>	<i>Financially Stable Government</i>	<input type="checkbox"/>	<i>Safe Place to Live</i>
<input type="checkbox"/>	<i>Cost Effective Services Responsive to Citizens</i>	<input type="checkbox"/>	<i>Downtown as a Community Focal Point</i>
<input type="checkbox"/>	<i>Open Government w/ Involved Citizens</i>	<input type="checkbox"/>	<i>Regional Partnerships</i>

COMMITTEE ACTION: CEDC on 06/21/11 Vote: Unanimous **DATE:** 06.28.11

BACKGROUND

The bankruptcy and reorganization of General Motors led to the closure of several dealerships across the country, including the former Larry Roesch Chevrolet dealership located at 333 West Grand Avenue. The dealership was vacant for over a year, advancing to the erosion of the new car dealership corridor along Grand Avenue. The Village was approached by Dan Roesch regarding the possibility of relocating Elmhurst Ford to the former Larry Roesch Chevrolet facility. The expenses related to the relocation of this dealership from York Road in Elmhurst and the Ford corporate requirements to demolish and reconstruct the showroom structure created a financial gap of approximately \$3.0M in the project. Mr. Roesch had multiple relocation options in Elmhurst, including the existing Ford location on York which he controls. Staff worked very closely with Mr. Roesch to ensure the relocation would be in Bensenville.

KEY ISSUES:

To ensure the continued viability of our dealership corridor along Grand Avenue, and to regain sales and property taxes from the subject property, the Village negotiated an Economic Incentive Agreement with BCR Automotive Group, LLC. The key terms are:

- 15 Year Term – Share 75% of the 1.0% sales tax: Years 2011, 2012 and 2013.
- Share 50% sales tax Years 2014 through 2025.
- Maximum sharing amount is \$2.350M.
- Minimum sales tax allocation to the Village is \$100,000 (Please see the Sales Tax Rebate Projections attached as Exhibit B – if sales fall below \$100,000, all sales tax proceeds go to the Village).
- The new showroom shall be completed no later than December 1, 2013.

The Board approved a Resolution of Support for this relocation and incentive agreement on January 25, 2011.

ALTERNATIVES:

1. Motion to approve the Ordinance.
2. Discretion of the Village Board.

RECOMMENDATION: Staff recommends approval of the Ordinance authorizing an Economic Incentive Agreement to relocate Elmhurst Ford to Bensenville. This new business will create new job opportunities, promote a viable dealership corridor and strengthen the sales and property tax base for the Village. But for this incentive agreement, it is likely the dealership would not have relocated to the Village of Bensenville.

At their June 21, 2011 meeting the Community & Economic Development Committee voted (6-0) unanimously to approve the incentive agreement.

BUDGET IMPACT: Estimated \$1.90M in sales tax revenue over the term of the Agreement.

ACTION REQUIRED: Motion to approve the Ordinance authorizing an Economic Incentive Agreement with BCR Automotive Group, LLC.

**VILLAGE OF BENSENVILLE
ECONOMIC INCENTIVE AGREEMENT**

THIS ECONOMIC INCENTIVE AGREEMENT ("Agreement") is made and entered into as of the ___ day of June 2011 by and between the VILLAGE OF BENSENVILLE, DuPage and Cook Counties, Illinois, an Illinois municipal corporation (the "Village"), and BCR AUTOMOTIVE GROUP, LLC, an Illinois limited liability company, d.b.a. Roesch Ford in Bensenville ("BCR"), with its principal office at 333 West Grand Avenue in the Village of Bensenville, County of DuPage, Illinois,

W I T N E S S E T H,

WHEREAS, the Village has determined that it is essential to the economic and social welfare of the Village to promote the economic vitality of the community by assuring opportunities for development and sound and stable commercial growth within the Village's corporate limits; and

WHEREAS, the laws of the State of Illinois authorize the Corporate Authorities of a municipality to enter into economic incentive agreements relating to the development or redevelopment of land within the corporate limits of the municipality; and

WHEREAS, the Corporate Authorities of the Village desire to improve the social and economic welfare of the Village and enhance the tax base of the Village to the benefit of the Village and other governmental entities by exercising the authority provided by law and entering into economic incentive agreements that are in the furtherance of and essential to the public interest; and

WHEREAS, members of BCR operated the Larry Roesch Chevrolet motor vehicle dealership within the boundaries of the Village from 1981 through 2009, which was forced to close because of the Franchise reduction resulting from General Motors' reorganization; and

WHEREAS, BCR is in final negotiations to purchase the Elmhurst Ford dealership Franchise, presently located at 678 North York Road in Elmhurst, Illinois, and has contingent approval from the Ford Motor Company to relocate that Franchise to the former Larry Roach Chevrolet dealership property at 303 West Grand Avenue in the Village, as more fully described herein ("Property"), which has been unoccupied for over a year prior hereto; and

WHEREAS, as a condition of the relocation of the Elmhurst Ford dealership Franchise to the Property, the Ford Motor Company is requiring BCR to redevelop the Property, including razing of the existing showroom, office, and repair facility on the site and to replace it with the Ford Trustmark Image facility and required Ford-approved signage, as more fully described herein (the "Project"); and

WHEREAS, BCR estimates that redevelopment of the Property as required by Ford Motor Company will cost in range of \$2,700,000 to \$3,000,000, and will require financing by BCR; and

WHEREAS, BCR has represented to the Village that sales tax revenue sharing for use as collateral is essential for BCR to secure proper financing for the redevelopment of the Property and BCR would not be able to redevelop the Property without sales tax revenue sharing; and

WHEREAS, the redevelopment of the Property will generate increased real estate tax and sales tax revenues and employment opportunities for the Village and stimulate the revitalization and redevelopment of the West Grand Avenue automobile sales corridor; and

WHEREAS, the Village desires to make it more economically feasible for BCR to redevelop the Property by entering into an economic incentive agreement with BCR pursuant to the authority set forth in Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, and other law; and

WHEREAS, as set forth in its Ordinance approving this Agreement and authorizing its execution and delivery, the Village has made the requisite findings, in accordance with Chapter 65 ILCS 5/8-11-20, that the buildings on the Property have remained unoccupied for over one year; that the Project is expected to create or retain job opportunities within the Village, will serve to further develop adjacent areas, will strengthen the commercial sector and enhance the tax base of the Village, and would not be possible without this Agreement; that BCR meets high standards of credit worthiness and strength; and that this Agreement is in the best interests of the Village.

IN CONSIDERATION OF the recitals and mutual covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, BCR and the Village hereby agree as follows:

SECTION 1. RECITALS

The recitals hereinabove set forth are hereby incorporated by this reference into the body of this Agreement to the same extent as if each such recital had been set forth in full in the body of this Agreement.

SECTION 2. DEFINITIONS

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context.

“Automotive or Truck Sales Franchise” or “Franchise”: The sale of a specified brand or brands of new automobiles and/or trucks and servicing of those brands pursuant to a dealership Franchise agreement with a motor vehicle manufacturing business, together with subsidiary sales and servicing of used motor vehicles.

“BCR”: BCR Automotive Group, LLC, an Illinois limited liability company, d.b.a. Roesch Ford in Bensenville, or any successor or assign as permitted under this Agreement.

“Commencement Date”: The date established pursuant to Section 3 of this Agreement.

“Corporate Authorities”: The President and Board of Trustees of the Village.

“Effective Date of this Agreement” or “Effective Date”: The date referenced in the first paragraph on Page 1 of this Agreement.

“Economic Incentive Payment” or “EIP”: The amounts payable to the Company pursuant to Section 4 of this Agreement.

“Force Majeure”: Shall include but not be limited to an Act of God or other event or cause not reasonably within the control of BCR or the Village including, without limitation, fire, strikes, lockouts, war, insurrection, earthquakes, casualties, acts of the public enemy, respective governmental laws and regulations, epidemics, quarantine, restrictions, or lack of transportation, building material supply shortages, vendor problems not caused by BCR, embargoes, civil riot, floods or natural catastrophe, as further described in Section 6 of this Agreement.

“Property”: The property commonly known as 303 West Grand Avenue, Bensenville, DuPage County, Illinois and legally described in Exhibit A, which is attached hereto and incorporated herein by reference as if fully set forth.

“Maximum Sharing Amount”: Shall mean the not-to-exceed cumulative amount of Two Million Three Hundred Fifty Thousand and 00/100ths Dollars (\$2,350,000.00) to be paid to BCR as set forth in Exhibit B, which is attached hereto and incorporated herein by reference as if fully set forth.

“Minimum Annual Allocation”: Shall mean the One Hundred Thousand Dollar (\$100,000) annual minimum 50% sales tax allocation to the Village effective in Sales Tax Year 2014 as set forth in Exhibit B, which is attached hereto and incorporated herein by reference as if fully set forth. If total sales tax receipts in any Sales Tax Year is less than \$100,000 then the Village minimum allocation shall be equal to said total. In no case shall BCR be required to cover the differential between the \$100,000 and the total if the total is less than the \$100,000 minimum allocation.

“Project”: The redevelopment of the Property, including the razing and/or alteration of the existing structures thereon, with the Ford Trustmark Image automobile dealership facility as set out and described in Exhibit C, which is attached hereto and incorporated herein by reference as if fully set forth, and the relocation and operation of the Elmhurst Ford dealership there by BCR or its successors.

“Party” or “Parties”: The Village and/or BCR and/or their successors or assigns as permitted under this Agreement.

“Sales Taxes”: The portion (presently one [1] percent) of any and all taxes distributed to and actually received by Village which are imposed and collected by the State pursuant to the Retailer’s Occupation Tax Act, 35 ILCS 120/1 *et seq.*, the Service Occupation Tax Act, 35 ILCS 115/1 *et seq.*, and the Use Tax Act, 35 ILCS 105/1 *et seq.*, from sales and

service transactions occurring on the Property, including internet generated by sales of vehicles and parts from which Illinois sales tax receipts are derived, but not including any portion of the Use Tax which is distributed on the basis of population (per capita distribution) and not included in the term "Sales Taxes," and further excluding any portion of a tax imposed or that may be imposed under the Non-Home Rule Retailer's Occupation Tax Act, 65 ILCS 8-11-1.3, *et seq*; Non-Home Rule Service Occupation Tax Act, 65 ILCS 8-11-1.4, *et seq*; Non-Home Rule Use Tax Act, 65 ILCS 8-11-1.5, *et seq*; and any other retailer's occupation tax, service occupation tax, use tax, or sales, except as expressly authorized by this definition.

"Sales Tax Year": For purposes of this Agreement, "Sales Tax Year" shall mean each twelve month period during the Term hereof, commencing April 1st of a given calendar year and ending March 31st of the following calendar year (e.g., the "2012 Sales Tax Year" would be from April 1, 2012, through March 31, 2013).

"State": The State of Illinois.

"Term": The period for which this Agreement shall be enforced, which shall be from April 1, 2011 through March 31, 2026.

SECTION 3. COMMENCEMENT OF CALCULATION OF ECONOMIC INCENTIVE PAYMENTS

The Commencement Date under this Agreement for the calculation of the EIP is hereby declared to be April 1, 2011.

SECTION 4. DETERMINATION OF AMOUNT OF ECONOMIC INCENTIVE PAYMENT

A. **Amount of Economic Incentive Payment ("EIP")**. Commencing on the Commencement Date, and for each Sales Tax Year during the Term hereof, BCR shall be entitled to an Economic Incentive Payment ("EIP") as follows:

1. For each of the Sales Tax Years commencing in 2011, 2012, and 2013, the Village shall pay BCR seventy five percent (75%) of the Sales Taxes up to and including but not exceeding the Maximum Sharing Amount.
2. For each of the Sales Tax Years 2014 through and including 2025, the Village shall pay BCR fifty percent (50%) of the Sales Taxes, subject to adjustment in any Sales Tax Year that the Village Minimum Allocation is not met, up to and including but not exceeding the Maximum Sharing Amount. Provided, however, once BCR has received an amount equal to the Maximum Sharing Amount, the Village shall have no further obligation to make any EIP's to BCR.

EIPs shall be made only from proceeds of Sales Taxes imposed and collected by the State, generated by sales and service transaction occurring on the Property, including internet generated

sales of vehicles and parts from which Illinois local sales tax receipts are derived, and distributed to and actually received by Village. All EIPs shall be based on the records of the Illinois Department of Revenue for BCR.

B. Village Payment. The Village shall make the EIP payments in the amounts provided for in Section 4.A. from the proceeds of Sales Tax distributions actually received by the Village within 120 days of the completion of the Sales Tax Year in which the revenues are recorded and subject to the receipt of the Illinois Department of Revenues Certification of the Sales Tax disbursements to the Village and Village receipt of the required supporting documentation for such Sales Taxes as specified in Sections 5D and 9. If, for any reason, the State of Illinois fails to distribute the Sales Tax receipts to the Village in sufficient time for the Village to make such annual payments, then the Village shall provide notice of such fact to BCR. In such event, the Village shall make the required EIP payment within 60 days after the date on which the Village actually receives the Sales Tax Receipts due to the Village for the applicable Sales Tax Year. If at the end of any Sales Tax Year there is a need to adjust and reconcile the amount of any EIP to account for any provision of this Agreement or to account for the amount of Sales Tax actually paid by the State of Illinois, then the Village and BCR do hereby agree to cooperate with each other to accomplish such reconciliation.

C. Change in the Law. The Village and BCR acknowledge and agree that the Village's obligation to pay the EIP to BCR is predicated on existing State law, including, without limitation, the Retailer's Occupation Tax Act and Section 8-11-20 of the Illinois Municipal Code. The Village and BCR further acknowledge that the General Assembly of the State has from time to time, considered proposals to modify or eliminate the distribution of Local Sales Tax receipts to Illinois municipalities. In the event that the State of Illinois amends or repeals the applicable state statutes or makes any other promulgation, enactment or change in law ("Change in Law"), and such Change in Law results in replacement taxes for all or a portion of the Sales Tax receipts generated by BCR as contemplated hereunder, then, for purposes of this Agreement, the revenue from such replacement taxes shall be used to calculate the Local Sales Tax Receipts, subject in all respects to the Village's actual receipt of its portion of such replacement taxes as well as the Village's authority under state law to provide for the sharing of such replacement taxes, as contemplated herein.

D. Limited Liability. Notwithstanding any other provision of this Agreement to the contrary, the Village's obligation to pay the EIP shall not be a general debt of the Village on or a charge against its general credit or taxing powers, but shall be a special limited obligation payable solely out of the Sales Tax receipts received by the Village, as specifically defined in Section 2 of this Agreement. Subject to all of the conditions, limitations and restrictions in this Agreement, the Village shall be liable to BCR for disbursement of monies hereunder only to the extent of the Sales Tax Receipts actually received by the Village from the Illinois Department of Revenue or other applicable State governmental agency. Further, any payments due to BCR from the Village pursuant to this Agreement shall be reduced by an amount equal to all collection fees imposed upon the Village by the State of Illinois or the Illinois Department of Revenue or other applicable governmental agency or body, for collections of revenues to be shared. BCR shall have no right to, and agrees that it shall not, compel any exercise of the taxing power of the Village to pay the EIP, and no execution of any claim, demand, cause of action, or judgment shall be levied upon or collected from the general credit, general funds, or other property of the Village. No recourse shall be had for any payment pursuant to this Agreement against any past,

present, or future director, member, elected or appointed officer, official, independent contractor, agent, attorney, or employee of the Village in his or her individual capacity.

E. Consent to Payment to BCR. By signing this Agreement, BCR and each and all of its successors and assigns acknowledges and represents to the Village and each and all of its elected and appointed officers, officials, employees, agents, attorneys, independent contractors successors and assigns (hereinafter for convenience collectively referred to as the "Village Representatives") that no representations, warranties (except that this Agreement has been duly enacted by the Village in accordance with all applicable laws), advice and/or statements of any kind or nature have been made by any of the Village Representatives that upon the Agreement becoming effective that:

1. The State of Illinois will continue to share sales tax receipts with the Village;
2. The State of Illinois will continue to authorize and/or permit economic incentive agreements and payments pursuant thereto; and/or

SECTION 5. BCR'S OBLIGATIONS. Village's obligation to make the EIP's as provide for in this Agreement is conditioned upon BCR's performance of the following acts and obligations. BCR's performance of such is material to this Agreement, and BCR's failure to perform such, subject to the provisions of notice and cure in Section 7. B., shall be deemed a breach of this Agreement for which the Village may immediately suspend and withhold payment of the EIP's or declare the Agreement terminated and pursue all lawful remedies available to it.

A. BCR shall provide to the Village a copy of all fully executed agreements with Ford Motor Company relating to the long-term relocation of the Elmhurst Ford Franchise to the Property and BCR shall also provide to the Village within three (3) business days of receipt thereof any notices or actions by the Ford Motor Company impacting the use of the Property as the site for said Ford Franchise.

B. BCR shall offer to sell to the Village any Ford Motor Company vehicle offered for sale by BCR at the State bid price, provided nothing herein shall be construed to require the Village to accept such offer or purchase of any vehicles from BCR.

C. BCR shall maintain for the duration of this Agreement copies of any and all sales tax returns, sales tax reports, amendments, proof of payment or any other sales tax information filed with the State of Illinois or other applicable governmental entity with respect to the Property. Such documents shall be available for inspection by the Village at all reasonable times and copies thereof shall be promptly provided to the Village if the Village requests such.

D. BCR shall provide the Village with all authorization necessary for the State's release of Sales Tax information to the Village.

E. BCR shall establish and must maintain throughout the Term of this Agreement, a procedure whereby all of BCR's internet generated sales of vehicles and parts which generate Sales Tax is administered so that all receipts of such Sales Tax permitted by law therefrom flow to the Village.

F. BRC shall complete the Project no later than December 31, 2013. BCR shall maintain the Property at all time in compliance with all Village codes and ordinances and shall not at any time place or permit to be placed any vehicles, signage of any kind, including all temporary signs, or other objects on any roadway easement right-of-way or parkway. Further BCR shall not at any time place or permit to be placed any temporary trailer signs on any portion of the Property, except that BCR shall be permitted to erect temporary signage and conduct in any Sales Tax Year up to four (4) "tent-sales" and/or like event on the Property, with each event limited to a maximum duration of eighteen (18) consecutive days,

SECTION 6. FORCE MAJEURE

A. Whenever a period of time is provided for in this Agreement for either BCR or the Village to perform any act or obligation, and BCR or the Village, as the case may be, is unable to perform or complete such act or obligation because of a Force Majeure, then upon the occurrence of any such Force Majeure, the time period for the performance and completion of such act or obligations shall be extended for a reasonable time to accommodate the delay caused by the Force Majeure.

B. Provided BCR is not in default hereunder, the Village shall continue to make any and all disbursements during any period of reconstruction or Force Majeure referred to hereinabove to which BCR would otherwise be entitled hereunder for said period.

SECTION 7. LITIGATION AND DEFENSE OF AGREEMENT

A. Litigation. If, during the Term of this Agreement, any lawsuits or proceedings are filed or initiated against either Party before any court, commission, board, bureau, agency, unit of government or sub-unit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of either party to perform its obligations under, or otherwise to comply with, this Agreement ("Litigation"), the Party against which the Litigation is filed or initiated shall promptly deliver a copy of the complaint or charge related thereto to the other party and shall thereafter keep the other party fully informed concerning all aspects of the Litigation.

B. Defense. The Village and BCR do hereby agree to use their respective best efforts to defend the validity of this Agreement and all ordinances and resolutions adopted and agreements executed pursuant to this Agreement, including every portion thereof and every approval given, and every action taken pursuant thereto. Each Party shall have the right to retain its own independent legal counsel, at its own expense, for any matter. The Village and BCR do hereby agree to reasonably cooperate with each other to carry out the purpose and intent of this Agreement.

SECTION 8. REMEDIES

A. Remedies. In the event of a breach or an alleged breach of this Agreement by either Party, either Party may, by suit, action, mandamus, or any other proceeding, in law or in equity, including specific performance, enforce or compel the performance of this Agreement in accordance with the provisions of Section 11 of this Agreement.

B. Notice and Cure. Neither Party may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to Subsection A of this Section without first providing written notice to the other party of the breach or alleged breach and allowing a period of fifteen (15) days for the curing of said breach or alleged breach, provided, however, that in the event such violation or failure cannot be cured within said fifteen (15)-day period notwithstanding diligent and continuous efforts by the Party receiving notice and said Party shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity then the period for curing such violation or failure shall be extended for such period as may be necessary for curing such violation with diligence and continuity.

SECTION 9. RELEASE OF INFORMATION

To the extent permitted by law, the Village shall maintain confidentiality of the information contained in such reports; however, BCR acknowledges the Village, as a public body, is subject to the (Illinois) Freedom of Information Act, 5 ILCS 140/1 *et seq.*, the (Illinois) Open Meetings Act, 5 ILCS 120/1 *et seq.*, and other law providing for the public disclosure of information and records, and agrees to abide by the Village's determinations regarding required disclosures under such laws and not to bring any claims, actions, suits, or causes of action or to seek damages of any kind against the Village on account of any disclosure. In addition, prior to any payments to BCR pursuant to this Agreement, BCR shall provide the State with properly executed authorizations granting the Village the right to access the Sales Tax records of BCR. BCR acknowledges and agrees that the provisions of this Agreement shall be a matter of public record, as shall any and all payments made by the Village to BCR pursuant to this Agreement. BCR further covenants and agrees, that upon the request of the Village, BCR shall furnish such consents or waivers as may be required by the Illinois Department of Revenue, including but not limited to, a Consent to Disclosure Statement in form and content satisfactory to the State and BCR in order to release the above-described sales tax information to the Village. BCR agrees and acknowledges that any disbursements made by the Village pursuant to this Agreement can only be made from and to the extent of the data submitted to the State in accordance with this Section.

SECTION 10. PAYMENT OF VILLAGE FEES AND COSTS

General Requirements. In accordance with all applicable Village codes, ordinances, resolutions, rules, or regulations, BCR shall pay to the Village, as and when due, all application, inspection, and permit fees, and all other fees, charges, and contributions therein required as uniformly applied throughout the Village. In good faith, the Village will act diligently to promptly review and process all applications submitted by BCR.

SECTION 11. ENFORCEMENT

A. The Parties hereto may, in law or in equity, by suit, action, mandamus, or any other proceeding, including, without limitation, specific performance, enforce or compel the performance of this Agreement, provided, however, that BCR agrees that it shall not seek, and that it does not have the right to seek, to recover a judgment for monetary damages against any elected or appointed Village officers, officials, agents, representatives, attorneys, independent contractors or employees on account of the negotiation, execution, or breach of any of the terms

and conditions of this Agreement. In addition to every other remedy permitted by law or the enforcement of the terms of this Agreement, the Village shall be entitled to withhold the issuance of building permits or certificates of occupancy for any structure on the Property whenever BCR has failed or refused to meet fully any of its material obligations under this Agreement. In the event of a judicial proceeding brought by any Party to this Agreement against any other party to this Agreement for enforcement or for breach of any provision of this Agreement, the prevailing party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful Party of all costs and expenses, including reasonable attorney's fees, incurred in connection with such judicial proceeding.

B. Except as otherwise set forth in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law or this Agreement, shall be cumulative and the exercise by any party of any one or more such remedies shall not preclude the exercise by it at the same time or different times of any other remedies for the same default or breach by any other party. Unless prohibited by law, any delay by any party in instituting or prosecuting any actions or proceedings or asserting its rights under this Agreement shall not operate as a waiver of such rights in any way, it being the intent of this provision that such party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of the default involved. No waiver made by any party with respect to any specific default by any other party under this Agreement shall be construed as a waiver of rights with respect to any other default by the defaulting party under this Agreement or with respect to the particular default except to the extent specifically waived in writing or otherwise prohibited by law.

C. Upon the occurrence of any one or more of the following events during the period of time commencing as of the date of the making of this Agreement above, and ending on the date that the last EIP is made by the Village to BCR, the Village shall have no obligation of any kind or nature whatsoever to make any further EIP to BCR:

1. A material breach of this Agreement by BCR; or
2. A significant reduction in the Sales Tax receipts as a result of changes in BCR business plan or other actions by BCR during the Term of this Agreement. A significant reduction in the Sales Tax receipts for purposes of this provision Section 11.C.2. in this Agreement shall mean and refer to a reduction in the amount of Sales Tax receipts which is equal to or greater than forty percent (40%) of the average of the Sales Tax receipts received by the Village in the last five (5) years during which economic incentive payments were made by the Village to BCR. Among the purposes of this provision is protection of the Village against relocation of the Franchise after incentive payments have been made or in the event that the Village declares any assignment or transfer of rights or interests void as provided in Section 13 of this Agreement and BCR proceeds with such assignment or transfer. A termination of BCR's Ford Franchise by Ford Motor Company shall not be a breach of this Agreement.

D. All judicial proceedings by the Parties to enforce State claims shall be brought in the Circuit Court for the Eighteenth Judicial Circuit, Wheaton, DuPage County, Illinois, and in

the U.S. District Court for the Northern District of Illinois to enforce federal claims.

SECTION 12. NATURE AND SURVIVAL OF OBLIGATIONS

The Parties agree that all charges payable pursuant to this Agreement, together with interest and costs of collection, including attorneys' fees, shall constitute the obligation of the Party liable for its payment beyond the terms of this Agreement, and of the successors of such party.

SECTION 13. TRANSFER OR ASSIGNMENT

BCR shall have the right from time to time to assign or transfer all or any part of its rights or interests under this Agreement in consideration of or as additional security for any financing or equipment leasing arrangement entered into by BCR. The Village agrees to execute any documents reasonably requested in connection therewith by a financing source. In all other cases, BCR'S assignment or transfer of any of its rights or interests hereunder shall be made only upon notice and with the written consent of the Village, which shall not be unreasonably delayed or withheld. The Village agrees that any transfer or assignment to a purchaser of its Ford Franchise shall be a permitted assignment. All assignment or transfer by BCR of its rights and interest provided for under this Section 13 shall be subject to the following terms and conditions:

A. No such assignment or transfer shall release BCR from any of its obligations under this Agreement.

B. No assignments and transfer shall violate the requirements of Section 8-11-20 of the Illinois Municipal Code, 65 ILCS 5/8-11-20, or other applicable law. Prior to consenting to such a transfer, the Village may require of BCR and BCR shall provide the Village documentation and other information demonstrating conformance therewith.

C. All assignees and transferees of all or any part of its rights or interests under this Agreement shall be subject to all terms, provisions, and conditions of this Agreement.

D. Any assignment or transfer of this Agreement or rights or interests hereunder shall be voidable, at the Village's option, within thirty (30) days after the Village receives notice of or becomes aware of such assignment or transfer, unless the Village has given its written consent to such assignment or transfer, or the assignment or transfer is in consideration of or as additional security for any financing or equipment leasing arrangement as provided for in this Section 13.

SECTION 14. REPRESENTATIONS AND WARRANTIES

In order to induce the Village to enter into this Agreement and to grant the rights herein provided for BCR hereby warrants and represents to the Village as follows:

A. BCR is an Illinois limited liability company duly organized, validly existing, and in good standing under the laws of the State of Illinois.

B. BCR has the authority and the legal right to make, deliver, and perform this Agreement and has taken all necessary corporate, partnership, and venture actions to authorize

the execution, delivery, and performance of this Agreement.

C. No mortgagee or any other secured party, other than those listed on Exhibit D attached hereto and, by this reference, incorporated herein, has an interest in the Property as of the date of this Agreement. No such mortgagee or any other secured party listed on Exhibit D has an objection to either (i) the execution and performance of this Agreement by BCR or (ii) the binding nature of this Agreement with respect to the Property.

D. All necessary consents of the members of BCR and its creditors, investors, partners, franchisers, judicial or administrative bodies, governmental authorities, or other parties regarding the execution and delivery of this Agreement have been obtained.

E. That it has or will provide any consent or authorization of, filing with, or other act by or in respect of any governmental authority (other than the Village,) that is required in connection with the execution, delivery, performance, validity, or enforceability of this Agreement.

F. The individuals executing this Agreement on behalf of BCR have the full power and authority necessary to execute and deliver this Agreement on behalf of BCR.

G. The execution, delivery, and performance of this Agreement (i) is not prohibited by any requirement of law or under any contractual obligation of BCR; (ii) will not result in a breach or default under any agreement to which BCR is a party or to which BCR, in whole or in part, is bound; and (iii) will not violate any restriction, court order, or agreement to which BCR or the Property or any Franchise in whole or in part is or are subject.

H. BCR has made its own independent investigation and determination of all matters relating to this Agreement including but not limited to a determination of whether its terms are enforceable and that BCR has not and will not rely upon the Village Representatives in connection therewith.

SECTION 15. GENERAL PROVISIONS

A. Complete Agreement: Supersedence. This Agreement and Exhibits A, B, and C, attached hereto, constitute the complete agreement of the parties regarding Economic Incentive Payments out of a portion of the Local Sales Tax Receipts to BCR and shall supersede and nullify all prior drafts and agreements concerning such matters.

B. Amendments. No amendment to, or modification of, this Agreement shall be effective unless and until it is in writing and is approved by the authorized representatives of BCR and by the Corporate Authorities by resolution or ordinance duly adopted, and executed and delivered by the authorized representative of each party.

C. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be in writing, and shall be deemed delivered to and received by the addressee thereof when delivered in person at the address set forth below or one (1) business day after deposit thereof with any recognized private courier company that provides overnight delivery service, or three (3) business days after deposit thereof in any main or branch United

States Mail, certified or registered mail, return receipt requested, postage prepaid, properly, addressed to the parties, respectively, as follows:

For notices and communications to the Village:

Village Manager
Village of Bensenville
12 South Center Street
Bensenville, Illinois 60106

With a copy to:

Patrick K. Bond, Esq.
Village Attorney
Bond, Dickson & Associates, P.C.
400 South Knoll Street, Unit C
Wheaton, Illinois 60187

For notices and communications to BCR:

BCR Automotive Group, LLC
333 West Grand Avenue
Bensenville, Illinois 60106

With a copy to:

James R. Hardt
Hardt, Stern & Kayne, P.C.
2610 Lake Cook Road, Suite 200
Riverwoods, IL 60015

By notice complying with the foregoing requirements of this paragraph, each Party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no such notice of change of address shall be effective unless in writing and until actually received.

D. Governing Law. This Agreement and the rights of the Parties hereunder shall be governed by, and construed, interpreted, and enforced in accordance with the laws of the State of Illinois.

E. Interpretation. This Agreement has been negotiated by all Parties and shall not be interpreted or construed against the Party drafting the Agreement.

F. Change in Laws. Except as otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations of any kind shall include such laws, ordinances, rules, or regulations of any kind as they may be amended or modified from time to time hereafter.

G. Headings. The headings of the sections, paragraphs, and other parts of this Agreement are for convenience and reference only and in no way define, extend, limit, or describe the meaning, scope, or intent of this Agreement, or the meaning, scope, or intent of any provision hereof.

H. Time of Essence Time is of the essence in the performance of all terms and provisions of this Agreement.

I. No Third Party Beneficiaries. Except, as expressly provided herein, nothing in this Agreement shall create, or be construed to create, any third-party beneficiary rights in any person or entity not a signatory to this Agreement.

J. Exhibits. Exhibits A, and B, attached to this Agreement, are incorporated herein and made a part hereof by this reference.

K. Counterparts. This Agreement may be executed in identical counterparts and all of said counterparts shall, individually and taken together, constitute the Agreement.

L. Severability. If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this Agreement so that the purpose of this Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment.

M. Expansion. In the event that after the Effective Date of this Agreement BCR expands its business within the Village at a location or locations not now included in this Agreement and if its plans for development and/or redevelopment qualify for economic incentive payments, then, the Village encourages BCR to seek an amendment to this Agreement and in good faith the Village shall consider the approval of such amendment or amendments.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

VILLAGE OF BENSENVILLE

BCR AUTOMOTIVE GROUP, LLC

By: _____
Village President

By: _____
Its _____

ATTEST:

Village Clerk

EXHIBIT A
LEGAL DESCRIPTION OF BCR
____ Property — Cook County, Illinois

PARCEL 1:

PARCEL 2:

PIN NO.

EXHIBIT B

SALES TAX REBATE PROJECTIONS

Year	Projected Sales Taxes	For Illustrative Purposes Sales Tax Allocation		Maximum Sharing	Minimum Annual Allocation
Commencing April 1	Roesch Ford	Village	Roesch	Roesch	Bensenville
		25% thru 2013 & 50% thereafter	75% thru 2013 & 50% thereafter		
2011	108,000	27,000	81,000		
2012	216,000	54,000	162,000		
2013	256,500	64,125	192,375		
2014	258,375	129,188	129,188		100,000
2015	271,500	135,750	135,750		100,000
2016	273,375	136,688	136,688		100,000
2017	273,375	136,688	136,688		100,000
2018	273,375	136,688	136,688		100,000
2019	273,375	136,688	136,688		100,000
2020	273,375	136,688	136,688		100,000
2021	273,375	136,688	136,688		100,000
2022	273,375	136,688	136,688		100,000
2023	273,375	136,688	136,688		100,000
2024	273,375	136,688	136,688		100,000
2025	273,375	136,688	136,688		100,000
2026	273,375	136,688	136,688		100,000
Total	4,117,500	1,913,625	2,203,875	2,350,000	

EXHIBIT C

BCR PROJECT SUMMARY

TYPE: Resolution SUBMITTED BY: Joe Caracci DATE: 06/23/2011

DESCRIPTION: Resolution to approve purchase of vehicles for the Public Works & Community Development Departments

SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:

<input checked="" type="checkbox"/> Financially Sound Village	<input type="checkbox"/> Enrich the lives of Residents
<input checked="" type="checkbox"/> Quality Customer Oriented Services	<input type="checkbox"/> Major Business/Corporate Center
<input type="checkbox"/> Safe and Beautiful Village	<input type="checkbox"/> Vibrant Major Corridors

ASSIGNED COMMITTEE: I&E (approved 5-1)

DATE: 6/28/11

BACKGROUND: Staff was asked to compile a Capital Plan for vehicle replacement during the past budget cycle. At that time future replacement needs for all Village departments were determined using several factors such as APWA's vehicle replacement guidelines, direction from department heads on their current and future needs, and useful life left in the vehicle. Below are staff's recommendations for replacement to the Village's fleet for FY11.

KEY ISSUES: As per agreement with Roesch Ford of Bensenville, IL to provide the Village with vehicles at a cost determined by the lowest bidder of the Suburban Purchasing Cooperative/State Bid. Below are the quoted prices.

Vehicle	Cost
2011 Ford F-250 4x4 Regular Cab Pickup Truck (PW)	\$ 23,112.00
2011 Ford F-450 4x2 Crew Cab w/ Dump Body (PW)	\$ 54,769.00
2011 Ford F-250 4x4 Crew Cab Pickup Truck (PW)	\$ 27,447.00*
2011 Ford F-150 4x4 SuperCrew Pickup Truck (CD)	\$ 23,506.00
TOTAL COST:	\$ 128,834.00

*Does not include the cost of a plow which is approximately \$5,000.00 additional.

ALTERNATIVES: Village Board Discretion

RECOMMENDATION: Staff recommends approval of vehicle purchases from Roesch Ford of Bensenville, IL as they are honoring the Suburban Purchasing Cooperative's lowest bidder prices.

BUDGET IMPACT: The adjustments in vehicles have exceeded the budgeted amount for FY11.

ACTION REQUIRED: Motion to approve a Resolution authorizing the Village Manager to execute a purchase order and other associated documents to Roesch Ford of Bensenville, IL for the purchase of new vehicles.

Resolution No.

**Authorizing the Execution of a Purchase Order and Contract
for Vehicle Purchases to Roesch Ford**

BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois as follows:

THAT the Village Board authorizes the Village Manager to execute a purchase order and other associated documents to Roesch Ford of Bensenville, IL for the purchase of new vehicles for an amount of \$128,834.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, _____, 2011.

APPROVED:

Frank Soto
Village President

ATTEST:

Corey Williamsen
Acting Village Clerk

AYES: _____

NAYS: _____

ABSENT: _____



Village of Bensenville Department of Public Works

717 E. Jefferson Street
Bensenville, IL 60106
Phone (630) 350-3435 Fax (630) 594-1148

Memorandum 2011-20

Date: June 13, 2011
To: Mike Cassady, Village Manager
From: Joe Caracci, Director of Public Works
Subject: Vehicle Purchases 2011

At the May 17, 2011 I&E Committee meeting I presented a recommendation for the purchase of four new vehicles for our Village fleet. All four vehicles were budgeted Ford vehicles in our FY2011 budget. The four vehicles are:

Vehicle #	Model / Year	Use
775	2011 Ford Explorer	Streets Supervisor / Pool Vehicle
776	2011 Ford F450 Dump Body	Forestry Dump Truck
885	2011 Ford F250 Pickup	Water Dept. Utility Truck
new	2011 Ford Fusion	CED Administration / Pool Vehicle

At the May 17 meeting, members of the Committee recommended the use of multi-purpose vehicles as substitutes for the Ford Explorer and Ford Fusion. Staff has put together alternate vehicles as requested.

Vehicle #775 is proposed as a 2011 Ford F-250 4x4 Crew Cab Pickup Truck. This vehicle provides the ability to transport multiple staff (Crew Cab) to meetings, seminars, and conferences. It also provides the ability to attach a plow, if needed (not included). The bed of the pickup will facilitate storage of tools, debris, etc. The cost of this upgraded vehicle is \$27,447. The budget includes \$27,000 which includes all necessary lighting and graphics. We anticipate the vehicle will be over budgeted by approximately \$3,000.

The new CED vehicle is proposed as a 2011 Ford F-150 Super Crew Pickup Truck. This vehicle provides the ability to transport multiple staff (Crew Cab) to meetings, seminars, and conferences. The bed of the pickup will facilitate storage of tools, debris, etc. The cost of this upgraded vehicle is \$23,506. The budget includes \$17,000 which includes all necessary lighting and graphics. We anticipate the vehicle will be over budgeted by approximately \$7,000.

The final proposed vehicle purchase list is as follows:

Vehicle #	Model / Year	Use	Cost
775	2011 Ford F250 Crew Cab Pickup	Streets Supervisor / Pool Vehicle	\$27,447
776	2011 Ford F450 Dump Body	Forestry Dump Truck	\$54,769
885	2011 Ford F250 Pickup	Water Dept. Utility Truck	\$23,112
new	2011 Ford F-150 Super Crew Pickup	CED Administration / Pool Vehicle	\$23,506
TOTAL			\$128,834

Purchases will be made through Larry Roesch Ford of Bensenville as part of an agreement to provide the Village of Bensenville vehicles at the State Purchase / Suburban Purchase Coop Pricing.

VILLAGE OF BENSENVILLE

TYPE: Resolution SUBMITTED BY: Joe Caracci DATE: 06/20/2011

DESCRIPTION: Consideration of a Resolution authorizing the execution of Amendment #2 to the contract with Christopher B. Burke for engineering services related to the Northern Business District Reconstruction Project in the amount of \$24,550.

SUPPORTS THE FOLLOWING APPLICABLE VILLAGE GOALS:

<input checked="" type="checkbox"/> Financially Sound Village	<input type="checkbox"/> Enrich the lives of Residents
<input type="checkbox"/> Quality Customer Oriented Services	<input checked="" type="checkbox"/> Major Business/Corporate Center
<input type="checkbox"/> Safe and Beautiful Village	<input type="checkbox"/> Vibrant Major Corridors

ASSIGNED COMMITTEE: **I&E**

DATE: **06/28/2011**

BACKGROUND: Christopher B. Burke Engineering Ltd. (CBBEL) was originally hired in 2005 to design a major reconstruction project in our northern business district utilizing a Special Assessment approach. In 2010, the project scope was reduced and the funding approach was changed to a Special Service Area model. In September 2010, Amendment #1 to CBBEL's contract was approved by the Village Board in order to compensate the engineer for additional services necessary as a result of the new scope and funding mechanism. The intent of Amendment #1 was to get us through the bidding stage of the project while maintaining funding for post construction floodplain revision request.

KEY ISSUES: Three additional tasks have been requested since Amendment #1 was approved. Task 1 includes survey and design of two storm sewer extensions that are located on private property at 740 Thomas Drive and 830 Fairview Drive. Task 2 includes extra effort required on the bid documents pertaining to pavement material options (concrete and asphalt) and the inclusion of 5 alternative bidding options that have proven to be necessary. Task 3 included an economic analysis of bid costs as it relates to life cycle costs of the asphalt cross section versus the concrete cross section. The total effort for these additional services resulted in a request for an additional \$24,550.

The Amendment would bring CBBEL whole on the project with appropriate funds still remaining to account for the FEMA LOMR floodplain revision recommendation that will take place upon the conclusion of the project construction.

ALTERNATIVES: 1. Motion to approve the Resolution.
2. Discretion of the Board.

RECOMMENDATION: I have reviewed the requested contract amendment and the effort associated with each task and find them to be in order. Staff recommends approval of Amendment #2 to the design engineering contract with CBBEL for a total cost not-to-exceed \$24,550.

BUDGET IMPACT: The cost of the additional engineering will be figured into the final SSA and TIF costs accordingly.

ACTION REQUIRED: Board approval of a resolution authorizing the Village Manager to execute the amendment to the contract with CBBEL for services related to the North Industrial Park SSA Project.

Resolution No.

**Authorizing the Execution of Amendment #2 to the Design Engineering Contract
with Christopher B. Burke Engineering Ltd.
for Engineering Services Related to the Northern Business District Reconstruction
Project**

BE IT RESOLVED by the President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois as follows:

THAT the Village Board authorizes the Village Manager to execute the proposal and associated documents from Christopher B. Burke Engineering Ltd., dated June 13, 2011 providing for additional engineering services rendered associated with the Northern Business District Reconstruction Project at a cost not to exceed \$24,550.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Bensenville, Illinois, _____, 2011.

APPROVED:

Frank Soto
Village President

ATTEST:

Corey Williamsen
Deputy Village Clerk

AYES: _____

NAYS: _____

ABSENT: _____



CHRISTOPHER B. BURKE ENGINEERING, LTD.

9575 West Higgins Road Suite 600 Rosemont, Illinois 60018 TEL (847) 823-0500 FAX(847) 823-0520

June 13, 2011

Village of Bensenville
12 South Center Street
Bensenville, Illinois 60106

Attention: Mr. Michael Cassady
Village Manager

Subject: Amendment 2 to the Proposal for Professional Engineering Services – North Business District Project (formerly North Industrial Special Service Area Project and North Industrial Special Assessment District Improvements Project)

Dear Mr. Cassady:

Christopher B. Burke Engineering, Ltd. (CBBEL) requests this amendment to our existing contract to provide professional engineering and survey services for the North Business District Project (formerly known as the North Industrial Special Service Area project and the North Industrial Special Assessment District Project) within the Village of Bensenville. Included in this proposal is our Understanding of the Assignment, Scope of Services and Estimate of Fee.

UNDERSTANDING OF THE ASSIGNMENT

The Village of Bensenville executed several contracts with CBBEL in 2005 to perform professional engineering and survey services related to the design of roadway, potable water, stormwater, and sanitary sewer infrastructure improvements for the area now identified as the North Business District. These improvements are now to be funded through the creation of seven (7) Special Service Areas (SSA's) and a Tax Increment Funding District that encompasses all of the Special Service Areas as well as additional properties within the Village boundaries.

The Village of Bensenville and CBBEL executed a contract amendment in 2010 to compensate CBBEL for the expense of revising the existing plans and specifications for the Special Assessment Project to reflect the reduced scope of the Special Service Area Project and to complete the required Stormwater permitting.

Since that amendment was executed material changes in the scope of the improvements have been requested by the Village. These scope changes have required additional survey and design engineering services by CBBEL and caused us to exhaust the limits of our extant agreement, as amended:

- CBBEL was directed to revise the project plans and specifications to reflect a revised bituminous concrete pavement cross-section and to include an entirely new Portland cement concrete pavement alternate.
- CBBEL was directed to revise the plans and specifications to reflect the creation of a base bid and five alternate bids.
- CBBEL was directed to revise the plans and specifications to add drainage improvements at 740 Thomas Drive and 830 Fairway Drive to the project scope of work.
- CBBEL was directed to revise the project specifications to include additional contractor qualifications and attended a pre-bid meeting with interested contractors requested by the Village.
- CBBEL was directed to analyze the base bid and five (5) alternate bids for the lowest responsive bidder and prepared a comparison of the bid cost versus the estimated project cost and the available SSA bond funding.
- CBBEL was directed to perform a present value analysis of the pavement reconstruction costs to compare the long term pavement expense of bituminous concrete versus Portland cement concrete based upon the unit prices submitted by the lowest responsible bidder.

SCOPE OF SERVICES

The extra work requested by the Village can be generally described as follows:

Task 1 – Additional Topographic Survey: the revised project scope included storm sewer improvements located on private property at 740 Thomas Drive and 830 Fairway Drive to address flooding problems brought to the attention of the Village subsequent to the SSA public meetings. These improvements required the collection of additional topographic survey information to define a problem solution and to serve as the Existing Conditions base sheet for the improvements included within the project bidding documents.

Task 2 – Bid Document Revisions: the revised scope of work included modifying the project typical roadway details, the project cross sections, the project quantities, and the project specifications to reflect the use of a changed bituminous concrete pavement section an alternate Portland cement pavement section, and the modifications to the project plans and specifications to reflect the use of a base bid and five alternate bids. The Base Bid and two of the alternate bids included the use of the bituminous pavement alternate while three of the alternate bids included the use of the Portland cement pavement alternate. Four of the alternate bids were created at the request of the Village in response to a perceived threat of litigation from landowners in one of the Special Service Areas.

Task 3 – Financial and Economic Analyses: upon the identification of the lowest responsible bidder and his bid unit prices, CBBEL prepared a detailed analysis of the base bid and the five alternate bids splitting the costs between three attributed funding sectors (SSA bonding, TIF bonding, and Water & Sewer Surcharge Funds) and then comparing these sums to the original project cost estimate and funding assumptions. In addition, CBBEL prepared a present value

analysis comparing the long term cost of the bituminous concrete pavement alternate and the Portland cement concrete pavement alternate over a forty year life cycle.

ESTIMATE OF FEE

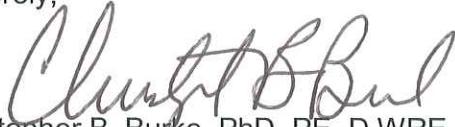
The table below illustrates a comparison of the Actual Additional Fees incurred by CBBEL to perform the additional scope of services described earlier and bring the project to the point of bid award versus the Requested Additional Fees by CBBEL. The final line in the table represents cost overruns incurred by CBBEL to satisfy the scope of work described in the First Amendment to the extant agreement. We are requesting compensation in the reduced amount in recognition of the longstanding relationship between CBBEL and the Village and the need recover our direct costs.

		Actual Additional Fee	Requested Additional Fee
Task 1	Additional Topographic Survey	\$ 2,200.00	\$ 2,200.00
Task 2	Bid Document Revisions	\$ 26,850.00	\$19,750.00
Task 3	Financial and Economic Analyses	\$ 2,600.00	\$ 2,600.00
	Additional Fees Associated with <u>Contract Amendment #1</u>	\$ 8,600.00	\$ 0.00
	Grand Total	\$ 40,250.00	\$24,550.00

We will continue to bill you at the hourly rates from 2005 that were specified on the Schedule of Charges that were attached to our current agreement and provide services in accordance with the existing General Terms and Conditions. These General Terms and Conditions are expressly incorporated into and are an integral part of this contract for professional services.

Please sign and return one copy of this agreement as an indication of acceptance and notice to proceed. Please feel free to contact us anytime.

Sincerely,



Christopher B. Burke, PhD, PE, D.WRE, F.ASCE
President

Encl. Schedule of Charges

THIS PROPOSAL, SCHEDULE OF CHARGES AND GENERAL TERMS AND CONDITIONS
ACCEPTED FOR VILLAGE OF BENSENVILLE

BY: _____

TITLE: _____

DATE: _____

CHRISTOPHER B. BURKE ENGINEERING, LTD.
STANDARD CHARGES FOR PROFESSIONAL SERVICES
JANUARY, 2009

<u>Personnel</u>	Charges*
	(\$/Hr)
Principal	240
Engineer VI	210
Engineer V	173
Engineer IV	138
Engineer III	125
Engineer I/II	102
Survey V	178
Survey IV	132
Survey III	127
Survey II	100
Survey I	78
Resource Planner V	112
Resource Planner IV	108
Resource Planner III	100
Resource Planner I/II	88
Engineering Technician V	150
Engineering Technician IV	132
Engineering Technician III	107
Engineering Technician I/II	97
CAD Manager	138
Assistant CAD Manager	126
CAD II	125
CAD I	98
GIS Specialist III	120
GIS Specialist I/II	67
Landscape Architect	138
Environmental Resource Specialist V	154
Environmental Resource Specialist IV	134
Environmental Resource Specialist III	114
Environmental Resource Specialist I/II	94
Environmental Resource Technician	90
Administrative	88
Engineering Intern	53
Survey Intern	53
Information Technician III	97
Information Technician I/II	62

Direct Costs

Outside Copies, Blueprints, Messenger, Delivery Services, Mileage Cost + 12%

*Charges include overhead and profit

Christopher B. Burke Engineering, Ltd. reserves the right to increase these rates and costs by 5% after December 31, 2009

Please note: In recognition of the economic challenges facing our clients, we have not increased our schedule of charges since January 2009.

CHRISTOPHER B. BURKE ENGINEERING LTD.

VILLAGE OF BENSENVILLE

NORTHERN BUSINESS DISTRICT IMPROVEMENT PROJECT

AMMENDMENT 2 MANHOURS

CBBEL PROJECT NO. 05-738

Prepared June 8, 2011

TASK 1 - ADDITIONAL TOPOGRAPHIC SERVICES

PROFESSIONAL PERSONNEL	ACTUAL HOURS	RATE	AMOUNT	REQUESTED HOURS	RATE	AMOUNT
SURVEY 5		4	\$ 130.00	\$ 520.00		
SURVEY 3		4.5	\$ 103.00	\$ 463.50		
SURVEY 2		11.5	\$ 82.00	\$ 943.00		
SURVEY 1		3.5	\$ 64.00	\$ 224.00		
CAD MANAGER		0.5	\$ 115.00	\$ 57.50		
TOTAL		24	\$ 2,208.00		24	\$ 2,208.00

REQUESTED AMOUNT IS \$2,200.00

TASK 2 - BID DOCUMENT REVISIONS

PROFESSIONAL PERSONNEL	ACTUAL HOURS	RATE	AMOUNT	REQUESTED HOURS	RATE	AMOUNT
ENGINEER 6	2.5	\$ 175.00	\$ 437.50		2.5	\$ 175.00
ENGINEER 5	5	\$ 130.00	\$ 650.00		5	\$ 130.00
ENGINEER 4	83.75	\$ 115.00	\$ 9,631.25		22	\$ 115.00
ENGINEER 3	44	\$ 107.00	\$ 4,708.00		44	\$ 107.00
ENGINEER 1/2	17	\$ 87.00	\$ 1,479.00		17	\$ 87.00
ADMINISTRATIVE	25.5	\$ 75.00	\$ 1,912.50		25.5	\$ 75.00
CAD TECHNICIAN 2	70.5	\$ 107.00	\$ 7,543.50		70.5	\$ 107.00
ASSISTANT CAD MANAGER	4.5	\$ 110.00	\$ 495.00		4.5	\$ 110.00
TOTAL	252.75		\$ 26,856.75		191	\$ 19,755.50

REQUESTED AMOUNT IS \$19,750

TASK 3 - FINANCIAL AND ECONOMIC ANALYSIS

PROFESSIONAL PERSONNEL	ACTUAL HOURS	RATE	AMOUNT	REQUESTED HOURS	RATE	AMOUNT
ENGINEER 4	22.75	\$ 115.00	\$ 2,616.25		22.75	\$ 115.00
TOTAL	22.75		\$ 2,616.25		22.75	\$ 2,616.25

REQUESTED AMOUNT IS \$2,600.00

CHRISTOPHER B. BURKE ENGINEERING, LTD.
GENERAL TERMS AND CONDITIONS

1. Relationship Between Engineer and Client: Christopher B. Burke Engineering, Ltd. (Engineer) shall serve as Client's professional engineer consultant in those phases of the Project to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or Engineer.

Furthermore, causes of action between the parties to this Agreement pertaining to acts of failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of substantial completion.

2. Responsibility of the Engineer: Engineer will strive to perform services under this Agreement in accordance with generally accepted and currently recognized engineering practices and principles, and in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.

Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Client and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.

3. Changes: Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Client shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes, if commercially possible.
4. Suspension of Services: Client may, at any time, by written order to Engineer (Suspension of Services Order) require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the

resumptions of the services upon expiration of the Suspension of Services Order. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.

5. Termination: This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.
6. Documents Delivered to Client: Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

When and if record drawings are to be provided by the Engineer, Client understands that information used in the preparation of record drawings is provided by others and Engineer is not responsible for accuracy, completeness, nor sufficiency of such information. Client also understands that the level of detail illustrated by record drawings will generally be the same as the level of detail illustrated by the design drawing used for project construction. If additional detail is requested by the Client to be included on the record drawings, then the Client understands and agrees that the Engineer will be due additional compensation for additional services.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest

extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

7. Reuse of Documents: All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Client or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Client's confidential and proprietary information if the Client has previously advised the Engineer in writing of the specific information considered by the Client to be confidential and proprietary.

8. Standard of Practice: The Engineer will strive to conduct services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement.
9. Compliance With Laws: The Engineer will strive to exercise usual and customary professional care in his/her efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement.

With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.

Further to the law and code compliance, the Client understands that the Engineer will strive to provide designs in accordance with the prevailing Standards of Practice as previously set forth, but that the Engineer does not warrant that any reviewing agency having jurisdiction will not for its own purposes comment, request changes and/or additions to such designs. In the event such design requests are made by a reviewing agency, but which do not exist in the form of a written regulation, ordinance or other similar document as published by the reviewing agency, then such design changes (at substantial variance from the intended design developed by the Engineer), if effected and incorporated into the project documents by the Engineer, shall be considered as Supplementary Task(s) to the Engineer's Scope of Service and compensated for accordingly.

10. Indemnification: Engineer shall indemnify and hold harmless Client up to the amount of this contract fee (for services) from loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage to the extent caused by the sole negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer under this Agreement, from loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error omission of Client.

In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties), which caused the personal injury or property damage.

Engineer shall not be liable for special, incidental or consequential damages, including, but not limited to loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, by reasons of the services rendered under this Agreement.

11. Opinions of Probable Cost: Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable Project Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgement as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him/her. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.

12. Governing Law & Dispute Resolutions: This Agreement shall be governed by and construed in accordance with Articles previously set forth by (Item 9 of) this Agreement, together with the laws of the **State of Illinois**.

Any claim, dispute or other matter in question arising out of or related to this Agreement, which can not be mutually resolved by the parties of this Agreement, shall be subject to mediation as a condition precedent to arbitration (if arbitration is agreed upon by the parties of this Agreement) or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

The Client and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Requests for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

13. Successors and Assigns: The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns: provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
14. Waiver of Contract Breach: The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.
15. Entire Understanding of Agreement: This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void & without effect to the extent they conflict with the terms of this Agreement.
16. Amendment: This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".

17. Severability of Invalid Provisions: If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
18. Force Majeure: Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
19. Subcontracts: Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
20. Access and Permits: Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer perform such services.
21. Designation of Authorized Representative: Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.
22. Notices: Any notice or designation required to be given to either party hereto shall be in writing, and unless receipt of such notice is expressly required by the terms hereof shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.
23. Limit of Liability: The Client and the Engineer have discussed the risks, rewards, and benefits of the project and the Engineer's total fee for services. In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, the Engineer's total aggregate liability to the Client for any and all injuries, claims, costs, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this Agreement from any cause or causes, including attorney's fees and costs, and expert witness fees and costs, shall not exceed the total Engineer's fee for professional engineering services rendered on this project as made part of this Agreement. Such causes included but are not limited to the Engineer's negligence, errors, omissions, strict liability or breach of contract. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

24. Client's Responsibilities: The Client agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Client's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Client agrees to furnish and pay for all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services which the Client may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Client.

The Client agrees to require the Contractor, to the fullest extent permitted by law, to indemnify, hold harmless, and defend the Engineer, its consultants, and the employees and agents of any of them from and against any and all claims, suits, demands, liabilities, losses, damages, and costs ("Losses"), including but not limited to costs of defense, arising in whole or in part out of the negligence of the Contractor, its subcontractors, the officers, employees, agents, and subcontractors of any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Losses are caused in part by a party indemnified hereunder. Specifically excluded from the foregoing are Losses arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, and the giving of or failure to give directions by the Engineer, its consultants, and the agents and employees of any of them, provided such giving or failure to give is the primary cause of Loss. The Client also agrees to require the Contractor to provide to the Engineer the required certificate of insurance.

The Client further agrees to require the Contractor to name the Engineer, its agents and consultants as additional insureds on the Contractor's policy or policies of comprehensive or commercial general liability insurance. Such insurance shall include products and completed operations and contractual liability coverages, shall be primary and noncontributing with any insurance maintained by the Engineer or its agents and consultants, and shall provide that the Engineer be given thirty days, unqualified written notice prior to any cancellation thereof.

In the event the foregoing requirements, or any of them, are not established by the Client and met by the Contractor, the Client agrees to indemnify and hold harmless the Engineer, its employees, agents, and consultants from and against any and all Losses which would have been indemnified and insured against by the Contractor, but were not.

When Contract Documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Client agrees to be wholly responsible for setting forth any and all such insurance requirements. Furthermore, any document provided for Client review by the Engineer under this Contract related to such insurance(s) shall be considered as sample insurance requirements and not the recommendation of the Engineer. Client agrees to have their own risk management department review any and all insurance requirements for adequacy and to determine specific types of insurance(s) required for the project. Client further agrees that decisions concerning types and amounts of insurance are

specific to the project and shall be the product of the Client. As such, any and all insurance requirements made part of Contract Documents prepared by the Engineer are not to be considered the Engineer's recommendation, and the Client shall make the final decision regarding insurance requirements.

25. Information Provided by Others: The Engineer shall indicate to the Client the information needed for rendering of the services of this Agreement. The Client shall provide to the Engineer such information as is available to the Client and the Client's consultants and contractors, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer and the Engineer's subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.
26. Payment: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly and as follows:

Collection Costs. In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgement or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies.

Suspension of Services. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in (Item 4 of) this Agreement.

27. When construction observation tasks are part of the service to be performed by the Engineer under this Agreement, the Client will include the following clause in the construction contract documents and Client agrees not to modify or delete it:

Kotecki Waiver. Contractor (and any subcontractor into whose subcontract this clause is incorporated) agrees to assume the entire liability for all personal injury claims suffered by its own employees, including without limitation claims under the **Illinois** Structural Work Act, asserted by persons allegedly injured on the Project; waives any limitation of liability defense based upon the Worker's Compensation Act, court interpretations of said Act or otherwise; and to the fullest extent permitted by law, agrees to indemnify and hold harmless and defend Owner and Engineer and their agents, employees and consultants (the "Indemnitees") from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that the Indemnitees may sustain as a result of such claims, except to the extent that **Illinois** law prohibits indemnity for the Indemnitees' own negligence. The Owner and Engineer are designated and recognized as explicit third party beneficiaries of the Kotecki Waiver within the general contract and all subcontracts entered into in furtherance of the general contract.

28. Job Site Safety/Supervision & Construction Observation: The Engineer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Work since they are solely the Contractor's rights and responsibilities. The Client agrees that the Contractor shall supervise and direct the work efficiently with his/her best skill and attention; and that the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and safety at the job site. The Client agrees and warrants that this intent shall be carried out in the Client's contract with the Contractor. The Client further agrees that the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work; and that the Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the subject site and all other persons who may be affected thereby. The Engineer shall have no authority to stop the work of the Contractor or the work of any subcontractor on the project.

When construction observation services are included in the Scope of Services, the Engineer shall visit the site at intervals appropriate to the stage of the Contractor's operation, or as otherwise agreed to by the Client and the Engineer to: 1) become generally familiar with and to keep the Client informed about the progress and quality of the Work; 2) to strive to bring to the Client's attention defects and deficiencies in the Work and; 3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. If the Client desires more extensive project observation, the Client shall request that such services be provided by the Engineer as Additional and Supplemental Construction Observation Services in accordance with the terms of this Agreement.

The Engineer shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Engineer does not guarantee the performance of the

Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

When municipal review services are included in the Scope of Services, the Engineer (acting on behalf of the municipality), when acting in good faith in the discharge of its duties, shall not thereby render itself liable personally and is, to the maximum extent permitted by law, relieved from all liability for any damage that may accrue to persons or property by reason of any act or omission in the discharge of its duties. Any suit brought against the Engineer which involve the acts or omissions performed by it in the enforcement of any provisions of the Client's rules, regulation and/or ordinance shall be defended by the Client until final termination of the proceedings. The Engineer shall be entitled to all defenses and municipal immunities that are, or would be, available to the Client.

29. Insurance and Indemnification: The Engineer and the Client understand and agree that the Client will contractually require the Contractor to defend and indemnify the Engineer and/or any subconsultants from any claims arising from the Work. The Engineer and the Client further understand and agree that the Client will contractually require the Contractor to procure commercial general liability insurance naming the Engineer as an additional named insured with respect to the work. The Contractor shall provide to the Client certificates of insurance evidencing that the contractually required insurance coverage has been procured. However, the Contractor's failure to provide the Client with the requisite certificates of insurance shall not constitute a waiver of this provision by the Engineer.

The Client and Engineer waive all rights against each other and against the Contractor and consultants, agents and employees of each of them for damages to the extent covered by property insurance during construction. The Client and Engineer each shall require similar waivers from the Contractor, consultants, agents and persons or entities awarded separate contracts administered under the Client's own forces.

30. Hazardous Materials/Pollutants: Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances.

Furthermore, Client understands that the presence of mold/mildew and the like are results of prolonged or repeated exposure to moisture and the lack of corrective action. Client also understands that corrective action is a operation, maintenance and repair activity for which the Engineer is not responsible.