

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

The REGIONAL TRANSPORTATION AUTHORITY, )  
an Illinois special purpose unit of government )  
and municipal corporation, )  
 )  
Plaintiff, )

vs. )

NO. 11 CH \_\_\_\_\_

The CITY OF KANKAKEE, an Illinois home rule )  
municipality, the VILLAGE OF CHANNAHON, )  
an Illinois home rule municipality, )  
MINORITY DEVELOPMENT COMPANY, LLC, )  
MTS CONSULTING, LLC, INSPIRED )  
DEVELOPMENT, LLC, CORPORATE )  
FUNDING SOLUTIONS, LLC, and )  
XYZ SALES, INC. )  
 )  
Defendants. )

**COMPLAINT AT LAW AND FOR DECLARATORY JUDGMENT**

NOW COMES the Plaintiff, REGIONAL TRANSPORTATION AUTHORITY, an Illinois special purpose unit of local government and municipal corporation (hereinafter "RTA"), by its attorneys, HEYL, ROYSTER, VOELKER & ALLEN, and hereby brings this Complaint against the defendants, CITY OF KANKAKEE, VILLAGE OF CHANNAHON, Illinois municipal corporations, (hereinafter, "Kankakee," "Channahon," and collectively, "Municipal Defendants," as appropriate), MINORITY DEVELOPMENT COMPANY, LLC, MTS CONSULTING, LLC, INSPIRED DEVELOPMENT, LLC, CORPORATE FUNDING SOLUTIONS, LLC and XYZ SALES, INC. (hereinafter, "Minority Development," "MTS Consulting," "Inspired Development," "Corporate Funding," "XYZ Sales," and collectively, "Private Defendants," collectively as appropriate), stating as follows:

## **NATURE OF THE ACTION AND JURISDICTION**

1. This case arises from the improper actions of Kankakee, Channahon, and the Private Defendants, which have entered into agreements specifically forbidden by Illinois law to induce companies operating in the six-county RTA region to claim that their sales are sourced through sham offices in the Municipal Defendants' jurisdictions. This scheme is intended to unlawfully divert the municipal share of the statewide Retailers' Occupation Tax to Kankakee and Channahon, denying it to the municipalities where the participating companies actually conduct business and receive government services. It also deprives RTA and other units of local government of legitimate tax revenues under their own locally-imposed retailers' occupation taxes. Moreover, the typical agreement rewards private companies with at least 75-85% of the tax revenues that Kankakee and Channahon receive instead of other municipalities, steering these funds further away from the public and into private coffers. This case also concerns Defendants' impermissible denials of valid FOIA requests seeking information concerning the practices described above, presumably to conceal this wrongdoing and deny the public its right to know how public funds are spent.

2. Because of Municipal Defendants' and Private Defendants' use of this scheme and their efforts to conceal the same, this complaint is filed (a) under the relevant portions of the Illinois Municipal Code (namely, 65 ILCS 5/8-11-21) asking this Court for the recoupment of the tax receipts wrongfully received by Defendants plus interest, penalties, and attorney's fees; (b) under 735 ILCS 5/2-701, *et seq.*, asking this Court to declare such agreements unlawful and not enforceable; and (c) pursuant to the Illinois Freedom of Information Act ("FOIA"), found at 5

ILCS 140/1, *et seq.*, asking this Court for other and further statutory relief for Municipal Defendants' failure to provide public records in response to RTA's FOIA requests.

3. RTA is a special purpose unit of local government and municipal corporation recognized under Illinois law. Beginning in 1983, RTA's primary responsibilities became financial and budget oversight of the Chicago Transit Authority, the Metra commuter rail system, and Pace suburban bus, and regional transit planning issues. RTA is the third largest public transportation system in North America, providing more than two million rides a day, and its system covers 7,200 route miles in a six-county region that currently has a population of approximately eight million people. In 2008, the Illinois General Assembly recognized RTA's continued growth and dedication to provide modern transit opportunities for its region, and therefore granted RTA additional oversight powers, including the authority to raise tax rates, where appropriate.

4. Kankakee is an Illinois home rule municipality in Kankakee County, while Channahon is an Illinois home rule municipality in Will and Grundy Counties.

5. Private Defendants Minority Development, MTS Consulting, and XYZ Sales have their registered offices in Cook County, Illinois. Private Defendants Inspired Development and Corporate Funding do business in Illinois and, on information and belief, operate in and contracted with companies in Cook County, Illinois, in practices which are the subject of this suit.

6. As this matter involves tax receipts received by Defendants through transactions which should have been received by RTA and/or other taxing bodies within and including Cook County, and because certain of the Private Defendants reside in Cook County, venue is proper under 735 ILCS 5/2-101.

## **BACKGROUND FACTS**

7. Pursuant to the powers granted to RTA under the Regional Transportation Authority Act, RTA has assessed a local sales tax upon retailers which engage in selling activities within the RTA's jurisdiction. This is known as the "Regional Transportation Authority Retailers' Occupation Tax." See 70 ILCS 3615/4.03.

8. Similar localized Retailers' Occupation Taxes are authorized for and have been passed by many municipalities throughout Illinois.

9. Illinois' Revenue Code also provides a statewide Retailers' Occupation Tax at a rate of "6.25% of gross receipts from sales of tangible personal property made in the course of business," that is to be shared between the State of Illinois and the relevant units of local government in which a retailer does its business. See 35 ILCS 120/2, *et seq.* This 6.25% is divided between the State and those local governments as follows: 5.00% to the State, 1.00% to the municipality, and 0.25% to the county. However, in Cook County, its 0.25% share is allocated directly to RTA.

10. To avoid paying any locally imposed taxes to RTA or other taxing bodies, certain retailers have created sham sales offices outside RTA's jurisdiction. These efforts take various forms, but typically involve the movement of no employees, assets, business, or decision-making authority to another municipality and county outside of RTA's jurisdiction. Instead, a contract is entered into with a private entity with an office outside RTA's jurisdiction (sometimes called a "Developer," and hereinafter referred to as a "Consultant" in this Complaint, as appropriate). These Consultants (including Private Defendants) establish a phone number at their office for the retailer and purport to "accept" sales transactions upon terms established at the retailer's

actual place of business (which is within the RTA's jurisdiction). The retailer then contends that the sale was made at the sham sales office and that taxes are due under the sales tax imposed at that sham office. RTA thereby loses sales tax monies that should have been rightfully paid to it.

11. Moreover, it is not unusual for the municipality or county in which the sham sales office exists to encourage this practice by entering into agreements with a retailer directly, or indirectly through a Consultant, which provides for portions of the sales tax monies paid to the municipality to be paid back to the Consultant and/or the retailer, thus not only taking money from the RTA and Cook County, but also taking tax monies and paying them directly to private parties. Simply put, these actions cause untold millions of dollars to be taken from the public.

12. In or about 2000 or 2001 (and also in later years), Municipal Defendants passed various Ordinances authorizing agreements or extensions of agreements between them and certain Consultants, including Private Defendants. See, Ordinance No. 1163 from Channahon authorizing an agreement with Inspired Development, as an example attached hereto and incorporated herein as Exhibit A.

13. These "Economic Development Agreements" state their purpose was to lead to an increase in the number of retail businesses that generate Retailers' Occupation Tax within Municipal Defendants' borders, and that the Consultants would offer their services to attract new retailers and provide them with resources to establish a place of business. See Exhibit A.

14. These Economic Development Agreements further establish that for their services, Consultants would receive a portion of the Retailers' Occupation Tax receipts generated, and in turn, Consultants would disburse a portion of those receipts to the new

retailers "as an economic incentive" to locate within Municipal Defendants' borders. See Exhibit A, Preamble.

15. Specifically, Municipal Defendants agreed to disburse at least seventy-five to eighty-five percent (75%-85%) of their share of sales tax receipts to Consultants on a monthly basis, and in some instances up to 100% of a Retailers' Occupation Tax for limited periods. See Exhibit A, Section 3.A; and Second Amendment to Agreement as an example.

16. Consultants (including the Private Defendants) would then enter into "development contracts" with retailers confirming the incentive terms to locate within Municipal Defendants' borders, but Municipal Defendants were to be "intended third party beneficiar[ies] of the contract." See Exhibit A, Section 2.F.

17. As described above, Consultants (including the Private Defendants) have been attracting retailers into Defendants' boundaries by working with existing companies (many of which have locations in Cook County and/or other areas served by RTA), and signing development contracts wherein sham place(s) of business are created within Municipal Defendants' jurisdiction that have no connection to the retailers except as a mail forwarding service to those retailers' actual place(s) of business. No meaningful selling activities take place at these sham locations. These retailers are not attracted to move into Municipal Defendants' boundaries – they are instead attracted to the idea of not paying tax receipts to RTA, and receiving a cut of Municipal Defendants' tax receipts just by having someone else answer a telephone or receive mail on their behalf in Kankakee or Channahon.

18. As an example of one such scheme, two Private Defendants (Inspired Development and Minority Development) share one location in Channahon on Blue Grass Drive.

19. Thus, these Consultants (including Private Defendants) and/or new retailers have engaged in a practice that deprives RTA of tax receipts that it should have received but for the Economic Development Agreements.

20. RTA further contends this practice deprives the public of vast amounts of revenue as locally imposed sales taxes are not paid, and between seventy-five and eight-five percent (75-85%) of the receipts misdirected to Municipal Defendants (and in some instances more) are immediately sent to private companies, including Private Defendants, and not used for the public good.

21. RTA understands that there are instances when legitimate companies will establish and/or relocate their actual places of business outside of RTA's jurisdiction, including within the Municipal Defendants' borders. However, Defendants have used Economic Development Agreements in direct contradiction to the purpose and intent of Retailers' Occupation Tax laws and other tax regulations which provide for taxes to be paid where retailers actually operate. Instead, Municipal Defendants sidestep the requirements of these laws by granting incentives to create sham sales offices, under a scheme forbidden by the Municipal Code.

22. In an effort to learn more about these Economic Development Agreements, development contracts and the related practice behind them, RTA submitted FOIA requests to Municipal Defendants on June 21, 2011. See FOIA requests, attached hereto and incorporated herein as Group Exhibit B.

23. Municipal Defendants each offered responses to these requests, acknowledging they are both "public bod[ies]" as defined in 5 ILCS 140/2(a). However, part of these responses included denials based on various exemptions under Section 7 of FOIA, 5 ILCS 140/7, *et seq.*

24. Under FOIA, "all persons are entitled to full and complete information regarding the affairs of government," and to deny such a request on the basis of Section 7 exemption must be proven by "clear and convincing evidence." 5 ILCS 140/1, 140/11(f).

**COUNT I**  
**CLAIM FOR LOST TAX REVENUES**  
***RTA v. Kankakee***

25. RTA includes and realleges paragraphs 1 through 24 of this Complaint as paragraphs 1 through 24 of Count I and incorporates the same herein.

26. By entering these Economic Development Agreements, allowing for the formation of development contracts between Consultants and new retailers and allowing almost all of the relevant tax proceeds to be used for a private purpose, Kankakee is in violation of Illinois law.

27. For example, under the relevant portions of 65 ILCS 5/8-11-21:

The corporate authorities of a municipality shall not enter into any agreement to share or rebate any portion of retailers' occupation taxes generated by retail sales of tangible personal property if: (1) the tax on those retail sales, absent the agreement, would have been paid to another unit of local government; and (2) the retailer maintains, within that other unit of local government, a retail location from which the tangible personal property is delivered to purchasers, or a warehouse from which the tangible personal property is delivered to purchasers. Any unit of local government denied retailers' occupation tax revenue because of an agreement that violates this Section may file an action in circuit court against only the municipality....

28. Kankakee may argue this statute only applies to agreements made "[o]n and after June 1, 2004," but as evidenced by Exhibit C, at least one such Economic Development



Agreement was amended (and therefore, renewed) in at least April 2006. See, Economic Development Agreement between Kankakee and MTS Consulting, LLC, attached hereto and incorporated herein as Exhibit C. Moreover, any agreement reached after June 1, 2004, between a consultant and a retailer is a *de facto* agreement between the municipality and the retailer in violation of the statute.

29. As Kankakee is in violation of 65 ILCS 5/8-11-21, the statute entitles RTA to damages in the amount of the tax revenue it was denied as a result of any "...agreement, statutory interest, costs, reasonable attorney's fees, and an amount equal to 50% of the tax."

30. Without the information sought in its FOIA request, however, RTA does not know the actual amount of sales tax receipts received by Kankakee and thus denied to RTA. However, in one document actually produced by Kankakee in response to RTA's FOIA request, it appears that in one year, Kankakee received roughly \$20,000,000.00 in sales tax revenue, and \$15,000,000.00 of those funds went to private entities, pursuant to the Economic Development Agreements. See Exhibit D.

31. RTA is entitled to know the actual amount of tax receipts generated and other locations in Illinois where the actual affairs of the companies participating in this scheme are conducted so it is able to determine the exact amount of tax receipts to which RTA is entitled.

32. As RTA continues to lose sales tax receipts on a daily basis, it prays that this Court allow for expedited discovery as part of this litigation so it can ascertain the amount to which it is entitled under Illinois law.

WHEREFORE, the Plaintiff, REGIONAL TRANSPORTATION AUTHORITY, requests this Court enter judgment against the defendant, CITY OF KANKAKEE, for an amount equal to the

amount of tax revenue it was denied as a result of any and all Economic Development Agreements and/or development contracts, its statutory interest, costs, reasonable attorney's fees, an amount equal to 50% of the tax at issue, and any further relief this Court deems equitable and proper.

**COUNT II**  
**CLAIM FOR LOST TAX REVENUES**  
***RTA v. Channahon***

25. RTA includes and realleges paragraphs 1 through 24 of this Complaint as paragraphs 1 through 24 of Count II and incorporates the same herein.

26. By entering these Economic Development Agreements, allowing for the formation of development contracts between Consultants and new retailers, and allowing almost all of the relevant tax proceeds to be used for a private purpose, Channahon is in violation of Illinois law.

27. For example, under the relevant portions of 65 ILCS 5/8-11-21:

The corporate authorities of a municipality shall not enter into any agreement to share or rebate any portion of retailers' occupation taxes generated by retail sales of tangible personal property if: (1) the tax on those retail sales, absent the agreement, would have been paid to another unit of local government; and (2) the retailer maintains, within that other unit of local government, a retail location from which the tangible personal property is delivered to purchasers, or a warehouse from which the tangible personal property is delivered to purchasers. Any unit of local government denied retailers' occupation tax revenue because of an agreement that violates this Section may file an action in circuit court against only the municipality....

28. Channahon may argue this statute only applies to agreements made "[o]n and after June 1, 2004," but as evidenced by Exhibit A, at least one of its Economic Development Agreements was amended (and therefore, renewed) in April 2005. See Exhibit A. Moreover, any

agreement reached after June 1, 2004, between a consultant and a retailer is a *de facto* agreement between the municipality and the retailer in violation of the statute.

29. As Channahon is in violation of 65 ILCS 5/8-11-21, it entitles RTA to damages in the amount of the tax revenue it was denied as a result of any "...agreement, statutory interest, costs, reasonable attorney's fees, and an amount equal to 50% of the tax."

30. Without the information sought in its FOIA request, however, RTA does not know the actual amount of sales tax receipts received by Channahon and thus denied to RTA.

31. RTA is entitled to know the actual amount of tax receipts generated and other locations in Illinois where the actual affairs of the companies in these development contracts are conducted so it is able to determine the exact amount of tax receipts to which RTA is entitled.

32. As RTA continues to lose sales tax receipts on a daily basis, it prays that this Court allow for expedited discovery as part of this litigation so it can ascertain the amount to which it is entitled under Illinois law.

WHEREFORE, the Plaintiff, REGIONAL TRANSPORTATION AUTHORITY, requests this Court enter judgment against the defendant, VILLAGE OF CHANNAHON, for an amount equal to the amount of tax revenue it was denied as a result of any and all Economic Development Agreements and/or development contracts, its statutory interest, costs, reasonable attorney's fees, an amount equal to 50% of the tax at issue, and any further relief this Court deems equitable and proper.

**COUNT III**  
**CLAIM FOR DECLARATORY JUDGMENT**  
***RTA v. Kankakee and Inspired Development***

33. RTA includes and realleges paragraphs 1 through 32 of Count I of this Complaint as paragraphs 1 through 32 of Count III and incorporates the same herein.

34. For the reasons set forth above, the Economic Development Agreement attached hereto as Exhibit E entered into between Kankakee and Inspired Development contravenes Illinois law, circumvents the intent of Illinois law, and for this and the other reasons cited in this Complaint, is void as to public policy as it injures the welfare of the public and is against the public good.

35. An actual controversy exists between RTA and Kankakee and Inspired Development, and, therefore, by the terms and provisions of 735 ILCS 5/2-701 of the Illinois Code of Civil Procedure, this Court is vested with the power to declare the rights and liabilities of the parties hereto and to give such other relief as may be necessary.

WHEREFORE, Plaintiff, REGIONAL TRANSPORTATION AUTHORITY, prays this Court: a) to adjudicate the rights and liabilities of the parties with respect to the said Economic Development Agreement; b) to find and declare that said Economic Development Agreement is void as a matter of public policy and law; c) to prohibit and enjoin the performance of such agreement by the parties; and d) for such other and further relief as this Court deems proper.

**COUNT IV**  
**CLAIMS FOR DECLARATORY JUDGMENT**  
***RTA v. Channahon and Inspired Development***

33. RTA includes and realleges paragraphs 1 through 32 of Count I of this Complaint as paragraphs 1 through 32 of Count III and incorporates the same herein.

34. For the reasons set forth above, the Economic Development Agreement attached hereto as Exhibit A entered into between Channahon and Inspired Development contravenes Illinois law, circumvents the intent of Illinois law, and for this and the other reasons cited in this Complaint, is void as to public policy as it injures the welfare of the public and is against the public good.

35. An actual controversy exists between RTA and Channahon and Inspired Development, and, therefore, by the terms and provisions of 735 ILCS 5/2-701 of the Illinois Code of Civil Procedure, this Court is vested with the power to declare the rights and liabilities of the parties hereto and to give such other relief as may be necessary.

WHEREFORE, Plaintiff, REGIONAL TRANSPORTATION AUTHORITY, prays this Court: a) to adjudicate the rights and liabilities of the parties with respect to the said Economic Development Agreement; b) to find and declare that said Economic Development Agreement is void as a matter of public policy and law; c) to prohibit and enjoin the performance of such agreement by the parties; and d) for such other and further relief as this Court deems proper.

**COUNT V**  
**CLAIMS FOR DECLARATORY JUDGMENT**  
***RTA v. Kankakee and MTS Consulting***

33. RTA includes and realleges paragraphs 1 through 32 of Count I of this Complaint as paragraphs 1 through 32 of Count III and incorporates the same herein.

34. For the reasons set forth above, the Economic Development Agreement attached hereto as Exhibit C entered into between Kankakee and MTS Consulting contravenes Illinois law, circumvents the intent of Illinois law, and for this and the other reasons cited in this Complaint, is void as to public policy as it injures the welfare of the public and is against the public good.

35. An actual controversy exists between RTA and Kankakee and MTS Consulting, and, therefore, by the terms and provisions of 735 ILCS 5/2-701 of the Illinois Code of Civil Procedure, this Court is vested with the power to declare the rights and liabilities of the parties hereto and to give such other relief as may be necessary.

WHEREFORE, Plaintiff, REGIONAL TRANSPORTATION AUTHORITY, prays this Court: a) to adjudicate the rights and liabilities of the parties with respect to the said Economic Development Agreement; b) to find and declare that said Economic Development Agreement is void as a matter of public policy and law; c) to prohibit and enjoin the performance of such agreement by the parties; and d) for such other and further relief as this Court deems proper.

**COUNT VI**  
**CLAIMS FOR DECLARATORY JUDGMENT**  
***RTA v. Channahon and Minority Development***

33. RTA includes and realleges paragraphs 1 through 32 of Count I of this Complaint as paragraphs 1 through 32 of Count III and incorporates the same herein.

34. For the reasons set forth above, the Economic Development Agreement attached hereto as Exhibit F entered into between Channahon and Minority Development contravenes Illinois law, circumvents the intent of Illinois law, and for this and the other reasons cited in this Complaint, is void as to public policy as it injures the welfare of the public and is against the public good.

35. An actual controversy exists between RTA and Channahon and Minority Development, and, therefore, by the terms and provisions of 735 ILCS 5/2-701 of the Illinois Code of Civil Procedure, this Court is vested with the power to declare the rights and liabilities of the parties hereto and to give such other relief as may be necessary.

WHEREFORE, Plaintiff, REGIONAL TRANSPORTATION AUTHORITY, prays this Court: a) to adjudicate the rights and liabilities of the parties with respect to the said Economic Development Agreement; b) to find and declare that said Economic Development Agreement is void as a matter of public policy and law; c) to prohibit and enjoin the performance of such agreement by the parties; and d) for such other and further relief as this Court deems proper.

**COUNT VII**  
**CLAIMS FOR DECLARATORY JUDGMENT**  
***RTA v. Kankakee and Corporate Funding***

33. RTA includes and realleges paragraphs 1 through 32 of Count I of this Complaint as paragraphs 1 through 32 of Count III and incorporates the same herein.

34. For the reasons set forth above, the Economic Development Agreement attached hereto as Exhibit G entered into between Kankakee and Corporate Funding contravenes Illinois law, circumvents the intent of Illinois law, and for this and the other reasons cited in this Complaint, is void as to public policy as it injures the welfare of the public and is against the public good.

35. An actual controversy exists between RTA and Kankakee and Corporate Funding, and, therefore, by the terms and provisions of 735 ILCS 5/2-701 of the Illinois Code of Civil Procedure, this Court is vested with the power to declare the rights and liabilities of the parties hereto and to give such other relief as may be necessary.

WHEREFORE, Plaintiff, REGIONAL TRANSPORTATION AUTHORITY, prays this Court: a) to adjudicate the rights and liabilities of the parties with respect to the said Economic Development Agreement; b) to find and declare that said Economic Development Agreement is void as a matter of public policy and law; c) to prohibit and enjoin the performance of such agreement by the parties; and d) for such other and further relief as this Court deems proper.



**COUNT VIII**  
**CLAIMS FOR DECLARATORY JUDGMENT**  
***RTA v. Kankakee and XYZ Sales***

33. RTA includes and realleges paragraphs 1 through 32 of Count I of this Complaint as paragraphs 1 through 32 of Count III and incorporates the same herein.

34. For the reasons set forth above, the Economic Development Agreement attached hereto as Exhibit H entered into between Kankakee and XYZ Sales contravenes Illinois law, circumvents the intent of Illinois law, and for this and the other reasons cited in this Complaint, is void as to public policy as it injures the welfare of the public and is against the public good.

35. An actual controversy exists between RTA and Kankakee and XYZ Sales, and, therefore, by the terms and provisions of 735 ILCS 5/2-701 of the Illinois Code of Civil Procedure, this Court is vested with the power to declare the rights and liabilities of the parties hereto and to give such other relief as may be necessary.

WHEREFORE, Plaintiff, REGIONAL TRANSPORTATION AUTHORITY, prays this Court: a) to adjudicate the rights and liabilities of the parties with respect to the said Economic Development Agreement; b) to find and declare that said Economic Development Agreement is void as a matter of public policy and law; c) to prohibit and enjoin the performance of such agreement by the parties; and d) for such other and further relief as this Court deems proper.

**COUNT IX**  
**UNDER FREEDOM OF INFORMATION ACT**  
***RTA v. Kankakee***

33. RTA includes and realleges paragraphs 1 through 32 of Count I of this Complaint as paragraphs 1 through 32 of Count V and incorporates the same herein.

34. On June 23, 2011, Kankakee requested a five day extension as allowed by FOIA. See Exhibit I.

35. On June 27, 2011, Kankakee responded to RTA's June 21, 2011, FOIA request. See Kankakee Response, attached hereto and incorporated herein as Exhibit J.

36. As demonstrated in Exhibit J, Kankakee denied item 1 of RTA's request under FOIA Section 7 exemptions (1)(c) and (1)(g), and further responded that documents related to requests 2 and 4 through 8 do not exist.

37. Kankakee provided notice of this intent to deny under 7(1)(c) to the Office of the Attorney General pursuant to 5 ILCS 140/9.5(b), and this "pre-authorization request" (2011 PAC 15143) was first received by the Office of the Attorney General in early July.

38. The Attorney General requested a more detailed factual and legal basis for this claimed exemption on July 8, 2011, but in any event, denied Kankakee's pre-authorization request on July 21, 2011. See July 8 and 21, 2011, Attorney General correspondence to Kankakee, attached hereto and incorporated herein as Group Exhibit K.

39. If Kankakee maintains its reason for its continued refusal to produce any documents in response to RTA's request 1 is due to its further claimed exemption under Section

7(1)(g), such a denial is not appropriate under FOIA, as Kankakee has failed to show any entity at issue actually faces competition and the disclosure of any document will likely result in harm.

40. As the Attorney General's office has concluded its review and Kankakee has not sought administrative review of the decision, RTA is now seeking appropriate redress in this Court by seeking the disclosure of any and all records enumerated in its FOIA request 1, specifically:

1. All agreements or extensions of agreements between the Village and any entity in which the agreement contains a sales tax sharing provision or an Economic Incentive Agreement.

See Group Exhibit B.

41. Upon information and belief, there are documents responsive to items 2 and 4 through 8 in RTA's June 21, 2011, FOIA request, which seek:

2. All documents relating to Kankakee's policy on sales tax sharing including:
  - a. All correspondence enticing or promoting Kankakee's tax sharing agreements or proposed agreements; and
  - b. Any board meeting notes or records relating to tax sharing agreements;
4. Please list each member of the staff that works on promoting and maintaining sales tax sharing agreements; list the cost to the City needed to monitor and attract new agreements.
5. All documents referencing Inspired Development or any of its representatives.
6. All documents referencing MTS Consulting or any of its representatives.
7. All documents referencing Minority Development Company or any of its representatives.
8. All documents referencing the FACTS Coalition.

See Group Exhibit B.

42. For example, Economic Development Agreements obtained by RTA call for monthly statements to be sent to Defendants that demonstrate sales tax amounts. See Exhibit C, Section 2.B. Further, meetings of the Kankakee City Council should address these Agreements in some fashion, or a violation of Illinois' Open Meetings Act has also likely occurred. In either example, Kankakee's failure to produce anything related to items 2 and 4 through 8 is a willful and intentional violation of FOIA.

43. Therefore, RTA is now seeking appropriate redress in this Court by seeking the disclosure of any and all records enumerated in its FOIA request to Kankakee (attached hereto as part of Group Exhibit B), including those claimed to be exempt under FOIA, as all are subject to disclosure, and not subject to any exemptions.

44. This Court has jurisdiction "to enjoin [Kankakee] from withholding public records and to order the production of any public records improperly withheld..." 5 ILCS 140/11(d).

45. Further, RTA is entitled to its reasonable attorneys' fees under 5 ILCS 140/11(i).

46. In the alternative, RTA believes this Court is entitled to an *in camera* review of the responsive documents to make its own determination, and therefore moves for such a review pursuant to 5 ILCS 140/11(e).

WHEREFORE, the Plaintiff, REGIONAL TRANSPORTATION AUTHORITY, requests this Court enter judgment in its favor ordering defendant, CITY OF KANKAKEE, to promptly produce all requested records, or in the alternative, an *in camera* review of the responsive documents, and in either event, awarding plaintiff its attorneys' fees for this action, assessing further

penalties against defendant for a willful and intentional violation of FOIA, and for any other further relief this Court deems just and proper.

**COUNT X**  
**CLAIM UNDER FREEDOM OF INFORMATION ACT**  
***RTA v. Channahon***

33. RTA includes and realleges paragraphs 1 through 32 of Count II of this Complaint as paragraphs 1 through 32 of Count VI and incorporates the same herein.

34. On June 29, 2011, Channahon requested an extension to provide a response to RTA's FOIA request, and the RTA agreed to an extension to July 6, 2011.

35. On July 15, 2011, Channahon responded to RTA's June 21, 2011, FOIA request. See Channahon response, attached hereto and incorporated herein as Exhibit L.

36. In that response, Channahon partially denied items 1, 5 and 7 under FOIA Section 7 exemptions (1)(c) and (1)(f), which seek:

1. All agreements or extensions of agreements between the Village and any entity in which the agreement contains a sales tax sharing provision or an Economic Incentive Agreement.
5. All documents referencing Inspired Development or any of its representatives.
7. All documents referencing Minority Development Company or any of its representatives.

See Group Exhibit B.

37. However, there has been no evidence provided demonstrating Channahon has filed a notice of intent to deny based on these Section 7 exemptions with the Office of the Attorney General as required by 5 ILCS 140/9.5(b) and its failure to do so is in itself a violation of FOIA.

38. In any event, Channahon further denied all of RTA's requests which seek records concerning the identity of and information related to new retailers contracting with Consultants under FOIA Section 7 exemption (1)(a), by claiming 35 ILCS 120/11 prohibits the disclosure of tax information and under Section 7 exemption (1)(g), stating the Economic Disclosure Agreements at issue prohibit disclosure of commercial or financial information.

39. Channahon's claimed exemptions under Section 7(1)(a) and (g) are not appropriate under FOIA.

40. As to its claimed 7(1)(a) exemption, 35 ILCS 120/11 has its own exemptions specifically authorizing the disclosure of information to both the public and various state and local units of government. For example,

...Nothing in this Act prevents the Director of Revenue from publishing or making available to the public the names and addresses of persons filing returns under this Act, or reasonable statistics concerning the operation of the tax by grouping the contents of returns so the information in any individual return is not disclosed...

41. As to its claimed 7(1)(g) exemption, Channahon has failed to show any entity at issue actually faces competition and that the disclosure of any document will likely result in harm.

42. Without any other available remedy through Channahon, RTA is now seeking appropriate redress in this Court by seeking the disclosure of any and all records enumerated in its FOIA request to Channahon (attached hereto as part of Group Exhibit B), including those claimed to be exempt under FOIA, as all are subject to disclosure, and not subject to any exemptions.

43. This Court has jurisdiction "to enjoin [Channahon] from withholding public records and to order the production of any public records improperly withheld..." 5 ILCS 140/11(d).

44. Further, RTA is entitled to its reasonable attorneys' fees under 5 ILCS 140/11(i).

45. In the alternative, RTA believes this Court is entitled to an *in camera* review of the responsive documents to make its own determination, and therefore moves for such a review pursuant to 5 ILCS 140/11(e).

WHEREFORE, the Plaintiff, REGIONAL TRANSPORTATION AUTHORITY, requests this Court enter judgment in its favor ordering defendant, VILLAGE OF CHANNAHON, to promptly produce all requested records, or in the alternative, an *in camera* review of the responsive documents, and in either event, awarding plaintiff its attorneys' fees for this action, assessing further penalties against defendant for a willful and intentional violation of FOIA, and for any other further relief this Court deems just and proper.

**PLAINTIFF DEMANDS A TRIAL BY A JURY OF TWELVE (12) ON ALL COUNTS AND ISSUES TRIABLE BY A JURY.**

The REGIONAL TRANSPORTATION AUTHORITY,  
an Illinois special purpose unit of  
government and municipal corporation

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

  
HEYL, ROYSTER, VOELKER & ALLEN

Timothy L. Bertschy

ARDC #199931

John M. Redlingshafer

ARDC #6283812

HEYL, ROYSTER, VOELKER & ALLEN  
60 W. Randolph Street, Suite 200  
Chicago, IL 60601

Telephone: 312.762.9235

Cook County Firm No. 15683

*and*

Suite 600

124 SW Adams Street

Peoria, IL 61602

Telephone: 309.676.0400

Facsimile: 309.676.3374



**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

The REGIONAL TRANSPORTATION AUTHORITY, )  
an Illinois special purpose unit of government )  
and municipal corporation, )

Plaintiff, )

vs. )

NO. 11 CH \_\_\_\_\_

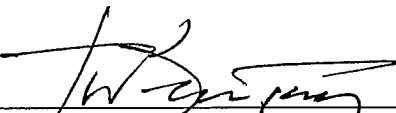
The CITY OF KANKAKEE, an Illinois home rule )  
municipality, and the VILLAGE OF CHANNAHON, )  
an Illinois home rule municipality, )

Defendants. )

**ILLINOIS SUPREME COURT RULE 222(b) AFFIDAVIT**

Timothy L. Bertschy, having been duly sworn and upon oath, states as follows:

1. I am competent to testify concerning the matters contained in this Affidavit.
2. As attorney for the REGIONAL TRANSPORTATION AUTHORITY, I have reviewed the facts of this case and have determined the total amount of money damages sought exceeds fifty thousand dollars and 00/100 cents (\$50,000.00).

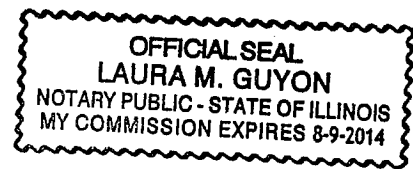
  
\_\_\_\_\_  
Timothy L. Bertschy #199931

HEYL, ROYSTER, VOELKER & ALLEN  
60 W. Randolph Street, Suite 200  
Chicago, IL 60601  
Telephone: 312.762.9235  
Cook County Firm No. 15683  
*and*  
Suite 600  
124 SW Adams Street  
Peoria, IL 61602  
Telephone: 309.676.0400  
Facsimile: 309.676.3374

STATE OF ILLINOIS    )  
                                  ) ss.  
COUNTY OF PEORIA    )

SUBSCRIBED AND SWORN to before me this 23<sup>rd</sup> day of August, 2011.

*Laura M. Guyon*  
NOTARY PUBLIC



PREPARED BY:

VILLAGE OF CHANNAHON  
24441 W. EAMES  
CHANNAHON, IL 60410

MAIL TO:

VILLAGE OF CHANNAHON  
24441 W. EAMES  
CHANNAHON, IL 60410

RECORDER'S STAMP

ORDINANCE NO. 1163

**An Ordinance Authorizing The Execution Of  
An Economic Development Incentive Agreement**

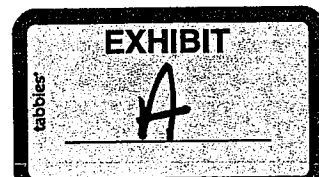
ADOPTED BY THE  
BOARD OF TRUSTEES  
VILLAGE OF CHANNAHON

THIS 5<sup>th</sup> DAY OF February, 2001

---

PUBLISHED IN PAMPHLET FORM BY AUTHORITY OF THE BOARD OF TRUSTEES OF THE  
VILLAGE OF CHANNAHON, WILL AND GRUNDY COUNTIES, ILLINOIS

THIS 6<sup>th</sup> DAY OF February, 2001



ORDINANCE NO. 1169

AN ORDINANCE AUTHORIZING THE EXECUTION OF  
AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF  
CHANNAHON, WILL AND GRUNDY COUNTIES, ILLINOIS;

**SECTION 1: SIGNATURE AND ATTESTATION.** That the Village President, be and is hereby authorized and directed to execute on behalf of the Village of Channahon, an Economic Development Incentive Agreement between the Village of Channahon, Will and Grundy Counties, Illinois a Home Rule Illinois Municipal Corporation, and Inspired Development, LLC which is substantially in the form attached hereto, marked Exhibit "1" and made a part hereof, and that the Village Clerk, be and is hereby authorized and directed to attest to the President's signature.

**SECTION 2: SEVERABILITY.** Each Section and part thereof of this ordinance is deemed to be severable and should any section or part thereof be held invalid or unconstitutional by any court of competent jurisdiction, such ruling shall not affect the validity or constitutionality of the remaining portions of this ordinance.

**SECTION 3: EFFECTIVE DATE.** That this ordinance shall be in full force and effect after its passage, approval and publication in pamphlet form as provided by law.

PASSED this 5<sup>th</sup> day \_\_\_\_\_ of February, 2001, with 6 trustees voting aye,

0 trustees voting nay, 0 trustees abstaining, and with 0 trustees absent, the President

not voting: said vote being: COOK Aye, FEENEY Aye, GRECO Aye, BAKER Aye, LYONS

Aye, NASH Aye, and CHESSON not Voting.

Eileen Clark  
Eileen Clark, Village Clerk

APPROVED this 5<sup>th</sup> day of February, 2001.

Wayne W. Chesson  
Wayne W. Chesson, Village President

(SEAL)

ATTEST:

Eileen Clark  
Eileen Clark, Village Clerk

ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE VILLAGE OF CHANNAHON AND  
INSPIRED DEVELOPMENT, LLC

This agreement is entered into this 5<sup>th</sup> day of February 2001, by and between the Village of Channahon ("Village"), an Illinois Home Rule Municipal Corporation, and Inspired Development, LLC (referred to hereinafter as the "Developer"), an Illinois Limited Liability Company with offices at 150 North Schuyler Avenue, Suite 1009A, Kankakee, Illinois 60901, (collectively "Parties").

PREAMBLE

Whereas, Village is a Home Rule Illinois Municipal Corporation under and by virtue of the Constitution and laws of the State of Illinois; and

Whereas, Village desires to increase the number of retail businesses in Channahon that generate Retailer's Occupation Tax; and

Whereas, Developer is willing to utilize its particular skills and abilities to attract new retail businesses ("new retailers") to the Village of Channahon; and

Whereas, Developer will provide the new retailers with the needed retail space, employees, equipment and services necessary to establish the place of business for each new retailer in Channahon, Illinois, and

Whereas, the attraction of new retail businesses to Channahon will stimulate local commercial activity, and the increase in the Retailer' Occupation Tax derived therefrom will enhance the tax base and the economic vitality of Village; and

Whereas, the Developer shall give first preference in hiring to residents of the Village, and

Whereas, the Developer shall to the extent practicable obtain the necessary equipment and supplies from existing Channahon retailers, and

Whereas, under this agreement Village will retain a portion of new tax revenue generated from sales made by the new retail businesses attracted to Village by Developer; and

Whereas, under this agreement Village will disburse a portion of such incremental sales tax to the Developer; and

Whereas, safeguards have been established to protect the legitimate business interests of existing Channahon retailers, and

Whereas, Developer will disburse a portion of such incremental sales tax to the new retailers as an incentive to locate in Channahon; and

Whereas, the amount of sales tax distributable to the Village from the Home Rule Municipal Retailers' Occupation Tax Fund and the Local Government Tax Fund attributable to Sales Taxes remitted to the Illinois Department of Revenue by the new retailers from sales to Illinois customers that are consummated within Channahon (hereinafter sometimes referred to as the "Local Share") is currently two percent (2%) of the total selling price of taxable products sold by the new retailers; and

Whereas, as an economic incentive for Developer to attract new retail businesses to Channahon, Developer and Village have agreed to share in the benefits realized by Village as a result of the new retailer's sales and other activities within Village; and .

Whereas, the Village is entering into this Agreement in the exercise of its Home Rule and other powers and authority.

~~NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BE IT AGREED AS FOLLOWS:~~

#### SECTION 1. INCORPORATION OF PREAMBLE AND EXHIBITS

That the Preamble to this Agreement is hereby declared to be the findings of the Parties and that said Preamble and all exhibits, if any, referred to in the Preamble and this Agreement are incorporated herein as if fully set forth in this Section 1.

#### SECTION 2. CONDITIONS PRECEDENT TO THE UNDERTAKING ON THE PART OF THE VILLAGE

All undertakings on the part of Village pursuant to this Agreement are subject to the satisfaction of the following conditions by Developer on or before the date of the initial incentive payment by Village provided for in Section 3 below, or as otherwise specifically hereinafter stated:

- A. Demonstration that in circumstances where Developer is acting as retail order acceptance agent for new retailer, Developer has leased, purchased, or otherwise arranged for the use of property located within the corporate limits of Village for the purpose of facilitating any sales herein contemplated. Where retailer will act as retail order acceptor, that retailer has leased, purchased, or otherwise arranged for the use of property located within the corporate limits of Village for the purpose of facilitating any sales herein contemplated.
- B. Prior to all disbursements by Village to Developer, Developer shall cause to be delivered to Village, on a monthly basis, a copy of the Illinois Retailer' Occupation Tax ("Sales Tax") returns and/or other documentation submitted by the new retailers to the Illinois Department of Revenue (hereinafter "IDOR"), which details the amounts of said Sales Taxes that were paid by the new retailers to IDOR with respect to sales made within Channahon. To maintain confidentiality, Developer may remove the names of suppliers or customers from the copies of documents that are provided to Village. Upon written request by Village, Developer shall provide Village, or cause Village to be provided, with an appropriate authorization addressed to and in a form satisfactory to IDOR authorizing IDOR to release to Village all gross revenue and Sales Tax information submitted by the new retailers to IDOR. Additionally, in the event that IDOR does not make available to Village said documentation, upon the request of Village, Developer shall provide Village, or cause Village to be provided, with alternative documentation which details the amount of said Sales Taxes that were collected and paid by the new retailers to IDOR.
- C. Developer will make a good faith effort to ensure that the new retailers conduct the activities to be performed by them in Channahon in such a manner that they will at all times comply with the terms and provisions of any and all statutes and regulations issued by the IDOR that apply to such activities.
- D. With regard to each new retailer Developer attracts to the Village of Channahon, Developer shall provide Village with a report indicating: (1) The name of the

new retailer, and (2) the trade name to be used by the new retailer in Channahon, and (3) a description of the trade or business in which the new retailer intends to engage in Channahon, including a description of the products sold, and (4) the address at which the new retailer intends to make such sales, and (5) a statement signed by the Developer and retailer affirming that the retailer does not currently engage in making retail sales from locations within Channahon, Illinois.

- E. If within 30 days of receiving a report from Developer, as provided for in paragraph D immediately above, identifying a particular new retailer and describing its proposed activities in Channahon, the Village determines that association with such retailer, its owners or its proposed activities brings dishonor upon Village, or that such retailer's expansion into Channahon will cause an existing Channahon retailer material harm, Village shall notify Developer in writing that such retailer is found "not acceptable" under the terms of this agreement and the specific reasons for such finding. Developer shall have a period of 60 days to provide rebuttal evidence to Village challenging the facts supporting the finding. Village shall consider the totality of the circumstances, including any rebuttal evidence provided by Developer or new retailer, and make a final determination as to the acceptability of new retailer within 60 days following the receipt of a written request for reconsideration. Village shall have sole responsibility for determining whether any particular retailer is acceptable under this program. Notwithstanding the forgoing sentence, Village shall not unreasonably deny participation and must clearly articulate the reasons for its findings. Upon a final determination that a retailer is not acceptable, and if requested, such findings are upheld following reconsideration by Village, such retailer shall be excluded from the provisions of Section 3 and no disbursements shall be made to Developer related to such unacceptable retailer's sales.
- F. Developer shall incorporate into each development contract it establishes with a prospective new retailer the following terms and conditions: (1) that the Village is an intended third party beneficiary of the contract, and (2) that the Village shall have rights against the new retailer equal to the rights of Developer in enforcing the terms of the development contract, and (3) that the new retailer releases the Village against any potential claim of alleged wrongdoing of any kind by any employee, associate, or agent (whether disclosed or not) of the Developer, and (4) that the new retailer is prohibited from entering into any similar Illinois Retailer's Occupation Tax or Use Tax sharing agreement with any other party during the term of the development contract, and (5) that the Village has final authority to determine eligibility to participate in the tax rebate program, and (6) that for the purpose of auditing the claimed sales subject to the tax rebate arrangement, the new retailer shall, upon written request and at a reasonable time and place, make available to the Developer and the Village such business records as may be kept in the ordinary course of business and are necessary to facilitate verification of the accuracy of the information presented to the Developer, the Village or the Illinois Department of Revenue and (7) that the new retailer shall indemnify and hold the Village harmless from and against any award or judgement entered against the Village as a result of any action or cause of action against the Village which is a result of an action brought by a non party to this agreement.
- G. Developer shall bond each officer, employee and agent of Developer. The coverage of such policy shall equal no less than the anticipated annual rebate for all new retailers accepted by the Village and then participating in this program.

- H. Developer shall escrow \$50,000.00 for the purpose of protecting the Village and Developer against unanticipated legal fees incurred in the defense of this agreement against challenges made by persons other than the Developer and the Village. Developer shall create the escrow by paying over to the escrow agent one-fourth of its income net of start-up and operating expense including federal and state income taxes until such time as the defense fund is fully funded. To the extent that the Village incurs costs and expenses, including reasonable attorney fees, in the defense of this agreement against challenges by non-parties to this agreement, Developer shall pay over to the escrow agent up to one-half of its income generated subsequent to the filing of the suit (net of start-up and operating expense including federal and state income taxes) until such time as the defense fund balance is once again restored to \$50,000.00. The Village and Developer shall work with the escrow agent to develop an Escrow Agreement on mutually agreeable terms.

SECTION 3. UNDERTAKINGS ON THE PART OF THE VILLAGE UPON SATISFACTION BY THE DEVELOPER OF ALL THE CONDITIONS HEREIN STATED

- A. On a monthly basis and after receipt of the Local Share from the State, Village shall disburse to Developer eighty-five percent (85%) of the Local Share attributable to sales made within Channahon by the new retailers. The Parties acknowledge the relevant monthly return periods shall mean the month in which sales are made, despite the fact that the returns to be filed for each monthly return period are due on the twentieth (20<sup>th</sup>) day of the following month. The Parties further acknowledge the State of Illinois may distribute the Local Share to Village sometimes as much as sixty (60) days following the receipt of the return and payment by the new retailers. Therefore, the Parties agree that the retention of the Local Share by Village and the disbursement to Developer may necessarily fall outside the calendar year in which the sales were consummated.
- B. The Village shall begin such disbursements by retaining its portion of the Local Share, after which the Village shall make such disbursements to the Developer within twenty-one (21) days following the receipt by the Village of the Local Share of the previous month's Sales Tax revenue received from IDOR which has been generated as a result of sales by the new retailers.
- C. During the term of this Agreement, the Village will cause to be created for accounting purposes a separate line item to be known as the ~~XXXXXXXXXXXXXXXXXXXX~~ (the "Fund"). The Local Share shall be accounted for in said Fund.
- D. Any amounts paid into the Fund over and above the amount required to be paid to Developer hereunder may be transferred by Village to its general or other funds without any restriction hereunder. Until such time as this Agreement terminates, the Village agrees that it will not take any action or omit to take any action that will affect the continued existence of the Fund or the availability of the Fund to pay the Developer.
- E. In the event that any copies of tax returns which have been submitted to Village are amended by any of the new retailers, Developer agrees to promptly forward, or cause to be forwarded, a photocopy of such amended tax returns to the Village, clearly identifying them as an amendment of a tax return previously submitted to the Village.
- F. Nothing in this agreement shall be construed to create an obligation or guarantee on the part of Developer as to Village's monthly or yearly distribution amount.



#### SECTION 4. AUDIT - RECONCILIATION

Each incentive payment by Village to Developer shall be accompanied by a statement executed by the Village Treasurer or the Treasurer's designee, setting forth the calculations of such payment. Developer shall have thirty (30) days following the receipt of said payment to contest any of the calculations or information contained in said statements. In the event that Developer shall initiate any such contest, it must be made by written notice to Village. If such contest shows that the amount paid to Developer were less or more than the amount that should have been paid to Developer, either Village shall pay to Developer the balance of such amount due within the thirty (30) days of the completion of such contest, or if Developer has been paid more than the amount that should have been paid, then Developer shall reimburse the Village within thirty (30) days of the completion of such contest; provided that in the event the new retailer(s) files an amended tax return as contemplated in Section 3 (B), which amended return is approved by the IDOR then in that event, the following months' disbursement to the Developer shall be adjusted accordingly.

#### SECTION 5. CONFIDENTIALITY

The Parties acknowledge that the information contained in any tax return (including, without limitation, tax returns filed by Developer and the new retailers) and report made by Developer is confidential information proprietary to Developer and the new retailer(s) and agree that to the fullest extent permitted by law, all documents, including tax returns, and information provided to Village, its agents and representatives pursuant to or with regard to the provisions of this Agreement, shall not be released or made available to any third person, corporation, organization or association without order of court or the prior approval of the new retailers or Developer. Village shall offer Developer and the new retailers the opportunity to defend any claim made by any third Party against Village for release of such documents or information.

#### SECTION 6. TERM

This Agreement shall remain in full force for a period of twenty years beginning with the effective date indicated herein. With respect to each new retailer, Village shall make the monthly disbursements to Developer contemplated herein for a period of time ending upon the earlier of the following occurrences: (1) the retailer discontinues making retail sales in Channahon for a period of twelve consecutive months, or (2) two-hundred-forty monthly disbursements have been paid to Developer. The rights, responsibilities and liabilities of the Parties under this Agreement shall be extinguished upon the termination of this Agreement except for any obligations that accrue prior to such termination. With respect to the previous sentence, the Village's obligation to continue the payments to Developer shall survive the earlier termination of this Agreement with respect to any new retailer(s) whose first retail sales from a Channahon location were made prior to the termination of this Agreement. Developer's obligations to Village related to such new retailer(s) shall likewise continue.

#### SECTION 7. REMEDIES

In the event of a 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. Upon a breach of this Agreement and following the expiration of the cure period described above, the non-breaching Party may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation set forth in this Agreement. The failure of any Party 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 8. LIABILITY

- A. The sole source of funds for payments to either Party under this Agreement shall be funds that consist of that portion of the Sales Taxes solely generated from sales by the new retailers in Channahon that are paid from the Home Rule Retailer's Occupation Tax Fund or Local Governmental Tax Fund to the Village. The Developer may not compel any exercise of taxing authority by the Village to make payments provided for hereunder. The provisions of this Agreement do not constitute indebtedness or a loan of credit of either Party within the meaning of any constitutional or statutory provision.
- B. The Parties acknowledge and agree that (i) in no event shall any individual, partner, member, shareholder, owner, officer, director, employee, affiliate, beneficiary, or elected or appointed public official of either Party, including individuals who are members of the group constituting the corporate authorities of the Village and entering into the Agreement in their corporate capacities as members of such group, or its affiliates, and with respect to Developer, be personally liable to the other Party for any judgements for monetary damages, payments, obligations or performance due under this Agreement, or any breach or failure of performance of either Party hereunder and (ii) that the sole recourse for payment or performance of the obligations hereunder shall be against the Parties themselves and each of their respective assets and not against any other person, except for such liability as may be expressly assumed by an assignee pursuant to an assignment of, or pursuant to, this Agreement in accordance with its terms hereof.

## SECTION 9. APPROPRIATIONS/BUDGET

To the extent required by law, for each year during the term of this Agreement, Village hereby agrees that it will budget for and appropriate funds necessary to satisfy its obligations hereunder. Such appropriation shall be a part of Village's annual appropriations ordinance, adopted in accordance with 65 ILCS 5/8-11-20, or as part of Village's annual budget adopted in accordance with 65 ILCS 5/8-11-20, as the case may be. Village shall make any appropriation necessary for the year that the Agreement is entered into by means of a supplemental appropriation under 65 ILCS 5/8-11-20, if any as necessary. All references to provisions in the 65 ILCS 5/8-11-20 are to provisions as in effect now and as hereafter amended.

## SECTION 10. LITIGATION

Neither Village nor Developer, nor their respective successors and assigns, shall challenge the legality or enforcement or any recital, provision or covenant of this Agreement. In the event any other person or entity attempts to enjoin or otherwise challenge the validity of any recital, provision or covenant of this Agreement, Village agrees to vigorously defend this Agreement and not to take a position adverse to enforcement of the same. Developer reserves the right, at its sole option, to petition to intervene in any such action or proceeding and to participate, at its sole costs, in the defense of any claim against Village which challenges the legality or enforceability of any recital, provision or covenant of this Agreement.

## SECTION 11. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Disputes between the parties arising under this Agreement shall be settled using binding arbitration procedure with expenses to be split equally between Village and Developer.

## SECTION 12. AMENDMENT

This Agreement may be amended only by the mutual consent of the Parties, or their successors and assigns, by a written instrument specifically referencing this Agreement.

SECTION 13. NOTICES

All notices, elections and other communications between the Parties shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, or delivered personally, to the Parties at the following addresses, or at such other addresses as the Parties may, by notice, designate:

If to the Village:           Village of Channahon  
                                  Attention: Village President  
                                  2441 W. Eames Street  
  
                                  Channahon, Illinois 60410

With a copy to:           Village of Channahon  
                                  Attention: Village Treasurer  
                                  2441 W. Eames Street  
                                  Channahon, Illinois 60410

And

If to Developer:           Inspired Development, LLC  
                                  Attention: President  
                                  150 North Schuyler Avenue  
                                  Suite 1009A  
                                  Kankakee, Illinois 60901

With a copy to:           Lisa Sloan, C.F.O.  
                                  6301 North Hamlin Avenue  
                                  Chicago, Illinois 60659

Notices shall be deemed received on the fourth business day following deposit in the U.S. Mail, if given by certified mail as aforesaid, and upon receipt or refusal, if personally delivered.

SECTION 15. EFFECTIVE DATE

This Agreement shall be effective on February 5, 2001

SECTION 16. MUTUAL ASSISTANCE AND CONSENTS

The Parties agree to do all things necessary or appropriate to carry out the terms and provision of this Agreement and to aid and assist each other in carrying out the terms of this agreement. In the event that any Party to this agreement is required to grant its consent or approval to the other Party to this Agreement in connection with any of the terms and provisions of this Agreement, such consent or approval shall not be unreasonably withheld.

SECTION 17. SEVERABILITY

If any provision, covenant or portion of this Agreement is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement.

SECTION 18. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, negotiations and exhibits and is full integration of the entire agreement of the Parties.

SECTION 19. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. Provided, however, that without the consent of the Village, which shall not be unreasonably withheld, the Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part other than in connection with a transfer of all or part of the business of Developer to which it pertains.

SECTION 20. APPROVALS

The Village hereby represents that it has obtained all authorizations and approvals, including, without limitation, the enactment of ordinances and resolutions, if applicable, which are necessary to enable the Village to comply with the terms and provisions of this Agreement and perform its obligations hereunder.

IN WITNESS WHEREOF, the Parties have executed this agreement this 16<sup>th</sup> day of January 2001.

Village of Channahon, an Illinois Home Rule  
Municipal Corporation,

By: 

It's President, Wayne Chesson

ATTEST:



Village Clerk

Inspired Development, LLC

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

It's President, Patrick Fahey

FIRST AMENDMENT TO ECONOMIC  
DEVELOPMENT AGREEMENT BETWEEN  
THE VILLAGE OF CHANNAHON AND INSPIRED DEVELOPMENT, LLC

WHEREAS, on the 5<sup>th</sup> day of February, 2001 the Village of Channahon (the "Village") and Inspired Development, L.L.C. ("Developer") entered into a certain Economic Development Agreement (the "Agreement"); and

WHEREAS, the Agreement provided for the sharing of certain taxes from the Home Rule Municipal Retailer's Occupation Tax Fund and the Local Government Tax Fund; and

WHEREAS, the parties now desire to amend the Agreement to provide for the sharing of taxes generated from certain articles sold which are not subject to the Home Rule Retailer's Occupation Tax; and

WHEREAS, the parties desire to extend the term of the Agreement; and

WHEREAS, except as herein specifically set forth, the Agreement shall remain in full force and effect.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, BE IT AGREED AS FOLLOWS:

SECTION 1. Incorporation of Preamble.

The Preamble to this Agreement is incorporated herein as if fully set forth in this Section

1.

SECTION 2. Amendments.

The Agreement is hereby amended as follows:

A. The following Preamble paragraph be and the same is hereby deleted from the Agreement:

"WHEREAS, the amount of sales tax distributable to the Village from the Home Rule Municipal Retailers' Occupation Tax Fund and the Local Government Tax Fund attributable to Sales Taxes remitted to the Illinois Department of Revenue by the new retailers from sales to Illinois customers that are consummated within Channahon (hereinafter sometimes referred to as the "Local Share") is currently two percent (2%) of the total selling price of taxable products sold by the new retailers; and"

and the following inserted in its place:

"WHEREAS, "Local Share" as used in this Agreement shall mean the sales tax remitted to the Illinois Department of Revenue generated by New Retailers to Illinois customers for sales that are consummated within Channahon in the following amounts: (i) two (2%) percent of the selling price for those sales which are subject to the Village's Home Rule Municipal Retailer's Tax; and (ii) one (1%) percent of the selling price for the following products, and only the following products, which, by state law, are not subject to the Home Rule Municipal Retailer's Tax: prescription and non-prescription medicine, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics." In the event of a change in state law other items may be agreed to in writing by the parties without the need to amend this Agreement.

B. That the first sentence of Section 6 be and the same is hereby deleted and the following inserted in its place:

"This Agreement shall remain in full force and effect until April 30, 2024, in the event that this extension is invalidated by state law then, in that event, the original termination date shall control."

C. That the following be deleted from Section 6:

"(2) two-hundred-forty monthly disbursements have been made to the Developer."

and the following inserted in its place:

"(2) the termination of this Agreement"

### SECTION 3. Validity of Agreement.

Except as herein specifically provided, the Agreement and all provisions thereof not specifically modified herein shall remain in full force and effect.

Executed at Channahon, Illinois this 17<sup>th</sup> day of May, 2004.

INSPIRED DEVELOPMENT, L.L.C.

By: *[Signature]*  
Its President

VILLAGE OF CHANNAHON

By: *[Signature]*  
Its President

ATTEST: *[Signature]*  
Its Clerk



**SECOND AMENDMENT TO THE  
ECONOMIC DEVELOPMENT AGREEMENT BETWEEN  
THE VILLAGE OF CHANNAHON  
AND INSPIRED DEVELOPMENT, LLC**

WHEREAS, on the 5<sup>th</sup> day of February 2001, the Village of Channahon (the "Village") and Inspired Development, LLC ("Developer") entered into a certain Economic Development Agreement (the "Agreement"); and

WHEREAS, on the 17th day of May, 2004, the Village and the Developer entered into the First Amendment to said Agreement; and

WHEREAS, the Village and the Developer each desire to again amend the Agreement; and

WHEREAS, it is the intention of the Village and the Developer that except as herein specifically amended the Agreement shall remain in full force and effect; and

WHEREAS, the Village and the Developer recognize that under certain unique circumstances the Village may be willing to disburse to the Developer one hundred percent (100%) of the Village's Home Rule Retailers Occupation Tax ("Home Rule Tax") in addition to eighty-five percent (85%) of the Village's share of the Local Government Tax Fund for New Retailers; and

WHEREAS, the Village and the Developer recognize that certain New Retailers are permitted by the Illinois Municipal Code specifically 65 ILCS 5/8-11-6(b) to use the Home Rule Tax paid to the Village as an offset to that New Retailer's obligation to pay to the City of Chicago a 1% "use" tax on items of tangible persons property other than tangible personal property titled by an agency of the State's government (the "Special Use Tax"); and



NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties hereto as follows:

Section 1. Incorporation of Recital.

The Recitals set forth above are incorporated herein as if fully set forth in this Section 1.

Section 2. Amendment.

That the Agreement is amended as:

A. That the following be added to the Agreement inserted as Section 21.

Section 21. Enhanced Share.

- A. An "Enhanced Share" shall mean a disbursement to the Developer equal to one hundred percent (100%) of the Village's Home Rule Tax paid by the New Retailer plus eighty-five percent (85%) of the Village's share of the Local Government Tax Fund paid by the New Retailer (i.e., \_\_\_% of the Local Share).
- B. Notwithstanding anything to the contrary contained in 2(B), the decision on whether to accept a proposed New Retailer that will receive an Enhanced Share is subject to the sole and absolute discretion of the Village. If the Developer proposes a New Retailer which desires to receive an Enhanced Share such request shall be made in writing to the Village. The Village shall have thirty (30) days from receipt of such a request to either accept or reject in writing the request for an Enhanced Share. If the Village

does not act within said thirty (30) days then the request shall be deemed denied.

- C. The Enhanced Share shall only be disbursed to the Developer to the extent that the New Retailer does not use the payment of the Village's Home Rule Tax as an offset against payment of the Special Use Tax as permitted by 65 ILCS 5/8-11-6(b).
- D. In order to receive the Enhanced Share, the New Retailer shall provide the Village with a copy of its Chicago Non-Titled Property Use Tax Return or similar document known by a different name. If the Home Rule Tax has not been used as an offset to paying the Special Use Tax then the Enhanced Share shall be paid to the Developer. If the Home Rule Tax has been used as an offset then the disbursement to the Developer shall be as provided in 3(A). If any payments of the Enhanced Share are made and it is later determined that the Enhanced Share should not have been made because the Home Rule Tax was used as an offset then the New Retailer shall repay to the Village within thirty (30) days the difference between the Enhanced Share and the amount that would have been paid pursuant to 3(A). If the New Retailer does not make such payment then in that event the Village may deduct such amount due from the next payment due.

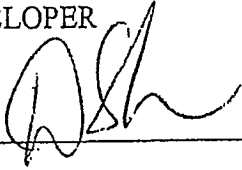
Section 3. Survival of Agreement.

Except as herein specifically amended, the Agreement (including the First Amendment) shall remain in full force and effect.

Signed in Channahon, Illinois this 15<sup>th</sup> day of April, 2005.

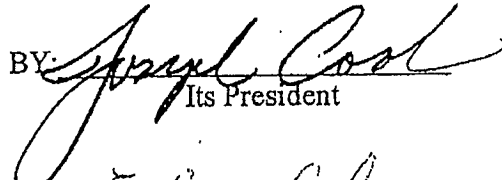
DEVELOPER

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



VILLAGE OF CHANNAHON

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

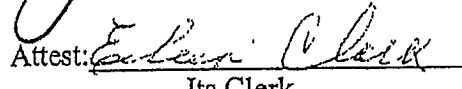


Its President

Attest: \_\_\_\_\_



Attest: \_\_\_\_\_



Its Clerk

Send Request to: Kris Schmitz, FOIA Director  
304 S. Indiana Ave.  
Kankakee, IL 60901  
Fax No.: 815-933-0528  
e-mail address: [kaschmitz@citykankakee-il.gov](mailto:kaschmitz@citykankakee-il.gov)

No. 2011-

CITY OF KANKAKEE  
STATE OF ILLINOIS

Department: \_\_\_\_\_ Date: June 21, 2011

**REQUEST FOR PUBLIC RECORDS**

Pursuant to the Freedom of Information Act, 5/ILCS 140/1.1 et sec., effective January 1, 2010, I hereby request the following public records within five (5) working days:

**EXACT DESCRIPTION/TITLE**

**\* The RTA requests copies of all documents described in Paragraphs 1 through 9 from January 1, 1994 through June 21, 2011.**

1. All agreements or extensions of agreements between the City and any entity in which the agreement contains a sales tax sharing provision or an Economic Incentive Agreement.
2. All documents relating to Kankakee's policy on sales tax sharing including:
  - a. All correspondence enticing or promoting Kankakee's tax sharing agreements or proposed agreements;
  - b. Any board meeting notes or records relating to tax sharing agreements;
3. Financial records demonstrating how much revenue the City of Kankakee raises each years from sales tax sharing agreements.
4. Please list each member of the staff that works on promoting and maintaining sales tax sharing agreements; list the cost to the City needed to monitor and attract new agreements.
5. All documents referencing Inspired Development or any of its representatives
6. All documents referencing MTS Consulting or any of its representatives
7. All documents referencing Minority Development Company or any of its representatives
8. All documents referencing the FACTS Coalition

City of Kankakee will only produce copies of those documents requested and described with a responsible degree of accuracy. The city is not required to guess at what is being requested. Nor is the City required to compile lists not in existence, or interpret or extrapolate information.

\_\_\_\_\_ I request to inspect these public records in person during regular office hours in the Department where they are maintained.

\_\_\_\_\_ I request \_\_\_\_\_ copies of these records and I understand that the first 50 pages of copies will be free of charge and thereafter I will pay .15¢ per page for any copies. Actual costs of copying will be charged for Maps and other similar documents. All such charges must be paid for in advance.

I request that all fees be waived or reduced in the public interest because the furnishing of the information requested can be considered as primarily benefiting the general public.

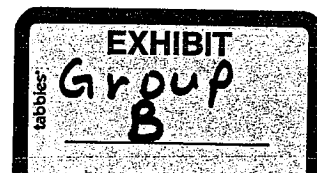
Name: **Beatriz Nieves, Executive Office**  
**Regional Transportation Authority**

Address: **175 W. Jackson Blvd, Suite 1650**

City, State, Zip: **Chicago, IL 60604**

Telephone: **(312) 913-3218**

Email: **nievesb@rtachicago.org**



Request received by: \_\_\_\_\_

Reply Sent by: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Date: \_\_\_\_\_, 20

Time: \_\_\_\_\_ o'clock \_\_\_\_\_ M.

Time: \_\_\_\_\_ o'clock \_\_\_\_\_ M.



VILLAGE OF CHANNAHON REQUEST FOR RECORDS  
24555 S. Navajo Drive, Channahon, IL 60410-3334  
Phone 815-467-6644 Fax 815-467-9774  
[www.channahon.org](http://www.channahon.org)

Date of request: June 21, 2011

Name of person making request: Beatriz Nieves, Executive Office

Full address: RTA, 175 W. Jackson Blvd, Suite 1650, Chicago, IL 60604

Telephone: (312) 913-3212 Fax: (312) 913-3216 Email: [nievesb@rtachicago.org](mailto:nievesb@rtachicago.org)

Describe below the public records you are requesting and state whether you wish to inspect and/or be provided with a copy of such records.

**\* The RTA requests copies of all documents described in Paragraphs 1 through 9 from January 1, 1994 through June 21, 2011.**

1. All agreements or extensions of agreements between the Village and any entity in which the agreement contains a sales tax sharing provision or an Economic Incentive Agreement.
2. All documents relating to Channahon's policy on sales tax sharing including:
  - a. All correspondence enticing or promoting Channahon's tax sharing agreements or proposed agreements;
  - b. Any board meeting notes or records relating to tax sharing agreements;
3. Financial records demonstrating how much revenue the Village of Channahon raises each years from sales tax sharing agreements.
4. Please list each member of the staff that works on promoting and maintaining sales tax sharing agreements; list the cost to the Village needed to monitor and attract new agreements.
5. All documents referencing Inspired Development or any of its representatives
6. All documents referencing MTS Consulting or any of its representatives
7. All documents referencing Minority Development Company or any of its representatives
8. All documents referencing the FACTS Coalition

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Is this request for Commercial Purposes? Yes  No

---

The Village of Channahon will respond to the above request within five (5) working days from the above date unless one or more of the seven (7) reasons for an extension of time provided for in Section 3 (d) of the Freedom of Information Act are invoked by the Village. Any commercial purpose requests have up to twenty-one (21) working days

Signature of person making request

Copying fees are fifteen cents (.15¢) per page after the first 50 pages of black and white for each request. Other fees may apply depending upon the request.

FOR OFFICE USE ONLY - ROUTING OF REQUEST TO THE FOLLOWING DEPARTMENT:

Action Taken: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Administrative
- Development
- Finance
- Police
- Public Works

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

\_\_\_\_\_  
Administrator's Signature

\_\_\_\_\_  
Date

Fee: \_\_\_\_\_

Updated May 11

**ECONOMIC DEVELOPMENT AGREEMENT**

**BETWEEN THE CITY OF KANKAKEE AND**

**MTS CONSULTING, LLC**

This Economic Development Agreement (the "Agreement") is entered into this 3rd day of February, 2003, by and between the City of Kankakee ("City"), an Illinois Home Rule Municipal Corporation, and MTS Consulting, LLC (referred to hereinafter as "Developer"), an Illinois Limited Liability Company with offices at 1975 E. Court Street, Kankakee, Illinois 60901 (collectively, the "Parties").

**PREAMBLE**

WHEREAS, City is a Home Rule Illinois Municipal Corporation under and by virtue of the Constitution and laws of the State of Illinois; and

WHEREAS, City desired to increase the number of retail businesses in City that generate Retailers' Occupation Tax; and

WHEREAS, Developer is willing to utilize its particular skills and abilities to attract new retail businesses ("new retailers") to City; and

WHEREAS, the attraction of new retail businesses to City will stimulate local commercial activity, and the increase in the Retailers' Occupation Tax derived therefrom will enhance the tax base and the economic vitality of City; and

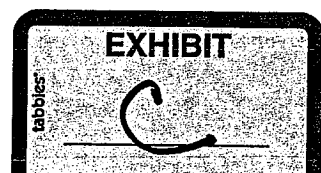
WHEREAS, under this agreement City will retain a portion of new tax revenue generated from sales made by the new retail businesses attracted to City by Developer; and

WHEREAS, under this agreement City will disburse a portion of such incremental sales tax to the new retailers as an incentive to locate in City; and

WHEREAS, the amount of sales tax distributable to City from the Local Government Tax Fund attributable to sales taxes remitted to the Illinois Department of Revenue by the new retailers from sales within City (hereinafter sometimes referred to as the "Local Share") will be one percent (1%) of the total selling price of goods sold; and

WHEREAS, as an economic incentive for Developer to attract new retail businesses to City, Developer and City have agreed to share in the benefits realized by City as a result of the new retailers' sales and other activities within City; and

WHEREAS, City is entering into this Agreement in the exercise of its Home Rule and other powers and authority.





NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BE IT AGREED AS FOLLOWS:

SECTION 1. INCORPORATION OF PREAMBLE AND EXHIBITS

That the Preamble to this Agreement is hereby declared to be the findings of the Parties and that said Preamble and all exhibits, if any, referred to in the Preamble and this Agreement are incorporated herein as if fully set forth in this Section 1.

SECTION 2. CONDITIONS PRECEDENT TO THE UNDERTAKING ON THE PART OF CITY

All undertakings on the part of City pursuant to this Agreement are subject to the satisfaction of the following conditions by Developer on or before the date of the initial incentive payment by City provided for in Section 3 below, or as otherwise specifically hereinafter stated:

- A. Demonstration that in circumstances where Developer is acting as retail order acceptance agent for new retailer, Developer has leased, purchased, or otherwise arranged for the use of property located within the corporate limits of City for the purpose of facilitating any sales herein contemplated. Where a retailer will act as retail order acceptor, that retailer has leased, purchased, or otherwise arranged for the use of property located within the corporate limits of City for the purpose of facilitating any sales herein contemplated.
- B. Prior to all disbursements by City to Developer, Developer shall cause to be delivered to City, on a monthly basis, a copy of the Illinois Retailers' Occupation Tax ("Sales Tax") returns and/or other documentation submitted by the new retailers to the Illinois Department of Revenue (hereinafter "IDOR"), which details the amounts of sales Sales Taxes that were paid by the new retailers to IDOR with respect to sales made within City. To maintain confidentiality, Developer may remove the names of suppliers or customers from the copies of documents which are provided to City. Upon written request by City, Developer shall provide City, or cause City to be provided, with an appropriate authorization addressed to and in a form satisfactory to IDOR authorizing IDOR to release to City all gross revenue and Sales Tax information submitted by the new retailers to IDOR. Additionally, in the event that IDOR does not make available to City said documentation, upon request of City, Developer shall provide City, or cause City to be provided, with alternative documentation which details the amount of said Sales Taxes that were collected and paid by the new retailers to IDOR.

- C. Developer will make a good faith effort to ensure that the new retailers conduct the activities to be performed by them in City in such a manner that they will at all times comply with the terms and provisions of any and all statutes and regulations issued by IDOR that apply to such activities.
- D. With regard to each new retailer Developer attracts to City, Developer shall provide City with a report indicating: (1) The name of the new retailer, and (2) the trade name to be used by the new retailer in City, and (3) a description of the trade or business in which the new retailer intends to engage in City, including a description of the goods sold, and (4) the address at which the new retailer intends to make such sales, and (5) a statement signed by Developer and the new retailer affirming that the new retailer does not currently engage in making retail sales from locations within the City or the State of Illinois.
- E. If within thirty (30) days of receiving a report from Developer, as provided for in paragraph D immediately above, identifying a particular new retailer and describing its proposed activities in City, City determines that association with such new retailer, its owners or its proposed activities brings dishonor upon City, or that such new retailer's expansion into City will cause an existing City retailer material harm, City shall notify Developer in writing that such new retailer is found "not acceptable" under the terms of this Agreement and the specific reasons for such finding. Developer shall have a period of sixty (60) days to provide rebuttal evidence to City challenging the facts supporting the finding. City shall consider the totality of the circumstances, including any rebuttal evidence provided by Developer or the new retailer, and make a final determination as to the acceptability of the new retailer within sixty (60) days following the receipt of a written request for reconsideration. City shall have sole responsibility for determining whether any particular new retailer is acceptable under this program. Notwithstanding the forgoing sentence, City shall not unreasonably deny participation and must clearly articulate the reasons for its findings. Upon a final determination that a new retailer is not acceptable, and if requested, such findings are upheld following reconsideration by City, such new Retailer shall be excluded from the provisions of Section 3 and no disbursements shall be made to Developer related to such unacceptable new retailer's sales.

SECTION 3. UNDERTAKINGS ON THE PART OF CITY UPON SATISFACTION BY DEVELOPER OF ALL CONDITIONS HEREIN STATED

- A. On a monthly basis and after receipt of the Local Share from the State, City shall disburse to Developer eight-five percent (85%) of the Local Share attributable to sales made within City by the new retailers. The Parties acknowledge the relevant monthly return periods shall mean the month in

which sales are made, despite the fact that the returns to be filed for each monthly return period are due on the twentieth (20<sup>th</sup>) day of the following month. The Parties further acknowledge the State of Illinois may distribute the Local Share to City sometimes as much as sixty (60) days following the receipt of the return and payment by the new retailers. Therefore, the Parties agree that the retention of the Local Share by City and the disbursement to Developer may necessarily fall outside the calendar year in which the sales were consummated.

- B. City shall begin such disbursements by retaining its portion of the Local Share, after which City shall make such disbursements to Developer within twenty-one (21) days following the receipt by City of the Local Share of the previous month's Sales Tax revenue received from IDOR which has been generated as a result of sales by the new retailers.
- C. During the terms of this Agreement, City will cause to be created for accounting purposes a separate line item to be known as the "City Tax Incentive MTS Consulting Account" (the "Fund"). The Local Share shall be accounted for in said Fund.
- D. Any amounts paid into the Fund over an above the amount required to be paid to Developer hereunder may be transferred by City to its general or other funds without any restriction hereunder. Until such time as this Agreement terminates, City agrees that it will not take any action or omit to take any action that will affect the continued existence of the Fund or the availability of the Fund to pay Developer.
- E. In the event that any copies of tax returns which have been submitted to City are amended by the new retailers, Developer agrees to promptly forward, or cause to be forwarded, a photocopy of such amended tax returns to City, clearly identifying them as an amendment of a tax return previously submitted to City.
- F. Nothing in this Agreement shall be construed as to create an obligation or guarantee on the part of Developer as to City's monthly or yearly distribution amount.

#### SECTION 4. AUDIT - RECONILIATION

Each incentive payment by City to Developer shall be accompanied by a statement executed by the City Treasurer or Treasurer's designee, setting forth the calculations of such payment. Developer shall have thirty (30) days following the receipt of said payment to contest any of the calculations or information contained in said statements. In the event that Developer shall initiate any such contest, it must be made by written notice to City. If such contest shows that the amount paid to Developer was less or more than the amount that should have been paid to Developer, either City shall pay to Developer the balance of such amount due within

thirty (30) days of the completion of such contest, or if Developer has been paid more than the amount that should have been paid, then Developer shall reimburse City within thirty (30) days of the completion of such contest, provided that in the event new retailer files an amended tax return as contemplated in Section 3 (E), which amended return is approved by IDOR, then in that event, the following month's disbursement to Developer shall be adjusted accordingly.

#### SECTION 5. CONFIDENTIALITY

The Parties acknowledge that the information contained in any tax return (including, without limitation, tax returns filed by Developer and the new retailers) and report made by Developer is confidential information proprietary to Developer and the new retailer(s) and agree that to the fullest extent permitted by law, all documents, including tax returns, and information provided to City, its agents and representatives pursuant to or with regard to the provisions of this Agreement, shall not be released or made available to any third person, corporation, organization or association without order of court or the prior approval of the new retailers or Developer. City shall offer Developer and the new retailers the opportunity to defend any claim made by any third party against City for release of such documents or information.

#### SECTION 6. TERM

This Agreement shall remain in full force for a period of ten (10) years beginning with the effective date indicated herein ("Initial Term"). With respect to each new retailer, City shall make the monthly disbursements to Developer contemplated herein for a period of time ending upon the earlier of the following occurrences: (1) the new retailer discontinues making retail sales in City for a period of twelve (12) months, or (2) one hundred twenty (120) monthly disbursements have been paid to Developer. The rights, responsibilities and liabilities of the Parties under this Agreement shall be extinguished upon the termination of this Agreement except for any obligations that accrue prior to such termination. With respect to the previous sentence, City's obligation to continue the payments to Developer shall survive the termination of this Agreement with respect to any new retailer whose first retail sales from a City location were made prior to the termination of this Agreement. Developer's obligations to City related to such new retailer shall likewise continue. Upon the conclusion of the Initial Term, the Parties, upon mutual consent, may elect to extend the rights, duties and obligations under this Agreement for an additional period of ten (10) years beginning with the day following the completion of the Initial Term.

#### SECTION 7. REMEDIES

In the event of a 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. Upon a breach of this Agreement and following the expiration of the cure period described above, the non-breaching party may take whatever

action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation set forth in this Agreement. The failure of any Party 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, by the same shall continue in full force and effect.

#### SECTION 8. LIABILITY

- A. The sole source of funds for payments to either Party under this Agreement shall be funds which consist of that portion of the Sales Taxes solely generated from sales by the new retailers in City which are paid from the Local Governmental Tax Fund to City. Developer may not compel any exercise of taxing authority by City to make payments provided for hereunder. The provisions of this Agreement do not constitute an indebtedness or a loan of credit of either Party within the meaning of any constitutional or statutory provision.
- B. The Parties acknowledge and agree that (i) in no event shall any individual, partner, member, shareholder, owner, officer, director, employee, affiliate, beneficiary, or elected or appointed public official of either Party, including individuals who are members of the group constituting the corporate authorities of City and entering into this Agreement in their corporate capacities as members of such group, or its affiliates, and with respect to Developer, be personally liable to the other Party for any judgments for monetary damages, payments, obligations or performance due under this Agreement, or any breach or failure of performance of either Party hereunder, and (ii) that the sole recourse for payment or performance of the obligations hereunder shall be against the Parties themselves and each of their respective assets and not against any other person, except for such liability as may be expressly assumed by an assignee pursuant to an assignment of, or pursuant to, this Agreement in accordance with its terms hereof.

#### SECTION 9. APPROPRIATIONS/BUDGET

To the extent required by law, for each year during the term of this Agreement, City hereby agrees that it will budget for and appropriate funds necessary to satisfy its obligations hereunder. Such appropriation shall be a part of City's annual appropriations ordinance, adopted in accordance with 65 ILCS 5/8-11-20, or as part of City's annual budget adopted in accordance with 65 ILCS 5/8-11-20, as the case may be. City shall make any appropriation necessary for the year that the Agreement is entered into by means of a supplemental appropriation under 65 ILCS 5/8-11-20, if any as necessary. All references to the provisions in 65 ILCS 5/8-11-20 are to provisions as in effect now and as hereafter amended.

## SECTION 10. LITIGATION

Neither City nor Developer, nor their respective successors and assigns, shall challenge the legality or enforcement or any recital, provision or covenant of this Agreement. In the event any other person or entity attempts to enjoin or otherwise challenge the validity of any recital, provision or covenant of this Agreement, City agrees to vigorously defend this Agreement and not to take a position adverse to enforcement of the same. Developer reserves the right, at its sole option, to petition to intervene in any such action or proceeding and to participate, at its sole costs, in the defense of any claim against City which challenges the legality or enforceability of any recital, provision or covenant of this Agreement.

## SECTION 11. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Disputes between the Parties arising under this Agreement shall be settled using binding arbitration procedures with expenses to be split equally between City and Developer.

## SECTION 12. AMENDMENT

This Agreement may be amended only by the mutual consent of the Parties, or their successors and assigns, by a written instrument specifically referencing this Agreement.

## SECTION 13. NOTICES

All notices, elections and other communications between the Parties shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, or delivered personally, to the Parties at the following addresses as the Parties may, by notice, designate:

If to City:

City of Kankakee  
Attention: Mayor  
385 E. Oak Street  
Kankakee, Illinois 60901

With a copy to:

City of Kankakee  
Attention: City Comptroller  
385 E. Oak Street  
Kankakee, Illinois 60901

And

If to Developer:

MTS Consulting, LLC  
Attention: President  
1975-E. Court Street  
Kankakee, Illinois 60901

With a copy to:

MTS Consulting, LLC  
Attention: CEO  
640 Pearson Street  
Des Plaines, Illinois 60016

Notices shall be deemed received on the fourth (4<sup>th</sup>) business day following deposit in the U.S. Mail, if given by certified mail as aforesaid, and upon receipt or refusal, if personally delivered.

#### SECTION 14. EFFECTIVE DATE

This Agreement shall be effective on February 3, 2003.

#### SECTION 15. MUTUAL ASSISTANCE AND CONSENTS

The Parties agree to do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms of this Agreement. In the event that any Party to this Agreement is required to grant its consent or approval to the other Party to this Agreement in connection with any of the terms and provisions of this Agreement, such consent or approval shall not be unreasonably withheld.

#### SECTION 16. SEVERABILITY

If any provision, covenant or portion of this Agreement is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement.

#### SECTION 17. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, negotiations and exhibits and is full integration of the entire agreement of the Parties.

#### SECTION 18. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. Provided, however, that without the consent of

City, which shall not be unreasonably withheld, Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part other than in connection with a transfer of all or part of the business of Developer to which it pertains.

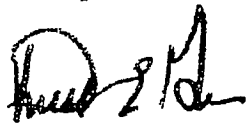
SECTION 19. APPROVALS

City hereby represents that it has obtained all authorizations and approvals, including, without limitation, the enactment of ordinances and resolutions, if applicable, which are necessary to enable City to comply with the terms and provisions of this Agreement and perform its obligations hereunder.

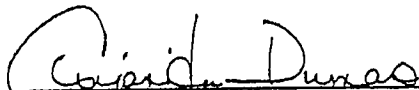


IN WITNESS WHEREOF, the Parties have executed this Agreement  
this 3<sup>rd</sup> day of February, 2003.

City of Kankakee, an Illinois Home Rule  
Municipal Corporation,

By:   
Its Mayor, Donald Green

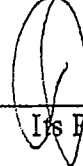
ATTEST:

  
City Clerk

MTS Consulting, LLC

By:   
Its CEO, David S. Porush, Esq.

MTS Consulting, LLC

By:   
Its President, Benjamin M. Klein

**AMENDMENT TO**  
**ECONOMIC INCENTIVE AGREEMENT**  
**BETWEEN THE CITY OF KANKAKEE AND**  
**MTS CONSULTING, LLC**

This AMENDMENT TO ECONOMIC INCENTIVE AGREEMENT (the "Agreement") is entered into this 1<sup>st</sup> day of April, 2006, by and between the City of Kankakee ("City"), an Illinois Home Rule Municipal Corporation, and MTS Consulting, LLC ("MTS"), an Illinois limited liability company with offices at 555 South Schuyler, Kankakee, Illinois 60901 (collectively, the "Parties").

**PREAMBLE**

WHEREAS, the City and MTS have previously entered into an agreement whereby the City reimburses a percentage of sales tax generated by companies operating out of MTS's Kankakee office. Said agreement is dated the 3<sup>rd</sup> day of February, 2003; and

WHEREAS, the State of Illinois Department of Revenue (IDOR) has changed the reporting of sales tax information to municipalities from monthly reports to quarterly reports; and

WHEREAS, the Parties desire to adopt a mutually acceptable alternative to making quarterly payments.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BE IT AGREED AS FOLLOWS:

- A. Effective retroactive to March 1, 2006, MTS will provide to the City, each month, a spreadsheet identifying each client (using the existing client number system to protect confidentiality), and identifying the taxable sales, tax collected, discount applied, anticipated amount due to the City and the anticipated amount due to MTS. This spreadsheet shall provide the information to the City which will allow the City to calculate monthly payments to MTS. MTS shall provide this spreadsheet no later than the last business day of the tax return filing month.
- B. Following the receipt of the spreadsheet, the City shall process an estimated monthly payment to the Developer based upon Developer's estimate for the respective month, limited in amount to the monthly average of rebates confirmed with the IDOR reports during the prior quarter.

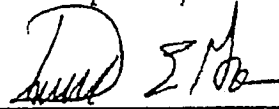
C. Upon the City's receipt of the quarterly report from the IDOR, the City will reconcile the state provided data with the MTS provided data. To the extent that there are any discrepancies, they will be rectified as follows:

a. ~~In the event an amount provided to the City by MTS is less than the amount provided via the quarterly report provided by the IDOR, the City shall provide to MTS the amount underpaid as an addition to the payment next made by the City to MTS.~~

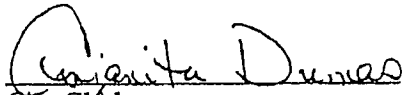
b. In the event an amount provided to the City by MTS is more than the amount provided via the quarterly report provided by the IDOR, the City shall withhold the amount overpaid reflected on the payment next made by the City to MTS.

IN WITNESS WHEREOF, the Parties have executed this Agreement this 1<sup>st</sup> day of April, 2006.

City of Kankakee, an Illinois Home  
Rule Municipal Corporation,

By:   
Its Mayor, Donald E. Green

ATTEST:

  
City Clerk

MTS Consulting, LLC

By:   
Its CEO, David S. Porush

**Governmental Activities – Statement of Activities Highlights**

The City posted a decrease in net assets from governmental activities before transfers of nearly \$0.7 million, and an increase of nearly \$0.8 million after transfers. There were several major shifts in both revenues and expenses that contributed to the change in net assets.

Sales tax revenues contribute significantly (nearly 42% of current year revenues) to the City's revenues, due primarily to a sales tax sharing incentive program that the City implemented in fiscal 2000. With this program, the City returns a substantial portion of the sales tax generated from the program to the program participants as an economic development incentive. Gross sales taxes decreased \$3.3 million from the prior year as a result of the national economic slowdown. At the same time, sales tax incentives decreased \$2.4 million. Overall, net sales tax revenue decreased \$0.9 million. The following table illustrates the change in gross and net sales tax revenue over the past nine fiscal years –

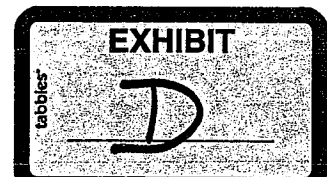
**Table 3: Sales taxes and incentives**

<u>Fiscal Year</u>	<u>Gross Amount Received</u>	<u>less Incentives Paid</u>	<u>Net Sales Tax</u>	<u>\$ Change</u>	<u>Percent Change</u>
2002	4,578,964	1,588,129	2,990,835	747,278	33.3%
2003	8,881,076	5,237,343	3,643,733	652,898	21.8%
2004	14,998,857	10,701,236	4,297,621	653,888	17.9%
2005	22,351,192	17,066,791	5,284,401	986,780	23.0%
2006	25,107,826	18,938,693	6,169,133	884,732	16.7%
2007	23,695,013	17,678,395	6,016,618	(152,515)	-2.5%
2008	26,611,558	20,109,951	6,501,607	484,989	8.1%
2009	24,419,114	17,617,181	6,801,933	300,326	4.6%
2010	21,098,621	15,210,630	5,887,991	(913,942)	-13.4%

Other major shifts included an increase of \$3.6 million in Capital Grants/Contributions, a 487% increase over the prior fiscal year, largely the result of the dedication of the Indian Meadows Subdivision improvements to the City; an increase of nearly \$0.7 million in property tax revenues, most of the increase due to required employer contributions to pensions (police, fire, and IMRF); the decline in revenue of over \$0.6 million in Operating Grants/Contributions as grant funding sources evaporated; a decline in Other Taxes of \$0.5 million, also from the national economic conditions; an decrease of \$0.4 million in Highways and streets expenses as a result of the City's continued investment in infrastructure; an increase of nearly \$1.9 million in Public Safety expenses, most of that from normal salary increases and a large increase in the actuarially required pension contributions to the public safety (Police and Fire) pension funds; a decline of nearly \$1.2 million in Public Works expenses as fuel prices eased a bit and the City was able to contract with a trash transfer station that was geographically much closer to the City in order to further reduce transportation costs; and a decline of nearly \$0.6 million in Community Development expenses as the City's grant projects slowed because of the reduction in grant revenues.

The cash transfer from the Sewer Utility came at a very important time. The City would have had a much more negative financial outcome if the Sewer Utility had not been able to provide the needed cash infusion.

The following charts graphically illustrate the composition of the City's revenues and expenses from governmental activities –



**ECONOMIC DEVELOPMENT AGREEMENT**

**BETWEEN THE CITY OF KANKAKEE AND**

**INSPIRED DEVELOPMENT, LLC**

This agreement is entered into this 21<sup>st</sup> day of August, 2000, by and between the City of Kankakee ("City"), an Illinois Home Rule Municipal Corporation, and Inspired Development, LLC (referred to hereinafter as the "Developer"), an Illinois Limited Liability Company with offices at 150 N. Schuyler Avenue, Suite 1009, Kankakee, Illinois 60901, (collectively "Parties").

**PREAMBLE**

Whereas, City is a Home Rule Illinois Municipal Corporation under and by virtue of the Constitution and laws of the State of Illinois; and

Whereas, City desires to increase the number of retail businesses in Kankakee that generate Retailer's Occupation Tax; and

Whereas, Developer is willing to utilize its particular skills and abilities to attract new retail businesses ("new retailers") to the City of Kankakee; and

Whereas, the attraction of new retail businesses to Kankakee will stimulate local commercial activity, and the increase in the Retailer' Occupation Tax derived therefrom will enhance the tax base and the economic vitality of City; and

Whereas, under this agreement City will retain a portion of new tax revenue generated from sales made by the new retail businesses attracted to City by Developer; and

Whereas, under this agreement City will disburse a portion of such incremental sales tax to the Developer; and

Whereas, Developer will disburse the economic benefit of the majority of such incremental sales tax to the new retailers as an incentive to locate in Kankakee; and

Whereas, the amount of sales tax distributable to the City from the Local Government Tax Fund attributable to Sales Taxes remitted to the Illinois Department of Revenue by the new retailers from sales within Kankakee (hereinafter sometimes referred to as the "Local Share") will be one percent (1%) of the total selling price of products sold; and

Whereas, as an economic incentive for Developer to attract new retail businesses to Kankakee, Developer and City have agreed to share in the benefits realized by City as a result of the new retailer's sales and other activities within City; and

Whereas, the City is entering into this Agreement in the exercise of its Home Rule and other powers and authority.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BE IT AGREED AS FOLLOWS:



## SECTION 1. INCORPORATION OF PREAMBLE AND EXHIBITS

That the Preamble to this Agreement is hereby declared to be the findings of the Parties and that said Preamble and all exhibits, if any, referred to in the Preamble and this Agreement are incorporated herein as if fully set forth in this Section 1.

## SECTION 2. CONDITIONS PRECEDENT TO THE UNDERTAKING ON THE PART OF THE CITY

All undertakings on the part of City pursuant to this Agreement are subject to the satisfaction of the following conditions by Developer on or before the date of the initial incentive payment by City provided for in Section 3 below, or as otherwise specifically hereinafter stated:

- A. Demonstration that in circumstances where Developer is acting as retail order acceptance agent for new retailer, Developer has leased, purchased, or otherwise arranged for the use of property located within the corporate limits of City for the purpose of facilitating any sales herein contemplated. Where retailer will act as retail order acceptor, that retailer has leased, purchased, or otherwise arranged for the use of property located within the corporate limits of City for the purpose of facilitating any sales herein contemplated.
- B. Prior to all disbursements by City to Developer, Developer shall cause to be delivered to City, on a monthly basis, a copy of the Illinois Retailer' Occupation Tax ("Sales Tax") returns and/or other documentation submitted by the new retailers to the Illinois Department of Revenue (hereinafter "IDOR"), which details the amounts of said Sales Taxes that were paid by the new retailers to IDOR with respect to sales made within Kankakee. To maintain confidentiality, Developer may remove the names of suppliers or customers from the copies of documents which are provided to City. Upon written request by City, Developer shall provide City, or cause City to be provided, with an appropriate authorization addressed to and in a form satisfactory to IDOR authorizing IDOR to release to City all gross revenue and Sales Tax information submitted by the new retailers to IDOR. Additionally, in the event that IDOR does not make available to City said documentation, upon the request of City, Developer shall provide City, or cause City to be provided, with alternative documentation which details the amount of said Sales Taxes that were collected and paid by the new retailers to IDOR.
- C. Developer will make a good faith effort to ensure that the new retailers conduct the activities to be performed by them in Kankakee in such a manner that they will at all times comply with the terms and provisions of any and all statutes and regulations issued by the IDOR that apply to such activities.
- D. With regard to each new retailer Developer attracts to the City of Kankakee, Developer shall provide City with a report indicating: (1) The name of the new retailer, and (2) the trade name to be used by the new retailer in Kankakee, and (3) a description of the trade or business in which the new retailer intends to engage in Kankakee, including a description of the products sold, and (4) the address at which the new retailer intends to make such sales, and (5) a statement signed by the Developer and retailer affirming that the retailer does not currently engage in making retail sales from locations within Kankakee, Illinois.
- E. If within 30 days of receiving a report from Developer, as provided for in paragraph D immediately above, identifying a particular new retailer and describing its proposed activities in Kankakee, the City determines that association with such retailer, its owners or its proposed activities brings dishonor upon City, or that such retailer's expansion into Kankakee will cause

an existing Kankakee retailer material harm, City shall notify Developer in writing that such retailer is found "not acceptable" under the terms of this agreement and the specific reasons for such finding. Developer shall have a period of 60 days to provide rebuttal evidence to City challenging the facts supporting the finding. City shall consider the totality of the circumstances, including any rebuttal evidence provided by Developer or new retailer, and make a final determination as to the acceptability of new retailer within 60 days following the receipt of a written request for reconsideration. City shall have sole responsibility for determining whether any particular retailer is acceptable under this program. Notwithstanding the forgoing sentence, City shall not unreasonably deny participation and must clearly articulate the reasons for its findings. Upon a final determination that a retailer is not acceptable, and if requested, such findings are upheld following reconsideration by City, such retailer shall be excluded from the provisions of Section 3 and no disbursements shall be made to Developer related to such unacceptable retailer's sales.

SECTION 3. UNDERTAKINGS ON THE PART OF THE CITY UPON SATISFACTION BY THE DEVELOPER OF ALL THE CONDITIONS HEREIN STATED

- A. On a monthly basis and after receipt of the Local Share from the State, City shall disburse to Developer eighty-five percent (85%) of the Local Share attributable to sales made within Kankakee by the new retailers. The Parties acknowledge the relevant monthly return periods shall mean the month in which sales are made, despite the fact that the returns to be filed for each monthly return period are due on the twentieth (20<sup>th</sup>) day of the following month. The Parties further acknowledge the State of Illinois may distribute the Local Share to City sometimes as much as sixty (60) days following the receipt of the return and payment by the new retailers. Therefore, the Parties agree that the retention of the Local Share by City and the disbursement to Developer may necessarily fall outside the calendar year in which the sales were consummated.
- B. The City shall begin such disbursements by retaining its portion of the Local Share, after which the City shall make such disbursements to the Developer within twenty-one (21) days following the receipt by the City of the Local Share of the previous month's Sales Tax revenue received from IDOR which has been generated as a result of sales by the new retailers.
- C. During the term of this Agreement, the City will cause to be created for accounting purposes a separate line item to be known as the "City Tax Incentive Inspired Development Account" (the "Fund"). The Local Share shall be accounted for in said Fund.
- D. Any amounts paid into the Fund over and above the amount required to be paid to Developer hereunder may be transferred by City to its general or other funds without any restriction hereunder. Until such time as this Agreement terminates, the City agrees that it will not take any action or omit to take any action that will affect the continued existence of the Fund or the availability of the Fund to pay the Developer.
- E. In the event that any copies of tax returns which have been submitted to City are amended by the new retailers, Developer agrees to promptly forward, or cause to be forwarded, a photocopy of such amended tax returns to the City, clearly identifying them as an amendment of a tax return previously submitted to the City.
- F. Nothing in this agreement shall be construed to create an obligation or guarantee on the part of Developer as to City's monthly or yearly distribution amount.

#### SECTION 4. AUDIT - RECONCILIATION

Each incentive payment by City to Developer shall be accompanied by a statement executed by the City Treasurer or the Treasurer's designee, setting forth the calculations of such payment. Developer shall have thirty (30) days following the receipt of said payment to contest any of the calculations or information contained in said statements. In the event that Developer shall initiate any such contest, it must be made by written notice to City. If such contest shows that the amount paid to Developer were less or more than the amount that should have been paid to Developer, either City shall pay to Developer the balance of such amount due within the thirty (30) days of the completion of such contest, or if Developer has been paid more than the amount that should have been paid, then Developer shall reimburse the City within thirty (30) days of the completion of such contest; provided that in the event the new retailer(s) files an amended tax return as contemplated in Section 3 (E), which amended return is approved by the IDOR then in that event, the following months' disbursement to the Developer shall be adjusted accordingly.

#### SECTION 5. CONFIDENTIALITY

The Parties acknowledge that the information contained in any tax return (including, without limitation, tax returns filed by Developer and the new retailers) and report made by Developer is confidential information proprietary to Developer and the new retailer(s) and agree that to the fullest extent permitted by law, all documents, including tax returns, and information provided to City, its agents and representatives pursuant to or with regard to the provisions of this Agreement, shall not be released or made available to any third person, corporation, organization or association without order of court or the prior approval of the new retailers or Developer. City shall offer Developer and the new retailers the opportunity to defend any claim made by any third Party against City for release of such documents or information.

#### SECTION 6. TERM

This Agreement shall remain in full force for a period of fifteen years beginning with the effective date indicated herein. With respect to each new retailer, City shall make the monthly disbursements to Developer contemplated herein for a period of time ending upon the earlier of the following occurrences: (1) the retailer discontinues making retail sales in Kankakee for a period of twelve months, or (2) one-hundred-twenty monthly disbursements have been paid to Developer. The rights, responsibilities and liabilities of the Parties under this Agreement shall be extinguished upon the termination of this Agreement except for any obligations that accrue prior to such termination. With respect to the previous sentence, the City's obligation to continue the payments to Developer shall survive the termination of this Agreement with respect to any new retailer(s) whose first retail sales from a Kankakee location were made prior to the termination of this Agreement. Developer's obligations to City related to such new retailer(s) shall likewise continue.

#### SECTION 7. REMEDIES

In the event of a 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. Upon a breach of this Agreement and following the expiration of the cure period described above, the non-breaching Party may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation set forth in this Agreement. The failure of any Party 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 8. LIABILITY

- A. The sole source of funds for payments to either Party under this Agreement shall be funds which consist of that portion of the Sales Taxes solely generated from sales by the new retailers in Kankakee which are paid from the Local Governmental Tax Fund to the City. The Developer may not compel any exercise of taxing authority by the City to make payments provided for hereunder. ~~The provisions of this Agreement do not constitute an indebtedness or a loan of credit of either Party within the meaning of any constitutional or statutory provision.~~
- B. The Parties acknowledge and agree that (i) in no event shall any individual, partner, member, shareholder, owner, officer, director, employee, affiliate, beneficiary, or elected or appointed public official of either Party, including individuals who are members of the group constituting the corporate authorities of the City and entering into the Agreement in their corporate capacities as members of such group, or its affiliates, and with respect to Developer, be personally liable to the other Party for any judgements for monetary damages, payments, obligations or performance due under this Agreement, or any breach or failure of performance of either Party hereunder and (ii) that the sole recourse for payment or performance of the obligations hereunder shall be against the Parties themselves and each of their respective assets and not against any other person, except for such liability as may be expressly assumed by an assignee pursuant to an assignment of, or pursuant to, this Agreement in accordance with its terms hereof.

#### SECTION 9. APPROPRIATIONS/BUDGET

To the extent required by law, for each year during the term of this Agreement, City hereby agrees that it will budget for and appropriate funds necessary to satisfy its obligations hereunder. Such appropriation shall be a part of City's annual appropriations ordinance, adopted in accordance with 65 ILCS 5/8-11-20, or as part of City's annual budget adopted in accordance with 65 ILCS 5/8-11-20, as the case may be. City shall make any appropriation necessary for the year that the Agreement is entered into by means of a supplemental appropriation under 65 ILCS 5/8-11-20, if any as necessary. All references to provisions in the 65 ILCS 5/8-11-20 are to provisions as in effect now and as hereafter amended.

#### SECTION 10. LITIGATION

Neither City nor Developer, nor their respective successors and assigns, shall challenge the legality or enforcement or any recital, provision or covenant of this Agreement. In the event any other person or entity attempts to enjoin or otherwise challenge the validity of any recital, provision or covenant of this Agreement, City agrees to vigorously defend this Agreement and not to take a position adverse to enforcement of the same. Developer reserves the right, at its sole option, to petition to intervene in any such action or proceeding and to participate, at its sole costs, in the defense of any claim against City which challenges the legality or enforceability of any recital, provision or covenant of this Agreement.

#### SECTION 11. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Disputes between the parties arising under this Agreement shall be settled using binding arbitration procedure with expenses to be split equally between City and Developer.

#### SECTION 12. AMENDMENT

This Agreement may be amended only by the mutual consent of the Parties, or their successors and assigns, by a written instrument specifically referencing this Agreement.

SECTION 13. NOTICES

All notices, elections and other communications between the Parties shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, or delivered personally, to the Parties at the following addresses, or at such other addresses as the Parties may, by notice, designate:

If to the City:                   City of Kankakee  
  Attention: Mayor  
  385 E. Oak Street  
  Kankakee, Illinois 60901

With a copy to:                   City of Kankakee  
  Attention: City Comptroller  
  385 E. Oak Street  
  Kankakee, Illinois 60901

And

If to Developer:                 Inspired Development, LLC  
  Attention: President  
  150 North Schuyler, Suite 1009  
  Kankakee, Illinois 60901

Notices shall be deemed received on the fourth business day following deposit in the U.S. Mail, if given by certified mail as aforesaid, and upon receipt or refusal, if personally delivered.

SECTION 15. EFFECTIVE DATE

This Agreement shall be effective on September 1, 2000.

SECTION 16. MUTUAL ASSISTANCE AND CONSENTS

The Parties agree to do all things necessary or appropriate to carry out the terms and provision of this Agreement and to aid and assist each other in carrying out the terms of this agreement. In the event that any Party to this agreement is required to grant its consent or approval to the other Party to this Agreement in connection with any of the terms and provisions of this Agreement, such consent or approval shall not be unreasonably withheld.

SECTION 17. SEVERABILITY

If any provision, covenant or portion of this Agreement is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement.

SECTION 18. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, negotiations and exhibits and is full integration of the entire agreement of the Parties.

SECTION 19. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. Provided, however, that without the consent of the City, which shall not be unreasonably withheld, the Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or

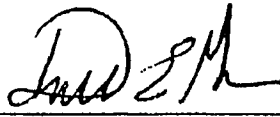
in part other than in connection with a transfer of all or part of the business of Developer to which it pertains.

SECTION 20. APPROVALS

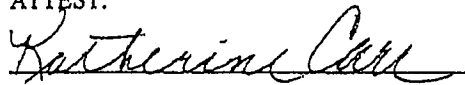
The City hereby represents that it has obtained all authorizations and approvals, including, without limitation, the enactment of ordinances and resolutions, if applicable, which are necessary to enable the City to comply with the terms and provisions of this Agreement and perform its obligations hereunder.

IN WITNESS WHEREOF, the Parties have executed this agreement this 21st day of August, 2000.

City of Kankakee, an Illinois Home Rule  
Municipal Corporation,

By:   
Its Mayor, Donald Green

ATTEST:

  
City Clerk

Inspired Development, LLC

By: \_\_\_\_\_  
Its President, Patrick E. Fahey

AMENDMENT TO ECONOMIC DEVELOPMENT  
AGREEMENT BETWEEN THE CITY OF KANKAKEE  
AND INSPIRED DEVELOPMENT LLC

WHEREAS, the City of Kankakee and and Inspired Development LLC have entered into an economic development agreement dated August 21, 2000; and

WHEREAS, it is the desire of the parties hereto to extend said agreement for a term of an additional five (5) years in order that said agreement shall extend for a total of twenty (20) years pursuant to the terms of said agreement.

NOW, THEREFORE, IN MUTUAL CONSIDERATION OF THE FOREGOING AND FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:

1. The parties hereby agree to amend Section 6 of said existing agreement to provide that the agreement shall be for a term of twenty (20) years, effective as provided in said Section 6 of said agreement.

2. The amendment shall be effective on the date executed by the parties hereto.

Dated this 27<sup>th</sup> day of MAY, 2004.

City of Kankakee

Inspired Development LLC

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

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

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

ORDINANCE NO. 1861

AN ORDINANCE AUTHORIZING THE EXECUTION OF  
AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE  
OF CHANNAHON, WILL AND GRUNDY COUNTIES, ILLINOIS;

**SECTION 1: SIGNATURE AND ATTESTATION.** That the Village President, be and is hereby authorized and directed to execute on behalf of the Village of Channahon, an Economic Development Incentive Agreement between the Village of Channahon, Will and Grundy Counties, Illinois a Home Rule Illinois Municipal Corporation, and Minority Development Company, LLC. Which is substantially in the form attached hereto, marked Exhibit "1" and made a part hereof, and that the Village Clerk be and is hereby authorized and directed to attest to the President's signature.

**SECTION 2: SEVERABILITY.** Each Section and part thereof of this ordinance is deemed to be severable and should any court of competent jurisdiction thereof hold any section or part invalid or unconstitutional, such ruling shall not affect the validity or constitutionality of the remaining portions of this ordinance.

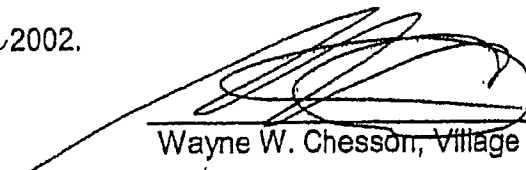
**SECTION 3: EFFECTIVE DATE.** That this ordinance shall be in full force and effect after its passage, approval and publication in pamphlet form as provided by law.

PASSED this 2<sup>nd</sup> day of December 2002, with 4 trustees voting aye, 0 trustees voting nay, 0 trustees abstaining, and with 0 trustees absent, the President not voting; said vote being: BAKER Aye, COOK Aye, FEENEY Aye, GRECO Aye, LYONS Aye, NASH Aye, and CHESSON not voting.



Eileen Clark, Village Clerk

APPROVED this 2<sup>nd</sup> day of December 2002.

  
Wayne W. Chesson, Village President

(SEAL)

ATTEST:

  
Eileen Clark, Village Clerk

EXHIBIT

F

tabbles

**ECONOMIC DEVELOPMENT AGREEMENT**  
**BETWEEN THE VILLAGE OF CHANNAHON AND**  
**MINORITY DEVELOPMENT COMPANY**

This Agreement is entered into this 2nd day of December, 2002, by and between the Village of Channahon ("Village"), an Illinois Home Rule Municipal Corporation, and Minority Development Company, LLC (referred to hereinafter as "MDC"), an Illinois limited liability company with offices at 1100 Jurie Boulevard, Suite 104, Oakbrook, Illinois 60523 (collectively "Parties").

**PREAMBLE**

WHEREAS, Village is a Home Rule Illinois Municipal Corporation under and by virtue of the Constitution and the laws of the State of Illinois; and

WHEREAS, Village desires to increase the number of retail businesses in Channahon that generate Retailer's Occupation Tax; and

WHEREAS, MDC is willing to utilize its particular skills and abilities to attract new retail business ("new retailers") to the Village of Channahon; and  
MDC

WHEREAS, the attraction of new retail businesses to Channahon will stimulate local commercial activity, and the increase in the Retailer' Occupation Tax derived therefrom will enhance the tax base and the economic vitality of Village; and

WHEREAS, MDC shall give first preference in hiring to residents of the Village; and

WHEREAS, MDC shall to the extent practicable obtain the necessary equipment and supplies from existing Channahon retailers; and

WHEREAS, under this Agreement, Village will retain a portion of new tax revenue generated from sales made by the new retail businesses attracted to Village by MDC; and

WHEREAS, under this Agreement, Village will disburse a portion of such incremental sales tax to MDC; and

WHEREAS, safeguards have been established to protect the legitimate business interests of existing Channahon retailers; and

WHEREAS, MDC will disburse a portion of such incremental sales tax to the new retailers as an incentive to locate in Channahon; and

WHEREAS, the amount of sales tax distributable to the Village from the Home Rule Municipal Retailers' Occupation Tax Fund and the Local Government Tax Fund attributable to

Sales Tax remitted to the Illinois Department of Revenue by the new retailers from sales to Illinois customers that are consummated within Channahon (hereinafter sometimes referred to as the "Local Share") is currently two percent (2%) of the total selling price of taxable products sold by the new retailers; and

WHEREAS, as an economic incentive for MDC to attract new retail businesses to Channahon, MDC and Village have agreed to share in the benefits realized by Village as a result of the new retailer's sales and other activities within Village; and

WHEREAS, the Village is entering into this Agreement in the exercise of its Home Rule and other powers and authority.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BE IT AGREED AS FOLLOWS:

SECTION 1. INCORPORATION OF PREAMBLE AND EXHIBITS

That the Preamble to this Agreement is hereby declared to be the findings of the Parties and that said Preamble and all exhibits, if any, referred to in the Preamble and this Agreement are incorporated herein as if fully set forth in this Section 1.

SECTION 2. CONDITIONS PRECEDENT TO THE UNDERTAKING ON THE PART OF THE VILLAGE

All undertakings on the part of Village pursuant to this Agreement are subject to the satisfaction of the following conditions by MDC on or before the date of the initial incentive payment by Village provided for in Section 3 below, or as otherwise specifically hereinafter stated:

- A. Demonstration that in circumstances where MDC is acting as retail order acceptance agent for new retailer, MDC has leased, purchased, or otherwise arranged for the use of property located within the corporate limits of Village for the purpose of facilitating any sales herein contemplated. Where retailer will act as retail order acceptor, that retailer has leased, purchased, or otherwise arranged for the use of property located within the corporate limits of Village for the purpose of facilitating sales herein contemplated.
- B. Prior to all disbursements by Village to MDC, MDC shall cause to be delivered to Village, on a monthly basis, a copy of the Illinois Retailer Occupation Tax ("Sales Tax") returns and/or other documentation submitted by the new retailer to the Illinois Department of Revenue (hereinafter "IDOR"), which details the amounts of said Sales Taxes that were paid by the new retailers to IDOR with respect to sales made within Channahon. To maintain confidentiality, MDC may remove the names of suppliers or customers from the copies of documents that are provided to Village. Upon written request by Village, MDC shall provide



Village, or cause Village to be provided, with an appropriate authorization addressed to and in a form satisfactory to IDOR authorizing IDOR to release to Village all gross revenue and Sales Tax information submitted by the new retailers to IDOR. Additionally, in the event that IDOR does not make available to Village said documentation, upon the request of Village, MDC shall provide Village, or cause Village to be provided, with alternative documentation which details the amount of said Sales Taxes that were collected and paid by the new retailers to IDOR.

- C. MDC will make a good faith effort to ensure that the new retailers conduct the activities to be performed by them in Channahon in such a manner that they will at all times comply with the terms and provisions of any and all statutes and regulations issued by the IDOR that apply to such activities.
- D. With regard to each new retailer MDC attracts to the Village of Channahon, MDC shall provide Village with a report indicating: (1) The name of the new retailer, and (2) the trade name to be used by the new retailer in Channahon and (3) a description of the trade or business in which the new retailer intends to engage in Channahon, including a description of the products sold, and (4) the address at which the new retailer intends to make such sales, and (5) a statement signed by MDC and retailer affirming that the retailer does not currently engage in making retail sales from locations within Channahon, Illinois.
- E. If within 30 days of receiving a report from MDC, as provided for in paragraph D immediately above, identifying a particular new retailer and describing its proposed activities in Channahon, the Village determines that association with such retailer, its owners or proposed activities brings dishonor upon Village, or that such retailer's expansion into Channahon will cause an existing Channahon retailer material harm, Village shall notify MDC in writing that such retailer is found "not acceptable" under the terms of this Agreement and the specific reasons for such finding. MDC shall have a period of 60 days to provide rebuttal evidence to Village challenging the facts supporting the finding. Village shall consider the totality of the circumstances, including any rebuttal evidence provided by MDC or new retailer, and make a final determination as to the acceptability of new retailer within 60 days following the receipt of a written request for reconsideration. Village shall have sole responsibility for determining whether any particular retailer is acceptable under this program. Upon a final determination that a retailer is not acceptable, and if requested, such findings are upheld following reconsideration by Village, such retailer shall be excluded from the provisions of Section 3 and no disbursements shall be made to MDC related to such unacceptable retailer's sales.
- F. MDC shall incorporate into each development contract it establishes with a prospective new retailer the following terms and conditions: (1) that the Village is an intended third party beneficiary of the contract, and (2) that the Village shall have rights against the new retailer equal to the rights of MDC in enforcing the

terms of the development contract, and (3) that the new retailer releases the Village against any potential claim of alleged wrongdoing of any kind by any employee, associate, or agent (whether disclosed or not) of MDC, and (4) that the new retailer is prohibited from entering into any Illinois Retailer's Occupation Tax or Use Tax sharing agreement with any other party, except that such retailer would not be prevented from opening a retail facility from which both sales and deliveries of those sales would be made and would not affect current sales in Channahon, during the term of the development contract, and (5) that the Village has final authority to determine eligibility to participate in the tax rebate program, and (6) that for the purpose of auditing the claimed sales subject to the tax rebate arrangement, the new retailer shall, upon written request and at a reasonable time and place, make available to MDC and the Village such business records as may be kept in the ordinary course of business and are necessary to facilitate verification of the accuracy of the information presented to MDC, the Village or the Illinois Department of Revenue and (7) that the new retailer shall indemnify and hold the Village harmless from and against all the Village's costs and expenses including reasonable attorney's fees and any award or judgment entered against the Village as a result of any action or cause of action against the Village which is result of an action brought by a non party to this agreement.

- G. MDC shall bond each officer, employee and agent of MDC. The coverage of such policy shall equal no less than 50% of the anticipated annual rebate for all new retailers accepted by the Village and then participating in this program.
- H. MDC shall escrow \$50,000.00 for the purpose of protecting the Village and MDC against unanticipated legal fees incurred in the defense of this Agreement against challenges made by persons other than MDC and the Village. MDC shall create the escrow by paying over to the escrow agent one-fourth of its income net of start-up and operating expense including federal and state income taxes until such time as the defense fund is fully funded. To the extent that the Village incurs costs and expenses, including reasonable attorneys fees, in the defense of the Agreement against challenges by non-parties to this Agreement, MDC shall pay over to the escrow agent up to one-half of its income generated subsequent to the filing of the suit (net of start-up and operating expenses including federal and state income taxes) until such time as the defense fund balance is once again restored to \$50,000.00. No expenses or costs, including attorney fees, will be incurred by the Village without MDC first receiving notice and an opportunity to discuss such expenses or costs before such costs or expenses are incurred by the Village. The Village and MDC shall work with the escrow agent to develop an Escrow Agreement on mutually agreeable terms.

SECTION 3. UNDERTAKINGS ON THE PART OF THE VILLAGE UPON SATISFACTION BY MDC OF ALL THE CONDITIONS HEREIN STATED.

- A. On a monthly basis, and after receipt of the Village's share of the Local sales tax from the State, Village shall disburse to MDC 85% of the Local Share attributable

to sales made within Channahon by the new retailers. The Parties acknowledge the relevant monthly return periods shall mean the month in which sales are made, despite the fact that the returns to be filed for each monthly return period are due on the twentieth (20th) day of the following month. The Parties further acknowledge the State of Illinois may distribute the Local Share to Village as much as sixty (60) days following the receipt of the return and payment by the new retailers. Therefore, the Parties agree that the retention of the Local Share by Village and the disbursement to MDC may necessarily fall outside the calendar year in which the sales were consummated.

- B. The Village shall begin such disbursements by retaining its portion of the Local Share, after which the Village shall make such disbursements to MDC within twenty-one (21) days following the receipt by the Village of the Local Share of the previous month's Sales Tax revenue received from IDOR which has been generated as a result of sales by the new retailers.
- C. During the term of this Agreement, the Village will cause to be created for accounting purposes a separate line item to be known as the [REDACTED] (the "Fund"). The Local Share shall be accounted for in said Fund.
- D. Any amounts paid into the Fund over and above the amount required to be paid to MDC hereunder may be transferred by Village to its general or other funds without any restriction hereunder. Until such time as this Agreement terminates, the Village agrees that it will not take any action or omit to take any action that will affect the continued existence of the Fund or the availability of the Fund to pay MDC.
- E. In the event that any copies of the tax returns which have been submitted to Village are amended by any of the new retailers, MDC agrees to promptly forward, or cause to be forwarded, a photocopy of such amended tax returns to the Village, clearly identifying them as an amendment of a tax return previously submitted to the Village. If necessary, payment to the Retailer shall be adjusted in the next or subsequent months as a result of the amended returns.
- F. Nothing in the Agreement shall be construed to create an obligation or guarantee on the part of MDC as to Village's monthly or yearly distribution amount.

#### SECTION 4. AUDIT-RECONCILIATION

Each incentive payment by Village to MDC shall be accompanied by a statement executed by the Village Treasurer or the Treasurer's designee, setting forth the calculations of such payment. MDC shall have forty five (45) days following the receipt of said payment to contest any of the calculations or information contained in said statements. In the event that MDC shall initiate any such contest, it must be made by written notice to Village. If such contest shows that the amount paid to MDC were less or more than the amount that should have been paid to MDC, either Village shall pay to MDC the balance of such amount due within thirty (30) days of the completion of such contest, or if MDC has been paid more than the amount that should have been paid, then MDC shall reimburse the Village within thirty (30) days of the completion of such contest; provided that in the event the new retailer(s) files an amended tax return as contemplated in Section 3 (E), which amended return is approved by the IDOR then in that event, the following months' disbursement to MDC shall be adjusted accordingly.

#### SECTION 5. CONFIDENTIALITY

The Parties acknowledge that the information contained in any tax return (including, without limitation, tax returns filed by MDC and the new retailers) and report made by MDC is confidential information proprietary to MDC and the new retailer(s) and agree that to the fullest extent permitted by law, all documents, including tax returns, and information provided to Village, its agents and representatives pursuant to or with regard to the provisions of this Agreement, shall not be released or made available to any third person, corporation, organization or association without order of court or the prior approval of the new retailers or MDC. Village shall offer MDC and the new retailers the opportunity to defend any claim made by any third party against Village for release of such documents or information. MDC and Retailer shall be responsible for reimbursing the Village for all of its costs and expenses related to opposing any such claim, including but not limited to the Village's reasonable attorney's fees and any monetary award or judgment against the Village. No expenses or costs, including attorney fees, will be incurred by the Village without MDC first receiving notice and an opportunity to discuss such expenses or costs before such costs or expenses are incurred by the Village.

#### SECTION 6. TERM

This Agreement shall remain in full force for a period of twenty years beginning with the effective date indicated herein. With respect to each new retailer, Village shall make the monthly disbursements to MDC contemplated herein for a period of time ending upon the earlier of the following occurrences; (1) the retailer discontinues making retail sales in Channahon for a period of twelve consecutive months, or (2) two-hundred-forty monthly disbursements have been paid to MDC. The rights, responsibilities and liabilities of the Parties under this Agreement shall be extinguished upon termination of this Agreement except for any obligations that accrue prior to such termination. With respect to the previous sentence, the Village's obligation to continue the payments to MDC shall survive the earlier termination of this Agreement with respect to any new retailer(s) whose first retail sales from a Channahon location were made prior to the termination of this Agreement. MDC's obligations to Village related to such new retailer(s) shall likewise continue. Additionally, all the provisions of this Agreement with regard to holding

harmless and indemnification shall survive termination. This Agreement shall terminate upon any change in law or Illinois Department of Revenue rule in such manner that the "occupation of selling" is no longer the determining factor in the allocation of sales tax revenues to the Village. However, this Agreement shall remain applicable to all revenues attributable to sales made within Channahon prior to the effective date of such law or rule change.

#### SECTION 7. REMEDIES

In the event of a 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. Upon breach of this Agreement and following the expiration of the cure period described above, the non-breaching Party may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance to any obligation set forth in this Agreement. The failure of any Party to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon any 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 8. LIABILITY

- A. The sole source of funds for any payments to MDC or any new Retailer under this Agreement shall be funds that consist of that portion of the Sales Taxes solely generated from sales by the particular new retailer in Channahon that are paid from the Home Rule Retailer's Occupation Tax Fund or Local Governmental Tax Fund to the Village. MDC may not compel any exercise of taxing authority by the Village to make payments provided for hereunder. The provisions of this Agreement do not constitute indebtedness or a loan of credit of either Party within the meaning of any constitutional or statutory provision.
- B. The Parties acknowledge and agree that (i) in no event shall an individual, partner, member, shareholder, owner, officer, director, employee, affiliate, beneficiary, or elected or appointed public official of either Party, including individuals who are members of the group constituting the corporate authorities of the Village and entering into the Agreement in their corporate capacities as members of such group, or its affiliates, and with respect to MDC, individuals who are members of the group constituting the LLC and entered the Agreement in their company capacity, be personally liable to the other Party for any judgments for monetary damages, payments, obligations or performance due under this Agreement, or any breach or failure of performance of either Party hereunder and (ii) that the sole recourse for payment or performance of the obligations hereunder shall be against the Parties themselves and each of their respective assets and not against any other person, except for such liability as may be expressly assumed by an assignee pursuant to an assignment of, or pursuant to, this Agreement in accordance with its terms hereof.

## SECTION 9. APPROPRIATIONS/BUDGET

To the extent required by law, for each year during the term of this Agreement, Village hereby agrees that it will budget for and appropriate funds necessary to satisfy its obligations hereunder. Such appropriations shall be part of Village's annual appropriations ordinance, ~~adopted in accordance with 65 ILCS 5/8-11-20, or as part of Village's annual budget adopted in~~ accordance with 65 ILCS 5/8-11-20, as the case may be. Village shall make any appropriation necessary for the year that the Agreement is entered into by means of a supplemental appropriation under 65 ILCS 5/8-11-20, if any as necessary. All references to provisions in the 65 ILCS 5/8-11-20 are to provisions as in effect now and as hereafter amended.

## SECTION 10. LITIGATION

Neither Village nor MDC, nor their respective successors and assigns, shall challenge the legality or enforcement of any recital, provision or covenant of this Agreement. In the event any other person or entity attempts to enjoin or otherwise challenge the validity of any recital, provision or covenant of this Agreement, Village agrees to vigorously defend this Agreement and not to take a position adverse to enforcement of the same. MDC reserves the right, as its sole option, to petition to intervene in any such action or proceeding and to participate, at its sole cost, in the defense of any claim against Village which challenges the legality or enforceability of any recital, provision or covenant of this Agreement.

## SECTION 11. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Disputes between the Parties arising under this Agreement shall be settled using binding arbitration procedure with expenses to be split equally between Village and MDC.

## SECTION 12. AMENDMENT

This Agreement may be amended only by the mutual consent of the Parties, or their successors and assigns, by a written instrument specifically referencing this Agreement.

## SECTION 13. NOTICES

All notices, elections and other communications between the Parties shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, or delivered personally, to the Parties at the following addresses, or at such other addresses as the Parties may, by notice, designate:

If to the Village:      Village of Channahon  
   Attention: Village President  
   2441 West Eames Street  
   Channahon, Illinois 60401

With a copy to: Village of Channahon  
Attention: Village Treasurer  
2441 West Eames Street  
Channahon, Illinois 60401

And

If to MDC: Minority Development Company, LLC  
1100 Jorie Boulevard  
Suite 104  
Oak Brook, Illinois 60523

With a copy to: Jerome S. Schain, Esq.  
Schain, Burney, Ross & Citron, Ltd.  
222 North LaSalle Street  
Suite 1910  
Chicago, Illinois 60601

Notice shall be deemed received on the fourth business day following deposit in the U.S. Mail, if given by certified mail as aforesaid, and upon receipt or refusal, if personally delivered.

#### SECTION 15. EFFECTIVE DATE

This Agreement shall be effective on the date first set forth above.

#### SECTION 16. MUTUAL ASSISTANCE AND CONSENTS

The Parties agree to do all things necessary or appropriate to carry out the terms and provision of this Agreement and to aid and assist each other in carrying out the terms of this Agreement. In the event that any Party to this Agreement is required to grant its consent or approval to the other Party to this Agreement in connection with any of the terms and provisions of this Agreement, such consent or approval shall not be unreasonably withheld.

#### SECTION 17. SEVERABILITY

If any provision, covenant or portion of this Agreement is held invalid, such invalidity shall not effect the application or validity of any other provisions, covenants or portions of this Agreement.

#### SECTION 18. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, negotiations and exhibits and is full integration of the entire agreement of the Parties.

SECTION 19. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. Provided, however, that without consent of the Village, which shall not be unreasonably withheld, MDC may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part other than in connection with a transfer of all or part of the business of MDC to which it pertains.

SECTION 20. REIMBURSEMENT OF PROFESSIONAL FEES. Within thirty (30) days of execution of this Agreement, the Developer shall reimburse the Village for its reasonable attorneys' fees associated with the preparation of this Agreement, in an amount not to exceed Five Thousand and no/100 Dollars (\$5,000.00).

MDC

By: Richard J. Pini  
Its: Manager - member

VILLAGE OF CHANNAHON

By: [Signature]  
Wayne W. Chesson  
Its President

ATTEST: Eileen Clark  
Eileen Clark  
Its Clerk

BLW/AGREEMENTS/ECONOMIC-DEVELOPMENT-AGREEMENT-MDC



**FIRST AMENDMENT TO ECONOMIC  
DEVELOPMENT AGREEMENT BETWEEN  
THE VILLAGE OF CHANNAHON AND MINORITY DEVELOPMENT COMPANY**

WHEREAS, on the 2<sup>nd</sup> day of December, 2002 the Village of Channahon (the "Village") and Minority Development Company ("Developer") entered into a certain Economic Development Agreement (the "Agreement"); and

WHEREAS, the Agreement provided for the sharing of certain taxes from the Home Rule Municipal Retailer's Occupation Tax Fund and the Local Government Tax Fund; and

WHEREAS, the parties now desire to amend the Agreement to provide for the sharing of taxes generated from certain articles sold which are not subject to the Home Rule Retailer's Occupation Tax; and

WHEREAS, the parties desire to extend the term of the Agreement; and

WHEREAS, except as herein specifically set forth, the Agreement shall remain in full force and effect.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, BE IT AGREED AS FOLLOWS:

**SECTION 1. Incorporation of Preamble.**

The Preamble to this Agreement is incorporated herein as if fully set forth in this Section

1.

**SECTION 2. Amendments.**

The Agreement is hereby amended as follows:

A. The following Preamble paragraph be and the same is hereby deleted from the Agreement:

"WHEREAS, the amount of sales tax distributable to the Village from the Home Rule Municipal Retailers' Occupation Tax Fund and the Local Government Tax Fund attributable to Sales Taxes remitted to the Illinois Department of Revenue by the new retailers from sales to Illinois customers that are consummated within Channahon (hereinafter sometimes referred to as the "Local Share") is currently two percent (2%) of the total selling price of taxable products sold by the new retailers; and"

and the following inserted in its place:

"WHEREAS, "Local Share" as used in this Agreement shall mean the sales tax remitted to the Illinois Department of Revenue generated by New Retailers to Illinois customers for sales that are consummated within Channahon in the following amounts: (i) two (2%) percent of the selling price for those sales which are subject to the Village's Home Rule Municipal Retailer's Tax; and (ii) one (1%) percent of the selling price for the following products, and only the following products, which, by state law, are not subject to the Home Rule Municipal Retailer's Tax: prescription and non-prescription medicine, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics." In the event of a change in state law other items may be agreed to in writing by the parties without the need to amend this Agreement.

B. That the first sentence of Section 6 be and the same is hereby deleted and the

following inserted in its place:

"This Agreement shall remain in full force and effect until April 30, 2024, in the event that this extension is invalidated by state law then, in that event, the original termination date shall control."

C. That the following be deleted from Section 6:

"(2) two hundred-forty monthly disbursements have made to the MDC."

and the following inserted in its place:

"(2) the termination of this Agreement"

### SECTION 3. Validity of Agreement.

Except as herein specifically provided, the Agreement and all provisions thereof not specifically modified herein shall remain in full force and effect.

Executed at Channahon, Illinois this 17<sup>th</sup> day of May, 2004.

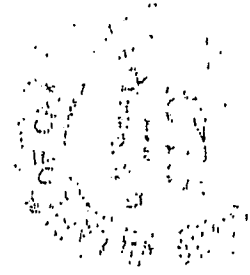
MINORITY DEVELOPMENT COMPANY

By: *[Signature]*  
Its President

VILLAGE OF CHANNAHON

By: *[Signature]*  
Its President

ATTEST: *[Signature]*  
Its Clerk



**MUNICIPAL SALES TAX AGREEMENT  
BETWEEN THE  
CITY OF KANKAKEE AND CORPORATE FUNDING SOLUTIONS, LLC**

~~This Agreement is entered into this day 19th of May, 2003, by and between the City of~~  
Kankakee, an Illinois municipal corporation, ("City"), and Corporate Funding Solutions, LLC,  
("Developer").

**WITNESSETH:**

**WHEREAS**, the Developer has located a retail service center in the City of Kankakee for the purposes of providing procurement services to various business entities.

**NOW, THEREFORE**, in consideration of the premises and of the mutual promises, agreements, covenants and undertakings set forth herein, the parties hereto agree as follows:

1. **Incorporation of Preambles.** The parties hereby adopt the recitals contained in the preambles as provisions of this Agreement and find the same to be true and correct.
2. **Definitions.**
  - A. **Municipal Sales Tax or Municipal Sales Tax Revenue.** For the purposes of this Agreement, the use of terms "Municipal Sales Tax" or "Municipal Sales Tax Revenue" shall mean any and all Retailers Occupations Taxes, Retailers Service Occupation Taxes, Retailers Use Tax, Retailers Service Use Tax, or any other "sales tax" or successor tax that may be enacted by the State of Illinois or any governmental agency or body created under the laws of the State of Illinois and located within the State of Illinois which the City is able to verify by reference to the documents described in Section 4, *infra*, hereinafter being assessed, accruing or arising as a result of and received by the City from the State of Illinois or such other governmental agency or body created as aforesaid.
  - B. **Home Rule Sales Tax.** That portion of the Municipal Sales Tax that is collected under Article 13-1 and 13-2 of the City of Kankakee Municipal Code known as the Home Rule Municipal Retailers' Occupation Tax and the Home Rule Municipal Service Occupation Tax.
  - C. **Revenue Year.** For the purposes of this Agreement, "Revenue Year" shall mean each twelve (12)-month period during the term hereof, commencing January 1 and ending December 31 of said calendar year.



3. Economic Incentives.

A. Location of Facility. ~~It is understood by the parties and declared by the City that the~~ location of the Developer's procurement office ("Office") in the City will generate a substantial level of Municipal Sales Tax Revenue not ordinarily realized by a typical business use, nor typically raised or collected in the State of Illinois prior to the creation of this Agreement. The Developer represents, warrants and covenants that it will comply in all respects with the Retailers Occupation Tax Act, as amended [35 ILCS 115/1 *et seq.*] and the Service Occupation Tax, as amended [35 ILCS 120/1 *et seq.*]

B. Municipal Sales Tax Incentive. City shall pay a Municipal Sales Tax incentive to the Developer per year beginning with the Revenue Year 2003. The payment will be 75% of the Municipal Sales Tax generated by the Office per year. The Developer represents, warrants and covenants that this incentive applies only to Municipal Sales Tax created by the location of the Office and does not apply to existing Municipal Sales Tax Revenue generated from the Developer's business as of the date of the Agreement. No amounts payable hereunder shall be paid until the Municipal Sales Taxes are paid to the City from the State.

C. Payment. On a quarterly basis, on or about March 1, June 1, September 1 and December 1 each year, from funds received and on hand from the State of Illinois Department of Revenue (IDOR) and from information on sales taxes created by sales attributed to the Developer's business operations at the Office as reported to the City by IDOR, the City shall calculate and determine the applicable Municipal Sales Tax and the Home Rule Sales Tax Incentive due to the developer for each month in the applicable reporting quarter. The City shall then process the applicable incentive and shall process payment to the Developer in accordance with the normal course of business for the City. The Developer shall provide for the release of information from the IDOR as required by the City relating to the Municipal Sales Tax and home rule Sales Tax for the term of this Agreement. The Developer shall also provide for the release of such information from any other parties operating through the Office. The Developer shall reconcile its records to the sales taxes reported by the City as receipted from IDOR, and shall account for and resolve any differences with IDOR and the City.

4. Sales Tax Reports. The Developer shall furnish the City with copies of any and all sales tax returns, sales tax reports, amendments, proof of payment or any other sales tax information filed with the State of Illinois or other applicable governmental entity upon the request of the City. To the extent permitted by law, the City shall maintain the confidentiality of the information contained in such reports.

5. Reimbursement Mechanism. The City shall remit in full to the Developer the share of the Municipal Sales Tax and Home Rule Sales Tax to which the Developer is entitled as determined in Section 3, *supra*. The City shall be liable to the Developer for disbursement of monies hereunder only to the extent of the Municipal Sales Tax and Home Rule Sales Tax Revenue generated by the sales of the Office and actually received by the City from the Illinois Department of Revenue or other applicable governmental agency or body.

6. Mutual Assistance. The Developer and the City agree to do all things practicable and reasonable to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms hereof.

7. Default Remedies. Except as otherwise provided in this Agreement, in the event of any default or breach of this Agreement or any terms or conditions by any party hereto, such party shall, upon written notice from the non-defaulting party, proceed promptly to cure or remedy such default or breach within sixty (60) days after receipt of such notice. If any such default is incapable of being cured within said sixty (60)-day period, and the defaulting party commences to cure the default within said sixty (60)-day period and proceed with due diligence, then such party shall not be deemed to be in default under this Agreement. Notwithstanding the foregoing, with respect to the obligations of the City pursuant to Section 3, *supra*, the City shall have fifteen (15) days after receipt of notice to cure or remedy a default. In case any action hereunder is not taken or not diligently pursued or the default or breach shall not be cured or remedies within the above periods, the aggrieved party may institute such proceedings as may be necessary or desirable, in its opinion, to cure and remedy such default or breach of its obligations, an action to compel specific performances by the party in default or breach of its obligations, an action to recover damages against any party liable pursuant to the provision hereof, or any action at law or in equity and the aggrieved party shall have the right to receive all costs and

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

9. **Entire Agreement.** This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the Developer and the City relative to the subject matter hereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than those herein set forth.

10. **Survival of Terms, Binding Upon Successors.** The covenants, terms, conditions, representatives, warranties, agreements and undertakings set forth in this Agreement (and specifically including, without limitation, those covenants, terms, conditions, representations, warranties, agreements and undertakings which survive the termination of this Agreement) shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

11. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

12. **Supplemental Agreement.** The parties agree to cooperate in order to execute such supplemental agreements, memoranda and similar documents as may be necessary to implement the terms of this Agreement.

13. Force Majeure. Performance by any party hereunder shall not be deemed to be in default where delay or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, respective governmental laws and regulations, epidemics, quarantine, restrictions, freight embargoes or lack of transportation. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice by the party claiming such extension is sent to the other party not more than twenty (20) days after the commencement of the cause or more than twenty (20) days after the party claiming such extension could have first reasonably recognized the commencement of the cause, whichever is later.

14. Term. This Agreement shall be in effect for ten (10) years and continue thereafter unless either party exercises their right to terminate this Agreement, in which case either party may terminate this Agreement upon one (1) year's written notice to the other party.

15. Notices. Any notice, request, demand or other communication made in connection with this Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery, if delivered to the persons identified below in person or by courier service, or five (5) business days after mailing, if mailed by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the City: Donald E. Green, Mayor  
City of Kankakee  
385 East Oak Street  
Kankakee, IL 60901

With a copy to: Christopher W. Bohlen  
Corporation Counsel  
200 East Court Street, Suite 502  
P. O. Box 1787  
Kankakee, IL 60901

If to the Developer: Myriam Simmons, Partner  
Corporate Funding Solutions, LLC  
1150 Stillwater Road  
Elgin, Illinois 60120



With a copy to:

Patrick A. Nasi,  
Partner - Secretary  
Corporate Funding Solutions, LLC,  
712 Balcarra Drive  
O'Fallon, Missouri 63366

16. **Severability.** If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be exercised and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this Agreement so that the purpose of this Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment. The court shall, however, to the extent possible, constitute all of the terms and provisions of this entire Agreement so as to make the same enforceable.

17. **Amendments: Recordation.** This Agreement may be amended from time to time with the written consent of the parties hereto.

18. **Representations, Warranties and Covenants.**

A. The Developer jointly and severally represent, warrant and covenant, as of the date of this Agreement and throughout the term of this Agreement, as follows:

- (1) The Developer has the right, power and authority to enter into, execute, deliver and perform this Agreement.
- (2) The execution, delivery and performance by the Developer of this Agreement has been duly authorized by all necessary action and does not and will not violate their Operating Agreements or Articles of Organization as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any third-party consent under any agreement, instrument or documents to which the Developer is a party.

B. The City of Kankakee, an Illinois corporation, represents, warrants and covenants, as of the date of this Agreement, as follows:

- (1) It is "home rule unit" pursuant to Article VII, Section 6, of the Illinois Constitution of 1970.

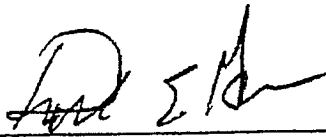
(2) It has the right, power and authority to enter into, execute, deliver and perform this Agreement.


19. Limited Liability of Corporate Authorities. The parties hereto acknowledge and agree that the individuals who are members of the group constituting the corporate authorities of the City are entering into this Agreement in their corporate capacities as members of such group and shall have no personal liability in their individual capacities.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the year and date first above written.

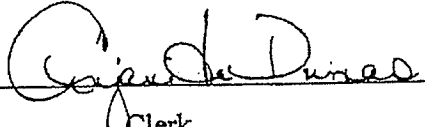
CITY OF KANKAKEE

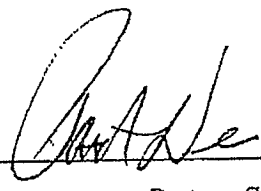
Corporate Funding Solutions, LLC

By   
Mayor

By   
Partner-President

ATTEST:

  
Clerk

  
Partner-Secretary

Ayes: 13 Abstain: 0  
Nays: 0 Absent: 1

STATE OF ILLINOIS

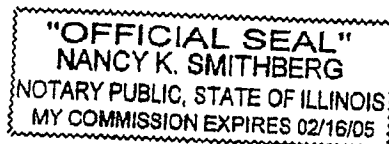
COUNTY OF KANKAKEE

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donald E. Green, personally known to me to be the Mayor of the City of Kankakee, Kankakee County, Illinois, and Anjanita Duma, personally known to me to be the Clerk of the City of Kankakee, Kankakee County, Illinois, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and Clerk of the City of Kankakee, caused the corporate seal of the City of Kankakee to be affixed thereto, as their free and voluntary act, and as the free and voluntary act and deed of said City of Kankakee, for the uses and purposed therein set forth.

Given under my hand and notarial seal this 20<sup>th</sup> day of May, 2003.

*Nancy K. Smithberg*

Notary Public



AMENDMENT TO MUNICIPAL SALES TAX  
AGREEMENT BETWEEN THE CITY OF KANKAKEE  
AND CORPORATE FUNDING SOLUTIONS, LLC

~~WHEREAS, the City of Kankakee and Corporate Funding Solutions, LLC have entered~~  
into an economic development agreement dated May 19, 2003; and

WHEREAS, it is the desire of the parties hereto to extend said agreement for a term of an additional ten (10) years in order that said agreement shall extend for a total of twenty (20) years pursuant to the terms of said agreement.

NOW, THEREFORE, IN MUTUAL CONSIDERATION OF THE FOREGOING AND FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:

1. The parties hereby agree to amend Paragraph 14 of said existing agreement to provide that the agreement shall be for a term of twenty (20) years, effective as provided in said Paragraph 14 of said agreement.
2. The amendment shall be effective on the date executed by the parties hereto.

Dated this 22nd day of March, 2004.

City of Kankakee

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

Attest: \_\_\_\_\_

Corporate Funding Solutions, LLC

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

Attest: \_\_\_\_\_

**AMENDMENT TO**  
**ECONOMIC INCENTIVE AGREEMENT**  
**BETWEEN THE CITY OF KANKAKEE AND**  
**Corporate Funding Solutions LLC**

This AMENDMENT TO ECONOMIC INCENTIVE AGREEMENT (the "Agreement") is entered into this 1<sup>st</sup> day of April, 2006, by and between the City of Kankakee ("City"), an Illinois Home Rule Municipal Corporation, and Corporate Funding Solutions LLC ("OC"), an Illinois limited liability company with offices at 388 E. Court St., Kankakee, Illinois 60901 (collectively, the "Parties").

**PREAMBLE**

WHEREAS, the City and OC have previously entered into an agreement whereby the City reimburses a percentage of sales tax generated by companies operating out of OC's Kankakee office, said agreement being dated the 1<sup>st</sup> day of April, 2006; and

WHEREAS, the State of Illinois Department of Revenue (IDOR) has changed the reporting of sales tax information to municipalities from monthly reports to quarterly reports; and

WHEREAS, the Parties desire to adopt a mutually acceptable alternative to making quarterly payments;

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, BE IT AGREED AS FOLLOWS:

- A. Effective retroactive to March 1, 2006, OC will provide to the City, each month, a spreadsheet identifying each client (using the existing client number system to protect confidentiality), and identifying the taxable sales, tax collected, discount applied, anticipated amount due to the City and the anticipated amount due to OC. This spreadsheet shall provide the information to the City which will allow the City to calculate monthly payments to OC. OC shall provide this spreadsheet no later than the last business day of the tax return filing month.
- B. Following the receipt of the spreadsheet, the City shall process an estimated monthly payment to OC based upon OC's estimate for the respective month, limited in amount to the monthly average of rebates confirmed with the IDOR reports during the prior quarter.

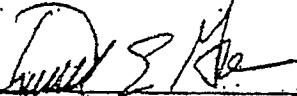
C. Upon the City's receipt of the quarterly report from the IDOR, the City will reconcile the state provided data with the OC provided data. To the extent that there are any discrepancies, they will be rectified as follows:

a. In the event an amount provided to the City by OC is less than the amount provided via the quarterly report provided by the IDOR, the City shall provide to OC the amount underpaid as an addition to the payment next made by the City to OC.

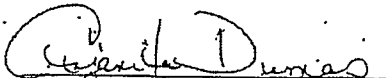
b. In the event an amount provided to the City by OC is more than the amount provided via the quarterly report provided by the IDOR, the City shall withhold the amount overpaid reflected on the payment next made by the City to OC.

IN WITNESS WHEREOF, the Parties have executed this Agreement this 1<sup>st</sup> day of April, 2006.

City of Kankakee, an Illinois Home  
Rule Municipal Corporation,

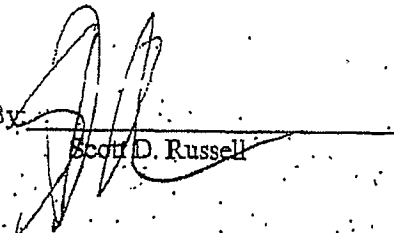
By:   
Its Mayor, Donald E. Green

ATTEST:

  
City Clerk

Company, LLC

Corporate Funding Solutions LLC

By:   
Scott D. Russell

**ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF KANKAKEE AND  
XYZ SALES, INC.**

This agreement is entered into this 17<sup>th</sup> day of May, 2004, by and between the City of Kankakee ("City"), an Illinois Home Rule Municipal Corporation, and XYZ Sales, Inc., (referred to hereinafter as the "Company"), an Illinois Corporation with offices at 10609 South Kenton, Oak Lawn, Illinois 60453, (collectively "Parties").

**PREAMBLE**

Whereas, City is a Home Rule Illinois Municipal Corporation under and by virtue of the Constitution and the laws of the State of Illinois; and

Whereas, City desires to increase the number of retail businesses in Kankakee that generate Retailer's Occupation Tax; and

Whereas, Company plans to build a business with significant Illinois retail sales, through merger, acquisition or otherwise; and

Whereas, the attraction of new retail businesses to Kankakee will stimulate local commercial activity, and the increase in the Retailer' Occupation Tax derived therefrom will enhance the tax base and the economic vitality of City; and

Whereas, under this agreement City will retain a portion of new tax revenue generated from sales made by Company; and

Whereas, the amount of sales tax distributable to the City from the Local Government Tax Fund attributable to Sales Taxes remitted to the Illinois Department of Revenue by the Company from sales within Kankakee (hereinafter sometimes referred to as the "Local Share") will be one percent (1%) of the total selling price of products sold; and

Whereas, an economic incentive for Company to locate its business in Kankakee, Company and City have agreed to share in the benefits realized by City as a result of the new sales and other activities within the City; and

Whereas, the City is entering into this Agreement in the exercise of its Home Rule and other powers and authority.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:



## **SECTION 1. INCORPORATION OF PREAMBLE AND EXHIBITS**

The Preamble to this Agreement is hereby declared to be the findings of the Parties and that said Preamble and all exhibits, if any, referred to in the Preamble and this Agreement are incorporated herein as if fully set forth in this Section 1.

## **SECTION 2. CONDITIONS PRECEDENT TO THE UNDERTAKING ON THE PART OF THE CITY**

All undertakings on the part of City pursuant to this Agreement are subject to the satisfaction of the following conditions by Company on or before the date of the initial incentive payment by City provided for in Section 3 below, or as otherwise specifically hereinafter stated:

A. Demonstration that Company has leased purchased or otherwise arranged for the use of property located within the corporate limits of City for the purpose of facilitating any sales herein contemplated.

B. The parties agree that any disbursements by City to Company, shall be based upon the monthly Illinois Retailer' Occupation Tax ("Sales Tax") returns and/or other documentation submitted by Company to the Illinois Department of Revenue (hereinafter "IDOR"), which details the amounts of said Sales Taxes that were paid by Company to IDOR with respect to sales made within Kankakee. Upon written request by City, Company shall provide City, or cause City to be provided, with an appropriate authorization addressed to and in a form satisfactory to IDOR authorizing IDOR to release to City all gross revenue and Sales Tax information submitted by Company to IDOR. Additionally, in the event that IDOR does not make available to City said documentation, upon the request of City, Company shall provide City, or cause City to be provided, with alternative documentation which details the amount of said Sales Taxes that were collected and paid by Company.

C. Company will make a good faith effort to ensure that it conducts all of its activities within Kankakee in such a manner that they will at all times comply with the terms and provisions of any and all statutes and regulations issued by IDOR that apply to such activities.

## **SECTION 3. UNDERTAKINGS ON THE PART OF THE CITY UPON SATISFACTION BY THE COMPANY OF ALL THE CONDITIONS HEREIN STATED**

On a monthly basis and after receipt of the Local Share from the State, as reported to the City by the State, City shall disburse to Company seventy-five percent (75%) of the Local Share attributable to sales made within Kankakee by the Company. The Parties acknowledge the relevant monthly return periods shall mean the month in which sales are made, despite the fact that the returns to be filed for each monthly return period are due on the twentieth (20<sup>th</sup>) day of the following month. The Parties further acknowledge the



State of Illinois may distribute the Local Share to City sometimes as much as sixty (60) days following the receipt of the return and payment by Company. Therefore, the Parties agree that the retention of the Local Share by City and the disbursement to Company may necessarily fall outside the calendar year in which the sales were consummated.

A. The City shall begin such disbursements by retaining its portion of the Local Share, after which the City shall make such disbursements to the Company within twenty-one (21) days following the receipt by the City of the Local Share of the previous month's Sales Tax revenue received from IDOR which has been generated as a result of sales by the Company.

C. In the event that any copies of tax returns which have been submitted to City are amended by the Company, Company agrees to promptly forward or cause to be forwarded a photocopy of such amended tax returns to the City, clearly identifying them as an amendment of tax returns previously submitted to the City.

D. Nothing in this agreement shall be construed to create an obligation or guarantee on the part of Company as to City's monthly or yearly distribution amount.

#### **SECTION 4. AUDIT - RECONCILIATION**

Each incentive payment by City to Company shall be accompanied by a statement executed by the City Treasurer or the Treasurer's designee, setting forth the calculations of such payment. Company shall have thirty (30) days following the receipt of said payment to contest any of the calculations or information contained in said statements. In the event that Company shall initiate any such contest, it must be made by written notice to City. If such contest shows that the amount paid to Company were less or more than the amount that should have been paid to Company, either City shall pay to Company the balance of such amount due within the thirty (30) days of the completion of such contest, or if Company has been paid more than the amount that should have been paid, then Company shall reimburse the City within thirty (30) days of the completion of such contest; provided that in the event the Company files an amended tax return as contemplated in Section 3 (E), which amended return is approved by the IDOR, then in that event the following month's disbursement to the Company shall be adjusted accordingly.

#### **SECTION 5. CONFIDENTIALITY**

The Parties acknowledge that the information contained in any tax return and report made by Company is confidential information proprietary to Company and agree that to the fullest extent permitted by law, all documents, including tax returns, and information provided to City, its agents and representatives, pursuant to or with regard to the provisions of this Agreement, shall not be released or made available to any third person, corporation, organization or association without order of court or the prior approval of the Company. City shall offer Company the opportunity to defend any claim made by any third party against City for release of such documents or information.

## SECTION 6. TERM

This agreement will remain in full force for a minimum period of twenty (20) years beginning with the effective date indicated herein. This agreement will automatically renew for another twenty (20) year period, unless City or Company provide written notice to the other Party within six (6) months of the expiration of the first twenty (20) year term.

## SECTION 7. REMEDIES

In the event of a 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. Upon a breach of this Agreement and following the expiration of the cure period described above, the non-breaching party may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation set forth in this Agreement. The failure of any Party 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 8. LIABILITY

The sole source of funds for payments to either Party under this Agreement shall be funds which consist of that portion of the Sales Taxes solely generated from sales by the Company in Kankakee which are paid from the Local Governmental Tax Fund to the City. The Company may not compel any exercise of taxing authority by the City to make payments provided for hereunder. The provisions of this Agreement do not constitute indebtedness or a loan of credit of either Party within the meaning of any constitutional or statutory provision.

A. The Parties acknowledge and agree that (i) in no event shall any individual, partner, member, shareholder, owner, officer, director, employee, affiliate, beneficiary, or elected or appointed public official of either Party, including individuals who are members of the group constituting the corporate authorities of the City and entering into the Agreement in their corporate capacities as members of such group, or its affiliates, be personally liable to the other Party for any judgments for monetary damages, payments, obligations or performance due under this Agreement, or any breach or failure of performance of either Party hereunder and (ii) that the sole recourse for payment or performance of the obligations hereunder shall be against the Parties themselves and each of their respective assets and not against any other person, except for such liability as may be expressly assumed by an assignee pursuant to an assignment of, or pursuant to, this Agreement in accordance with its terms hereof.

## **SECTION 9. APPROPRIATIONS/ BUDGET**

To the extent required by law, for each year during the term of this Agreement, City hereby agrees that it will budget for and appropriate funds necessary to satisfy its obligations hereunder. Such appropriation shall be a part of City's annual appropriations ordinance, adopted in accordance with 65 ILCS 5/8-11-20, or as part of City's annual budget adopted in accordance with 65 ILCS 5/8-11-20, as the case may be. City shall make any appropriation necessary for the year that the Agreement is entered into by means of a supplemental appropriation under 65 ILCS 5/8-11-20, if any is necessary. All references to provisions in 65 ILCS 5/8-11-20 are to provisions as in effect now and as hereafter amended.

## **SECTION 10. LITIGATION**

Neither City nor Company, nor their respective successors and assigns, shall challenge the legality or enforcement or any recital, provision or covenant of this Agreement. In the event any other person or entity attempts to enjoin or otherwise challenge the validity of any recital, provision or covenant of this Agreement, City agrees to vigorously defend this Agreement and not to take a position adverse to enforcement of the same. Company reserves the right, at its sole option, to petition to intervene in any such action or proceeding and to participate, at its sole costs, in the defense of any claim against City which challenges the legality of enforceability of any recital, provision or covenant of this Agreement.

## **SECTION 11. GOVERNING LAW**

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

## **SECTION 12. AMENDMENT**

This Agreement may be amended only by the mutual consent of the Parties, or their successors and assigns, by a written instrument specifically referencing this Agreement.

### SECTION 13. NOTICES

All notices, elections and other communications between the Parties shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, or delivered personally, to the Parties at the following addresses, or at such other addresses as the Parties may, by notice, designate:

If to the City: City of Kankakee  
Attention: Mayor  
385 E. Oak Street  
Kankakee, Illinois 60901

With copy to: City of Kankakee  
Attention: City Comptroller  
385 E. Oak Street  
Kankakee, Illinois 60901

And

If to Company: XYZ Sales, Inc.  
Attention: President  
10609 South Kenton  
Oak Lawn, Illinois 60453

Notices shall be deemed received on the fourth business day following deposit in the U.S. Mail, if given by certified mail as aforesaid, and upon receipt or refusal, if personally delivered.

### SECTION 14. EFFECTIVE DATE

This Agreement shall be effective on May 17, 2004.

### SECTION 15. MUTUAL ASSISTANCE AND CONSENTS

The Parties agree to do all things necessary or appropriate to carry out the terms and provision of this Agreement and to aid and assist each other in carrying out the terms of this agreement. In the event that any Party to this Agreement is required to grant its consent or approval to the other Party to this Agreement in connection with any of the terms and provisions of this Agreement, such consent or approval shall not be unreasonably withheld.

### SECTION 16. SEVERABILITY

If any provisions, covenant or portion of this Agreement is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement.

**SECTION 17. ENTIRE AGREEMENT**

This Agreement supersedes all prior agreements, negotiations and exhibits and is a full integration of the entire agreement of the Parties.

**SECTION 18. BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. Provided, however, that without the consent of the City, which shall not be unreasonably withheld, the Company may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part other than in connection with a transfer of all or part of the business of Company to which it pertains.

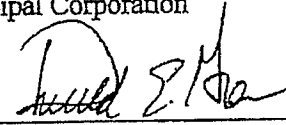
**SECTION 19. APPROVALS**

The City hereby represents that it has obtained all authorizations and approvals, including, without limitation, the enactment of ordinances and resolutions, if applicable, which are necessary to enable the City to comply with the terms and provisions of this Agreement and perform its obligations hereunder.

IN WITNESS WHEREOF, the Parties have executed this Agreement this 18th day of May, 2004.

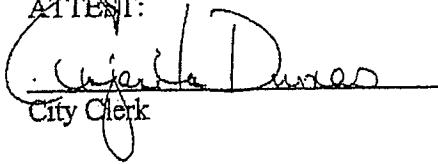
City of Kankakee, an Illinois Home Rule  
Municipal Corporation

By:



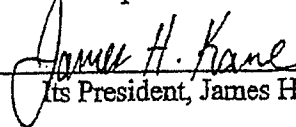
Its Mayor, Donald Green

ATTEST:

  
City Clerk

XYZ Sales, Inc.,  
an Illinois Corporation

By:



Its President, James H. Kane



RECEIVED

JUN 29 2011

EXECUTIVE DIRECTOR'S OFFICE

Administration Building  
304 South Indiana Avenue  
Kankakee, Illinois 60901  
(815) 936-3559  
Fax: (815) 033-0528

June 23, 2011

Beatriz Nieves, Executive Office  
Regional Transportation Authority  
175 W. Jackson Blvd., Suite 1650  
Chicago, IL 60604

Re: FOIA Request 2011-00161  
Date Received: June 22, 2011

Dear Ms. Nieves:

I am in the process of preparing the City of Kankakee's response to the above FOIA requests. I'm requesting a five day extension pursuant to statute for the following reasons:

1. The request requires an extensive search and copying;
2. The records need to be reviewed to determine whether they are exempt from FIOA.

Sincerely,

L. Patrick Power  
Assistant City Attorney  
City of Kankakee

LPP/kas





Corporation Counsel  
Administration Building  
304 South Indiana Avenue  
Kankakee, Illinois 60901-3904  
(815) 936-3618 Fax (815) 936-3619  
web site: www.citykankakee-il.gov

6/27/11  
10:47 AM  
JAN 27 2011

June 27, 2011

Beatriz Nieves, Executive Office  
Regional Transportation Authority  
175 W. Jackson Blvd., Suite 1650  
Chicago, IL 60604

Re: FOIA Request No. 2011-0161  
Dated: June 21, 2011

Dear Ms. Nieves:

This letter is written in response to the above referred to FOIA request.

As to Item No. 1, your request is denied. Section 7(1)(c) of FOIA protects such information from disclosure unless it is authorized in writing the parties. In addition to that exemption. I am also claiming under paragraph 7(1)(g) in that information would constitute trade secrets and commercial or financial information, which are proprietary, privileged and confidential and would cause competitive harm to the person or business if disclosed.

As to Item No. 2, 4 thru 8, no such documents exist.

As to Item No. 3, I am a little unclear as to what you are looking for. However, I have enclosed part of our annual audit, which may help you. If that is not what you want let me know and I will try to get the information you are looking for.

You have the right to have the Public Access Counselor review said denial. Its address is Office of the Attorney, State of Illinois, Public Access Counselor, 500 South Second St.,



Springfield, Illinois 62706, phone number 217-782-1090. You also have the right to a judicial review under Section 11 of this Act.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Patrick Power". The signature is written in a cursive style with a large initial "L" and "P".

L. Patrick Power  
Assistant City Attorney  
City of Kankakee

LPP/kas

pc: City Clerk  
Attorney General



Send Request to: Kris Schmitz, FOIA Director  
 304 S. Indiana Ave.  
 Kankakee, IL 60901  
 Fax No.: 815-933-0528  
 e-mail address: [kaschmitz@citykankakee-il.gov](mailto:kaschmitz@citykankakee-il.gov)

No. 2011-

00161

CITY OF KANKAKEE  
 STATE OF ILLINOIS

Department: \_\_\_\_\_ Date: June 21, 2011

REQUEST FOR PUBLIC RECORDS

Pursuant to the Freedom of Information Act, 5/ILCS 140/1.1 et sec., effective January 1, 2010, I hereby request the following public records within five (5) working days:

EXACT DESCRIPTION/TITLE

\* The RTA requests copies of all documents described in Paragraphs 1 through 9 from January 1, 1994 through June 21, 2011.

1. All agreements or extensions of agreements between the City and any entity in which the agreement contains a sales tax sharing provision or an Economic Incentive Agreement.
2. All documents relating to Kankakee's policy on sales tax sharing including:
  - a. All correspondence enticing or promoting Kankakee's tax sharing agreements or proposed agreements;
  - b. Any board meeting notes or records relating to tax sharing agreements;
3. Financial records demonstrating how much revenue the City of Kankakee raises each years from sales tax sharing agreements.
4. Please list each member of the staff that works on promoting and maintaining sales tax sharing agreements; list the cost to the City needed to monitor and attract new agreements.
5. All documents referencing Inspired Development or any of its representatives
6. All documents referencing MTS Consulting or any of its representatives
7. All documents referencing Minority Development Company or any of its representatives
8. All documents referencing the FACTS Coalition

City of Kankakee will only produce copies of those documents requested and described with a responsible degree of accuracy. The city is not required to guess at what is being requested. Nor is the City required to compile lists not in existence, or interpret or extrapolate information.

\_\_\_\_\_ I request to inspect these public records in person during regular office hours in the Department where they are maintained.

\_\_\_\_\_ I request \_\_\_\_\_ copies of these records and I understand that the first 50 pages of copies will be free of charge and thereafter I will pay .15¢ per page for any copies. Actual costs of copying will be charged for Maps and other similar documents. All such charges must be paid for in advance.

I request that all fees be waived or reduced in the public interest because the furnishing of the information requested can be considered as primarily benefiting the general public.

Name: Beatriz Nieves, Executive Office  
 Regional Transportation Authority

Address: 175 W. Jackson Blvd, Suite 1650

City, State, Zip: Chicago, IL 60604

Telephone: (312) 913-3218

Email: [nievesb@rtachicago.org](mailto:nievesb@rtachicago.org)

***Governmental Activities – Statement of Activities Highlights***

The City posted a decrease in net assets from governmental activities before transfers of nearly \$0.7 million, and an increase of nearly \$0.8 million after transfers. There were several major shifts in both revenues and expenses that contributed to the change in net assets.

Sales tax revenues contribute significantly (nearly 42% of current year revenues) to the City's revenues, due primarily to a sales tax sharing incentive program that the City implemented in fiscal 2000. With this program, the City returns a substantial portion of the sales tax generated from the program to the program participants as an economic development incentive. Gross sales taxes decreased \$3.3 million from the prior year as a result of the national economic slowdown. At the same time, sales tax incentives decreased \$2.4 million. Overall, net sales tax revenue decreased \$0.9 million. The following table illustrates the change in gross and net sales tax revenue over the past nine fiscal years –

**Table 3: Sales taxes and incentives**

<u>Fiscal Year</u>	<u>Gross Amount Received</u>	<u>less Incentives Paid</u>	<u>Net Sales Tax</u>	<u>\$ Change</u>	<u>Percent Change</u>
2002	4,578,964	1,588,129	2,990,835	747,278	33.3%
2003	8,881,076	5,237,343	3,643,733	652,898	21.8%
2004	14,998,857	10,701,236	4,297,621	653,888	17.9%
2005	22,351,192	17,066,791	5,284,401	986,780	23.0%
2006	25,107,826	18,938,693	6,169,133	884,732	16.7%
2007	23,695,013	17,678,395	6,016,618	(152,515)	-2.5%
2008	26,611,558	20,109,951	6,501,607	484,989	8.1%
2009	24,419,114	17,617,181	6,801,933	300,326	4.6%
2010	21,098,621	15,210,630	5,887,991	(913,942)	-13.4%

Other major shifts included an increase of \$3.6 million in Capital Grants/Contributions, a 487% increase over the prior fiscal year, largely the result of the dedication of the Indian Meadows Subdivision improvements to the City; an increase of nearly \$0.7 million in property tax revenues, most of the increase due to required employer contributions to pensions (police, fire, and IMRF); the decline in revenue of over \$0.6 million in Operating Grants/Contributions as grant funding sources evaporated; a decline in Other Taxes of \$0.5 million, also from the national economic conditions; an decrease of \$0.4 million in Highways and streets expenses as a result of the City's continued investment in infrastructure; an increase of nearly \$1.9 million in Public Safety expenses, most of that from normal salary increases and a large increase in the actuarially required pension contributions to the public safety (Police and Fire) pension funds; a decline of nearly \$1.2 million in Public Works expenses as fuel prices eased a bit and the City was able to contract with a trash transfer station that was geographically much closer to the City in order to further reduce transportation costs; and a decline of nearly \$0.6 million in Community Development expenses as the City's grant projects slowed because of the reduction in grant revenues.

The cash transfer from the Sewer Utility came at a very important time. The City would have had a much more negative financial outcome if the Sewer Utility had not been able to provide the needed cash infusion.

The following charts graphically illustrate the composition of the City's revenues and expenses from governmental activities –



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EXECUTIVE DIRECTOR'S OFFICE

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

July 8, 2011

Mr. L. Patrick Power  
Assistant City Attorney  
City of Kankakee  
Administration Building  
304 S. Indiana Ave.  
Kankakee, IL 60901-3904

RE: FOIA Pre-Authorization Request – 2011 PAC 15143

Dear Mr. Power:

We have received and reviewed the above-referenced Freedom of Information Act (FOIA) Pre-Authorization Notice of Intent to Deny under section 9.5(b) of the Freedom of Information Act (5 ILCS 140/9.5(b) (West 2010)). We have concluded that further inquiry is warranted to determine whether the City of Kankakee (City) has complied with the requirements of FOIA in responding to the request for records submitted by Ms. Beatriz Nieves on June 21, 2011. A copy of your Notice of Intent to Deny is enclosed.

Ms. Nieves' request sought copies of all City agreements containing a tax sharing provision or an Economic Incentive Agreement and related records. The City is seeking to deny portions of this request citing section 7(1)(c) of FOIA (5 ILCS 140.7(1)(c) (West 2010)). The City asserts that the disclosure of the information in question would constitute a clearly unwarranted invasion of privacy. In order to review this issue, please provide us with a detailed factual and legal basis for this assertion.

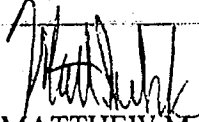
As required under the Act, please provide the information requested to this office within 7 working days after your receipt of this letter (5 ILCS 140/9.5(b), (c) (West 2010)). As we review this matter, we will advise you if we require any additional information. If you believe that other documents or information would help us in our review, please submit the additional information or affidavits with the requested records.

If you have any questions or would like to discuss this matter, please contact me at (217) 782-9078.



Mr. L. Patrick Power  
July 8, 2011  
Page 2

Very truly yours,



MATTHEW M. SEBEK  
Assistant Attorney General  
Public Access Bureau

Enclosure

cc: Ms. Beatriz Nieves  
Executive Office  
Regional Transportation Authority  
175 W. Jackson Blvd.  
Suite 1650  
Chicago, IL 60604

Re-sending  
w/attachments  
7/1/11



Corporation Counsel  
Administration Building  
304 South Indiana Avenue  
Kankakee, Illinois 60901-3904  
(815) 936-3618 Fax (815) 936-3619  
web site: [www.citykankakee-il.gov](http://www.citykankakee-il.gov)

June 27, 2011

Office of the Attorney General  
Public Access Division  
500 S. Second Street  
Springfield, IL 62706


Re: Intent to Deny  
City of Kankakee's No. 2011-161

TO WHOM IT MAY CONCERN:

Please be advised that it is the intent of the City of Kankakee to deny the above FOIA request in its entirety pursuant to 5 ILCS 140/1. Attached are the following documents:

1. A copy of the FOIA request.
2. The proposed response.
3. The summary of our reasons for denial are contained in our proposed response attached.

Sincerely,

  
L. Patrick Power  
Assistant City Attorney  
City of Kankakee

LPP/kas  
Enclosures

15143 MS  
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ATTORNEY GENERAL

JUL - 5 2011

FOIA/OMA



Corporation Counsel  
Administration Building  
304 South Indiana Avenue  
Kankakee, Illinois 60901-3904  
(815) 936-3618 Fax (815) 936-3619  
web site: [www.citykankakee-il.gov](http://www.citykankakee-il.gov)

CC COPY

June 27, 2011

Beatriz Nieves, Executive Office  
Regional Transportation Authority  
175 W. Jackson Blvd., Suite 1650  
Chicago, IL 60604

Re: FOIA Request No. 2011-0161  
Dated: June 21, 2011

Dear Ms. Nieves:

This letter is written in response to the above referred to FOIA request.

As to Item No. 1, your request is denied. Section 7(1)(c) of FOIA protects such information from disclosure unless it is authorized in writing the parties. In addition to that exemption, I am also claiming under paragraph 7(1)(g) in that information would constitute trade secrets and commercial or financial information, which are proprietary, privileged and confidential and would cause competitive harm to the person or business if disclosed.

As to Item No. 2, 4 thru 8, no such documents exist.

As to Item No. 3, I am a little unclear as to what you are looking for. However, I have enclosed part of our annual audit, which may help you. If that is not what you want let me know and I will try to get the information you are looking for.

You have the right to have the Public Access Counselor review said denial. Its address is Office of the Attorney, State of Illinois, Public Access Counselor, 500 South Second St.,

Springfield, Illinois 62706, phone number 217-782-1090. You also have the right to a judicial review under Section 11 of this Act.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Patrick Power". The signature is written in a cursive style with a horizontal line underneath the name.

L. Patrick Power  
Assistant City Attorney  
City of Kankakee

LPP/kas

pc: City Clerk  
Attorney General

Send Request to: Kris Schmitz, FOIA Director  
 304 S. Indiana Ave.  
 Kankakee, IL 60901  
 Fax No.: 815-933-0528  
 e-mail address: [kaschmitz@citykankakee-il.gov](mailto:kaschmitz@citykankakee-il.gov)

No. 2011-

00161

CITY OF KANKAKEE  
 STATE OF ILLINOIS

Department: \_\_\_\_\_ Date: June 21, 2011

REQUEST FOR PUBLIC RECORDS

Pursuant to the Freedom of Information Act, 5/ILCS 140/1.1 et sec., effective January 1, 2010, I hereby request the following public records within five (5) working days:

EXACT DESCRIPTION/TITLE

\* The RTA requests copies of all documents described in Paragraphs 1 through 9 from January 1, 1994 through June 21, 2011.

1. All agreements or extensions of agreements between the City and any entity in which the agreement contains a sales tax sharing provision or an Economic Incentive Agreement.
2. All documents relating to Kankakee's policy on sales tax sharing including:
  - a. All correspondence enticing or promoting Kankakee's tax sharing agreements or proposed agreements;
  - b. Any board meeting notes or records relating to tax sharing agreements;
3. Financial records demonstrating how much revenue the City of Kankakee raises each year from sales tax sharing agreements.
4. Please list each member of the staff that works on promoting and maintaining sales tax sharing agreements; list the cost to the City needed to monitor and attract new agreements.
5. All documents referencing Inspired Development or any of its representatives
6. All documents referencing MTS Consulting or any of its representatives
7. All documents referencing Minority Development Company or any of its representatives
8. All documents referencing the FACTS Coalition

City of Kankakee will only produce copies of those documents requested and described with a responsible degree of accuracy. The city is not required to guess at what is being requested. Nor is the City required to compile lists not in existence, or interpret or extrapolate information.

\_\_\_\_\_ I request to inspect these public records in person during regular office hours in the Department where they are maintained.

\_\_\_\_\_ I request \_\_\_\_\_ copies of these records and I understand that the first 50 pages of copies will be free of charge and thereafter I will pay .15¢ per page for any copies. Actual costs of copying will be charged for Maps and other similar documents. All such charges must be paid for in advance.

I request that all fees be waived or reduced in the public interest because the furnishing of the information requested can be considered as primarily benefiting the general public.

Name: Beatriz Nieves, Executive Office  
 Regional Transportation Authority

Address: 175 W. Jackson Blvd, Suite 1650

City, State, Zip: Chicago, IL 60604

Telephone: (312) 913-3218

Email: [nievesb@rtachicago.org](mailto:nievesb@rtachicago.org)





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EXECUTIVE DIRECTOR'S OFFICE

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

July 21, 2011

Mr. L. Patrick Power  
Assistant City Attorney  
City of Kankakee  
Administration Building  
304 S. Indiana Ave.  
Kankakee, IL 60901-3904

RE: FOIA Pre-Authorization Request – 2011 PAC 15143

Dear Mr. Power:

We have received and reviewed written notice from the City of Kankakee (City) of its intention to deny certain information as exempt from disclosure under section 7(1)(c) of the Freedom of Information Act (FOIA) (5 ILCS 140/7(1)(c) (West 2010)). The City submitted its written notice to our office in response to a June 21, 2011, FOIA request it received from Ms. Beatriz Nieves of the Regional Transportation Authority. Ms. Nieves's FOIA request sought copies of all City agreements containing a tax sharing provision or an Economic Incentive Agreement and related records. The City claims that certain information responsive to this FOIA request is exempt under section 7(1)(c) because the disclosure of this information would constitute a "clearly unwarranted invasion of personal privacy." 5 ILCS 140/7(1)(c) (West 2010).

**DETERMINATION**

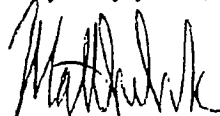
The City's use of the exemption in section 7(1)(c) to withhold information responsive to Ms. Nieves's request is **denied**. This information relates to business entities, not to individuals. Corporations and other business entities do not have a right to personal privacy for the purpose of section 7(1)(c) of FOIA. See *FCC v. AT&T, Inc.*, 562 U.S. \_\_\_, 131 S. Ct. 1177, 1185 (2011) (holding that corporations do not have a privacy interest for purposes of Exemption

Mr. L. Patrick Power  
July 21, 2011  
Page 2

7(C) of the Federal FOIA (5 U.S.C. §552(b)(7)(C)) which exempts law enforcement records, the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.). This conclusion is equally applicable to section 7(1)(c) of FOIA. Therefore, there is no personal privacy interest in this information that could outweigh the public interest in obtaining it.

If you have any questions or would like to discuss this matter, please contact me at (217) 782-9078. This correspondence shall serve to close this matter.

Very truly yours,



MATTHEW M. SEBEK  
Assistant Attorney General  
Public Access Bureau

15143 (c) pa dl mun

cc: Ms. Beatriz Nieves  
Executive Office  
Regional Transportation Authority  
175 W. Jackson Blvd.  
Suite 1650  
Chicago, IL 60604

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VILLAGE OF  
CHANNAHON

EXECUTIVE DIRECTOR'S OFFICE

24555 S. NAVAJO DRIVE • CHANNAHON, ILLINOIS 60410  
(815) 467-6644 • FAX (815) 467-9774 • www.channahon.org

July 15, 2011

Beatriz Nieves, Executive Office  
RTA  
175 W. Jackson Boulevard, Ste. 1650  
Chicago, Illinois 60604

Re: **FOIA Request**

Dear Ms. Nieves:

In response to your FOIA request dated June 21, 2011, the Village of Channahon responds as follows:

**Request 1:** All agreements or extensions of agreements between the Village and any entity in which the agreement contains a sales tax sharing provision or an Economic Incentive Agreement.

**Response:** Attached are the following Agreements:

1. Forsythe Technology, Inc., Forsythe Solutions Group, Inc., Forsythe Solutions, Inc. and Forsythe McArthur Associates, Inc.;
2. Hartford Computer Group, Inc.;
3. The Reynolds and Reynolds Company;
4. The Relizon Company;
5. Inspired Development, LLC;
6. Cairo Procurement Services, LLC;
7. Minority Development Company, LLC; and
8. PSS World Medical, Inc.



The Rebate Account Number/Name has been redacted from each of the agreements to prevent disclosure of information exempt from release as set forth in Responses 5(B) and (C) and 7(B) and (C) which are incorporated as the response for this partial denial of Request No. 1.

**Request 2:** All documents relating to Channahon's policy on sales tax sharing including: (a) all correspondence enticing or promoting Channahon's tax sharing agreements or proposed agreements; and (b) any board meeting notes or records relating to tax sharing agreements.

**Response:** The Village has no documents that are responsive to (a).

Attached are the following Village Board minutes:

1. September 7, 1999 regular meeting
2. April 3, 2000 regular and committee meetings
3. November 20, 2000 regular meeting
4. February 5, 2001 regular meeting and committee meeting
5. June 17, 2002 regular meeting
6. December 2, 2002 board meeting
7. May 25, 2004 special board meeting

**Request 3:** Financial records demonstrating how much revenue the Village of Channahon raises each year from sales tax sharing agreements.

**Response:** Attached are the following:

1. Village Revenue and Expense Report dated June 15, 2011.
2. Village Revenue and Expense Report dated June 14, 2010.
3. Village Revenue and Expense Report dated June 29, 2009.
4. Village Revenue and Expense Report dated June 12, 2008.
5. Village Revenue and Expense Report dated June 5, 2007.

**Request 4:** Please list each member of the staff that works on promoting and maintaining sales tax sharing agreements; list the cost to the Village need to monitor and attract new agreements.

**Response:** The Village has no documents which are responsive to this request, however, it states that Robert Guess, Finance Director is responsible for administration of sales tax sharing agreements. The village has no documents that are responsive to the second portion of your request.

**Request 5:** All documents referencing Inspired Development or any of its representatives.

**Response:**

A.1. Correspondence from Jamie Bowden to Inspired Development, LLC and Ms. Lisa Sloan dated June 1, 2011.

2. Correspondence to Inspired Development, LLC dated May 12, 2010.

3. Correspondence to Inspired Development, LLC dated July 1, 2010.

4. Correspondence to Robert K. Guess from Inspired Development, LLC dated March 5, 2001.

5. Email to Joe Cook and David Silverman dated June 3, 2003.

6. Email to Bob Guess from Jay Cooksey dated April 26, 2004.

7. Correspondence from Bob Guess to Don Sloan dated May 24, 2004.

8. Correspondence from Don Sloan to Bob Guess dated May 27, 2004.

9. Correspondence from Bob Guess to Don Sloan dated April 21, 2005.

10. Correspondence from Bob Guess to Don Sloan dated March 9, 2006.

B. Notice of Intention to Deny. The Village hereby notifies you and the Public Access Counselor of its intent to deny a portion of your request pursuant to 5 ILCS 140/7(1)(f).

Some of the documents that could be responsive to this request and others are exempt pursuant to 5 ILCS 140(1)(f). Pursuant to the Village's agreement with Inspired Development before any new retailer is allowed to participate in an economic development incentive program, the retailer must provide certain information to the Village concerning the proposed retailer. The Village states that it does possess correspondence from Inspired with respect to certain retailers as well as confidential communications to the Village Board with respect to such retailers. However, you are hereby notified that the Village intends to deny your

request with respect to such documents pursuant to 5 ILCS 140/7(1)(f) in that such documents are "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated" which have not been publicly cited and identified by the head of the public body.

C. Also see the "Additional Reasons for Denial" set forth below.

**Request 6:** All documents referencing MTS Consulting or any of its representatives.

**Response:** The Village has no documents that are responsive to this request.

**Request 7:** All documents referencing Minority Development Company or any of its representatives.

**Response:**

- A.1. Letter dated June 1, 2011 to Rich Rios.
2. Letter dated May 24, 2004 to Rich Rios.
3. Letter Agreement dated April 20, 2011 to Rich Rios.
4. Letter Agreement dated March 9, 2006 to Rich Rios.

B. Notice of Intention to Deny. The Village hereby notifies you and the Public Access Counselor of its intent to deny a portion of your request pursuant to 5 ILCS 140/7(1)(f).

Some of the documents that could be responsive to this request and others are exempt pursuant to 5 ILCS 140(1)(f). Pursuant to the Village's agreements with Minority Development before any new retailer is allowed to participate in an economic development incentive program, the retailer must provide certain information to the Village concerning the proposed retailer. The Village states that it does possess correspondence from Minority with respect to certain retailers as well as confidential communications to the Village Board with respect to such retailers. However, you are hereby notified that the Village intends to deny your request with respect to such documents pursuant to 5 ILCS 140/7(1)(f) in that such documents are "preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated" which have not been publicly cited and identified by the head of the public body.

C. Also see the "Additional Reasons for Denial" set forth below.

~~**Request 8:** All documents referencing the FACTS Coalition.~~

**Response:** The Village has no documents that are responsive to this requests.

**Additional Reasons for Denial**

To the extent that any of the above requests seek information concerning taxpayers identity, the information is exempt pursuant to 5 ILCS 140/7(1)(a). In addition to receiving taxpayer names from Inspired and Minority Development, the Village has also received the names of retailers who have paid retailer's occupation taxes pursuant to sales made in Channahon from the Illinois Department of Revenue through tax returns given to the Village by the Illinois Department of Revenue. The Village receives the information from the Department of Revenue pursuant to a Confidentiality Agreement with the Department of Revenue. A copy of the confidentiality agreement between the Village and the Illinois Department of Revenue is attached (the "Confidentiality Agreement"). The Village has been advised that to provide names of taxpayers which the Village has obtained from tax returns provided to the Village would be considered by the Illinois Department of Revenue to be a breach of the Confidentiality Agreement and may subject the Village to penalties thereunder. The disclosure is also prohibited by law. See, 35 ILCS 120/11.

As an additional basis for denial, the Village asserts that the names of the retailers and other information requested are commercial or financial information exempt from disclosure pursuant to 5 ILCS 140/7(1)(g). The Village's agreement with Inspired provide:

The parties acknowledge that the information contained in any tax return (including, without limitation, tax returns filed by Developer and the new retailers) and report made by Developer is confidential by law, all documents, including tax returns, and information provided to Village, its agents and representatives pursuant to or with regard to the provisions of this Agreement, shall not be released or made available to any third person, corporation, organization or association without order of court or the prior approval of the new retailers or Developer. Village shall offer Developer and the new retailers the opportunity to defend any claim made by any third Party against Village for release of such documents or information.

The Village's Agreement with Minority Development provides:

SECTION 5. CONFIDENTIALITY.

The Parties acknowledge that the information contained in any tax return (including, without limitation, tax returns filed by MDC and the new retailers) and report made by MDC is confidential information proprietary to MDC and the new retailer(s) and agree that to the fullest extent permitted by law, all documents, including tax returns, and information provided to Village, its agents and representatives pursuant to or with regard to the provisions of this Agreement, shall not be released or made available to any third person, corporation, organization or association without order of court or the prior approval of the new retailers or MDC. Village shall offer MDC and the new retailers the opportunity to defend any claim made by any third party against Village for release of such documents or information. MDC and Retailer shall be responsible for reimbursing the Village for all of its costs and expenses related to opposing any such claim, including but not limited to the Village's reasonable attorney's fees and any monetary award or judgment against the Village. No expenses or costs, including attorney fees, will be incurred by the Village without MDC first receiving notice and an opportunity to discuss such expenses or costs before such costs or expenses are incurred by the Village.

To the extent that your requests seek documentation or correspondence which would result in the disclosure of the amount of taxes paid by any particular retailer to the Illinois Department of Revenue, or that information could be ascertained from such documentation or correspondence, then the request is also denied pursuant to 5 ILCS 140/7(a) as such disclosure is prohibited by state law. See 35 ILCS 120/11.

Further such tax information is exempt pursuant to 5 ILCS 140/7(1)(g) in that the information requested constitutes commercial or financial information furnished under a claim that they are proprietary, privileged or confidential and that disclosure of the commercial or financial information would cause competitive harm to the person or business.

The individual responsible for any denial, including redactions, is Mr. James F. Bowden, Village Administrator and FOIA Officer. You have the right to appeal this denial to the Public Access Counselor. The address and telephone number of the Public Access Counselor are:

Ms. Sarah Pratt  
Acting Public Access Counselor  
Office of the Attorney General  
500 S. 2<sup>nd</sup> Street  
Springfield, Illinois 62706  
1-877-299-3642



July 15, 2011  
Page 7

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~~You are further notified that you have a right to judicial review under Section 11  
of the Illinois Freedom of Information Act (5 ILCS 140/11).~~

Very truly yours,

VILLAGE OF CHANNAHON

By: James F. Bowden  
James F. Bowden  
Village Administrator

Enclosure

cc: Illinois Attorney General, Public Access Counselor