

**Professional Fee Reimbursement Agreement**

This Professional Fee Reimbursement Agreement (“Agreement”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_, between the City of DeKalb (“the City”), whose address is 200 S. Fourth Street, DeKalb, Illinois, and \_\_\_\_\_ (“Applicant”), whose address is \_\_\_\_\_, with the City and the Applicant hereafter being referred to as “the Parties”.

WHEREAS, on (date) \_\_\_\_\_, the Applicant has filed with the City a certain request for review (“Request”) in the form of a:

- Petition for Annexation
- Plat of Subdivision
- Building Permit Request
- Site Plan Review Request
- Request to Construct or Alter a Public Improvement
- Other (specify): \_\_\_\_\_

and;

WHEREAS, the Request filed by Applicant contemplates \_\_\_\_\_

more fully described on the Request, which shall hereafter be referred to as “the Project”.

WHEREAS, Applicant desires that the City, by and through its staff and professional consultants including but not limited to engineers, surveyors, planners and other consultants as the City shall deem necessary (“Professional Consultants”), review the Request and Project and evaluate them for conformity with the City’s Codes and Ordinances; and,

WHEREAS, if approved, Applicant wishes to construct the Project and understands that the City may use Professional Consultants to review the Project and the construction thereof to ensure conformity with any applicable permits, permissions, restrictions, codes, ordinances or other regulations; and,

WHEREAS, the Applicant recognizes that the City requires the Applicant to bear the cost of the Professional Consultants review of the Request and the Project pursuant to the terms and conditions of this Agreement; and,

WHEREAS, the Applicant wishes to benefit from the review of the Request and Project by the Professional Consultants in order to enable the Applicant to seek permission to construct the Project in accordance with applicable codes and regulations; and,

WHEREAS, it is the intent of the Applicant and the City to have the Applicant bear the expense of Professional Consultants utilized by the City relative to the Request and the Project;

NOW THEREFORE, in consideration of the City's agreement to utilize Professional Consultants to review the Request and Project and provide a summary of the results of such Professional Consultants' review to the Applicant, and for other good and adequate consideration, the sufficiency of which is hereby acknowledged by the Parties, IT IS HEREBY AGREED AS FOLLOWS:

**1. Incorporation of Recitals:** The recitals to this agreement are incorporated by reference as if fully stated herein.

**2. Professional Fee Reimbursement:** The Applicant hereby agrees to reimburse, indemnify and hold harmless the City from any and all fees, charges, expenses or costs associated with the review and ongoing administration of the Request or the Project by the Professional Consultants, plus a five percent administrative fee imposed by the City ("Fees"). For purposes of this Agreement, Fees shall also include any legal expenses, costs, interest or other additional costs or penalties of any kind which the City or the Professional Consultants incur as a result of Applicant's failure to maintain sufficient funding in the Escrow Account. Applicant acknowledges that the selection of the Professional Consultants to be utilized hereunder shall be at the City's sole and absolute discretion. The Parties acknowledge that building plan review costs and building inspection costs are to be separately handled under the City's building permit fees. All obligations herein shall be in accordance with the provisions of City Code Section 9.05.

**3. Escrow Account to be Established:** The Applicant hereby agrees to submit to the City the sum of \$\_\_\_\_\_, which shall be held by the City separately in an escrow account for the payment of Fees. The City shall provide the Applicant with a copy of any invoice to be paid out of the escrow account within thirty (30) days of its receipt. The Applicant shall be responsible for providing additional funding to maintain the funding in the escrow account at the amount prescribed above for the duration of the evaluation of the Request and the construction of the Project. The Applicant expressly acknowledges that the failure of the Applicant to maintain the escrow account at the prescribed level shall constitute grounds for the City to discontinue review of the Request or Project, refuse to issue permits or permissions for the Project, revoke existing permits or permissions for the Project, and/or issue stop work orders on the Project, in the City's sole and absolute discretion. In the alternative, the City may file suit to enforce the provisions of this Agreement.

**4. Expenses Subject to this Agreement:** The escrow account established by this Agreement may be utilized to pay any expense due and owing the City. Without regard to the escrow account, the Applicant agrees and acknowledges that it shall be responsible for all Fees incurred by the City in the review of the Request or Project, and any interest or penalties accruing thereupon.

**5. Termination of Escrow:** Within a reasonable time after completion of the Project or termination of the Request, the City shall deduct from the funds in the escrow account an amount sufficient to compensate all Professional Consultants for services

rendered. In the event the amount in the escrow account is insufficient to cover such expenses, Applicant shall be responsible for forwarding payment of any expenses not funded by the escrow account to the City within thirty (30) days of receipt of a notice from the City of the amount due. In the event the Applicant fails to forward payment within that timeframe, the City may choose from any combination of the following remedies: 1) revoke any permits or permissions issued for the Project or any other project involving the Applicant until all amounts due are satisfied and/or issue one or more stop work orders on the Project or any other projects involving the Applicant until all amounts due are satisfied; 2) refuse to consider any new Request or Project from the Applicant, or any new Request or Project pertaining to the Property which was the subject of the original Request until all amounts due are satisfied; 3) file suit in a court of competent jurisdiction under this Agreement or otherwise pursue collection of the amount claimed as due; 4) file a lien on any property relating to the Request or Project; or, 5) pursue any other remedy in law or equity which the City shall deem appropriate.

**6. Term.** This Agreement shall remain in place and effective until one year after the full and final satisfaction of any obligation of the Applicant hereunder, with such date being not earlier than one year after the conclusion of the Project or one year after the withdrawal of the Request by the Applicant, or such earlier date as the City shall deem appropriate.

**7. Enforceability and Severability.** This Agreement shall be enforceable by any party hereto by any appropriate action at law or in equity to secure the performance of the covenants herein contained. If any provision of this Agreement is held invalid, such provision shall be deemed to be excised from and the invalidity thereof shall not affect any of the other provisions contained herein.

**8. General Provisions.**

**A.** Any notice of demand hereunder from either party to the other shall be in writing and shall be deemed duly served if mailed by prepaid registered or certified mail, return receipt requested, or personally delivered with evidence of receipt addressed as noted in the introduction to this Agreement, or to such address as any party may from time to time designate by notice to the other party.

**B.** This Agreement may be executed in two or more counterparts, each of which, taken together, shall constitute one and the same instrument.

**C.** Applicant shall be required to reimburse all Fees through the City and shall not make or attempt to make any payment directly to any Professional Consultant.

**D.** This Agreement will be governed by and construed in accordance with the laws of the State of Illinois.

**E.** No provision of this Agreement and no obligation of either party under this Agreement may be waived or amended except by an instrument in writing signed by both parties.

**F.** Time is of the essence in the performance of each and every term, condition and covenant of this Agreement.

**G.** It is expressly agreed by the Parties that any dispute arising out of this Agreement shall be heard in the courts of the Twenty-Third Judicial Circuit, DeKalb County, Illinois.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

**City of DeKalb:**

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

**Applicant:**

BY: \_\_\_\_\_

ITS: \_\_\_\_\_