

[FOR RECORDER'S USE]

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**ANNEXATION AGREEMENT  
[COATED SAND SOLUTIONS]**

**Date:** September 13, 2011

**Parties:** **THE CITY OF ROCHELLE**, an Illinois municipal corporation;

**COATED SAND SOLUTIONS, LLC**, a Delaware limited liability company;

And

**JENNIFER L. BOYLE**, as the current owner of an undivided 25% interest in the Property (as hereinafter defined), **JACQUELINE COLEMAN KENYON**, f/k/a Jacqueline Boyle Coleman, as the current owner of an undivided 25% interest in the Property, **THOMAS D. MOCK**, as owner of an undivided 20% interest in the Property, **BRITTNEY E. COLEMAN**, as an owner of an undivided 20% interest in the Property, and **KURT T. BOYLE**, as owner of an undivided 10% interest in the Property

**Property:** *approximately 28.05 acres located east of Steward Road and south of Ritchie Road*

**Legal Description:** see attached **Exhibit A**

**Property Tax Identification Number(s):** 25-32-400-014 (partial)

**Common Address:** N/A

**Prepared By and Return To:**

ALAN H. COOPER

233 East Route 38, Suite 202

P. O. Box 194

Rochelle, IL 61068

(815) 562-2677

Attorney for City of Rochelle

**CITY OF ROCHELLE  
ANNEXATION AGREEMENT  
[COATED SAND SOLUTIONS]**

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**ANNEXATION AGREEMENT  
(INDUSTRIAL/COMMERCIAL)**

This Annexation Agreement (“Agreement”) entered into as of the 13th day of September, 2011, by and among the City of Rochelle, an Illinois municipal corporation (“the City”), Coated Sand Solutions, LLC, a Delaware limited liability company (“Developer”), and Jennifer L. Boyle, as the current owner of an undivided 25% interest in the Property (as hereinafter defined), Jacqueline Coleman Kenyon, f/k/a Jacqueline Boyle Coleman, as the current owner of an undivided 25% interest in the Property, Thomas D. Mock, as owner of an undivided 20% interest in the Property, Brittney E. Coleman, as owner of an undivided 20% interest in the Property, and Kurt T. Boyle, as owner of an undivided 10% interest in the Property (collectively, “Owner”):

**WITNESSETH**

**THAT WHEREAS**, the City is a non-home rule municipal corporation organized under the laws of the State of Illinois, and has the power to annex territory and to enter into annexation agreements in connection with the annexation of territory, pursuant to the applicable provisions of the Illinois Municipal Code, including without limitation 65 ILCS 5/7-1-8 and 65 ILCS 5/11-15.1-1 *et. seq.*; and

**WHEREAS**, Developer is the contract purchaser and thus holder of equitable title to that certain property consisting generally of 28.05 acres located in Dement Township, Ogle County, Illinois, the legal description of which is attached hereto as **Exhibit A** and incorporated herein (“the Property”); and

**WHEREAS**, Owner includes all of the owners of record of the fee interest in the Property; and

**WHEREAS**, the Property is not within the corporate boundaries of any incorporated municipality, the Property is contiguous to the City, and there are no electors residing within the Property; and

**WHEREAS**, a petition for annexation has been filed with the City Clerk of the City, pursuant to 65 ILCS 5/7-1-8, pursuant to which the Owner and Developer seek to have the Property annexed to the City pursuant to the terms of this Agreement; and

**WHEREAS**, all notices, publication, public hearings, and all other matters required by law have been given and performed by the Corporate Authorities of the City regarding the approval, execution and delivery of the Agreement; and

**WHEREAS**, Developer has represented to the City that Developer intends to develop the Property in accordance with the provisions of the Rochelle Municipal Code, including without limitation Chapter 22 (Buildings and Building Regulations), Chapter 86 (Subdivisions), and Chapter 110 (Zoning), as may be amended, and as may be modified by this Agreement; and

**WHEREAS**, Developer intends to build and operate a facility to produce resin coated sand on the Property and the development of the Property will, in all events, be subject to the terms of this Agreement; and

**WHEREAS**, Developer's present concept plan for the Property is attached hereto as **Exhibit B** (the "Concept Plan") and incorporated herein by reference, but is subject to change during the process of City review and approval, but in all events will be subject to the terms of this Agreement; and

**WHEREAS**, the City Council of the City of Rochelle, after due and careful consideration, has concluded that the annexation and development of the Property on the terms set forth herein would further the orderly growth of the City and serve the best interests of the citizens of the City; and

**WHEREAS**, by a favorable vote of at least two-thirds (2/3) of the City Council then holding office, an ordinance has heretofore been adopted authorizing the execution and delivery of this Agreement;

**NOW THEREFORE**, in consideration of the foregoing premises and the mutual agreements contained herein, the parties agree as follows:

**1. RECITALS.** The recitals set forth above are a material part of this Agreement and are hereby incorporated in this Agreement by reference.

**2. GENERAL AND SPECIAL TERMS.** This Agreement shall consist of the foregoing recitals, the provisions of paragraphs 1 through 5 and the following:

- (a) The General Terms set forth in Schedule 1 attached hereto;
- (b) The Special Terms set forth in Schedule 2 attached hereto;
- (c) Exhibits A, B, C, D - 1, D - 2, E, F G and H attached hereto;
- (d) All other Exhibits referred to in the General Terms or in the Special Terms.

**3. ROCHELLE MUNICIPAL CODE.** Except as modified by this Agreement, the provisions of the Rochelle Municipal Code in effect from time to time shall govern the development of the Property and the relationship of the Parties.

**4. EXCULPATORY CLAUSE.** If applicable, this Agreement is executed by one or more of the Owners, not individually but solely as Trustee under the terms and provisions of the Trust Agreement referred to. All representations and warranties herein contained are those of Owner's Beneficiary, and no obligation or liability thereon shall inure or apply against the Owner. Owner's undertakings under this Agreement shall be to execute and deliver the Agreement in accordance herewith and all necessary documents, if any, requisite to consummate the transaction.

**5. ADDRESSES FOR NOTICES.** Notices referred to in this Agreement shall be sent to the following addresses, unless otherwise designated in writing:

- If to City: Rochelle City Clerk  
420 North 6<sup>th</sup> St.  
Rochelle, IL 61068
- With a copy to: Rochelle City Manager  
420 North 6<sup>th</sup> St.  
Rochelle, IL 61068
- With a copy to: City Attorney  
City of Rochelle  
420 N. 6<sup>th</sup> St.  
Rochelle, IL 61068
- If to Developer: Coated Sand Solutions, LLC  
c/o U.S. Silica Company  
8490 Progress Drive, Suite 300  
Frederick, MD 21701  
Attention: James Manion, Esq
- With a copy to: Kirkland & Ellis LLP  
300 N. LaSalle Street  
Chicago, Illinois 60654  
Attention: John G. Caruso, Esq.
- If to Owner: Williams McCarthy LLP  
120 West State Street, Suite 400  
P.O. Box 219  
Rockford, Illinois 61105  
Attention: Carl A. Ecklund, Esq.

Any notice required or permitted by the provisions of this Agreement shall be in writing and sent by certified mail, return receipt requested, or personally delivered, to the Parties at the addresses shown or at such other addresses as the Parties may, by notice, designate. Notices shall be deemed given on the fifth (5<sup>th</sup>) business day following deposit in the U.S. Mail, if given by certified mail as aforesaid, and upon receipt, if personally delivered.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date first above written.

**CITY OF ROCHELLE**, an Illinois  
municipal corporation (“City”)

**COATED SAND SOLUTIONS,  
LLC**, a Delaware limited liability  
company (“Developer”)

By: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_

Its: \_\_\_\_\_

**OWNER:**

\_\_\_\_\_  
JENNIFER L. BOYLE,  
in her own right, as an owner of an undivided 25% interest

\_\_\_\_\_  
JACQUELINE COLEMAN KENYON  
(f/k/a Jacqueline Boyle Coleman), in her own right, as an owner of an undivided 25%  
interest

\_\_\_\_\_  
THOMAS D. MOCK  
in his own right, as owner of an undivided 20% interest

\_\_\_\_\_  
BRITTNEY E. COLEMAN  
in her own right, as owner of an undivided 20% interest

\_\_\_\_\_  
KURT T. BOYLE,  
in his own right, as an owner of an undivided 10% interest

ALAN H. COOPER  
Attorney at Law  
233 East Route 38, Suite 202  
P. O. Box 194  
Rochelle, IL 61068  
(815) 562-2677

**SCHEDULE 1 (GENERAL TERMS)  
(INDUSTRIAL/COMMERCIAL)**

**ARTICLE I  
TERM, ANNEXATION AND ZONING**

**Section 1. Term.** The term of this Agreement shall be as set forth in Schedule 2 (Special Terms).

**Section 2. Enactment of Annexation Ordinance.** Concurrently with the execution of this Agreement (or within such other time as may be set forth in Schedule 2 (Special Terms)), the City will enact a valid and binding ordinance (“the Annexation Ordinance”) annexing the Property to the City. The City shall file the Annexation Ordinance and a plat of annexation (to be provided by Developer at Developer’s cost) with the office of the County Recorder within thirty (30) days after enactment of the Annexation Ordinance. Developer shall pay all costs of recordation at the time of recordation.

This Agreement, in its entirety, together with any petitions for annexation or zoning filed in connection herewith, shall be null and void, and of no force or effect unless the Property is annexed to the City contemporaneously with the approval and execution of this Agreement (or within such other time as may be set forth in Schedule 2 (Special Terms)).

**Section 3. Adoption of Zoning Map Amendment.** Concurrently with the enactment of the Annexation Ordinance, the City will adopt one or more ordinances zoning the Property in the manner set forth in Schedule 2 (Special Terms). The zoning adopted pursuant to this Agreement shall remain in effect throughout the term of this Agreement and after the expiration of this Agreement unless thereafter amended in accordance with applicable law.

**ARTICLE II  
CODES, FEES AND REIMBURSEMENTS**

**Section 4. Applicability of Codes.** Except as otherwise expressly provided in this Agreement, for the period set forth in Schedule 2 (Special Terms), the provisions of the Rochelle Municipal Code Chapters 22 (Buildings and Building Regulation), 86 (Subdivisions), and 110 (Zoning) in effect as of the date of this Agreement shall remain in effect as they pertain to the Property.

Beginning immediately following the end of the period set forth in Schedule 2 (Special Terms), except as otherwise expressly provided in this Agreement, Developer shall comply with all provisions of the Rochelle Municipal Code then in effect with respect to all aspects of the development of the Property. If, during the term of this Agreement, the Rochelle Municipal Code is amended in a manner that imposes less restrictive requirements on the development of property within the City with respect to

similarly situated developers, then Developer may elect to proceed under such less restrictive requirement.

**Section 5. Limitations on Fees.** Attached hereto as **Exhibit C** is a list of the fees and charges (not including user fees) regularly imposed by the City pursuant to the Rochelle Municipal Code on new developments. Minor fees and charges are not included on **Exhibit C**. Except as expressly set forth in **Exhibit C**, no fee or charge of any description (except user fees) shall be imposed upon Developer or upon the development and use of the Property for the period set forth in Schedule 2 (Special Terms). The City shall not increase the amount of any fee or charge shown on **Exhibit C** for the period set forth in Schedule 2 (Special Terms). Thereafter, Developer shall be liable for payment of all fees made generally applicable to all similarly-situated owners, users and developers of property within the City.

**Section 6. Reimbursement to City.** Developer shall reimburse the City for all actual and reasonable professional fees, costs or other expenses related to the Property incurred by the City in connection with the negotiation and approval of this Agreement and related matters, including without limitation reasonable legal fees, reasonable charges for staff time, planning and engineering consultant fees, and a reasonable portion of the cost of pertinent regional traffic studies and review fees and expenses. In accordance with Section 86-57 of the Rochelle Municipal Code, Developer shall deposit the sum set forth in Schedule 2 (Special Terms) with the City (and replenish said deposit as required) to cover these fees, costs and expenses.

Developer agrees to reimburse the City for all amounts payable by the City to the Ogle-Lee Fire Protection District by reason of the application of Section 20(e) of the Fire Protection District Act, 70 ILCS 705/20(e). Developer shall pay such amounts within thirty (30) days after receipt of an invoice from the City showing the basis for the amount due. The City may invoice in advance, and Developer shall pay, an amount estimated to represent five (5) years of such payments, based on the latest amount payable by the City pursuant to said statute.

Additionally, Developer agrees to reimburse City for all amounts paid by City for construction observation expenses incurred in connection with the construction of improvements on the Property, notwithstanding any limitation on such reimbursement contained in the Rochelle Municipal Code.

### **ARTICLE III DEVELOPMENT CONDITIONS**

**Section 7. City Code to Apply.** The Property shall be developed in accordance with the provisions of the Rochelle Municipal Code, except as modified in these General Terms or in Schedule 2 (Special Terms).

**Section 8. Excavation, Grading, and Preparation of the Property for Development.** Prior to the construction of any improvements on the Property (public or

private), Developer shall secure any required permits and approvals from any applicable federal or state agencies relating to archeological significance, endangered species, floodplain/floodway or wetlands.

Developer shall have the right, prior to obtaining approval of final engineering drawings and prior to approval of the Final Plat of subdivision by the City, to undertake excavation, preliminary grading work, filling, and soil stockpiling on the Property in preparation for the development of the Property based solely on submittal of a grading plan and soil erosion and sedimentation control plan and drainage plan to the City, which plans shall be approved by the City provided said plans are in accordance with all applicable City codes and ordinances. Such work shall be undertaken without injury to the property of surrounding property owners. A letter of credit, bond or other security in an amount not to exceed 110% of the approved estimated cost of completing such excavation, preliminary grading work, filling, soil stockpiling, erosion control items, seeding, mulching, and other associated drainage systems, structures or pipes necessary to assure proper site restoration shall be required and submitted by Developer as a condition precedent to the commencement of such work.

**Section. 9. Construction Traffic Routes and Parking.** City may designate routes of access to the Property for construction traffic to protect pedestrians and to minimize disruption of traffic and damage to paved street surfaces; provided, however, that the designated routes shall not unduly hinder or obstruct direct and efficient access to the Property for construction traffic. Developer shall keep all routes used for construction traffic free and clear of mud, dirt, debris, obstructions and hazards and shall repair all damage caused by construction traffic. All construction vehicles, including passenger vehicles, and construction equipment shall be parked within the Property or in areas designated by the City.

**Section 10. Dedication and Acceptance of Improvements.** Developer shall dedicate to the City the roads, sanitary sewers, storm sewers, water mains and sidewalks ("Improvements") upon dedicated utility easements and/or public right-of-way within the Property, upon final acceptance by City. Nothing whatsoever shall constitute an acceptance by the City of any Improvement except express acceptance by the City in compliance with the requirements of the Rochelle Municipal Code, including without limitation Sections 86-54 through 86-57.

Prior to acceptance of the Improvements by the City, Developer shall execute, or cause to be executed, all documents that the City shall request to transfer Ownership of the Improvements to, and to evidence Ownership of the Improvements by, the City, free and clear of all liens, claims, encumbrances, and restrictions unless otherwise approved by the City. All such documents shall be in form and substance acceptable to the City. Developer shall simultaneously grant, or cause to be granted, to the City all easements or other property rights which the City may require to install, operate, maintain, service, repair, and replace the Improvements that have not previously been granted to the City, free and clear of all liens, claims, encumbrances, and restrictions, unless otherwise approved by the City.

City shall not be obligated to accept any street until all construction traffic on the street has ceased and the street has been completed and, if necessary, restored and repaired. City shall not be obligated to keep any street cleared, plowed or otherwise maintained until the street has been accepted by the City in accordance with this Agreement; provided, however, that the City shall plow any street after the binder has been applied and found acceptable by the City Engineer.

**Section 11. Conveyances.** Any conveyance of real estate to the City pursuant to this Agreement shall be by warranty deed, plat of dedication or appropriate dedication on a recorded plat of subdivision conveying good and merchantable fee simple title to the City. Any deed of conveyance shall be subject only to covenants, restrictions and easements of record (provided the same do not render the real estate unsuitable for the purposes for which it is being conveyed), the terms of this Agreement, general taxes for the year in which the conveyance is made, and such other exceptions as may be agreed by the City in writing.

#### **ARTICLE IV UTILITIES**

**Section 12. Utility Easements.** Developer shall provide to City, with no charge, all easements on property necessary to carry out the provisions of this Agreement related to utilities, including, without limitation, the easements indicated in Schedule 2 (Special Terms). Upon request by Developer, and subject to limitations as provided by applicable law, City shall, at Developer's expense, use its best efforts to acquire any off-site easements from third parties which are necessary to enable the City to provide water, sanitary sewer and electrical service to the boundaries of the Property in accordance with the provisions of this Agreement. If necessary, and upon request by Developer following Developer's use of its best efforts to acquire any necessary off-site easements for utilities, City will promptly use its power of eminent domain to obtain such off-site easements from third parties at Developer's expense, and Developer shall promptly reimburse City, on an ongoing basis, for all costs and expenses of any such eminent domain proceeding.

**Section 13. Costs of Upsizing.** Any upsizing of sanitary sewer, water, electrical or fiberoptic systems required by the City for long range planning, over the amounts required herein, shall be paid by the City in accordance with the Rochelle Municipal Code. The costs to be paid by the City for such upsizing shall include only the costs of materials.

**Section 14. Recapture (Utilities).** If applicable, the Parties shall enter into a Recapture Agreement substantially in the form attached hereto as **Exhibit D - 1**, with respect to any properties benefited by water, sanitary sewer, or electric facilities paid for or constructed by Developer. The identities of the benefiting properties (including legal descriptions, property tax identification numbers and names of record owners) together with the estimated recapture costs and estimated allocation of recapture costs among the benefiting properties shall be as indicated on Schedule 2 (Special Terms).

**Section 15. Water Service.** Developer shall, at its sole cost and expense, construct and install all potable water facilities required from the terminus of existing water mains to the Property line and within the Property, and to the far side of the Property, in accordance with any approved final plat and the provisions of the Rochelle Municipal Code, except as may be expressly set forth in Schedule 2 (Special Terms).

City agrees that it will provide a fully functional potable water supply system sufficient to serve the Property as developed, at the time such system is needed. Nothing in this section shall be deemed to require the City to reserve water capacity in advance of the time it is needed.

**Section 16. Sanitary Sewer Service .** Developer shall, at its sole cost and expense, construct and install all sanitary sewer facilities required from the terminus of existing sanitary sewer facilities to the Property line and within the Property, and to the far side of the Property, in accordance with any approved final plat and the provisions of the Rochelle Municipal Code, except as may be expressly set forth in Schedule 2 (Special Terms).

City agrees that it will provide sanitary sewer facilities sufficient to service the Property as developed, at the time such system is needed. Nothing in this section shall be deemed to require the City to reserve sanitary sewer capacity in advance of the time it is needed.

**Section 17. Electric and Fiberoptic Service; Street Lights.** City shall, at Developer's sole cost and expense, construct all electric and fiberoptic facilities required from the terminus of existing electric facilities to the Property line and within the Property, and to the far side of the Property, in accordance with any approved final plat and the provisions of the Rochelle Municipal Code, except as may be expressly set forth in Schedule 2 (Special Terms).

City shall, at Developer's sole cost and expense, install street lights within the Property in accordance with this Section and the Rochelle Municipal Code, except as may be expressly set forth in Schedule 2 (Special Terms). The number and location of street lights shall be consistent with the Illuminating Engineering Society (IES) Code. Developer shall pay City the full cost for street light installation prior to the commencement of installation. The street lights referred to in this section shall also include, at a minimum, street lights within the rights-of-way along those portions of streets, roads or highways that are contiguous to the subject Property then being developed.

**ARTICLE V  
STREETS, SIDEWALKS AND TRAFFIC LIGHTS**

**Section 18. Interior Roadways and Sidewalks.** Developer, at its sole cost and expense, shall construct all interior roadways and sidewalks necessary to service the Property at locations to be determined by the parties, in accordance with the requirements of the Rochelle Municipal Code, except as may be otherwise set forth in Schedule 2 (Special Terms). Sidewalks shall be constructed along both sides of all streets and along any adjacent right-of-way. All roads and streets within the Property shall be public and shall be dedicated to the City.

**Section 19. Street Construction Standards.** All public roadways to be dedicated to the City shall be constructed in accordance with the standards set forth in the Rochelle Municipal Code, except as may be otherwise set forth in Schedule 2 (Special Terms). All roadways that may be reasonably anticipated to service light industrial uses with semi-truck traffic shall be constructed to Class II Illinois Department of Transportation (IDOT) standards.

**Section 20. Traffic Lights.** Developer shall contribute to the cost of installation of any required or anticipated traffic signal lights as set forth in Schedule 2 (Special Terms). The provisions of this paragraph shall survive the expiration of this Agreement.

**Section 21. Perimeter and Offsite Road Improvements.** Developer shall contribute to the cost of perimeter and offsite road improvements necessitated in whole or in part by the improvements to be constructed on the Property, on the terms set forth in Schedule 2 (Special Terms).

**Section 22. Recapture (Roads).** If applicable, the Parties shall enter into a Recapture Agreement substantially in the form attached hereto as **Exhibit D - 1**, with respect to any properties benefited by perimeter or offsite road improvements paid for or constructed by Developer. The identities of the benefiting properties (including legal descriptions, property tax identification numbers and names of record owners) together with the estimated recapture costs and estimated allocation of recapture costs among the benefiting properties shall be as indicated on Schedule 2 (Special Terms).

**ARTICLE VI  
STORMWATER PROVISIONS**

**Section 23. Stormwater Management; Drainage District Review.** Developer shall provide all necessary storm sewers, retention systems and compensatory storage in compliance with all provisions of the Rochelle Stormwater Management Ordinance included within the Rochelle Municipal Code, except as may otherwise be set forth in Schedule 2 (Special Terms), including without limitation provisions relating to stormwater drainage and detention, stream and wetland protection, soil erosion and sediment control, flood way and flood plain protection, and shall comply with all other

applicable law, rules and regulations related to stormwater management. The retention system shall be maintained by the Developer or the Association in accordance with covenants recorded against the Property for that purpose in a safe, sanitary and sightly manner. In determining whether any lot satisfies zoning standards, any part thereof within a retention system may be included as part of the area of said lot.

Developer shall at all times comply with all requirements of applicable ordinances, statutes, rules and regulations then in effect relating to stormwater management, including without limitation provisions of the Rochelle Municipal Code and requirements of the Illinois Department of Natural Resources (IDNR) and the Federal Emergency Management Agency (FEMA), if appropriate.

Developer shall have all stormwater and drainage plans, including a detailed onsite subsurface drainage tile study, reviewed and approved by the appropriate Drainage District ("District") and shall reimburse the District for the District's reasonable costs of review. In the event the District fails to complete its review and approval within thirty (30) days following submission of Developer's plans to the District, the District shall be deemed to have given its approval to the plans. In all events, final approval of stormwater and drainage plans for the Property remains with the City.

**Section 24. Stormwater Management Fee.** Developer shall pay, as a contractual obligation under this Agreement, all sums provided in the Rochelle Municipal Code and in resolutions of the Rochelle City Council adopted pursuant to the Rochelle Municipal Code, as a Stormwater Management Fee for the Property. The total payment and the timing of the payment shall be as shown in Schedule 2 (Special Terms). Developer's obligation to pay the Stormwater Management Fee shall be contractually binding upon Developer regardless of any legal ruling affecting the validity of any ordinance establishing the fee.

**Section 25. Regional Detention; Reimbursement by City.** The parties shall comply with the provisions of the Rochelle Municipal Code, with respect to calculating and accommodating stormwater flows from upstream tributary areas. In the event City should choose to require a regional or oversized stormwater storage facility on the Property, City shall reimburse Developer for the cost of oversizing the facility to accommodate the additional storage volume needed for the upstream tributary area. City's reimbursement to Developer shall be calculated using Developer's actual per acre purchase price for any additional land required for such oversizing, together with Developer's actual cost for any additional excavation and landscaping required for such oversizing. If the City will not require regional stormwater detention on the Property, that agreement will be shown in Schedule 2 (Special Terms).

## **ARTICLE VII RAIL PROVISIONS**

**Section 26. Rail Provisions.** The City shall provide rail service to the Property in accordance with the provisions set forth in Schedule 2 (Special Terms).

## **ARTICLE VIII REMEDIES**

**Section 27. Remedies Available; No Election.** Subject to the indemnity provisions of Article IX, upon a breach of this Agreement, any of the parties, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance or both. No action taken by any party hereto pursuant to the provisions of this Article or pursuant to the provision of any other Article of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non exclusive of any other remedy either set forth herein or available to any party at law or in equity.

**Section 28. Notice and Opportunity to Cure.** In the event of a material breach of this Agreement (other than non-payment of sums owed), the Parties agree that the party alleged to be in breach shall have thirty (30) days after written notice of said breach to correct the same prior to the non-breaching party's seeking of any remedy provided for herein, (provided, however, that said thirty (30) day period shall be extended if the defaulting party has initiated the cure of said default and is diligently proceeding to cure the same).

**Section 29. Failure to Cure.** If any of the Parties shall fail to perform any of its obligations hereunder (other than non-payment of sums owed), and the party affected by such default shall have given written notice of such default to the defaulting party, and such defaulting party shall have failed to cure such default within thirty (30) days of such default notice (provided, however, that said thirty (30) day period shall be extended if the defaulting party has initiated the cure of said default and is diligently proceeding to cure the same), then, in addition to any and all other remedies that may be available, either in law or equity, the party affected by such default shall have the right (but not the obligation) to take such action as in its reasonable discretion and judgment shall be necessary to cure such default. In such event, the defaulting party hereby agrees to pay and reimburse the party affected by such default for all reasonable costs and expenses (including attorney's fees and litigation expenses) incurred by it in connection with action taken to cure such default.

**Section 30. No Waiver.** The failure of the Parties to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

**Section 31. Force Majeure.** If the performance of any obligation to be performed hereunder by any Party is delayed as a result of circumstances which are beyond the reasonable control of such Party (which circumstances may include acts of

God, war, acts of civil disobedience, strike or similar acts), the time for such performance shall be extended by the amount of time of such delay.

## **ARTICLE IX LIABILITY AND INDEMNITY OF CITY**

**Section 32. City Review.** Developer acknowledges and agrees that the City is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the City's review and approval of any plans for the Property or the Improvements, or the issuance of any approvals, permits, certificates, or acceptances for the development or use of the Property or the Improvements, and that the City's review and approval of those plans and the Improvements and issuance of those approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure Developer, or any of its heirs, successors, assigns, tenants, and licensees, or any other person, against damage or injury of any kind at any time.

**Section 33. City Procedure.** Developer acknowledges and agrees that notices, meetings, and hearings have been properly given and held by the City with respect to the approval of this Agreement and agrees not to challenge the City's approval on the grounds of any procedural infirmity or of any denial of any procedural right.

**Section 34. Indemnity.** Developer shall hold harmless, defend and indemnify the City, the Corporate Authorities, the Plan Commission, and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims (except for willful misconduct) that may be asserted at any time against any of them in connection with (i) the City's review and approval of any plans for the Property or the Improvements; (ii) the issuance of any approval, permit, certificate, or acceptance for the Property or the Improvements; and (iii) the development, construction, maintenance, or use of any portion of the Property or the Improvements, for activity occurring prior to, or contemporaneously with, acceptance of the Improvements.

**Section 35. Defense Expense.** Developer shall, and does hereby agree to, pay all expenses, including without limitation legal fees and administrative expenses, incurred by Developer in defending City with regard to any and all of the claims referenced in Sections 37 and 39 of this Agreement.

**Section 36. Assignability and Transfer of Obligations.** This Agreement shall inure to the benefit of, and be binding upon, successors of Developer and its grantees, lessees, and assigns, and upon successor corporate authorities of City and successor municipalities, and shall constitute a covenant running with the land.

## **ARTICLE X REPRESENTATIONS AND WARRANTIES**

**Section 37. Representations and Warranties of Owner and Developer .**  
Owner represents and warrants to the City:

(a) that Owner includes all of the legal title holders of record of the Property;

(b) that Owner has full power and authority to execute this Agreement and to bind the Property as herein provided;

(c) that the legal descriptions of the Property set forth herein and in the attached Exhibits are accurate and complete;

(d) that the officers of Owner executing this Agreement have been lawfully authorized to execute this Agreement on behalf of Owner and that Owner is lawfully organized and in good standing under all applicable laws;

(e) that there is no litigation pending by or against Owner that would substantially impair its ability to perform its obligations contemplated by this Agreement.

Developer represents and warrants to the City:

(a) that Developer intends to develop the Property in the manner contemplated in this Agreement;

(b) that Developer has full power and authority to execute this Agreement and to bind the Property as herein provided;

(c) that the legal descriptions of the Property set forth herein and in the attached Exhibits are accurate and complete;

(d) that the officers of Developer executing this Agreement have been lawfully authorized to execute this Agreement on behalf of Developer and that Developer is lawfully organized and in good standing under all applicable laws;

(e) that there is no litigation pending by or against Developer that would substantially impair Developer's ability to perform Developer's obligations contemplated by this Agreement.

**Section 38. Representations and Warranties of City.** City represents and warrants to Owner and Developer:

(a) that the City Manager and Clerk of the City have been lawfully authorized by the City Council of the City to execute this Agreement on behalf of the City;

(b) that the City has given or caused to be given and published or caused to be published all notices required by law to be given or published in connection with this Agreement or any other action of the corporate authorities required to be taken as a precondition to execution of this Agreement or annexation of the Property, and that all public hearings required in connection with this Agreement and the annexation of the Property have been held;

(c) that there is no litigation pending by or against the City that would substantially impair its ability to perform its obligations contemplated by this Agreement.

## **ARTICLE XI MISCELLANEOUS PROVISIONS**

**Section. 39. Continuation of Current Uses.** If applicable, the Property is currently being used for the purposes set forth in Schedule 2 (Special Terms). In reviewing this Agreement, the City has given due consideration to the continuation of such current uses. Accordingly, and notwithstanding any provisions of the City Code, the Zoning Ordinance, or any other code, ordinance or regulation, now in effect or adopted during the Term of this Agreement, and notwithstanding the City's subsequent zoning of the Property pursuant to the terms hereof, the current uses of the Property shall be permitted to continue.

**Section 40. Amendment.** This Agreement, and the exhibits attached hereto, may be amended only by the mutual consent of the Parties, by adoption of an ordinance by City approving said amendment as provided by law, and by the execution of a written amendment by the Parties or their successors in interest.

**Section 41. Severability.** If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provision, covenant or portion of this Agreement, and to that end, all provisions, covenants, agreements and portions of this Agreement are declared to be severable. If for any reason the annexation or zoning of the Tract is ruled invalid, in whole or in part, the City Council, as soon as possible, shall take such actions (including the holding of such public hearings and the adoption of such ordinances and resolutions) as may be necessary to give effect to the spirit and intent of this Agreement and the objectives of the Parties, as disclosed by this Agreement, provided that the foregoing shall be undertaken at the expense of Developer.

**Section 42. Entire Agreement.** This Agreement sets forth and fully integrates all agreements, understandings and covenants between the Parties with respect to the subject matter hereof, and is intended to supersede and discharge all prior oral or written or contemporaneous oral agreements, negotiations and understandings between the Parties.

**Section 43. Time of Essence.** Time is of the essence of this Agreement and of each and every provision hereof.

**SCHEDULE 2 (SPECIAL TERMS)  
(INDUSTRIAL/COMMERCIAL)**

- Section 1. Term of Agreement:** 5 years
- Section 2. Deadline for Annexation of Property:** Immediate  
following approval of Agreement by City Council.
- Section 3. Zoning of Property:** I-2
- Special Use Permit.** Owner shall be granted a special use permit to allow Owner to operate a sand coating business on the Property.
- Variance.** Owner shall be granted variances and relief from Rochelle Municipal Code §110-321 with respect to the height restrictions for the Property from 60 to 150 feet.
- Section 4. Period of Freezing City Code Provisions:** 5 years
- Section 5. Period of Freezing City Fees and Charges:** 5 years
- Section 6. Deposit for Fees, Costs and Expenses:** \$10,000.00
- Section 12. Utility Easement Provisions:** Notwithstanding any provision to the contrary herein, the City acknowledges and agrees that any additional utilities installed by the City for the benefit of any third party shall be located in the Dedicated Property (as hereinafter defined) and Developer shall not be required to provide any additional easements to the City with respect to the Property.
- Section 14. Recapture Provisions (Utilities):** N/A
- Section 15. Special Water Provisions:** The City water main presently extends to a point on the west side of Steward Road across from the Property. Developer shall, at its sole cost, connect to the City water main at its present location, and shall extend a private water service from that point under Steward Road to buildings within the Property. City shall, in all events, have access to water meters and shut-off facilities located on or off the Property. In consideration of the dedication of a 4.4 acre parcel of land to the City, as hereinafter described, Developer shall have no obligation to extend, construct or install a public water main to the east end of its property or, if required by the City, any cost to upsize any water mains beyond the existing sizes.
- Section 16. Special Sanitary Sewer Provisions:** The City sanitary sewer presently extends to a point on the west side of Steward Road across from the Property. Developer shall, at its sole cost, connect to the City sanitary sewer at its present location, and shall extend a private sanitary sewer service from that point under Steward Road to buildings within the Property. In consideration of the dedication of a 4.4 acre parcel of land to the

City, as hereinafter described, Developer shall have no obligation to extend, construct or install a public sanitary sewer to the east end of its property or, if required by the City, any cost to upsize the sanitary sewer beyond the existing sizes and Developer shall not be responsible for any of the costs of the sanitary sewer lift station which will service the Property; provided, however, Developer agrees to cooperate with any effort by the City to obtain grant funds for the construction and installation of the lift station, including the execution of a Participation Agreement, reasonably acceptable to Developer, obligating the Developer to meet certain economic criteria (including job creation).

**Section 17. Special Electric, Fiberoptic and Street Light Provisions:** The City shall, at its sole cost, extend electric lines to a transformer to be located at the property line of the Property, and Developer, at its sole cost, shall be responsible for extending the electric line from the transformer to buildings within the Property. In consideration of the dedication of a 4.4 acre parcel of land to the City, as hereinafter described, Developer shall have no obligation to extend, construct or install public electric and fiber optic facilities to the east end of its property and not street lights shall be required to be installed on the Property.

**Section 18. Special Interior Road Provisions:** N/A

**Section 20. Traffic Light Provisions:** N/A

**Section 21. Perimeter and Offsite Road Improvement Provisions:** N/A

The City will work with Developer to facilitate any widening of Steward Road required by Ogle County, Illinois, but the costs for such improvements shall be paid by Developer.

**Section 22. Recapture Provisions (Roads):**

The widening of Steward Road from the North property line of the Property to the Lee County, Illinois county line.

<b>Estimated cost of improvements:</b>	<b>\$299,623.05</b>
<b>Estimated recapture amount:</b>	<b>\$149,811.52</b>
<b>Allocation formula</b>	<b>Steward Rd. Frontage</b>
<b>Amount Allocated to Owner of Property</b>	<b>\$149,811.53</b>
<b>Map of Benefiting Properties</b>	<b>See Exhibit D - 2</b>
<b>Legal Descriptions of Benefiting Properties</b>	<b>See Exhibit D - 2</b>
<b>Allocation Amounts:</b>	<b>IRE - \$149,811.52 and Developer- \$149,811.53</b>

**Section 23. Stormwater Management Provisions:** (a) The City agrees that Developer may use the "Greater Rochelle Regional Base Flood Elevation Study" conducted by Wills Burke Kelsey Associates, and the letter dated August 17, 2011, from the Rochelle City Manager to the Plant Manager for Developer's proposed facility to be

located on the Property, a true copy of which is attached as **Exhibit H**, to determine a stormwater management plan for the Property and that Developer's use of such study and letter satisfies any and all requirements contained within the Rochelle Municipal Code that would require Developer to conduct its own flood study on the Property.

(b) The City shall, at its sole cost, grade the Dedicated Property (and an additional 4.4 acres immediately north of the Dedicated Property, which is anticipated to also be dedicated to the City), in order to cause stormwater to flow to the north, and then to the west into a stormwater detention facility to be constructed by the City on the Dedicated Property. The City may accomplish the grading in phases, consistent with, and adequate for, the rail infrastructure to be constructed on the property from time to time. Notwithstanding the foregoing, Developer shall have the right to grade the Dedicated Property (and, upon dedication to the City, the additional 4.4 acres immediately north of the Dedicated Property) at Developer's sole cost and expense pursuant to a mass grading plan approved by the City. Developer shall pay fifty percent (50%), up to \$60,000, of any additional storm water management fees payable to the City based upon the construction of an undersized storm water detention pond on the Dedicated Property.

(c) On or before April 30, 2012, the City shall obtain, at the City's sole cost, drainage easements or dedicated rights-of-way, and temporary construction easements, for the construction of a drainage ditch on the east end of the Dedicated Property and on property to the north of the Dedicated Property, all as reflected on **Exhibit G** (the "By-Pass Channel"), in order for stormwater to flow southerly into a similarly situated drainage ditch on the east end of the Property, and from there into Johns Creek, or shall institute (and thereafter diligently prosecute) eminent domain proceedings to take such easements and rights-of-way. Developer shall construct the By-Pass Channel at Developer's sole cost, except such costs, if any, incurred in obtaining any required easements or dedicated rights-of-way for the By-Pass Channel.

**Section 24. Stormwater Management Fee and Payment Provisions:**

Fee Amount: \$30,745.00 (based upon 23.65 acres)

**Section 25. Regional Stormwater Detention on the Property**  X  not required  
\_\_\_\_\_ may be required

**Section 26. Rail Provisions:** (a) The City shall construct an extension of the City railroad, consisting of one (1) railroad line, from the current terminus of the City railroad west of Steward Road east across Steward Road to a point not less than three hundred feet (300') east of Steward Road capable of allowing Developer to construct or install up to two (2) switches for spur tracks onto the Property from the City railroad (the "City Rail Work"). The City Rail Work shall be located on easements or dedicated right-of-way, or utilize irrevocable licenses for the use of existing rail owned by others, sufficient to extend the City railroad in accordance with this Section 26. The City railroad and switches shall be located in that portion of the dedicated right of way as reflected on the

“Rail Plan” attached hereto as **Exhibit E**. The City shall pay all costs and expenses to complete the Rail Work; provided, however, the Developer shall reimburse the City for the reasonable cost, including materials and labor, of installing the switches, estimated at \$30,000.00 per switch. The City agrees that it shall use its best efforts to be under contact for the completion of the City Rail Work on or before April 30, 2012 and complete the City Rail Work on or before June 30, 2012.

(b) Contemporaneously with the execution of this Agreement, the parties shall execute an Industrial Track Agreement in the form attached hereto as **Exhibit F**.

(c) In the event City fails to enter into a contract to complete the City Rail Work on or before April 30, 2012 or complete the City Rail Work on or before June 30, 2012, Developer may provide five days’ written notice to the City that it intends to exercise self-help rights and if the City does not enter into a contract for the completion of the City Rail Work or complete the City Rail Work within such five day period, as applicable, Developer may proceed to complete the City Rail Work. Developer shall thereafter provide an accounting of its expenditures to complete the City Rail Work, with proper documentation. The City shall be responsible to reimburse Developer for the reasonable amount of such expenditures; provided, however, that the City’s reimbursement obligation shall not be a general obligation of the City, but shall be limited to reimbursement to Developer of \$50.00 per car for each rail car entering or leaving the Property for which City receives payment from its Operator until Developer has received reimbursement for such City Rail Work expenditures.

**Section 39. Current Uses of the Property to Be Permitted to Continue:** N/A

**Other Special Terms:**

**Multi-Use Path.** Owner shall dedicate a twelve foot (12’) easement along the east side of Steward Road, within the landscape buffer, to the City for the purposes of a shared use path, as reflected on the Concept Plan. Owner shall contribute \$20,000.00 to the City at the time of execution of this Annexation Agreement as Developer’s contribution to the City’s multi-use path program. City shall not impose any special assessments in the future upon the Property for construction of multi-use paths.

**Dedication.** Developer or Owner shall convey by special warranty deed to the City a one hundred foot (100’) wide strip of land (approximately 4.4 acres) across the northern property line of the Property (the “Dedicated Property”), as reflected on the Concept Plan, at the time of closing on Developer’s contract to purchase the Property.

**Infrastructure.** Except as expressly set forth in this Agreement, Developer shall not be required to construct any on-site or off-site public infrastructure or perform any other construction, maintenance, repairs, replacements or alterations in connection with the development and use of the Property. The City represents and warrants that it has no knowledge of, or reason to know of, any existing on-site or off-site City infrastructure improvements or the need for repairs, replacements or alterations to any City

infrastructure improvements which must or should be made in connection with the development and use of the Property as contemplated under this Agreement, except as is expressly set forth in this Agreement. Nothing in this Agreement is intended to limit the City's ability to repair or replace public infrastructure as necessary in the future, or to limit the City's ability to finance said repairs or replacement in any manner, including by special assessment in accordance with applicable law; provided, however, that in no event shall Developer be obligated to contribute to the cost of upsizing public infrastructure to serve other properties.

**Applicable Municipal Ordinances.** Notwithstanding anything to the contrary set forth in this Agreement, all presently existing ordinances, regulations and codes of the City relating to subdivision controls, zoning subdivision, landscaping and screening, signs, street graphics, appearance, grading, placement of buildings and other structures and improvements, as modified and varied by the terms of this Agreement, shall apply to Property for a period of five (5) years from the date of this Agreement. All presently existing ordinances, regulations and codes of the City relating to storm water drainage and detention, stream and wetland protection, soil erosion and sediment control, flood way, flood plain and flood fringe protection, and to the building code, health code, safety code, and fire codes, as modified and varied by the terms of this Agreement, shall apply to the Property for a period of five (5) years from the date of this Agreement unless amendment to the aforesaid is mandated by controlling authorities such as the State of Illinois or the Federal Government that pre-empts the authority of the City or are modifications of the national codes previously adopted by the City.

**Property Tax Abatement.** Developer has applied for inclusion of the Property in the Lee County Enterprise Zone. In the event the Property is not included in the Lee County Enterprise Zone, then at such time as the Property is developed and a Certificate of Occupancy is issued (the "Trigger Date"), all real estate taxes levied against the Property by the City shall be abated in the amount of 90% of such tax in the first full year after the Trigger Date and in the amount of 75% for the second full year after the Trigger Date.

**Certificate of Occupancy.** (a) The City agrees to issue certificates of occupancy for the structures on the Property within five business days of request for final inspection or issue a letter of denial within said period of time informing Developer specifically as to what corrections are necessary as a condition to the issuance of a certificate of occupancy and quoting the section of the building regulations or this Agreement relied on by the City in its request for correction. If, after final inspection or reinspection, the City's inspector does not request correction of any items, immediate occupancy of the premises will be allowed, it being understood that the staff processing of the certificate may take up to five business days. Temporary occupancy permits may be issued when adverse weather conditions do not permit outside painting, landscaping, sidewalks, driveways, or final grading for commercial buildings. Final surfacing of driveways also may be deferred for weather conditions. Such painting, landscaping, sidewalks, grading, and driveway construction shall be accomplished or installed as soon as weather permits. Such additional temporary permits that may be required due to adverse weather conditions shall not be unreasonably withheld or delayed.

(b) At the request of Developer, the City shall issue a temporary certificate of occupancy for the structures on the Property evidencing that the shell of the structure has been completed in accordance with City ordinances. In addition, subject to the satisfaction of all life-safety requirements, upon the completion of the shell of any structure, the City all allow Developer to access the structure in order to install improvements and equipment and in order to perform systems testing.

**EXHIBIT A**  
**(Legal Description)**

DESCRIPTION:

Part of the Southeast Quarter of Section 32, Township 40 North, Range 2 East of the Third Principal Meridian bounded and described as follows:

Beginning at the Southwest corner of said Southeast Quarter; thence North 01 degree 14 minutes 52 seconds West (Assumed Bearing) on and along the West line of said Southeast Quarter, a distance of 634.57 feet; thence North 88 degrees 27 minutes 21 seconds East parallel with the South line of said Southeast Quarter, a distance of 1926.68 feet to a point on the west line of a premises conveyed in a Corrective Trustee's Deed, Document No. 0207738 as recorded in the Ogle County Recorder's Office; thence South 01 degree 2 minutes 30 seconds East on and along last named line, a distance 634.58 feet to said South line of the Southeast Quarter and the Southwest corner of said premises conveyed; thence South 88 degrees 27 minutes 21 seconds West on and along last named line, a distance of 1924.40 feet to the Point of Beginning, containing 28.05 acres, more or less. Situated in the Township of Dement, County of Ogle, State of Illinois.

**EXHIBIT B**  
**(Concept Plan)**



**EXHIBIT C**

**(Fee Schedule for the City)**

**Price Schedule  
Planning, Zoning, and Subdivision Related Services  
Effective 2/1/05**

<b>Annexation &amp; Disconnections (Petitions, hearing, map change, recording, etc.)</b>	<b>\$150 Publication, mailing &amp; recording costs</b>
<b>Annexation Agreements</b>	<b>Publication, mailing &amp; recording costs</b>
<b>Zoning Amendments (Regulations, uses, District/Map, etc.)</b>	<b>\$150 plus Publication &amp; mailing costs</b>
<b>Conditional &amp; Special Uses</b>	<b>\$150 plus Publication &amp; mailing costs</b>
<b>Variances (Pro-Diversity, Subdivision and Zoning)</b>	<b>\$150 plus Publications and mailing costs</b>
<b>Appeals (Pro-Diversity, Subdivision and Zoning)</b>	<b>\$150 plus Publication and mailing costs</b>
<b>Vacation of Plats &amp; Streets, Alleys and other rights-of-way.</b>	<b>\$150 plus Chapter 12.55 charges Publication, mailing, recording and Professional service costs</b>
<b>Planned Unit Developments and Subdivisions</b>	
<p>A. Filing fee (payable when preliminary PUD plan and Subdivision Plat is filed):</p> <ol style="list-style-type: none"> <li>1. \$350 for one to twenty lots;</li> <li>2. For more than twenty lots, \$350 plus \$20 for each lot in addition to twenty lots;</li> <li>3. Mailing and publication costs.</li> </ol> <p>B. Filing fee (payable when Final PUD plan and Subdivision plat is filed):</p> <ol style="list-style-type: none"> <li>1. \$150;</li> <li>2. Mailing and publication costs.</li> </ol> <p>C. Reimbursement for professional services:</p> <ol style="list-style-type: none"> <li>1. Recording fees at the courthouse;</li> <li>2. A traffic analysis performed by a member of the Institute of Transportation Engineers when such traffic analysis is required by City staff;</li> <li>3. Fees for city attorney's review and negotiations in connection with the filing, review and construction of the subdivision.</li> </ol> <p>D. Reimbursement for city staff review and inspection costs, which shall be paid by the sub-divider according to the following schedule:</p> <ol style="list-style-type: none"> <li>1. Preliminary Plan/Plat, engineering plan and Final Plan/Plat: payable prior to recording of the final plat, shall be one-half of one percent of the approved estimate of cost;</li> <li>2. Engineering construction observation: engineering observation during the construction of the land improvements shall be 2% of the approved Engineer's estimate of cost. This fee shall be paid before recording of the final plat. All Engineer's estimates shall be approved by City Staff.</li> </ol>	

**PRICE SCHEDULE  
BUILDING PERMIT AND RELATED CODE SERVICES  
EFFECTIVE 9/10/07**

Section 1. Fees for permits shall be calculated and collected based upon the following prices:

1) **Minimum Fees:**

Residential . . \$30      Commercial/Industrial ....\$75.00

2) **Minimum Fees apply to the following residential applications:**

accessory buildings, approaches, curb cuts, decks, demolitions, driveways, electrical, fire alarm systems, HVAC, moving a structure, patios, plumbing, pumps & hoses, occupancy permits, open porches, ramps, re-inspections, satellite dishes, sewer inspection, sidewalks, siding, sprinkler systems, stoops, stop work orders, tanks, water inspection.

3) **New Structures, Additions, Build-out**

Residential \$ .09 psf/1<sup>st</sup> 5,000 sf, \$ .05 psf/balance  
Commercial/Industrial \$ .175psf

4) **Electrical, HVAC and Plumbing**

Residential (per trade): \$30  
Commercial/Industrial (per following schedules):

<b>Electrical</b>	<b>Fixed Charge</b>
Up to 200 AMP Service	\$ 50
Up to 400 AMP Service	\$ 60
Up to 600 AMP Service	\$ 70
Up to 800 AMP Service	\$ 80
Up to 1,000 AMP Service	\$ 100
Up to 1,200 AMP Service	\$ 130
Up to 1,600 AMP Service	\$ 170
Up to 2,000 AMP Service	\$ 210
Over 2,000 AMP Service	\$ 250
<b>Electrical</b>	<b>Variable Charge</b>
0 - 2,000 Sq. Feet	\$ 100
2,001 - 3,000 Sq. Feet	\$ 160
3,001 - 4,000 Sq. Feet	\$ 210
4,001 - 5,000 Sq. Feet	\$ 270
5,001 - 6,000 Sq. Feet	\$ 320
6,001 - 7,000 Sq. Feet	\$ 380
7,001 - 8,000 Sq. Feet	\$ 430
8,001 - 9,000 Sq. Feet	\$ 490
9,001 - 10,000 Sq. Feet	\$ 540
10,001 -100,000 Sq. Feet	\$ 1,980
100,001 - 500,000 Sq. Feet	\$ 9,820
Over 500,000 Sq. Feet	\$24,220

**BUILDING PERMIT AND RELATED CODE SERVICES**  
Page 2

<b>HVAC</b>	<b>\$50 Per Unit, Plus</b>	<b>Variable Charge</b>
	1 - 5,000 Sq. Feet	\$ 50
	5,001 - 10,000 Sq. Feet	\$ 100
	10,001 - 27,000 Sq. Feet	\$ 160
	27,001 - 51,000 Sq. Feet	\$ 270
	51,001 - 75,000 Sq. Feet	\$ 380
	75,001 - 100,000 Sq. Feet	\$ 430
	100,001 - 200,000 Sq. Feet	\$ 530
	200,001 - 300,000 Sq. Feet	\$ 630
	300,001 - 400,000 Sq. Feet	\$ 730
	400,001 - 500,000 Sq. Feet	\$ 830
	Over 500,000 Sq. Feet	\$ 1,000

<b>Plumbing</b>	<b>Variable Charge</b>
1 - 2,500 Sq. Feet	\$ 150
2,501 - 5,000 Sq. Feet	\$ 310
5,001 - 12,000 Sq. Feet	\$ 630
12,001 - 25,000 Sq. Feet	\$ 950
25,001 - 50,000 Sq. Feet	\$ 1,430
50,001 - 75,000 Sq. Feet	\$ 2,140
75,001 - 100,000 Sq. Feet	\$ 3,220
100,001 - 500,000 Sq. Feet	\$ 5,090
Over 500,000 Sq. Feet	\$ 6,370

6) **Temporary Occupancy:** \$100

7) **Plan Review**

Residential Plan Review - \$30 and \$ .03/sf

Commercial/Industrial Plan Review (including elevator and fire sprinkler)

The City of Rochelle uses an outside plan review service. This cost will be billed to the applicant plus 10% for administrative costs.

8) **Fences:**

Residential - \$30 for 1<sup>st</sup> 250 lf and \$ .09/lf balance

Commercial/Industrial \$75 for 1<sup>st</sup> 500 lf and \$ .05/lf balance

9) **Parking lots (and other hard surfaces):** \$75 for 1<sup>st</sup> 7500 sf and \$ .01/sf balance

10) **Roofing:**

Residential - \$30

Commercial/Industrial - \$75 for 1<sup>st</sup> 7500 sf and \$ .01/sf balance

**BUILDING PERMIT AND RELATED CODE SERVICES**

**Page 3**

**11) Signs:**

- Residential - \$30
- Commercial/Industrial - Greater of \$75 or \$1.00/sf
- Lighted Signs add \$50

**12) Swimming Pools**

- Residential - Above Ground - \$30; Below Ground - \$30 and \$ .09/sf
- Commercial/Industrial - Above Ground - \$75; Below Ground - \$75 and \$ .05/sf

**13) Towers (antenna/communications)**

- Residential: Greater of \$30 or \$1.00/ft.
- Commercial/Industrial: Greater of \$75 or \$1.00/ft.

Section 2. No permit shall be issued until the required fee has been paid. Work commenced prior to securing a permit shall be subject to twice the standard fee.

Section 3. In the event an outside plan review service is retained for any project requiring a permit, the plan review fee shall be based upon the above schedule or the actual outside service fee incurred, whichever fee is greater.

WATER

Rochelle Municipal Utilities  
City of Rochelle  
Water Rates

Effective January 1, 2007  
Sheet 2

RESIDENTIAL WATER RATE #410

General Information

Residential Water Rate is available to customers residing in a metered one-family dwelling unit, usually physically separate. Customers outside the Rochelle City corporate boundaries will be charged two times the charges.

Fixed Charge

<u>Meter Size</u>	<u>Charges</u>		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
< or = 5/8"	\$ 6.72	\$ 8.01	\$ 9.30
= 3/4"	\$ 7.81	\$ 9.31	\$10.81
= 1"	\$ 8.89	\$10.60	\$12.31
>1"	\$19.50	\$23.25	\$27.00

Variable Charge (User Rate)

	<u>Charges</u>		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
per cubic foot	\$0.0150	\$0.0164	\$0.0177
or			
per gallon	\$0.00201	\$0.00219	\$0.00237

WATER

Rochelle Municipal Utilities  
City of Rochelle  
Water Rates

Effective Date January 1, 2007  
Sheet 2

GENERAL SERVICE WATER RATE #430

General Information

General Service Water Rate is available to customers not qualifying as Residential Water Rate 410 and having a monthly usage less than 500,000 cubic feet (3,740,000 gallons) during the current month or in any of the previous 11 billing months. Customers outside the Rochelle City corporate boundaries will be charged two times the charges.

Fixed Charge

<u>Meter Size</u>	<u>Charges</u>		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
< or = 1"	\$ 8.89	\$ 10.60	\$ 12.31
> 1" or = 2"	\$ 19.50	\$ 23.25	\$ 27.00
= 3"	\$ 74.00	\$ 88.00	\$102.00
= 4"	\$ 94.00	\$112.00	\$130.00
= 6"	\$142.00	\$171.00	\$195.00
= 8"	\$195.00	\$233.00	\$270.00

Variable Charge (User Rate)

per cubic foot	<u>Charges</u>		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
First 100,000	\$0.0150	\$0.0164	\$0.0177
Additional	\$0.0061	\$0.0066	\$0.0071

or

per gallon	<u>Charges</u>		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
First 748,000	\$0.00201	\$0.00219	\$0.00237
Additional	\$0.00082	\$0.00088	\$0.00095

WATER

Rochelle Municipal Utilities  
City of Rochelle  
Water Rates

Effective Date January 1, 2007  
Sheet 3

INDUSTRIAL SERVICE WATER RATE #440

General Information

Industrial Service Water Rate is for Industrial water customers that have a monthly usage of 500,000 cubic feet (3,740,000 gallons) during the current billing month or in any of the previous 11 billing months. The variable charge is based on the higher of the current billing months' usage or 40% of the highest usage recorded in the previous 11 billing months. Customers outside the Rochelle City corporate boundaries will be charged two times the charges.

Fixed Charge

<u>Meter Size</u>	<u>Charges</u>		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
< 12"	\$255.00	\$304.00	\$353.00
=or > 12"	\$322.00	\$384.00	\$446.00

Variable Charge (User Rate)

per cubic foot	<u>Charges</u>		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
First 100,000	\$0.0150	\$0.0164	\$0.0177
Additional	\$0.0061	\$0.0066	\$0.0071

or

per gallon	<u>Charges</u>		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
First 748,000	\$0.00201	\$0.00219	\$0.00237
Additional	\$0.00082	\$0.00088	\$0.00095

WATER

Rochelle Municipal Utilities  
 City of Rochelle  
 Water Rates

Effective Date January 1, 2007  
 Sheet 4

LAWN IRRIGATION WATER RATE #450

General Information

Lawn Irrigation Water Rate is available to customers who install a separate meter with a shut-off valve and check valve for the inlet side, installed by a licensed plumber and approved by the Rochelle Water Division. This rate may be used only for non-sanitary sewer related uses, i.e., lawn irrigation. The usage registered on this meter will not be subject to sewer charges. Abuse may result in the termination of application of this rate to the customer.

The Rochelle Water Division reserved the right to periodically inspect plumbing whenever it deems necessary or appropriate to do so.

The fixed charge is applicable only to bills for meter readings on or after June 30 until and including September 30 (usage during the months of June, July, and August).

Customers outside the Rochelle City corporate boundaries will be charged two times the charges and rates.

Fixed Charge

<u>Meter Size</u>	<u>Charges</u>		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
< or = 5/8"	\$ 6.72	\$ 8.01	\$ 9.30
= 3/4"	\$ 7.81	\$ 9.31	\$10.81
= 1"	\$ 8.89	\$10.60	\$12.31
> 1"	\$19.50	\$23.25	\$27.00

Variable Charge (User Rate)

	<u>Charges</u>		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
per cubic foot	\$0.0150	\$0.0164	\$0.0177
or			
per gallon	\$0.00201	\$0.00219	\$0.00237

WATER

Rochelle Municipal Utilities  
 City of Rochelle  
 Water Rates

Effective Date January 1, 2007  
 Sheet 5

GENERAL SERVICE BULK PURCHASE WATER RATE #460

General Information

General Service Bulk Purchase Water Rate is available to customers for temporary or short-term purchases. The customer is required to obtain a temporary meter from the Water Division.

The Rochelle Water Division reserves the right to periodically inspect attachments and proper meter recordings. Water misuse or bypassing the meter may result in discontinuing water service to the customer.

Fixed Charge

	<u>Charges</u>		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
per whole or partial month	\$94.00	\$112.00	\$130.00

Variable Charge (User Rate)

	<u>Charges</u>		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
per cubic foot	\$0.0300	\$0.0328	\$0.0354
or			
per gallon	\$0.00401	\$0.00439	\$0.00473

**PRICE SCHEDULE OF UTILITY CHARGES AND RATES  
FOR SANITARY SEWERAGE AND WASTEWATER TREATMENT  
(EFFECTIVE MAY 1, 2008)**

Pursuant to Article 4 Chapter 98-4 of the City Code, this Price Schedule provides user charges and rates for sanitary sewerage and wastewater treatment and replaces and supersedes those charges and rates previously established.

**SECTION 1: Residential, Commercial and Minor Industrial**

A. Residential, commercial, and minor industrial sewage which is primarily domestic in nature shall be charged the following rates:

2008:

<u>Rate Component</u>	<u>Residential, Commercial, Minor Industrial Customers</u>
Fixed Charge	
Water Meter Only	\$4.06 per month
Water and Sewer Meter	\$74.06 per month
Basic User Rate	\$1.50 per 100 Cubic Feet (748 Gallons)
IEPA Replacement	\$0.13 per 100 Cubic Feet (748 Gallons)
Non-Debt Funded Projects	\$0.35 per 100 Cubic Feet (748 Gallons)
Capital Recovery	\$1.60 per 100 Cubic Feet (748 Gallons)

2009:

<u>Rate Component</u>	<u>Residential, Commercial, Minor Industrial Customers</u>
Fixed Charge	
Water Meter Only	\$4.22 per month
Water and Sewer Meter	\$77.00 per month
Basic User Rate	\$1.74 per 100 Cubic Feet (748 Gallons)
IEPA Replacement	\$0.14 per 100 Cubic Feet (748 Gallons)
Non-Debt Funded Projects	\$0.44 per 100 Cubic Feet (748 Gallons)
Capital Recovery	\$1.60 per 100 Cubic Feet (748 Gallons)

2010:

<u>Rate Component</u>	<u>Residential, Commercial, Minor Industrial Customers</u>
Fixed Charge	
Water Meter Only	\$4.40 per month
Water and Sewer Meter	\$80.10 per month
Basic User Rate	\$1.98 per 100 Cubic Feet (748 Gallons)

IEPA Replacement	\$0.15 per 100 Cubic Feet (748 Gallons)
Non-Debt Funded Projects	\$0.54 per 100 Cubic Feet (748 Gallons)
Capital Recovery	\$1.60 per 100 Cubic Feet (748 Gallons)

B. All wastewater discharged into the city sewerage system shall comply with Rochelle City Ordinance 2663. Residential, commercial, and minor industrial customers with wastewater characteristics which exceed domestic sewage characteristics shall be charged an additional surcharge rate in accordance with Section 3 below.

C. If sewage is shown to be other than characteristic of normal domestic sewage, it shall be subject to the charges associated for the entire group and as stated in this Price Schedule.

D. Residential Summer Sewer Rates. For the purpose of calculating sewer charges for Residential Class Water customers during the summer months, not more than 125% of the Customer's Basic Cubic Feet usage shall be used to calculate the volume sewer charge for monthly billing in July, August, September and October.

E. For the purposes hereof a Customer's Base Cubic Feet Usage shall be the cubic feet of water use during the monthly billing period with an ending meter reading date on or after June 1 of the billing year. If there is no cubic feet usage during the base period, the customer base will be 600 cubic feet.

## SECTION 2: Major Industrial Customers

A. Major industrial customers (MIC) are those customers that discharge more than 200,000 gallons of wastewater per working day in 1990 when construction began on Phase I of the new wastewater treatment plant. Also included in this class are those customers currently discharging more than 200,000 gallons of wastewater per working day. Based upon the concentrations of Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS), the wastewater of some major industrial customers may require pretreatment at the City of Rochelle wastewater treatment plant.

B. MIC Category I includes customers with wastewater which is processed through the city owned and operated pretreatment facility for the purpose of reducing BOD and TSS.

C. The rates of charge for MIC Category I as follows:

2008:

### MIC Category I

Fixed Charge	\$74.06/month
Basic User Rate	\$1.29/HCF
IEPA Replacement	\$0.24/HCF
Non-debt Projects	\$0.16/HCF

Capital Recovery \$25,132/month

2009:

MIC Category I

Fixed Charge	\$77.00/month
Basic User Rate	\$1.51/HCF
IEPA Replacement	\$0.26/HCF
Non-debt Projects	\$0.27/HCF
Capital Recovery	\$25,132/month

2010:

MIC Category I

Fixed Charge	\$80.10/month
Basic User Rate	\$1.78/HCF
IEPA Replacement	\$0.26/HCF
Non-debt Projects	\$0.38/HCF
Capital Recovery	\$25,132/month

D. The City of Rochelle at its discretion may agree to enter into a separate contract for wastewater pretreatment and/or treatment with a MIC. Any contract entered into shall be based on the cost of wastewater treatment, capital recovery, and associated costs of the total wastewater plant and system. If no contract is entered into, the MIC customer shall be charged in accordance with this Price Schedule.

**SECTION 3: Village of Creston**

A. Rochelle Municipal Utilities provides wastewater treatment for the Village of Creston per the agreement between the City of Rochelle and the Village of Creston.

B. The volume of billed wastewater is recorded by a sanitary sewer flow meter on the sanitary forcemain line that connects the Village of Creston sanitary sewer system to the Rochelle Municipal Utilities sanitary sewer system.

C. The rates of charge for the Village of Creston is as follows:

Fixed Charge	
FY2008/09	\$74.06/month

FY2009/10	\$77.00/month
FY2010/11	\$80.10/month
Basic User Rate	\$1.66/HCF
IEPA Replacement	\$0.15/HCF
Non-debt Projects	No Charge
Capital Recovery	\$0.76/HCF

**SECTION 4: Surcharges**

A. A surcharge shall be charged to those users who discharge wastewater into the treatment facilities with pollutant concentrations in excess of 250 mg/l of Biochemical Oxygen Demand (BOD) and 300 mg/l of Total Suspended Solids (TSS).

B. The rates of surcharge for BOD, TSS and Ammonia shall be as follows:

BOD:	\$0.17/lb
TSS:	\$0.25/lb
Ammonia:	\$0.78/lb

C. Computation of Surcharge: The concentration of wastes used for computing surcharges shall be established by waste sampling. Waste sampling shall be performed as often as may be deemed necessary by the City and shall be binding as a basis for surcharges.

BOD:  $\text{Flow (MGD)} \times B \times 8.34 \times BC = CS$   
 where  $B = \text{BOD concentration} - 250 \text{ mg/l}$   
 $BC = \$0.17/\text{lb BOD}$   
 $CS = \text{Amount of Surcharge}$

TSS:  $\text{Flow (MGD)} \times S \times 8.34 \times SC = CS$   
 where  $S = \text{TSS concentration} - 300 \text{ mg/l}$   
 $SC = \$0.25/\text{lb Suspended Solids}$   
 $CS = \text{Amount of Surcharge}$

Ammonia:  $\text{Flow (MGD)} \times A \times 8.34 \times AC = CA$   
 where  $A = \text{Ammonia concentration} - 35 \text{ mg/l}$   
 $AC = \$0.78/\text{lb Ammonia}$   
 $CA = \text{Amount of Surcharge}$

**SECTION 5: Sewer Connection Charge:** The sewer connection charge is based on population equivalents (PE) as stated by the Illinois Recommended Standards for Sewage Works.

A. Residential	PE	Charge
Single family dwelling	3.5	\$700

Apartments or multifamily dwelling		
Efficiency or Studio	1.0	\$200
1 bedroom	1.5	\$300
2 bedrooms	3.0	\$600
3 bedrooms	3.0	\$600

**B. Commercial**

Based on PE from IEPA connection permit at rate of \$200 per PE, but not less than the single family dwelling charge in effect.

**C. Industrial**

Based on flow and PE from IEPA connection permit at rate of \$200 per PE, but not less than the single family dwelling charge in effect. Charges for flow will be based on impacts the industry has to system.

**D.** In the event a commercial or industrial customer is granted an increase in their Illinois Environmental Protection Agency (IEPA) approved PE then they shall pay a connection fee equal to the amount of the increased PE.

**E.** The City Council may grant an exemption of all or a portion of the sewer connection charge to units of government.

**F.** Existing commercial or industrial customers which construct new connections to the City's sewer system would receive a credit in an amount equal to the projected PE reduction from their previous sewer connection.

**EXHIBIT D - 1**  
**(Recapture Agreement)**



**RECAPTURE AGREEMENT BETWEEN  
THE CITY OF ROCHELLE AND \_\_\_\_\_,  
AN \_\_\_\_\_,  
FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS  
*[identify improvements, e.g., water, sewer electric]***

This Recapture Agreement *[identify improvements, e.g., water, sewer, electric]* entered into as of the \_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_, by and between the City of Rochelle, an Illinois municipal corporation with offices at 420 North 6<sup>th</sup> Street, Rochelle, Illinois 61068 (hereinafter referred to as "City"), and \_\_\_\_\_, an \_\_\_\_\_, with offices at \_\_\_\_\_, \_\_\_\_\_ County, \_\_\_\_\_ (hereinafter referred to as "Owner/Developer").

**WITNESSETH**

**THAT WHEREAS**, the Illinois Compiled Statutes, 65 ILCS 5/9-5-1, authorize the use of recapture agreements for the reimbursement of costs of improvements to real estate which benefit more than one property; and

**WHEREAS**, Owner/Developer is constructing a *[describe development]* on property legally described on **Exhibit A** attached hereto and incorporated herein by reference (the "Subject Property"); and

**WHEREAS**, the development of the Subject Property is subject to the terms of an Annexation Agreement between the parties dated \_\_\_\_\_, 20 \_\_\_\_, and the provisions of the Rochelle Municipal Code, as modified by the Annexation Agreement, which requires the installation of certain improvements as a condition of either acceptance of a preliminary plat or final plat or the issuance of a building permit, and which further requires the dedication of said improvements to the public; and

**WHEREAS**, in developing the Subject Property, the Owner/Developer has

agreed to pay all or a portion of the cost and expense to design, construct and install, at its sole cost and expense, certain *[insert type]* facilities described as follows: *[insert accurate and detailed description of subject improvements]* (said improvements being collectively referred to herein as the "Subject Improvements"); and

**WHEREAS**, the design, construction and installation of the Subject Improvements will benefit the Subject Property as well as certain other properties; and

**WHEREAS**, the City has required Owner/Developer to design, construct and install the Subject Improvements so that the Subject Improvements would be available to, and would benefit, certain other properties, legally described in **Exhibit B** attached hereto and incorporated herein by reference (said properties being collectively referred to herein as "Benefiting Properties" and individually as a "Benefiting Property"); and

**WHEREAS**, the general location of the Subject Property and the Benefiting Properties is depicted on the map attached hereto as **Exhibit C** and incorporated herein by reference; and

**WHEREAS**, Owner/Developer has agreed to pay the total cost of the Subject Improvements, provided that the owners of the Benefiting Properties reimburse Owner/Developer in accordance with the terms of this Agreement; and

**WHEREAS**, the City has determined that the Owner/Developer's estimate of the costs of the Subject Improvements, as specified on **Exhibit D** is reasonable, and such estimated costs have been fairly and reasonably apportioned between the Owner/Developer and the owners of the Benefiting Properties, as specified on **Exhibit D** attached hereto and incorporated herein by reference; and

**WHEREAS**, the parties agree that the Benefiting Properties should pay reimbursement (hereinafter "Recapture Payments") for the Subject Improvements on the basis of the actual costs incurred by Owner/Developer, which actual costs shall include Developer's reasonable engineering expenses;

**NOW, THEREFORE**, in consideration of the mutual promises herein contained together with all other agreements and obligations undertaken by the Owner/ Developer with the City, the parties hereby agree as follows:

1. The foregoing recitals are substantive and by this reference are incorporated in the body of this Agreement and made a part hereof.
2. As soon as practicable after the recordation of this Agreement, Owner/Developer shall provide to City a summary of the actual costs incurred by Owner/Developer for engineering and construction of the Subject Improvements, with such supporting documentation as may be requested by City.
3. The parties agree that the City shall take all reasonable steps to collect from the owners of the Benefiting Properties that portion of the actual costs incurred by Owner/Developer for engineering and construction of the Subject Improvements which is apportioned to the Benefiting Properties as shown on **Exhibit D** (hereinafter referred to as the "Recapture Amount"). The Recapture Amount may vary from the estimate shown on **Exhibit D**, if the actual costs vary from the estimated costs. The City shall promptly remit to Owner/Developer all Recapture Payments (in amounts equal to the Recapture Amount) received from the owners of the Benefiting Properties.
4. The City shall become obligated to collect, and the owners of the Benefiting Properties shall become obligated to pay, the required Recapture Amount

when the Benefiting Properties individually make use of or benefit from the Subject Improvements, as determined by the City in the reasonable exercise of its discretion.

5. The City may, and will use its best efforts to, condition the annexation, subdivision and issuance of any building, occupancy, connection, or access permits upon payment by the owners of the Benefiting Properties of an appropriate share of the Recapture Amount under this Agreement.

6. Owner/Developer shall be entitled to the payment from the Benefiting Property owners and developers from the funds reimbursed to the City. The City's obligation to deliver the Recapture Amount or to make any Recapture Payment collected pursuant to this Agreement, constitutes a limited obligation of the City, payable solely from the amounts received by the City from the owners of the Benefiting Properties as Recapture Amount(s). Said obligation does not now and shall never constitute a general indebtedness of the City within the meaning of any State of Illinois constitutional or statutory provision, or give rise to any pecuniary liability of the City. Nothing contained herein, however, shall be deemed to exonerate or exculpate the City from liability in the event of willful or intentional failure to perform the duties assumed by it hereunder as to collection of the Applicable Recapture Amount(s) or payment of the Recapture Payment(s).

7. The Recapture Amounts shall bear interest at six percent (6%) per annum, from and after the date of acceptance of the Subject Improvements by the City. The interest amount shall be adjusted after the first ten (10) years based on the increase or decrease in the U.S. Government's Consumer Price Index (e.g., if the CPI has increased a total of 10% over the ten years, the new interest rate would be 6.6%).

8. The Recapture Amount shall include, to the extent not prohibited by law, any and all costs and reasonable attorney's fees of the City reimbursed by Owner/Developer in connection with the acquisition of any easements reasonably necessary to construct the Subject Improvements.

9. The obligations imposed upon the Benefiting Properties under this Agreement shall be a covenant running with the land and shall constitute encumbrances against the land so as to bind the owners and any successor owners of record of the Benefiting Property.

10. The City agrees to approve this Agreement by ordinance, and this Agreement shall become effective upon both execution by the parties and recording of this Agreement and said ordinance with the Recorder of Ogle County, Illinois, as provided by law. City shall record this Agreement, with the costs of recordation to be borne by Owner/Developer.

11. The failure or omission of the City to require payment of any Applicable Recapture Amount(s) by a Benefiting Property Owner to the City in accordance with this Agreement shall not relieve such Benefiting Property Owner of the obligation to pay the Applicable Recapture Amount(s), and the City agrees that Owner/Developer shall have the right to enforce such obligation directly against such Benefiting Property Owner in any court of competent jurisdiction. In any such proceeding Owner/Developer shall also be entitled to recover its reasonable attorneys' fees and costs from such Benefiting Property Owner to the extent not prohibited by law.

12. Owner/Developer has had the benefit of consultation with its own attorney in connection with the validity, enforceability and construction of this Agreement, and acknowledges that the City has made no representations or warranties in that regard. In the event of any litigation concerning the validity, enforceability or construction of this Agreement, Owner/Developer shall indemnify and hold harmless the City from and against any and all costs (including without limitation attorney's fees, court costs and expenses) incurred by the City, and shall indemnify and hold harmless the City from any liabilities, judgments or settlement payments in connection therewith.

**IN WITNESS WHEREOF**, the parties to this Agreement by their signatures acknowledge that they have read and understand this Agreement and intend to be bound by its terms.

**CITY OF ROCHELLE**, an Illinois  
municipal corporation

ATTEST:

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
City Clerk

**OWNER/DEVELOPER**

\_\_\_\_\_  
an \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ILLINOIS     )  
                                  )  
COUNTY OF OGLE        )     SS.

The foregoing instrument was acknowledged before me by Ken Alberts, City  
Manager, and Bruce McKinney, City Clerk, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

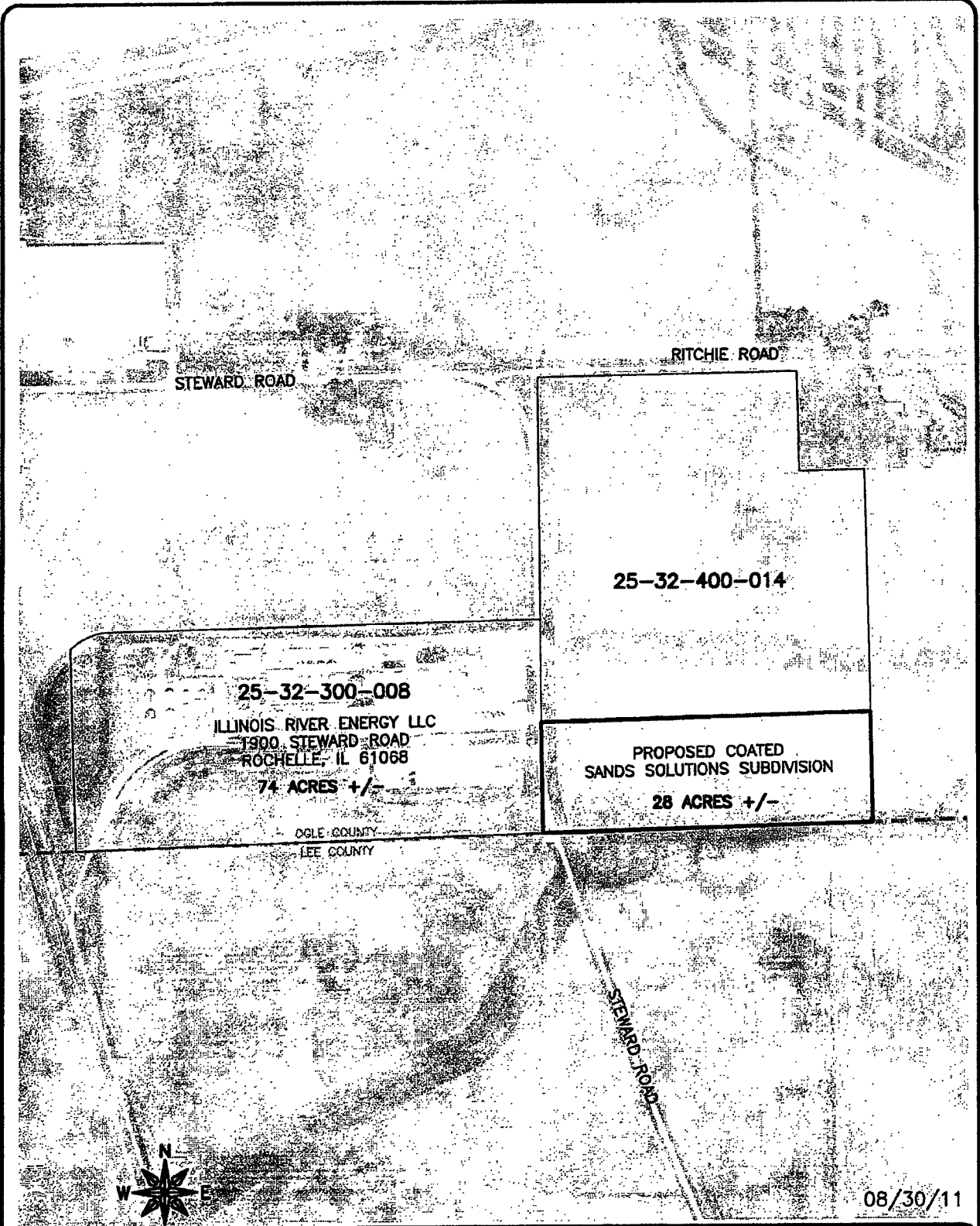
STATE OF \_\_\_\_\_ )  
                                  )  
COUNTY OF \_\_\_\_\_ )     SS.

The foregoing instrument was acknowledged before me by \_\_\_\_\_,  
\_\_\_\_\_ of \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT D - 2**  
**(Map and Legal Descriptions of Benefitting Properties)**

G:\EPL\111-338\111-338 - Receipt Agreement Exhibit.dwg Layout1



08/30/11

**FEHR-GRAHAM & ASSOCIATES, LLC**  
**ENGINEERING AND SCIENCE CONSULTANTS**  
 FREEPORT, IL ROCKFORD, IL ROCHELLE, IL SPRINGFIELD, IL MONROE, WI  
ILLINOIS DESIGN FIRM NO. 184-003628

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**DESCRIPTION:**

**Part of the Southeast Quarter of Section 32, Township 40 North, Range 2 East of the Third Principal Meridian bounded and described as follows:**

**Beginning at the Southwest corner of said Southeast Quarter; thence North 01 degree 14 minutes 52 seconds West (Assumed Bearing) on and along the West line of said Southeast Quarter, a distance of 634.57 feet; thence North 88 degrees 27 minutes 21 seconds East parallel with the South line of said Southeast Quarter, a distance of 1926.68 feet to a point on the west line of a premises conveyed in a Corrective Trustee's Deed, Document No. 0207738 as recorded in the Ogle County Recorder's Office; thence South 01 degree 2 minutes 30 seconds East on and along last named line, a distance 634.58 feet to said South line of the Southeast Quarter and the Southwest corner of said premises conveyed; thence South 88 degrees 27 minutes 21 seconds West on and along last named line, a distance of 1924.40 feet to the Point of Beginning, containing 28.05 acres, more or less. Situated in the Township of Dement, County of Ogle, State of Illinois.**

PARCEL I

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 32 IN TOWNSHIP 40 NORTH, RANGE 2 EAST OF THE THIRD PRINCIPAL MERIDIAN, COUNTY OF OGLE, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 32;  
THENCE SOUTH 88 DEGREES 31 MINUTES 33 SECONDS WEST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, 40.00 FEET TO A LINE 40.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST QUARTER AND THE POINT OF BEGINNING;  
THENCE CONTINUING SOUTH 88 DEGREES 31 MINUTES 33 SECONDS WEST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, 2,612.09 FEET TO THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 32;  
THENCE NORTH 01 DEGREES 25 MINUTES 59 SECONDS WEST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER, 1199.79 FEET TO THE POINT ON CURVE;  
THENCE NORTHEASTERLY, 111.42 FEET ALONG A NON-TANGENTIAL CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 580.00 FEET, CHORD BEARING NORTH 67 DEGREES 55 MINUTES 56 SECONDS EAST, 111.24 FEET;  
THENCE NORTH 88 DEGREES 31 MINUTES 01 SECONDS EAST, 2,512.35 FEET TO SAID LINE 40 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHWEST QUARTER OF SECTION 32;  
THENCE SOUTH 01 DEGREES 13 MINUTES 52 SECONDS EAST ALONG SAID LINE, 1,239.32 FEET TO SAID POINT OF BEGINNING, CONTAINING 3,237,523 SQUARE FEET OR 74.323 ACRES MORE OR LESS.

PARCEL II

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 2 EAST OF THE THIRD PRINCIPAL MERIDIAN, COUNTY OF OGLE, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 31;  
THENCE SOUTH 88 DEGREES 19 MINUTES 19 SECONDS WEST ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER, 164.71 FEET TO A LINE 100.00 FEET EAST OF AND PARALLEL WITH THE EASTERLY RIGHT OF WAY LINE OF BURLINGTON NORTHERN RAILROAD;  
THENCE NORTH 16 DEGREES 46 MINUTES 42 SECONDS WEST ALONG SAID LINE, 523.21 FEET;  
THENCE NORTH 10 DEGREES 58 MINUTES 44 SECONDS WEST, 79.90 FEET TO A POINT ON CURVE;  
THENCE NORTHEASTERLY, 743.37 FEET ALONG A NON-TANGENTIAL CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 580.00 FEET, CHORD DISTANCE OF 693.53 FEET AND BEARING NORTH 25 DEGREES 42 MINUTES 42 SECONDS EAST TO THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 31;  
THENCE SOUTH 01 DEGREES 25 MINUTES 59 SECONDS EAST ALONG SAID EAST LINE, 1,199.79 FEET TO SAID POINT OF BEGINNING, CONTAINING 294,381 SQUARE FEET OR 6.758 ACRES MORE OR LESS.

**EXHIBIT E**  
**(Rail Plan)**

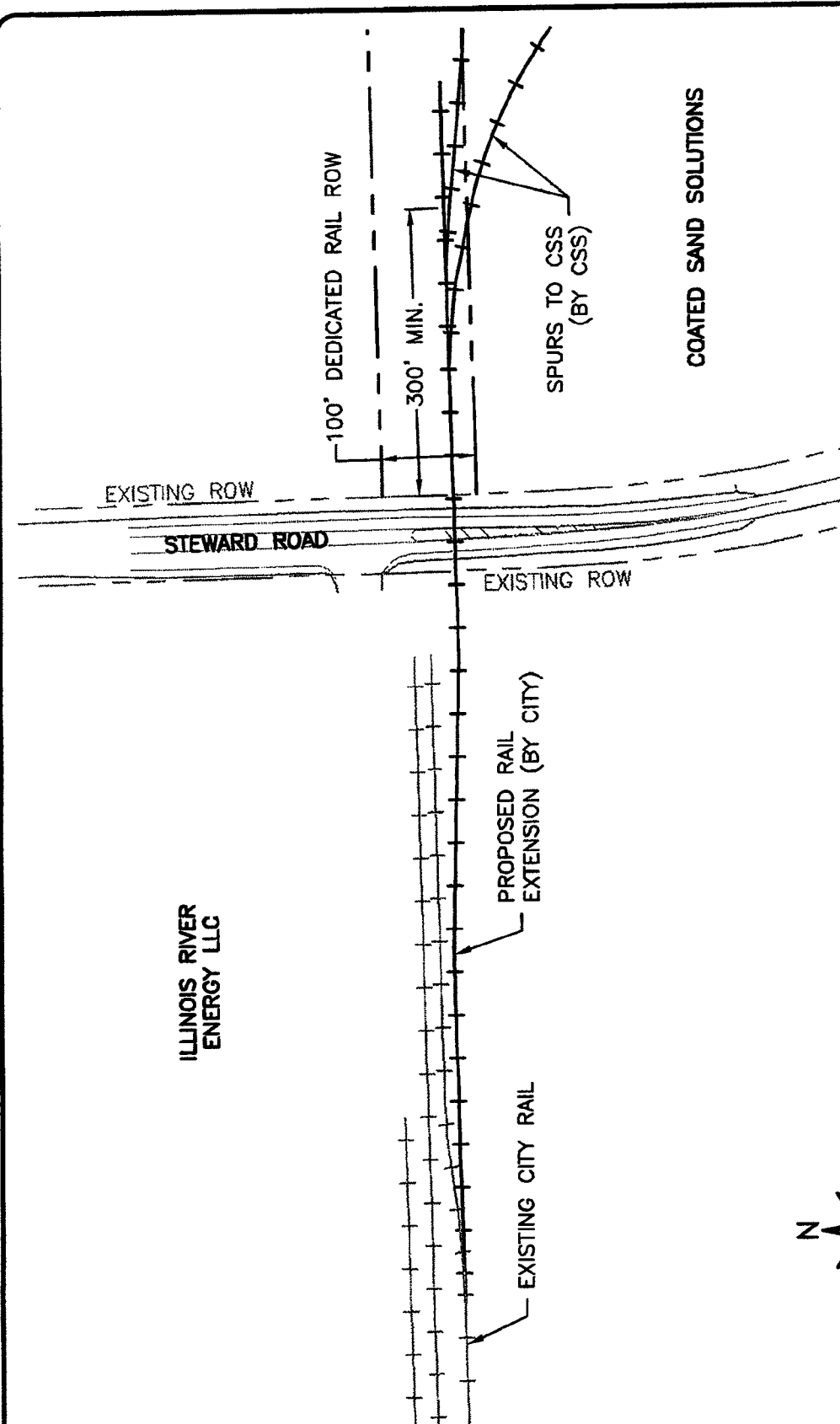
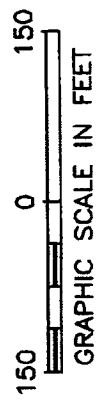
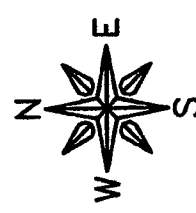


EXHIBIT E 08/31/11

**FEHR-GRAHAM & ASSOCIATES, LLC**  
 ENGINEERING AND SCIENCE CONSULTANTS  
 FREEPORT, IL ROCKFORD, IL ROCHELLE, IL SPRINGFIELD, IL MONROE, WI  
 ILLINOIS BOARD OF PROFESSIONAL ENGINEERS NO. 184-000000  
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**EXHIBIT F**  
**(Industrial Track Agreement)**

## **INDUSTRIAL TRACK AGREEMENT**

This Industrial Track Agreement (“Agreement”) is entered into as of the 12th day of September, 2011, between the City of Rochelle, an Illinois municipal corporation (“City”) and Coated Sand Solutions, LLC, a Delaware limited liability company (“Industry”):

### **WITNESSETH**

**THAT WHEREAS**, City is the owner of certain real estate located in the city limits of City, improved with rail lines and rail facilities for the operation of a railroad (the “City Track”); and

**WHEREAS**, City has been duly designated and authorized by the appropriate authorities of the United States Government and any and all other pertinent agencies to operate a railroad on the City Track for the purpose of providing common carrier rail service within the city limits of the City; and

**WHEREAS**, in order to provide for the operation of a railroad on the City Track, City has entered into one or more operating agreements with third parties whereby said third parties or their successor(s) (“Operator”) are authorized and obligated to operate a railroad on the City Track for the purpose of providing common carrier rail service within the city limits of the City; and

**WHEREAS**, Industry has constructed, or intends to construct, a certain industrial facility on real estate located, or to be located, within the city limits of the City, the legal description of which is attached hereto as Exhibit A, (the “Industry Property”), for Industry’s business purposes, and in connection with said business wishes to ship and receive railroad cars over the City Track; and

**WHEREAS**, in consideration of the construction and operation of such industrial facility on the Industry Property and in order to facilitate Industry’s operation of its business on the Industry Property, the parties have entered into an agreement governing the provision of rail service to the Industry Property on certain terms and conditions, and wish to memorialize same in writing:

**NOW THEREFORE**, in consideration of the foregoing premises and the mutual promises and covenants contained herein, the sufficiency of which is acknowledged the parties agree as follows:

**1. PROVISION OF RAIL SERVICES TO INDUSTRY PROPERTY.** City shall arrange for and assure the continuation of rail switching services to be provided from the applicable Class I common carrier main railroad track to the Industry Property on the terms set forth herein. City shall arrange for and assure the continuation of such rail service to be provided over the City Track to the point (the “Clearance Point”) where the City Track enters the Industry

Property and connects to rail line, rail track or railway facilities located on the Industry Property (the "Industry Track"). City shall have the obligation to construct the City Track and to arrange for and assure the continuation of its maintenance, and to procure any needed right-of-way, public authority or permission for construction, maintenance and/or operation of rail services on the City Track by Operator, and shall pay, or arrange for payment of, any and all fees or costs imposed by any such public or private person, firm or entity, for the privilege of constructing and maintaining the City Track, or operating rail cars on the City Track.

The parties acknowledge that the cost of switching fees is presently absorbed by the applicable Class I common carrier. So long as the applicable Class I common carrier continues to absorb the cost of switching fees, Industry shall not be charged a switching fee or other fee for use of the City Track by City, and City shall enter into such contractual provisions with Operator as necessary to prohibit the charging of switching fees or other fees to Industry by Operator for use of the City Track; provided, however, that Industry shall be responsible for paying the line haul rate and/or any other charges of the applicable Class I common carrier, and charges of Operator for switching in addition to the minimum switching required under Paragraph 4 of this Agreement, and ancillary services such as fueling, cleaning rail cars, demurrage and multiple spotting.

City shall have no obligation to construct or maintain the Industry Track, or to operate on the Industry Track except to place inbound railcars and pull outbound railcars between the Industry Track and the City Track as requested by the Industry. Industry shall have the obligation to procure any needed right-of-way, public authority or permission for construction, maintenance, and/or operation of rail services on the Industry Track or on any track utilized by Industry outside the City Track, and shall pay any and all fees or costs imposed by any such public or private person, firm or entity, for the privilege of constructing and maintaining the Industry Track, or operating rail cars on the Industry Track.

**2. SERVICES TO BE NON-EXCLUSIVE.** Industry acknowledges that City has entered into, and in the future may enter into, similar Industrial Track Agreements with other industries, and that Industry's rights under this Agreement are non-exclusive. In the event of a conflict between the rights of Industry and of other industries under this and similar Industrial Track Agreements, City (acting through Operator) shall have the discretion to resolve said conflict in any reasonable manner which is fair and equitable to Industry and all other industries, in order to promote the fair and efficient use of the City Track for the benefit of all industries similarly situated; provided, however, that City shall not grant to any other user superior rights to the use of the City Track.

**3. OPERATOR/INDUSTRY AGREEMENTS.** Industry may, but shall not be required to, enter into such other agreements with Operator as may be necessary to facilitate the provision of rail service to the Industry Property over the City Track, provided that the terms of such agreements may not be inconsistent with the terms of this Agreement.

**4. MINIMUM SERVICE LEVELS; DEFAULT AND REMEDIES.** Acting through Operator, City shall arrange for and assure the continuation of a minimum level of service over the City Track of at least one set of cars per day to and from the dock doors of the warehouse located on the Industry Property during normal business hours, six (6) days a week ("daily service"). In case of default, the following remedies shall apply:

(A) **Exhaustion of Remedies.** In the event Industry considers that there has been a failure of the minimum service levels required under this Agreement, or if Industry has any other complaint concerning the provision of rail service to the Industry Property under this Agreement, Industry shall first address its complaint to Operator. Only in the event Operator fails to provide a response or remedy which is reasonably satisfactory to Industry within a reasonable time, shall Industry address its complaint to City. City acknowledges that Industry's business, customers and tenants rely on the prompt provision of rail service, that any interruption of such services may result in serious and irreparable harm, and that under certain circumstances Operator's or City's response must therefore be immediate in order to be reasonable.

(B) **Failure of Service.** In the event Operator fails to provide service on a daily basis for more than two (2) consecutive days or more than ten (10) days in any twelve-month period, or if other scheduled service should fail to be provided for more than two (2) consecutive days or more than ten (10) days in any twelve-month period, and such failure is not excused by *force majeure*, and provided that Industry has exhausted its remedies as set forth above, City shall terminate and replace Operator consistent with the provisions of its contract with Operator. The selection of a successor Operator shall be in the sole discretion of City, but City shall promptly provide Industry the identity and credentials of any successor Operator.

(C) **Inadequate Service.** In the event Industry deems such daily service not to be commercially reasonable, and provided that Industry has exhausted its remedies as set forth above, Industry shall provide written notice of same to City, in sufficient detail to advise City of the nature of the inadequacy and/or unsatisfactory service. City shall, within ten (10) calendar days of its receipt of said notice, propose any modifications to service frequency or operating patterns of Operator City reasonably deems necessary to remedy the matters addressed in Industry's notice, and shall thereafter promptly take all steps reasonably necessary to implement such modifications. In the event City and Industry, acting reasonably, thereafter agree that Operator's service remains unsatisfactory or inadequate, City shall take all steps reasonably necessary to terminate the present Operator and retain a successor Operator.

(D) **Material Default.** In the event City should materially default in its obligations under this Paragraph 4, which default is not excused by *force majeure*, in addition to any other remedies to which Industry may be entitled at law or in equity, Industry may, upon written notice of default to City and Operator specifying the nature of the default, and provided that Industry has exhausted its remedies as set forth above, seek an emergency order from the Surface Transportation Board of the U.S. Department of

Transportation (the "STB") for an interim Operator for the City Track. However, only one Operator or interim Operator shall be designated at any time. Any such interim Operator shall meet all standards imposed by the Federal Railroad Administration (FRA), or the STB, or any other pertinent agency for the operation of short line facility, and shall provide service to Industry and any other industries similarly situated consistent with the terms of this Agreement and any similar agreements related to the City Track. In the event an interim Operator is so designated, City shall have the right to select a permanent successor Operator. Any such successor Operator shall be selected within sixty (60) days following Industry's notice of default.

(E) **Other Contracts.** Any and all contracts between Industry and Operator for rail service shall be consistent with the provisions of this Paragraph 4.

**5. SAFETY MATTERS.** Industry shall adhere to the following safety rules:

(A) **Clearances.** Industry shall not permit, erect, place, pile, store, stack, park or maintain any building, platform, fence gate, vehicle, or other structure, obstruction or material or equipment of any kind upon the City Track (including the land upon which the track and rail facilities are located), or any closer to the City Track than the following standard clearances, without the prior written consent of City and Operator: (1) horizontally, nine (9) feet from the centerline of the City Track; (2) vertically, twenty-three (23) feet above the top of the rail of the City Track; and (3) for any portion of the City Track that is curved, the standard horizontal clearance shall be increased one and one-half (1 1/2) inches for each degree of curvature. All doors, windows and gates shall be of the sliding type or open away from the City Track if opening them toward the City Track would impair clearances. Any moveable appliance, including but not limited to, dock plates and loading or unloading spouts or other equipment that impairs standard clearances only when in use shall be securely stored or fastened when not in use so it will not impair such standard clearances. If greater clearances are required by the National Electrical Safety Code or by statute, regulation or other competent public authority, Industry shall comply with same and shall obtain any necessary consents or authority to impair clearances before creating any impairment. Any structural material or other obstruction (whether in use or not) which is closer to the City Track than the standard clearances or applicable codes, statutes, regulations or other competent public authority, shall be considered an impairment, whether or not consented to by City;

(B) **Facilities.** Industry shall not construct, locate, maintain or permit the construction, location, maintenance or erection of any pits, loading or loadout facilities, buildings, private crossing, beams, pipes, wires, or other obstructions or installations of any kind over or under the City Track without the prior written consent of City;

(C) **Walkways.** Industry, at its expense, shall provide and maintain a clear and safe walkway, which shall not be required to exceed [to be determined] feet in width, for Operator along both sides of the Industry Track beyond the Clearance Point to the beginning of the City Track. If such walkways are required by statute or regulation,

Industry shall, at its expense, ensure that walkways are built and maintained to conform with all such statutes or regulations;

(D) **Training and Oversight.** Industry shall have a non-delegable duty to train and oversee its employees and agents as to proper and safe working practices while performing any work or activities upon or in connection with the City Track or the Industry Track and the operations thereon;

(E) **Industry Switching.** Industry shall not perform, permit or cause the movement of rail cars on the City Track by Industry;

(F) **Standards.** Industry shall comply with all applicable ordinances, regulations, statutes, rules and orders including without limitation, safety, zoning, air and water quality, noise, hazardous substances and hazardous waste rules issued by any federal, state or local governmental body or agency, in connection with its operations on the Industry Track or the City Track;

(G) **Hazardous Materials.** In the event Industry uses the City Track for the purpose of shipping or receiving or storing railcars containing hazardous materials, as defined by the United States Department of Transportation, Industry will comply in all material respects with Department of Transportation Regulations as set forth in 49 C.F.R. 100-199, as amended from time to time, and in applicable circulars of the Bureau of Explosives and the Association of American Railroads, and any amendments or supplements thereto; and

(H) **Fire Precautions.** Industry shall not permit, place, pile, store or stack any flammable material within ten (10) feet of the centerline of the City Track. Industry shall remove or otherwise control vegetation on the Industry Property adjacent to the City Track in order to prevent a fire hazard, and shall ensure that suitable firefighting equipment, as reasonably determined by Industry, is readily available and in working order to address any potential fire hazard adjacent to the City Track.

6. **LIABILITIES.** Except as otherwise specifically provided in this Agreement, all loss of or damage to the property of any third person or party and/or injury to or death of any third person or party, including without limitation, costs, expenses, costs of defending litigation, reasonable attorney's fees, expert witness fees, court costs, amounts paid in settlement or in satisfaction of any judgment, and pre-judgment and post-judgment expenses arising from analysis and/or clean-up of any incident involving the release of hazardous substances or hazardous wastes, or related to the construction, operation, maintenance, use, presence or removal of the City Track ("Loss") and payable by City and/or Industry shall be allocated as follows:

(A) City shall indemnify and hold Industry harmless for the Loss to the extent the Loss arises from the negligent or wrongful acts or omissions of City or Operator;

(B) Industry shall indemnify and hold City harmless for the Loss to the extent the Loss arises from the negligent or wrongful acts or omissions of Industry, and also to the extent the Loss arises from or grows out of any of the following:

- (1) any impairment by Industry of the standard clearances as described in Paragraph 5 (A);
- (2) Industry's failure to construct or adequately maintain pathways or walkways as required by Paragraph 5(C);
- (3) Industry switching in violation of Paragraph 5(E);
- (4) Industry's failure to comply with the standards required by Paragraph 5(F); or
- (5) any explosion or leakage or evaporation of hazardous substances or hazardous wastes shipped, received or stored by Industry, except to the extent arising from the negligence or wrongful acts or omissions of City or Operator.

With respect to any or all of the foregoing items (1) through (5), Industry shall indemnify and hold City harmless, regardless of whether City or Operator had notice of, consented to, or permitted the aforesaid impairments, failures, hazardous waste or substances.

**7. REARRANGEMENT OF TRACK; ADDITIONAL TRACKAGE.** City may rearrange or reconstruct the City Track or modify its elevation in order to develop, change, or improve the City Track, provided that Industry shall continue to have uninterrupted access to similar trackage without additional cost to Industry. All references in this Agreement to the City Track shall apply to the City Track as constructed, even if it differs or varies from its construction and location at the time this Agreement is entered into. References in this Agreement to the City Track shall also apply to rearrangement, reconstructions, extensions or additions to the City Track made by City.

**8. PAYMENT OF BILLS: ASSIGNABLE COSTS.** Bills for any expenses properly chargeable to Industry pursuant to this Agreement shall be paid by Industry within thirty (30) days after presentation by City except as otherwise provided. Bills not paid within thirty (30) days shall be subject to interest at the then current rate charged by City, not to exceed 18% per annum.

**9. GOVERNMENTAL RESTRICTIONS.** This Agreement is made subject to applicable laws, rules and regulations of the United States government or any state, municipal, or local governmental authority, including City, now or hereafter in effect.

10. **FORCE MAJEURE.** The term "*force majeure*" as used in this Agreement shall mean any delay in the completion of any obligation of a party under this Agreement (or Operator) which is attributable to any: (1) actual delay or failure to perform attributable to any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party hereto), civil disturbance, act of a public enemy, war, riot, sabotage, blockade, or embargo; and (2) delay attributable to lightning, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion or any other similar cause beyond the reasonable control of the party from whom performance is required, or any of its contractors or other representatives. Any prevention, delay or stoppage due to any *force majeure* shall excuse the performance of the party affected for a period of time equal to any such prevention, delay or stoppage (except the obligations of either party to pay money); provided, however, that the party seeking relief shall promptly provide written notice to the other party of the event of *force majeure* and shall use all reasonable efforts to overcome such *force majeure* as promptly as practicable with the least amount of adverse effect on the other party.

11. **NOTICES.** Any notice, consent, or approval that either party hereto desires, or is required, to give to the other party under this Agreement shall be in writing. The notice, consent or approval shall be deemed to have been given to Industry by serving the Industry personally or by mailing same, postage prepaid, to Industry at:

Coated Sand Solutions, LLC  
c/o U.S. Silica Company  
8490 Progress Drive, Suite 300  
Frederick, MD 21701  
Attention: James Manion, Esq.

with a copy to:

Kirkland & Ellis LLP  
300 N. LaSalle Street  
Chicago, Illinois 60654  
Attention: John G. Caruso, Esq.

Notice may be given to City by mailing same to the office of the City Manager, City of Rochelle, 420 North Sixth Street, Rochelle, IL 61068. Notices involving an alleged default or termination shall be by certified mail, return receipt requested, and notice shall be deemed so given on the date deposited with United States Postal Service. Any of the parties hereto may change its address for notice by written notice to the other parties hereto.

12. **ASSIGNMENT; USE BY THIRD PARTIES.** Industry shall not assign this Agreement to anyone other than an affiliate without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Industry may assign this Agreement to an affiliate provided Industry notifies City in writing of such assignment to an affiliate prior to the

effective date of the assignment. For any intentional, material departure from the terms of this paragraph, City may terminate this Agreement.

13. **SUCCESSORS AND ASSIGNS.** Subject to the provisions of the preceding paragraph, the rights and obligations contained in this Agreement shall inure to the benefit of and be binding upon the successors in interest, assigns, and transferees of the parties to this Agreement.

**IN WITNESS WHEREOF,** the parties have executed and delivered this Industrial Track Agreement to each other as of the date set forth above.

CITY OF ROCHELLE, an  
Illinois Municipal Corporation

COATED SAND SOLUTIONS,  
LLC, a Delaware limited liability  
company

By: \_\_\_\_\_  
City Manager ("City")

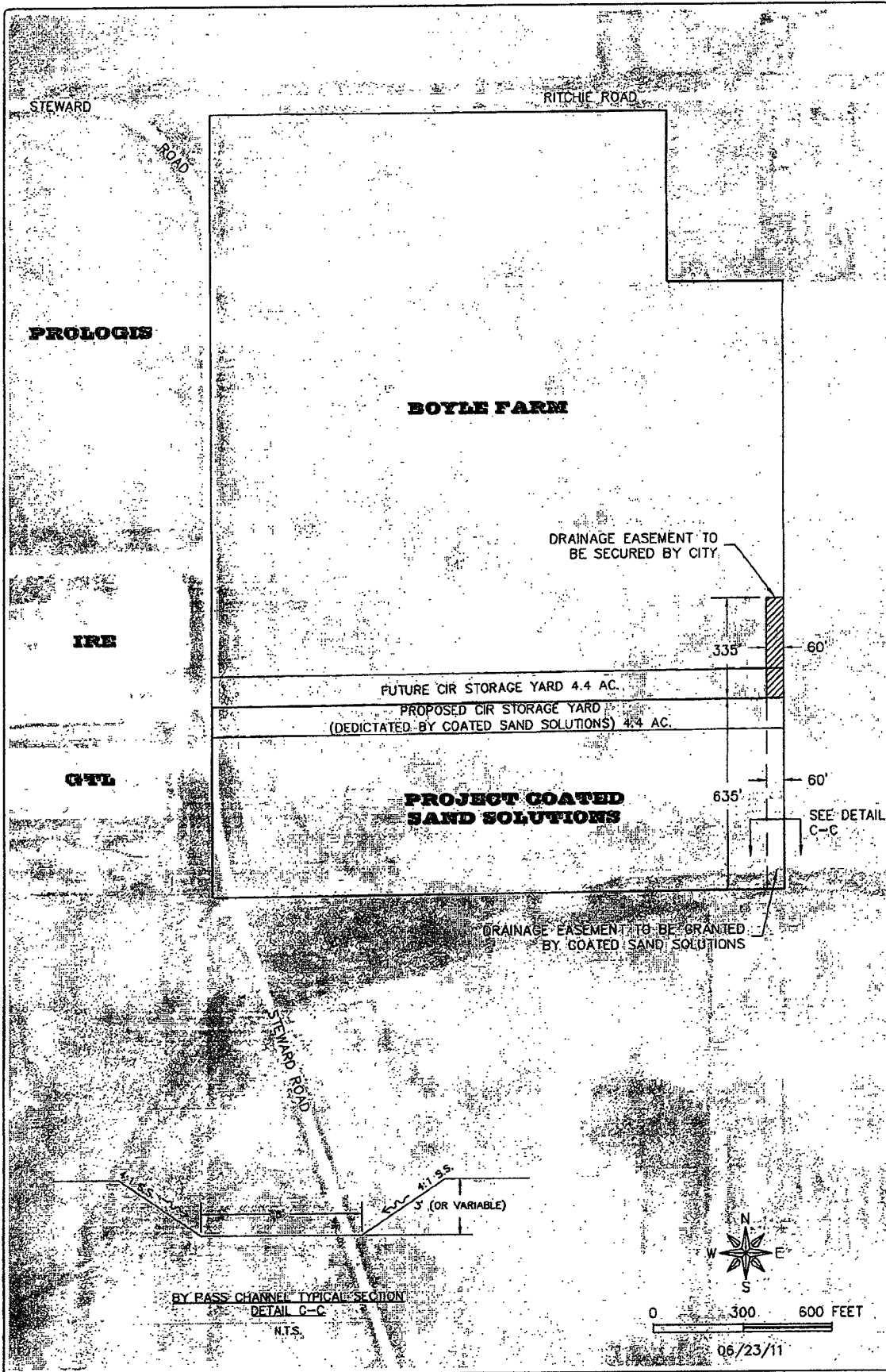
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
("Industry")

Attest: \_\_\_\_\_  
City Clerk

**EXHIBIT A**

**Industry Property**

**EXHIBIT G**  
**(By-Pass Channel)**



**FEHR-GRAHAM & ASSOCIATES, LLC**  
 ENGINEERING AND SCIENCE CONSULTANTS  
 FREEPORT, IL. ROCKFORD, IL. ROCHELLE, IL. SPRINGFIELD, IL. MONROE, WI.  
 LICENSE NUMBER: 04-00000000  
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PREPARED BY:  
 COATED SAND SOLUTIONS  
 ROCHELLE, ILLINOIS

DRAWN BY:  
 DRAINAGE EASEMENTS

JOB NUMBER:  
 11-338

SHEET NUMBER:  
 1 of 1

**EXHIBIT H**  
**(Letter of August 17, 2011)**



## City of Rochelle

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420 N 6<sup>th</sup> Street  
P.O. Box 601  
Rochelle, IL 61068-0601  
Tele: (815) 562-6161  
Fax: (815) 562-3888

August 17, 2011

Mr. Joe Ebens  
Plant Manager Coated Sand Solutions  
946 North Illinois Rt. 2  
Oregon IL 61061

Dear Mr. Ebens:

We appreciate your interest in becoming a partner with the City of Rochelle in developing "Project True Grit", a Sand Resin Coating facility in our community. As you continue your due diligence for Project True Grit, we wish to clarify the approval process for mitigating the flood plain that was recently discovered on your proposed site.

It is our understanding that the findings of the City Wide Flood Study completed by WBK as commissioned by the City of Rochelle has identified flood plain along the southern boundary of your proposed site following John's Creek. Further, the study suggests that there is additional flood plain that cuts across the eastern one half of your site flowing from north to south resulting from a split flow of the John's Creek Flood plain that occurs easterly of your site. For your project to progress, this flood plain must be addressed. Based on the current information and information/direction provided by WBK as well as your consulting engineer Fehr-Graham & Associates, the following outlines our recommendation to address mitigating the flood plain as identified:

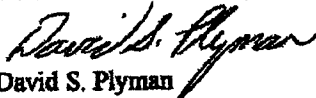
1. CSS and your consultant shall design and construct a means to relocate the aforementioned split flow that mitigates the flood plain concern as well as results in no impact to the upstream properties.
2. Said mitigation approach shall be similar to proposed eastern bypass channel shown on the attached drawing as prepared by WBK and dated August 10, 2011 which results in the associated boundaries (dashed line) and flood elevations as detailed.
3. CSS and your consultant shall utilize this data to establish finish floor elevations, detention calculations, floodplain impact, drainage report, and civil site development in accordance with the Rochelle Municipal Code floodplain and storm water runoff sections.
4. The City will utilize the flood map and data as described above during the review of the all plans and plats associated with this project.

5. The City and WBK will proceed with every effort necessary to secure the approval of the flood model as originally submitted to the IDNR and FEMA. To avoid complicating the said review process, the flood model will not be updated at this time to reflect the proposed improvements on the True Grit site.
6. Once FEMA and IDNR adopt the regional flood study and update the flood maps, CSS (with all necessary assistance from the City) will then prepare and submit a Letter of Map Revision (LOMR) to FEMA based upon as-built grading information. This submittal will include all site development improvements.

Based on our understanding from the dialogue over the last week between FGA, the City and WBK, the above approach will allow the project to be designed in a manner that is consistent with FEMA and IDNR regulations. As such, the above approach is acceptable to the City of Rochelle.

We look forward to working with you in the development of Project True Grit. If my office can further assist you, please do not hesitate to call me at 815-561-2000.

Yours in Public Service,



David S. Plyman  
City Manager

cc: Economic Development Director Jason Anderson  
Community Development Director Chris Linas  
City Engineer Sam Tesreau  
Attorney Alan Cooper

