

[FOR RECORDER'S USE]

AMENDED ANNEXATION AGREEMENT
20TH STREET SUBDIVISION (f/k/a Squire's Landing West)

Date: _____, 2011

Parties: *The City of Rochelle, an Illinois municipal corporation*

and

AKCK, LLC, an Illinois limited liability company

Property: *151.09 acres west of 20th Street from 8th Avenue north*

Legal Description: *see attached Exhibit A*

Property Tax #: *24-23-100-001*

Common Address: *N/A*

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#212

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SCHOOL DISTRICT #231

**AMENDED ANNEXATION AGREEMENT
(20TH STREET SUBDIVISION)**

This Amended Annexation Agreement (the “Amended Agreement”), is made and entered into this 24th day of January, 2011, by and among the **City of Rochelle**, an Illinois municipal corporation located in Ogle County, Illinois, (the "City"), and **AKCK, LLC**, an Illinois limited liability company (hereinafter referred to as the "Developer"). The City and Developer are hereinafter collectively referred to as "Parties" and individually referred to as a "Party".

RECITALS:

A. Developer is the owner of record of approximately 151.09 acres of real property located in Ogle County, Illinois, which property is legally described on **Exhibit A**, attached hereto and incorporated herein by reference (the "Property").

B. The City and Squires Landing, LLC, previously entered into an Annexation Agreement on May 23, 2005, relating to the Property, which was recorded as Document No. 0605654 in the Office of the Ogle County Recorder on Jun 6, 2005 (“Annexation Agreement”) and Developer is the successor in interest to Squires Landing, LLC, under the Annexation Agreement;

C. The Property was annexed into the City by ordinance adopted on May 23, 2005, and was zoned PUD-R;

D. The Parties desire to enter into this Amended Agreement pursuant to the provisions of 65 ILCS 5/11-15.1-1 et. seq., to amend the Annexation Agreement in certain particulars, in accordance with the terms and conditions hereinafter set forth.

E. Developer has represented to the City that Developer intends to develop the Property as a planned unit development residential subdivision with single family attached and/or detached units, roadways, landscaping and water features, and stormwater retention/detention, the precise configuration of which is not presently known, but will be governed by market forces and will be subject to the City’s approval pursuant to the provisions of the Rochelle Municipal Code governing the procedures for approval of planned unit developments. Developer’s Concept Plan for the Property is attached hereto as **Exhibit B** and incorporated herein by reference.

F. The City acknowledges that the Developer's proposed use of the Property will be compatible with and will further the planning objectives of the City, and that the annexations of the Property to the City will be of substantial benefit to the City, will extend the corporate limits and jurisdiction of the City, will permit orderly growth, planning and development of the City, will increase the tax base of the City, and will promote and enhance the general welfare of the City and its residents.

G. Pursuant to the applicable provisions of the Illinois Municipal Code, a proposed Amended Annexation Agreement similar in substance and in form to this Amended Agreement was submitted to the Mayor and City Council of the City (hereinafter collectively referred to as the "Corporate Authorities") and a public hearing was held thereon on January 10, 2011, pursuant to notice, as provided by statute.

H. All other and further notices, publications, procedures, public hearings and other matters attendant to the consideration and approval of this Agreement have been given, made, held and performed by the City as required by the Illinois Municipal Code, and all other applicable statutes, and all applicable ordinances, regulations and procedures of the City. This Agreement is made and entered into by the Parties pursuant to the provisions of Section 5/11-15.1-1 et seq. of the Illinois Municipal Code.

I. The Corporate Authorities have duly considered all necessary matters to enter into this Agreement, and have further duly considered the terms and provisions of this Agreement and have, by an ordinance duly adopted by a vote of two-thirds (2/3) of the Corporate Authorities then holding office, authorized the City Manager to execute, and the City Clerk to attest, this Agreement on behalf of the City.

J. Developer has represented to the City that, as a part of said development, Developer will cause to be executed and recorded a declaration of covenants, conditions, restrictions and easements for the Property ("Subdivision Covenants"), which shall include provisions for a homeowners' association ("Homeowners' Association") which shall have the duty to maintain the common areas within the Property, including without limitation the retention and detention facilities which serve the Property, the landscaping along streets, the compensatory storage area (for as long as the area is utilized as compensatory storage), any permanent monument sign (including any costs to illuminate said signs) and any landscaped islands in the right-of-way.

K. The parties acknowledge that the current economic environment has slowed development significantly and has made it extremely difficult for developers to obtain financing for the purpose of constructing improvements to their land.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements herein made, the Parties hereby agree as follows:

ARTICLE I
RECITALS

The Parties acknowledge that the statements and representations contained in the foregoing recitals are true and accurate and incorporate such recitals into this Agreement as if fully set forth in this Article I.

ARTICLE II
ANNEXATION OF THE PROPERTY

- A. **Action by City.** [omitted]
- B. **Annexation Contingent on Zoning.** [omitted]

ARTICLE III
ZONING AND DEVELOPMENT OF THE PROPERTY

- A. **Action by City.** [omitted]

A. **Zoning Classification; Density.** The Property shall be rezoned PUD-R Planned Unit Development–Residential, pursuant to Rochelle Municipal Code §110-435, with a maximum of 400 dwelling units. Notwithstanding the provision of any City code, ordinance, or regulation to the contrary (whether now or in the future), so long as the Property is developed in general conformance with the Concept Plan attached hereto as **Exhibit B**, the City agrees to allow and approve development of a residential nature, which may consist of single family detached or attached, on certain portions or phases of this project, the number of which shall not exceed a cumulative total of 400 dwelling units. In addition to the maximum number of dwelling units allowed, the overall density within the development shall not exceed 4.0 units per net acre on the average over the entire Property, notwithstanding some portions of the development may exceed that average, in accordance with the Rochelle Municipal Code standards. The open spaces shown on the Concept Plan shall be developed by the Developer. Developer and the City shall comply with the procedures set forth in Chapter 10, Article VII of the Rochelle Municipal Code for approval of a concept plan, preliminary plat and final plat for a PUD subdivision.

- C. **Stormwater Provisions.**

1. **General.** Except as expressly set forth herein, 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, 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 laws, rules and regulations related to stormwater management; provided, however, that said retention may be provided on a “site-by-site” basis as the various portions of the Property are developed. The retention system shall be

maintained by the Developer or Homeowners' 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.

2. **Stormwater Management; Drainage District Review.** Developer shall pay all sums, as a contractual obligation under this Agreement, provided in the Rochelle Municipal Code as a Stormwater Management Fee for the Property for the Property in the amount of \$1,300.00 per acre. The Stormwater Management Fee shall be paid based on the surveyed acres included in each phase of development. Developer shall pay the Stormwater Management Fee upon the recording of the final plat of each phase of development. 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. 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 Federal Emergency Management Agency (FEMA). The parties acknowledge that, as of the date of this Agreement, the controlling FEMA flood maps are FEMA Flood Insurance Rate Map for Ogle County, Illinois (Community Panel Number 170525 0470 A; effective date April 5, 1988).

Developer shall have all stormwater and drainage plans reviewed and approved by the Brush Grove Drainage District ("District") and shall reimburse the District for the District's reasonable cost 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.

3. **Regional Detention; Reimbursement by City.** The parties shall comply with the provisions of of the Rochelle Municipal Code, with respect to calculating and accommodating stormwater flows from upstream tributary areas. The parties acknowledge that City may require a regional stormwater storage facility on the Property, and 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.

At the City's option, the City's reimbursement obligation may be discharged by an excess stormwater credit, in the amount of the City's reimbursement obligation, to be given to the Developer to be applied as set forth herein. The Developer's excess stormwater credit shall first be applied to any stormwater management fee (presently \$1,300.00 per acre) then in existence pursuant to the City's ordinance, and thereafter to capital improvement(s) for future development(s) within the City to the extent the capital improvements and the application of the excess stormwater credit have been approved by the City.

D. **Shared Use Path.** Developer shall, for the purpose of a shared use path, convey by quit claim deed to the Flagg Rochelle Community Park District adequate land needed to extend a bike path from 20th Street to the intersection of the west line of the Property and the Railroad right of way, pursuant to the letter agreement between the Developer and the Flagg Rochelle Community Park District attached hereto as **Exhibit D**.

E. **Streets and Sidewalks; 20th Street/Flagg Road Intersection.**

1. **Interior Local Streets; 10th Avenue; Sidewalks.** Developer, at its sole cost and expense, shall provide all interior roadways and sidewalks necessary to service the Property as it shall be developed from time to time. Unless otherwise agreed, sidewalks shall be constructed along both sides of all streets. Sidewalks constructed and installed on the Property shall be constructed with a five foot (5') width along 10th Avenue, all other sidewalks shall be constructed with a four foot (4') width, and shared use paths shall be constructed with a ten foot (10') width. Unless otherwise set forth in a special use permit issued pursuant to this Agreement, all roads and streets within the Property shall be public and shall be dedicated to the City. Developer shall construct, at Developer's sole cost and expense, all on-site public streets as needed to implement the development of the Property not contracted for by any unit of government. City shall accept the construction of streets upon final inspection and approval by the City Engineer. All public roadways to be dedicated to the City shall be constructed in accordance with the standards set forth in the Rochelle Municipal Code, including without limitation the provisions governing PUD-R subdivisions, except as otherwise provided in this agreement.

10th Avenue shall be constructed and dedicated as a part of the final plat of Phase II of the development and shall be constructed as a Minor Collector. Notwithstanding the provisions of the Rochelle Municipal Code, the right-of-way for 10th Avenue shall be eighty feet (80'), with pavement of thirty-one feet (31') back-to-back. 10th Avenue shall be constructed consistent with the drawings attached as **Exhibit E**. Parking shall be prohibited along both sides of 10th Avenue. No driveways will be allowed on 10th Avenue.

The right-of-way of all Local Streets shall be sixty feet (60'). Notwithstanding the provisions of the Rochelle Municipal Code, all Local Streets shall be thirty-one feet (31') back-to-back. All Local Streets shall be constructed consistent with the drawings attached as **Exhibit F**.

To the extent the description provided above, the description provided in the Annexation Agreement and the provisions of the Rochelle Municipal Code are inconsistent with the drawings provided as **Exhibit E and F**, the drawings shall control construction of this provision.

The location of all public roadways and private roadways (if any) shall be situated on the Property, as determined from time to time by the parties; provided, however, that final roadway

dedications shall include one or more stubs on the west boundary line of the Property, the location of which may differ from the location shown on Exhibit B, and two (2) stubs on the north line and three (3) stubs on 20th Street.

2. **Regional Traffic Study.** The City shall cause a regional traffic study to be completed on an expedited basis to determine whether a 33-foot right-of-way dedication on all or a portion of the west boundary of the Property shall be required, and shall promptly thereafter decide whether to require such a dedication, after considering any comments from the Developer.

3. **20th Street/Flagg Road Intersection.** Upon recordation of this Agreement, Developer shall promptly post a cash escrow with a financial institution of the City's choosing in the amount of \$43,000 in cash to be applied as Developer's contribution to the cost of intersection improvements at 20th Street and Flagg Road, including without limitation the cost of pavement removal, widening, reconstruction, striping, restoration, traffic signal, right-of-way acquisition and engineering; provided, however, that Developer shall have the right to present traffic studies regarding anticipated traffic at that intersection and appropriate methods for allocating the costs of same, and if the parties hereafter agree to adjust the amount of Developer's contribution either up or down based upon said studies, this Agreement shall be amended accordingly. If the parties are unable to agree on an appropriate amendment to this Agreement, the \$43,000 shall remain as the Developer's contribution, to be used when the improvements are made, and if not made before the termination of this Agreement, to be refunded to the Developer or the Developer's assignee or successor in interest.

4. **20th Street.** The parties agree that 20th Street north of 10th Avenue shall be constructed to urban standards as set forth herein, and that 20th Street from 10th Avenue south to 8th Avenue shall be constructed to rural standards, as set forth herein. The parties agree that the intersection of 20th Street and 10th Avenue shall be constructed to urban standards as set forth herein. The right-of-way for 20th Street shall be sixty-six feet (66'); provided, however, that the parties agree, if the regional traffic study requires, the right-of-way for 20th Street shall be up to eighty feet (80').

Urban Standards

All portions of 20th Street from 10th Avenue to the north boundary of the property shall be improved pursuant to the Urban Street Standards of the Rochelle Municipal Code and all other applicable requirements, and subject to the approval of the City Engineer or the City's consulting engineer, as the case may be, and dedicated to the City upon completion and approval, said improvement and dedication to be completed as a part of Phase I of the development after the thirtieth (30th) lot has been sold . Without limiting the foregoing, the following terms shall apply:

With respect to all portions of 20th Street from 10th Avenue to the north line of Section 23:

- a. Developer shall provide all necessary traffic studies and/or analysis along 20th Street and proposed intersection, such studies to be subject to approval of the City Engineer;
 - b. Developer shall be responsible for all roadway upgrades or widening necessary for turning, deceleration or transition lanes on the West side of the road (from West side to centerline). City shall be responsible for all roadway upgrades or widening necessary for turning, deceleration or transition lanes on the East side of the road (from East side to centerline), except as otherwise provided in this agreement;
 - c. Developer shall bear the cost of a box culvert under 20th Street and the City acknowledges that this obligation has been completed and accepted by the City prior to this Amendment;
 - d. the City's costs, where applicable, shall not include engineering costs;
 - e. the street specifications shall be consistent with the drawings attached as **Exhibit G** and shall include, without limitation, the following:
 - (i) curb and gutter, 33' back-to-back outside of areas required for turning, deceleration, or transition lanes;
 - (ii) curb to be Type B6.18 and inlets to be precast 2' X 3' or 4' X 4' or 6' X 6' as required by the City Engineer, at spacing to be developed in accordance with the Rochelle Municipal Code;
 - (iii) a 3" bituminous surface Superpave N70 mix overlay to be placed on an improved rotomixed bituminous aggregate mixture (minimum M.S. of 1500);
 - (iv) widening to be constructed with bituminous aggregate mix (approximately 4.5' wide on each side) outside of areas required for turning, deceleration, or transition lanes;
- To the extent the description provided above, the description provided in the Annexation Agreement and the provisions of the Rochelle Municipal Code are inconsistent with the drawings provided as **Exhibit G**, the drawings shall control construction of this provision.
- f. all roadway striping and pavement markings to be at Developer's cost;
 - g. street signs and traffic control devices required by the regional traffic

study to be installed by the City fifty percent (50%) at Developer's cost and fifty percent (50%) at City's cost, pursuant to § 86-126(8) of the Rochelle Municipal Code;

- h. sidewalks to be installed by Developer along the west side of 20th Street except where the bike path is located;

With respect to the portion of 20th Street from the south line of 6081 N. 20th Street Property (PIN 24-23-201-007) to 10th Avenue:

- a. Developer to pay for curb and gutter on the west side of the road, one half of bituminous surface mix overlay (from west side to centerline) and widening on west side;
- b. the City to pay for curb and gutter on the east side of the road, one half of bituminous surface mix overlay (from east side to centerline) and widening on east side;
- c. Developer to install inlets on west side of road at standard spacing, with the pipes crossing the road to the centerline;
- d. the City to install inlets on east side of road at standard spacing, with the pipes crossing the road to the centerline.

With respect to the portion of 20th Street from the north line of Section 23 to the south line of 6081 N. 20th Street Property (PIN 24-23-201-007):

- a. Developer to pay for curb and gutter, bituminous surface mix overlay and widening on both sides of the road;
- b. Developer to install inlets and pipes to cross the road, and a roadside ditch (with maximum side slopes of 3:1) along the east side of the road in front of the two single family dwellings adjacent to the Squires Landing East Property, with restoration of residential drive and culvert upgrades;
- c. overland and ditch flow shall be directed into the proposed detention facility in the Squires Landing East Property, and the existing 24-inch storm sewer shall be utilized to collect and carry pavement water in this section of the road;
- d. Developer to install sidewalks on both sides of 20th Street.

Rural Standards

All portions of 20th Street from 10th Avenue south to 8th Avenue shall be improved pursuant to all applicable requirements, including without limitation requirements of the Rochelle Municipal Code, and shall be subject to the approval of the City Engineer or the City's consulting engineer, as the case may be, and dedicated to the City upon completion and approval, said improvement and dedication to be completed prior to development of any part of the Property that is west of the portion of 20th Street between 10th Avenue and 8th Avenue. Without limiting the foregoing, the following terms shall apply:

With respect to all portions of 20th Street from 10th Avenue to 8th Avenue:

- a. Developer shall provide all necessary traffic studies and/or analysis along 20th Street and proposed intersection, such studies to be subject to approval of the City Engineer;
- b. Developer shall be responsible for all roadway upgrades or widening necessary for turning, deceleration or transition lanes on the West side of the road (from West side to centerline). City shall be responsible for all roadway upgrades or widening necessary for turning, deceleration or transition lanes on the East side of the road (from East side to centerline), except as otherwise provided in this agreement;
- c. Developer shall bear the cost of a box culvert under 20th Street and the City acknowledges that this obligation has been completed and accepted by the City prior to this Amendment, and shall install culverts at spacing to be developed in accordance with the Rochelle Municipal Code;
- d. Developer shall construct ditches on the west side of 20th Street, a minimum of 10' wide and 18" deep; provided, however, that the depth and width of ditches may be adjusted with the City's approval to avoid problems with a gas pipeline that runs along the west side of 20th Street;
- e. the City's costs, where applicable, shall not include engineering costs;
- f. the street specifications shall be consistent with the drawings attached as **Exhibit H** and shall include, without limitation, the following:
 - (i) street shall be 26' wide, edge to edge outside of areas required for turning, deceleration, or transition lanes;
 - (ii) a 3" bituminous surface Superpave N70 mix overlay to be placed on an improved rotomixed bituminous aggregate mixture (minimum M.S. of 1500);
 - (iii) widening to be constructed with a 12" bituminous aggregate mix

(approximately 3.0' wide on each side) with 7" of asphalt overlay outside of areas required for turning, deceleration, or transition lanes;

- (iv) aggregate shoulders type B, 6" thick and 4' wide (minimum) shall be constructed along the edge of pavement;

To the extent the description provided above, the description provided in the Annexation Agreement and the provisions of the Rochelle Municipal Code are inconsistent with the drawings provided as **Exhibit H**, the drawings shall control construction of this provision.

- g. all roadway striping and pavement markings to be at Developer's cost;
- h. street signs and traffic control devices required by the regional traffic study to be installed by the City fifty percent (50%) at Developer's cost and fifty percent (50%) at City's cost, pursuant to § 86-126(8) of the Rochelle Municipal Code;
- i. sidewalks to be installed by Developer along the west side of 20th Street except where the bike path is located;

F. **Access Points.** Parties agree that the number and locations of the street access points along 20th Street, as depicted on **Exhibit B**, are acceptable.

G. **Private Wells.** City agrees to allow Developer to install and maintain up to two (2) private individual residential-sized wells for the sole purpose of irrigation and maintaining water levels in the proposed water features and ponds. Said wells shall be installed and maintained in accordance with all federal, state and local standards, and shall be located, installed and maintained so as not to pose a threat to public health or safety.

H. **Enforcement of Covenants.** In the event the Developer or the homeowners' association shall fail or refuse to enforce the Subdivision Covenants, the City may, at its option, enforce any and all covenants, conditions, restrictions, and easements in the Subdivision Covenants. In such event, the Homeowners' Association (or Developer if no homeowners' association has been established) shall reimburse City for all of City's costs and expenses, including without limitation attorney's fees, incurred by City in connection with said enforcement.

I. **"As-Built" Plans.** As soon as practicable following completion of all public Improvements, but prior to acceptance by the City, the Developer shall submit to the City a set of as-built plans, being sealed by an Illinois licensed professional engineer, and a sworn statement of the contractor performing work in connection with the completed Improvements, specifying the work performed on such Improvements and the cost thereof, and executed waivers of lien relating thereto. Developer shall cause as-built plans ("Plans") for the land improvements, not to include final pavement surface course or final lot grading, to be submitted to the City Engineer

pursuant to the applicable provisions of the Rochelle Municipal Code. All Plans shall be submitted on a reproducible Mylar plan and in an electronic version compatible with Auto CAD computer software. The Plans shall show the exact location and elevation of all land improvements, as previously noted, and, if deemed necessary by the City building official, the elevation certificates of a proposed lowest floor, including the basement, or a floodproof certificate. The Plans shall be certified by a State of Illinois licensed professional engineer or surveyor, as required by applicable laws, ordinances or regulations.

J. **Subdivision Amendments; Major and Minor.** Any proposed amendments to the approved Final Plat shall be submitted to the City Manager for review. If the City Manager deems the proposed amendment to be a Minor Amendment, as defined below, the City Manager may approve the amendment. If the City Manager deems the proposed amendment to be a Major Amendment, as defined below, then the City Manager shall forward the plat to the City Council for review and approval as if it were a new final plat. The City Manager shall have the discretion in all instances to submit any proposed amendment to the City Council for review and approval.

Minor Amendments shall include any change that does not materially affect the infrastructure, design, use or character of the development. Minor Amendments shall include, but are not necessarily limited to:

1. A decrease in side yard requirements;
2. A change in the location of an access point by less than fifty (50) feet;
3. An adjustment to utility easements which have not yet been recorded and are not yet occupied by physical utility facilities;
4. A change in the location of any open space which is not a significant reorientation of the improved areas of the site;
5. Any other minor dimensional or other adjustments which are consistent with the character of development on the site and do not significantly change the overall orientation of the improved areas on the site of the infrastructure serving the site.

Major Amendments are other changes not meeting the terms or requirements of a Minor Amendment, as set forth herein.

ARTICLE IV
CODES AND ORDINANCES; FEES

A. **Agreement to Control.** To the extent of any conflict, ambiguity or inconsistency between the terms, provisions or standards contained in this Agreement and the terms, provisions or standards, either presently existing or hereafter adopted, of the City Code, the Zoning Ordinance, the Subdivision Control Ordinance as hereinafter identified, or any other City code, ordinance or regulation, the terms, provisions and standards of this Agreement shall govern and control.

B. **Codes to Remain in Effect.** All codes, ordinances, rules and regulations of the City in effect as of the date hereof shall continue in effect, insofar as they relate to the development of the Property, during the entire Term of this Agreement, except as otherwise provided herein and except to the extent of amendments mandated by State or Federal requirements. All codes, ordinances, rules and regulations of the City in effect as of the date hereof which relate to building, housing, plumbing, electrical and related restrictions affecting development of the Property shall continue in effect, insofar as they relate to the development of the Property, during the entire Term of this Agreement, except as otherwise provided herein and except to the extent that said codes, ordinances, rules and regulations are amended on a general basis as to be applicable to all property within the City, for purposes of directly furthering the public health and safety. All retention ponds shall be constructed with a slope of three (3) to one (1).

Notwithstanding the foregoing, the City acknowledges that Developer may from time to time request a reduction in normal side yard requirements in connection with the Planned Unit Development for certain of the platted lots therein, so as to provide for the public demand on home styles, and the City agrees that the City Council shall grant that request, as part of the Planned Unit Development and regardless of any provisions of the Rochelle Municipal Code setting different standards, if it determines that such requests are reasonable, justifiable and shall benefit the public.

C. **Limitations on Fees.** No fee or charge of any description shall be imposed upon Developer or upon the development and use of the Property unless, as of the date of this Agreement, such fee or charge is in existence and being collected by the City on a uniform basis from all similarly-situated owners, buyers and developers of property within the City. The City shall not increase the amount of any fee or charge for building permit fees, occupancy permit fees, plan review fees, inspection fees, utility fees, application fees or user fees during the Term of this Agreement unless such increases are made generally applicable to all similarly-situated owners, users and developers of property within the City.

D. **Impact Fees; Lag Time Fees; Contributions.** The City has adopted City Ordinance No. 04-3263, which establishes the City policy with respect to contributions to be made by developers of real estate being annexed to the City to the following taxing jurisdictions: Flagg-Rochelle Community Park District ("Park District"), and Rochelle Township High School District #212 and Rochelle Community Consolidated School District #231 (collectively "School Districts"). Pursuant to said ordinance, Developer agrees to make the contributions to the

enumerated units of local government having jurisdiction over the Property as set forth in the ordinance.

In addition to any impact fee imposed by City ordinance for the benefit of the Park District, the School Districts or other governmental entities, Developer shall pay a lag time fee in the total amount of One Thousand Two Hundred Fifty Dollars (\$1,250.00) per dwelling unit for the benefit of the School Districts, said payment to be made direct to the School Districts for their unrestricted use when the Final Plat is approved by the City Council.

In the event the Developer independently reaches agreement with the Park District or the School Districts with respect to contributions, the amount set forth in the ordinance shall be adjusted to reflect such agreement. The agreement between the Developer and the Park District is attached as **Exhibit I**. The agreement between the Developer and the Rochelle Township High School District #212 is attached as **Exhibit J**. The agreement between the Developer and the Rochelle Community Consolidated School District #231 is attached as **Exhibit K**. Said contributions shall be made by the Developer in the manner and at the times set forth in the ordinance. Developer's conveyance of land for a bike path, as described in **Article III**, Section D of this Agreement, is not intended to be, and shall not be construed to be, a contribution within the meaning of this Section D, for which the amount of impact fees would need to be adjusted.

The Developer's obligation to pay the school and park impact fee and the lag time fee described in this section shall be contractually binding on the Developer regardless of any legal ruling affecting the validity of any such ordinance establishing such fee. The provisions of this paragraph shall survive the expiration of this Agreement.

Notwithstanding the Developer's unconditional agreement to make the impact fee contribution, the parties hereto acknowledge that it is the intent of the parties hereto that said impact fee shall be paid from time to time by Developer or Developer's assignees. The fee shall be paid at the time the builder of the proposed improvement applies for a residential building permit. No residential building permit shall be issued by the City until said impact fee is paid for the parcel(s) to be improved with residential buildings.

Except as set forth in this Section D (and except for tap-on, inspection and other fees provided for elsewhere in this Agreement), no impact fees, donations or contributions shall be due or payable, and Developer shall not be liable for payment of any such impact fees, donations or contributions, in connection with the development of the Property.

E. **Model Homes.** City agrees to allow construction of model homes (not for immediate occupancy) within any neighborhood under development prior to full development of the neighborhood, provided adequate access for fire and police protection is provided, and a functional fire hydrant is installed and located within 300 feet of each model home. The number and location of model homes for the Property shall be as set forth in the approved PUD-R.

F. **Reimbursement to City.** Notwithstanding any other provision of this Agreement, Developer shall reimburse City for all actual professional fees, costs or other expenses related to the Property incurred by City in connection with the negotiation and approval of this Agreement and related matters, including without limitation legal fees, planning and engineering consultant fees, and traffic studies and review fees and expenses. In accordance with Section 16.12.720 of the Rochelle Municipal Code (as enacted by Ordinance 03-3196 on October 27, 2003), the Developer shall deposit the sum of \$2,500.00 with the City (and replenish said deposit as required) to cover these fees, costs and expenses.

Additionally, Developer agrees to reimburse the City for all amounts payable by the City to the 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.

ARTICLE V **SANITARY SEWER SERVICE**

The City shall cooperate with Developer and execute all applications, permit requests and other documents required to obtain sanitary sewage treatment service from the City and in order to allow Developer's connection to the sanitary sewer lines when installed in the public right of way, adjacent to the Property. The Developer shall be responsible, at its cost, for obtaining sanitary sewer easements, and the City shall cooperate with Developer in obtaining all necessary easements to, and shall grant Developer access to all City-owned rights-of-way to, enable Developer's provisions of sanitary sewer service to the Property. The design and layout of sewer lines within the development shall be in accordance with the provisions of the Rochelle Municipal Code and shall be subject to approval by the City Utilities Director prior to the issuance of any permit; provided, however, that sanitary sewer may be located in the parkway adjacent to all local streets and 10th Avenue, in which case no trees or bushes may be planted in the parkway and Developer will place trees in the front yard of each lot.

ARTICLE VI **POTABLE WATER SERVICE**

The City represents that it owns, operates and maintains a potable water supply and distribution system within its borders and specifically: (i) that it owns the 20th Street water main, which is located within a private easement; (ii) that the water main on 10th Avenue is owned by the City and located in the right-of-way; (iii) that the terminus of the water mains described herein is at or in near proximity to, the boundaries of the Property; and (iv) that the City's water system has sufficient capacity to accommodate the anticipated potable water and fire protection needs of the Property and the residents of the Property to the extent the Property is developed in accordance with the permitted zoning uses. The Developer shall have the right to connect to and use such system; provided, however that Developer shall be responsible for acquiring and

conveying to the City any necessary permanent easements prior to connection, at Developer's cost. The design and layout of water mains within the development shall be in accordance with the provisions of the Rochelle Municipal Code and shall be subject to approval by the City Utilities Director prior to the issuance of any permit

ARTICLE VII **ELECTRIC SERVICE**

City shall, at Developer's cost, construct all electric distribution facilities underground from the terminus of existing electric facilities to the Property line and within 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 this Agreement. The City, through Rochelle Municipal Utilities, will install at Developer's cost all required street lighting, which shall conform to the standards established by Rochelle Municipal Utilities and which are as published by the Illuminating Engineering Society.

ARTICLE VIII **CONTINUATION OF CURRENT USES**

The Property is presently being used for farming and general agricultural uses. 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, crop, but not livestock, shall be permitted to continue.

ARTICLE IX **MUTUAL ASSISTANCE**

A. **Parties' Actions.** The Parties shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement; to aid and assist each other in carrying out the terms and objectives of this Agreement and the intentions of the Parties as reflected by said terms, including, without limitation, the giving of such notices, the holding of such public hearings, the enactment by the City of such resolutions and ordinances and the taking of such other actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement and as may be necessary to give effect to the terms and objectives of this Agreement and the intentions of the Parties as reflected by said terms.

B. **Parties' Cooperation.** The Parties shall cooperate fully with each other in seeking from any or all appropriate governmental bodies (whether Federal, State, County or

local) financial or other aid and assistance required or useful for the construction or improvement of property and facilitate in and on the Property or for the provision of services to residences of the Property, including, without limitation, grants and assistance for public transportation, roads and highways, water and sanitary sewage facilities and storm water disposal facilities.

ARTICLE X **REMEDIES**

A. **Available Remedies.** Upon a breach of this Agreement, any of the Parties, in any court of competent jurisdiction, by an action or proceedings 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, or may obtain rescission and disconnection for material failure of performance. No action taken by any party hereto pursuant to the provisions of this Article IX or pursuant to the provisions 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 nonexclusive of any other remedy either set forth herein or available to any party at law or in equity.

B. **Notice of Breach.** In the event of a material breach of this Agreement, 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).

C. **Opportunity to Cure.** If either of the Parties shall fail to perform any of its obligations hereunder, 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) day 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.

D. **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.

E. **Force Majeure.** If the performance of any covenant 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, strikes or similar acts), the time for such performance shall be extended by the amount of time of such delay.

E. **Construction.** This Agreement shall not be construed more strictly against one party than against any other, merely by virtue of the fact that it may have been prepared primarily by counsel for one of the Parties, it being recognized that all Parties have contributed substantially and materially to the preparation of this Agreement.

ARTICLE XI

SPECIAL SERVICE AREA AND TAXES

A. **Failure to Maintain Common Areas.** In the event the City reasonably determines that either the Developer or the Homeowners' Association has failed to properly maintain the Common Areas, City may, but is not required to, enter or authorize others to enter onto the Property and to maintain or cause others to maintain the Common Areas, and in such event the City shall be paid for the same pursuant to the imposition of a special service area tax or assessment as set forth herein.

B. **Special Service Area.** Developer hereby consents to the establishment of a special service area, pursuant to the provisions of Illinois law, including 35 ILC 200/27-5, *et. seq.*, consisting of the Property ("Special Service Area"). Neither the Developer nor any lot owner in the Property shall object or cause anyone else to object to the creation of the Special Service Area. The Special Service Areas shall be created prior to any building being conveyed within the Property, but shall be maintained in inactive status unless and until activated by the City in accordance with the provisions of this Article. The Special Service Area shall not be activated unless and until the City determines that neither the Developer nor the Homeowners' Association has properly maintained the Common Areas on an ongoing basis. The Special Service Area shall continue indefinitely unless the City determines otherwise or as otherwise limited by law.

C. **Special Taxes/Assessments.** For the foregoing purpose, the City may levy Special Service Area taxes to the fullest extent provided by law required to maintain the Common Areas and pay all costs of operation, upkeep, maintenance, repair, replacement, alteration, safekeeping, and improvements for the foregoing, including recovering costs for prior years' as well as current and future years' maintenance, and to recover costs for any and all administrative and legal actions to put into effect or to defend the ability of the City to establish and collect taxes from the Special Service Area. The Special Service Area shall be for perpetual duration with a maximum rate of two and one-half percent (2.5%) of the assessed value, as equalized on the property in the Special Service Area, excluding all personal property. The actual tax to be levied shall be determined annually based on the best estimate of incurred or expected cost for the City to maintain the Common Area and for other costs described herein.

The Developer and the Homeowners' Association shall be jointly and severally responsible for the City's expense in creating the Special Service Area in an amount not to exceed Three Thousand Five Hundred Dollars (\$3,500.00).

ARTICLE XII
TERM

This Agreement shall be binding upon the Parties and their respective successors and assigns for twenty (20) years, commencing as of the date hereof, and for such further terms as may hereinafter be authorized by statute and by City ordinance. If any of the terms of this Agreement, or the annexation or zoning of the Property, is challenged in any court proceeding, then, to the extent permitted by law, the period of time during which such litigation is pending shall not be included in calculating said twenty (20) year period. The expiration of Term of this Agreement shall not affect the continuing validity of the zoning of the Property or any ordinance enacted by the City pursuant to this Agreement.

ARTICLE XIII
MISCELLANEOUS

A. **Amendment.** This Agreement, and the exhibits attached hereto, may be amended only by mutual consent of the Parties or their successors in interest, by adoption of an ordinance by the City approving said amendment as approved by said Parties or their successors in interest.

B. **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 provisions, covenants, agreements and portions of this Agreement, and to that end, all provisions, covenants, agreements and portions of the Agreement are declared to be severable. If for any reason the annexation or zoning of the Property is ruled invalid, in whole or in part, the Corporate Authorities, 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 as the expense of the Developer.

C. **Entire Agreement.** This Agreement sets forth all agreements, undertakings and covenants between and among the Parties. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and is a full integration of the entire agreement of the Parties.

D. **Survival.** The provisions contained herein shall survive the annexation of the Property and shall not be merged or expunged by the annexation of the Property to the City. The provisions of this Agreement related to zoning of the Property, easements, and any fees to be paid by Developer, including without limitation impact fees of any nature, shall survive the termination of this Agreement. All fees and charges to be paid by Developer under this

Agreement shall be contractual and shall survive any judicial determination of the invalidity or inapplicability of any ordinance providing for payment of same.

E. **Successors and Assigns.** This Agreement shall inure to the benefit of, and be binding upon, the Developer, the Owners and their respective heirs, legal representatives, successors, grantees, lessees, and assigns, and upon successor corporate authorities of the City and successor municipalities, and shall constitute a covenant running with the land. This Agreement may be assigned without the City approval, and upon said assignment and acceptance by an assignee, the assignor shall have no further obligations hereunder. If a portion of the Property is sold, the seller shall be deemed to have assigned to the purchaser any and all rights and obligations seller may have under this Agreement which affect the portion of the Property sold or conveyed and thereafter the seller shall have no further obligations under this Agreement as it relates to the portion of the Property conveyed.

F. **Notices.** 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 following addresses, or at such other addresses as the Parties may, by notice, designate:

If to City: City Clerk
City of Rochelle
420 North 6th Street, P.O. Box A
Rochelle, Illinois 61068

With a copy to: City Attorney
City of Rochelle
420 North 6th Street, PO Box A
Rochelle, Illinois 61068

And

City Manager
City of Rochelle
420 North 6th Street, PO Box A
Rochelle, Illinois 61068

If to Developer: AKCK, LLC
221 E. Route 38
P.O. Box 67
Rochelle, Illinois 61068

Notices shall be deemed given on the fifth (5th) business day following deposit in the U.S. Mail if given by certified mail as aforesaid, and upon receipt, if personally delivered.

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

H. **City Approval.** Wherever any approval or consent of the City, or of any of its departments, officials or employees, is called for under this Agreement, the same shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written and, by so executing, each of the Parties warrants that it possesses full right and authority to enter into this Agreement.

CITY OF ROCHELLE, an
Illinois Municipal Corporation

AKCK, LLC, an Illinois
limited liability company

By: _____
Ken Alberts, City Manager

By: _____
Larry Groenhagen, Member

Attest: _____
Bruce McKinney, City Clerk

STATE OF ILLINOIS)
)
COUNTY OF OGLE)

BEFORE ME, the undersigned notary public, on the ____ day of _____, 2005, personally appeared Ken Alberts and Bruce McKinney, the City Manager and City Clerk, respectively, of the City of Rochelle, an Illinois municipal corporation, and acknowledged that they signed the foregoing instrument in said capacities.

Notary Public

STATE OF ILLINOIS)
)
COUNTY OF OGLE)

BEFORE ME, the undersigned notary public, on the ____ day of _____, 2005, personally appeared Larry Groenhagen, a member of AKCK, LLC, an Illinois limited liability company, and acknowledged that he signed the foregoing instrument in said capacity.

Notary Public

EXHIBIT A

THAT PART OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 40 NORTH, RANGE 1 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER; THENCE SOUTH 00 DEGREES 18 MINUTES 59 SECONDS EAST, 2639.69 FEET ALONG THE EAST LINE OF SAID NORTHWEST QUARTER TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 89 DEGREES 34 MINUTES 54 SECONDS WEST, 1576.54 FEET ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER TO THE NORTHERLY RIGHT-OF-WAY LINE OF THE CHICAGO, BURLINGTON AND QUINCEY RAILROAD; THENCE NORTH 56 DEGREES 51 MINUTES 43 SECONDS WEST, 1267.70 FEET ALONG SAID RIGHT-OF-WAY LINE TO THE WEST LINE OF SAID NORTHWEST QUARTER; THENCE NORTH 00 DEGREES 15 MINUTES 08 SECONDS WEST, 1939.50 FEET ALONG THE WEST LINE OF SAID NORTHWEST QUARTER TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 89 DEGREES 35 MINUTES 36 SECONDS EAST, 2632.04 FEET ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER TO SAID POINT OF BEGINNING, IN OGLE COUNTY, ILLINOIS.

SAID TRACT CONTAINS 151.09 ACRES MORE OR LESS.

EXHIBIT B
(Amended Concept Plan)

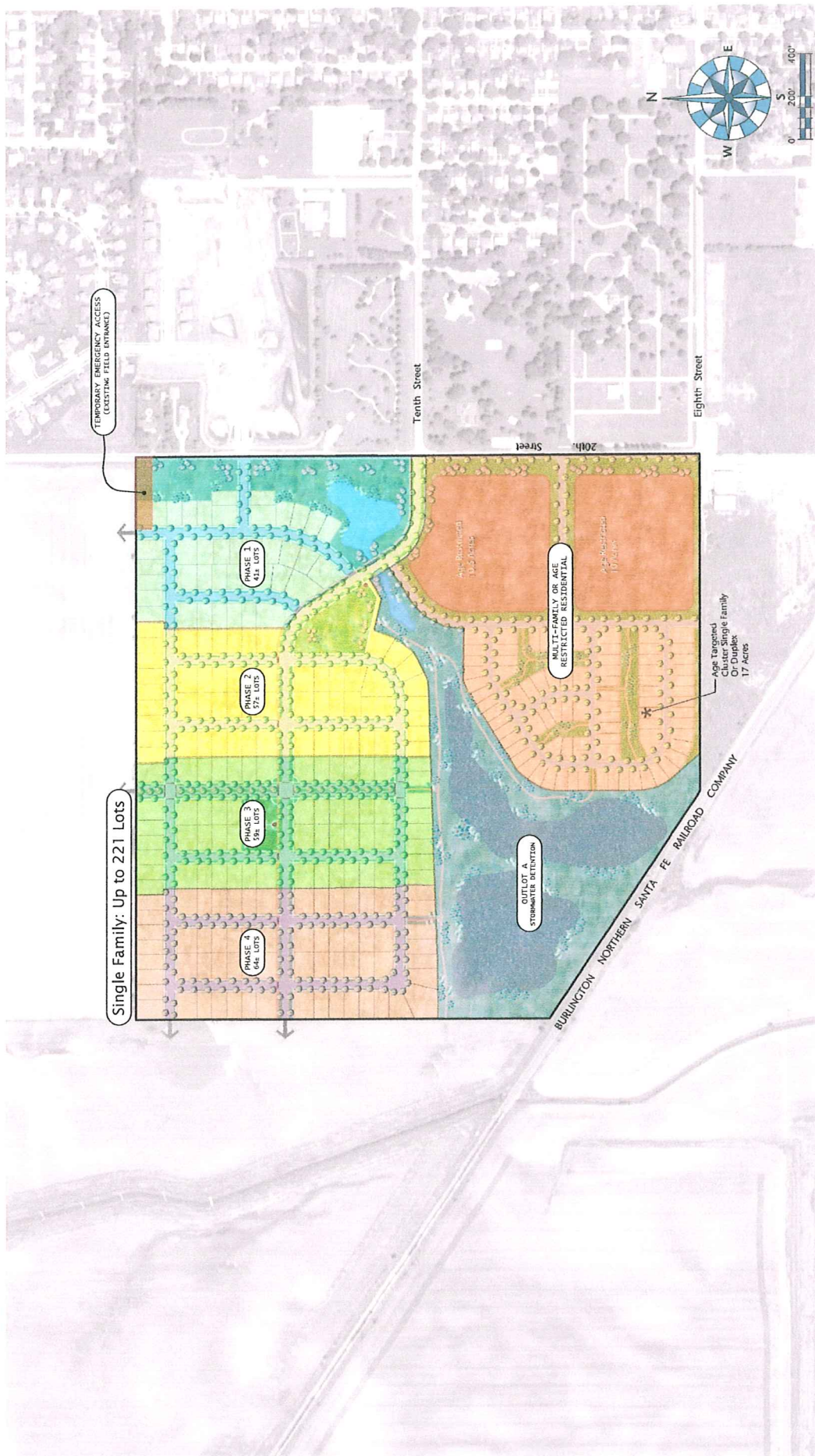


EXHIBIT B

**EXHIBIT C
[OMITTED]**

EXHIBIT D
(Amended Agreement with Park District)

EXHIBIT E
(10th Avenue Design)

MINOR COLLECTOR URBAN STANDARD

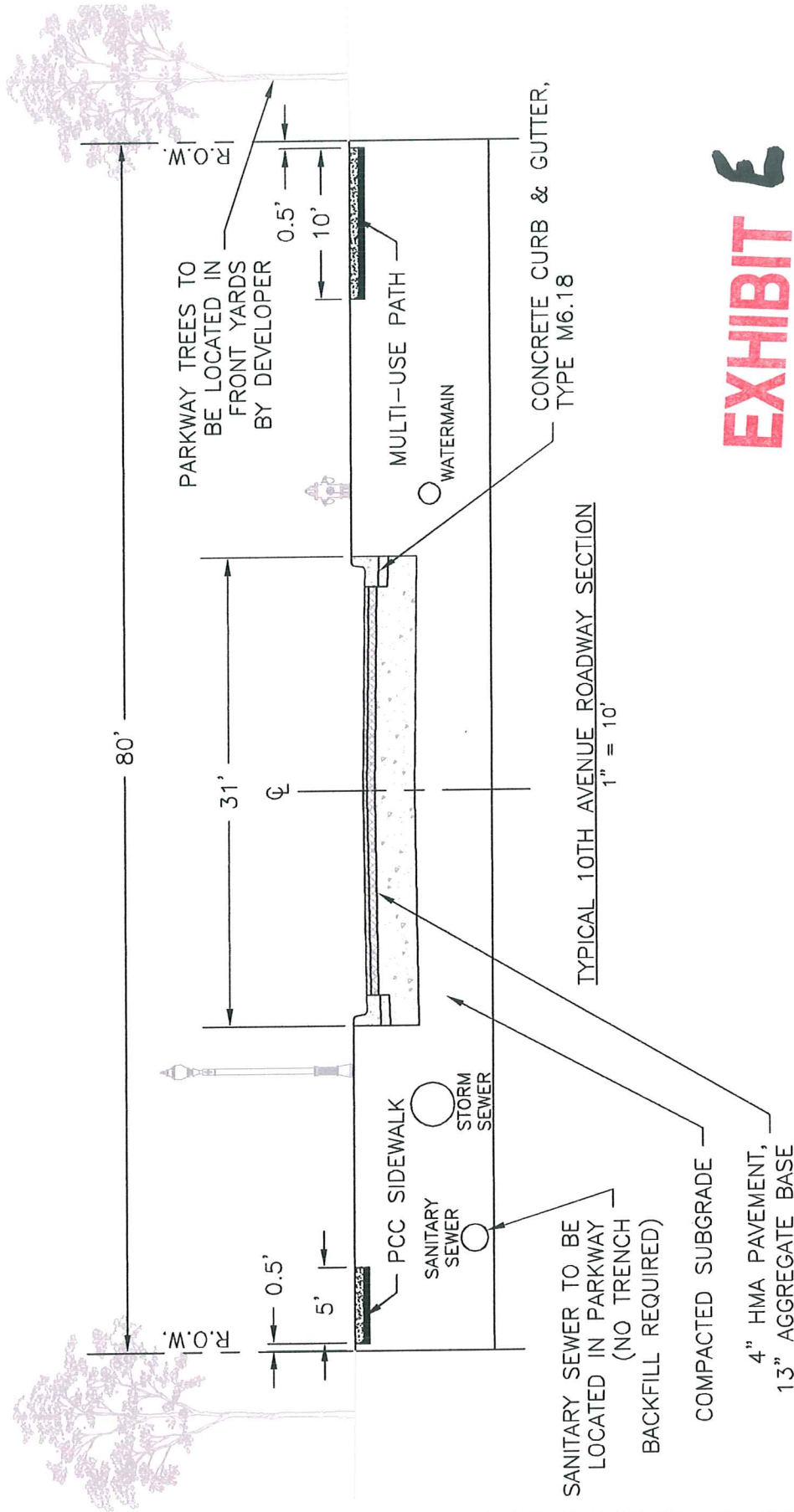


EXHIBIT E



FEHR-GRAHAM & ASSOCIATES, LLC
 ENGINEERING AND SCIENCE CONSULTANTS
 FREEPORT, IL ROCKFORD, IL ROCHELLE, IL SPRINGFIELD, IL MONROE, WI
 LICENSE NUMBER 1741 NO. 181-000029
 © 2010 FEHR-GRAHAM & ASSOCIATES

EXHIBIT F
(Local Streets Design)

LOCAL STREET URBAN STANDARD

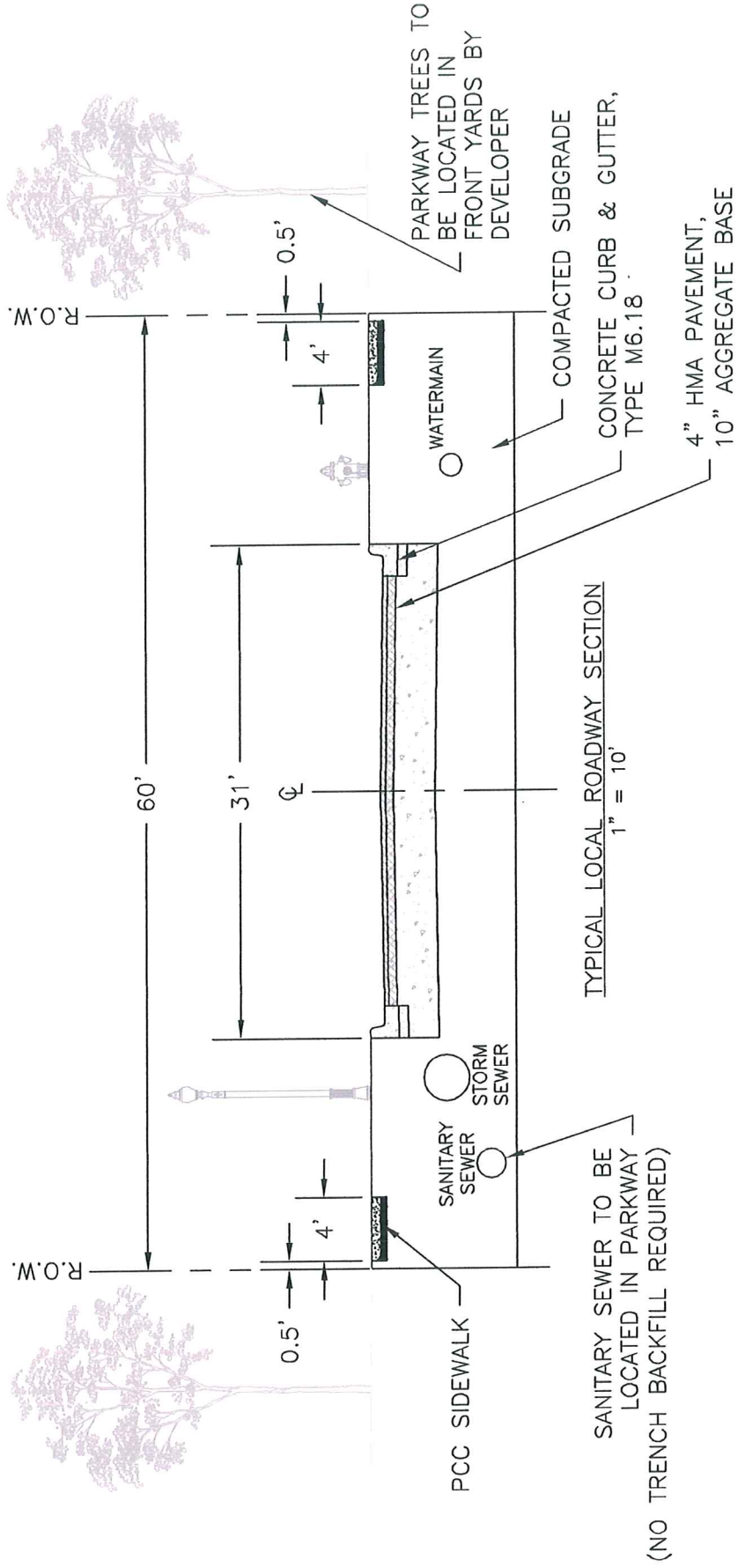
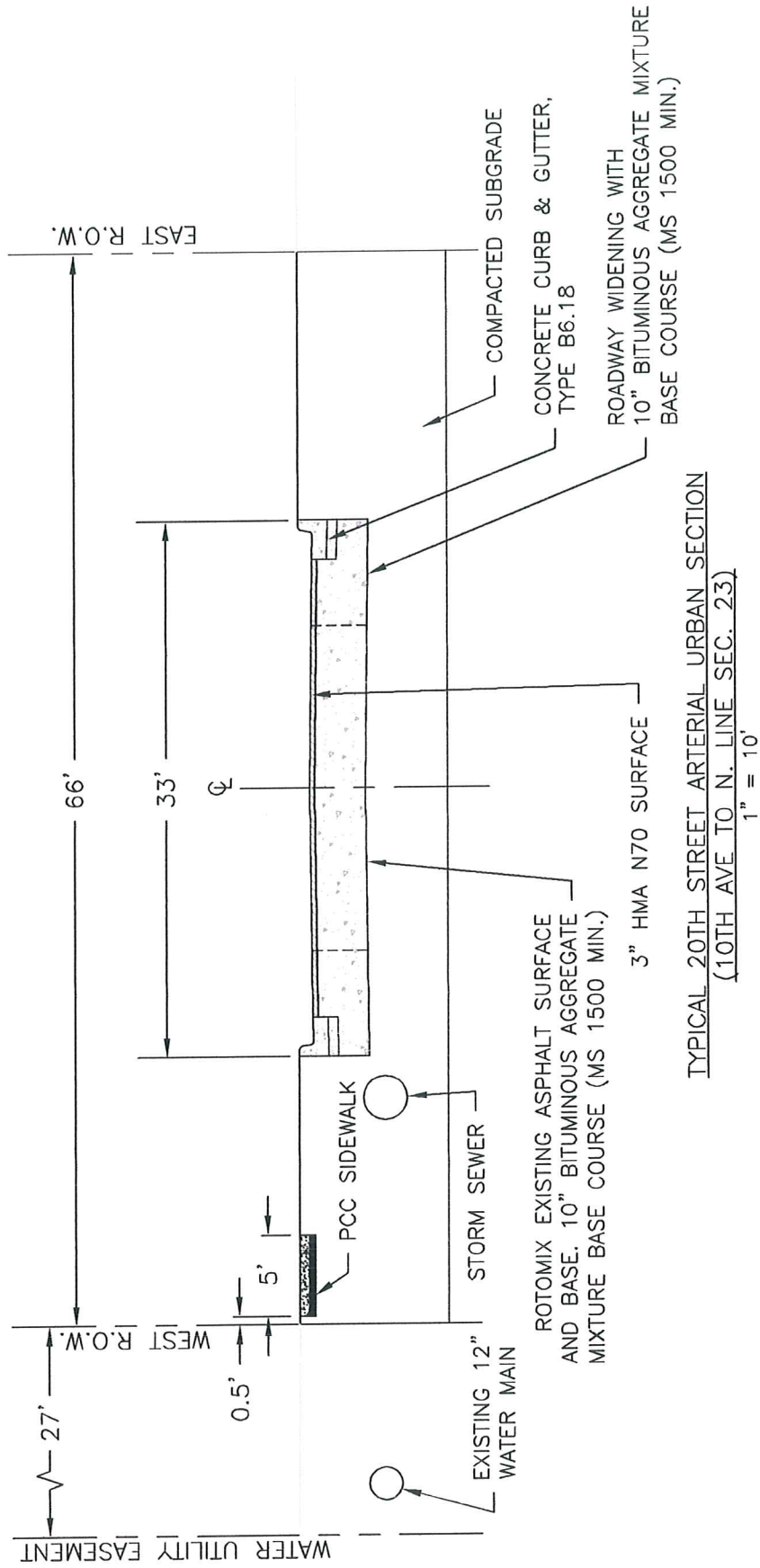


EXHIBIT F

FEHR-GRAHAM & ASSOCIATES, LLC
 ENGINEERING AND SCIENCE CONSULTANTS
 FREEPORT, IL ROCKFORD, IL ROCHELLE, IL SPRINGFIELD, IL MONROE, WI
 LICENSE NUMBER FEH 10-000000
 © 2010 FEHR-GRAHAM & ASSOCIATES

EXHIBIT G
(20th Street Deisgn from 10th Avenue to north line of Section 23)

ARTERIAL ROAD URBAN SECTION



TYPICAL 20TH STREET ARTERIAL URBAN SECTION
(10TH AVE TO N. LINE SEC. 23)

1" = 10'

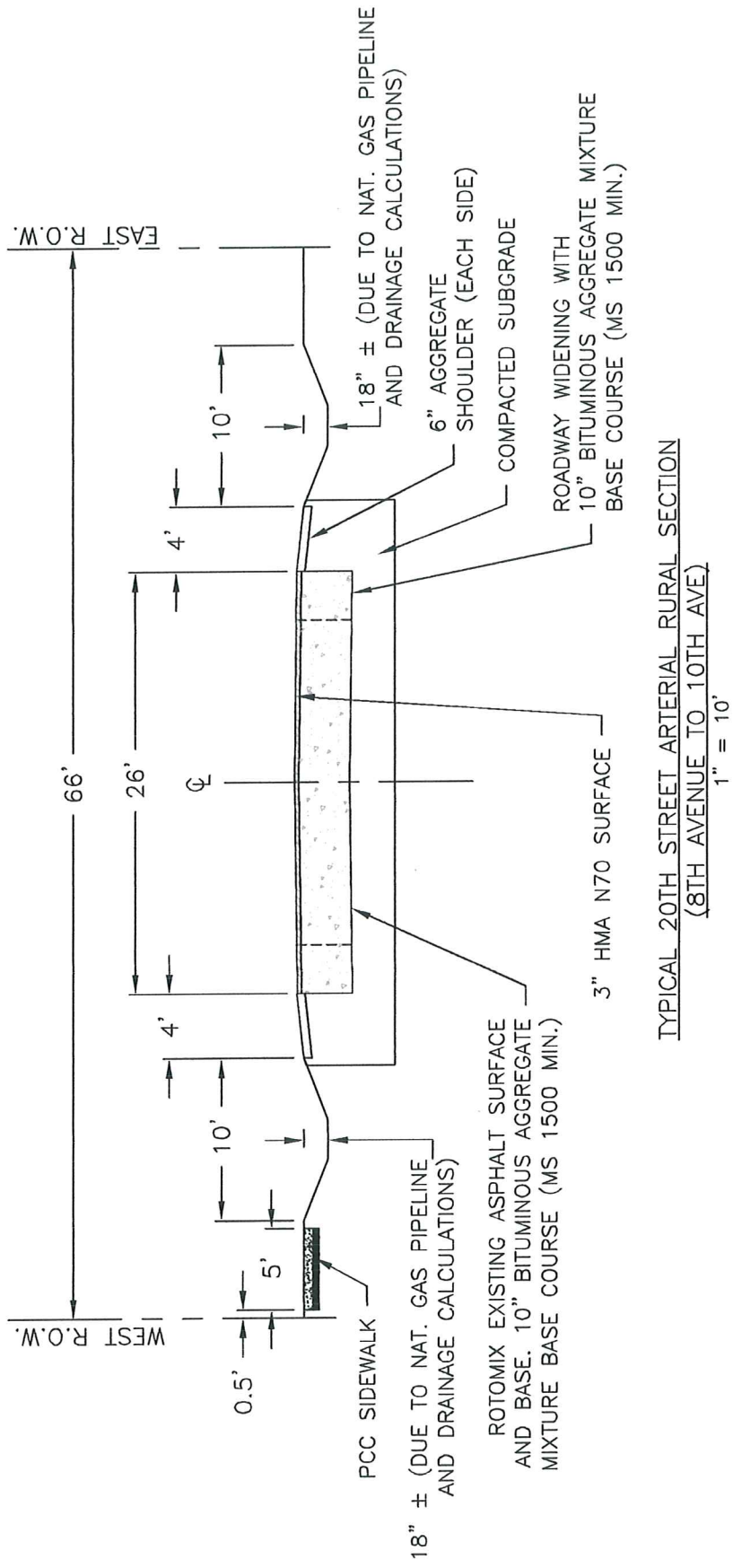
EXHIBIT 6



FEHR-GRAHAM & ASSOCIATES, LLC
ENGINEERING AND SCIENCE CONSULTANTS
FREEPORT, IL ROCKFORD, IL ROCHELLE, IL SPRINGFIELD, IL MONROE, WI
LICENSE NUMBER (P&S) NO. 18-000025
© 2010 FEHR-GRAHAM & ASSOCIATES

EXHIBIT H
(20th Street Design from 8th Avenue to 10th Avenue)

ARTERIAL ROAD RURAL SECTION



TYPICAL 20TH STREET ARTERIAL RURAL SECTION
(8TH AVENUE TO 10TH AVE.)
1" = 10'

EXHIBIT H



FEHR-GRAHAM & ASSOCIATES, LLC
ENGINEERING AND SCIENCE CONSULTANTS
FREEPORT, IL ROCKFORD, IL SPRINGFIELD, IL MONROE, WI
LICENSE NUMBER: PROJ. NO. 181-000028

© 2010 FEHR-GRAHAM & ASSOCIATES

EXHIBIT I
(Agreement with Park District (Impact Fees))

EXHIBIT J
(Agreement with Rochelle Township High School District #212)

EXHIBIT K
(Agreement with Rochelle Community Consolidated School District #231)