

RESOLUTION 17 - 58

**A RESOLUTION RATIFYING THE RETAINER
OF MILLER CANFIELD AS SPECIAL TIF COUNSEL**

WHEREAS, a major corporation has entered into discussions with the Mayor and Village Staff pursuant to the directions and general oversight of the Village Board, and

WHEREAS, the corporation wishes to remain anonymous at this point in time, but generally speaking has negotiated toward an incentive package to be extended to it in consideration of the significant investment it intends to make in the IDI Industrial Park within the Village and in consideration of the jobs that will follow that investment, and

WHEREAS, the terms of the negotiations, pending formal approval of the Village Board, include modification of an existing fairly complex TIF district and that requires special counsel with particular knowledge of TIF laws, bonds and related laws, and

WHEREAS, the Village Attorney, in conjunction with the Administrator, negotiated a retainer agreement with the Miller Canfield firm for this task, which firm has previously represented the Village in bond financing matters, and

WHEREAS, the Village Board, being fully informed in the premises finds that ratifying the retainer agreement is an appropriate and wise choice, particularly given that the fees of TIF counsel can properly be charged to the TIF district and ultimately paid for through bonds or other TIF receipts,

NOW THEREFORE, BE IT RESOLVED by the Village of Antioch, Lake County, Illinois, as follows:

SECTION ONE: The attached retainer agreement, previously executed on behalf of the Village by the Village Attorney, is hereby ratified.

SECTION TWO: This resolution shall take effect immediately upon passage.

PASSED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF ANTIOCH, ILLINOIS,
ON THIS 11 DAY OF SEPTEMBER, 2017.

ATTEST:


LAWRENCE M. HANSON, MAYOR


LORI K. ROMINE, VILLAGE CLERK



Founded in 1852
by Sidney Davy Miller

MILLER CANFIELD

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September 1, 2017

VIA EMAIL AND REGULAR MAIL

Robert J. Long, Esq.
Village Attorney – Village of Antioch, Illinois
Daniels, Long & Pinsel, LLC
19 North County Street
Waukegan, IL 60085

Re: Village of Antioch, Lake County, Illinois
Engagement as Counsel – Antioch Corporate Center Redevelopment Project Area

Dear Bob:

If you wish us to represent the Village of Antioch, Lake County, Illinois (the “**Village**”) in connection with assisting the Village as to matters in regards to the Antioch Corporate Center Redevelopment Project Area and a proposed redevelopment project, I ask that you review this letter and the enclosed **Standard Terms of Engagement** and return a signed copy of this letter to me.

Client. Our client in this matter will be the Village. This engagement does not give rise to a lawyer-client relationship between the firm and any affiliate of the Village or other person or entity. If you wish us to represent any other person or entity, please let me know so that I can revise this engagement letter.

Scope of Engagement. We have been engaged to represent the Village as to legal matters in connection with an existing redevelopment project area pursuant to the Tax Increment Allocation Redevelopment Act of the State of Illinois. Because we are not the Village’s general counsel, our acceptance of this engagement is not an undertaking to represent the Village or its interests in any other matter.

Staffing. I will be principally responsible for managing this engagement. My time on this engagement will be charged at \$450 per hour, which is a discount from my usual rate of \$590. I may be assisted by one or more other members of our professional staff, whose charges will not exceed \$450 per hour. The staffing on this matter is subject to change, based on cost considerations, the workloads of our professional staff members, and the specific tasks to be

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

Robert J. Long, Esq.

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September 1, 2017

performed. The firm periodically adjusts the rates of its professional personnel as described in the attached **Standard Terms of Engagement**.

Billing and Payment. We customarily send invoices for fees and expenses each month. We expect payment of our invoices within 30 days. Please contact me if these payment arrangements are not acceptable to you.

Completion of Engagement. This engagement will terminate when we perform our last services for you in this matter, whether or not the charges for those services have been invoiced or paid. Unless we are then representing the Village in another matter, the lawyer-client relationship between us will terminate at the same time.

Standard Terms of Engagement. Attached to this letter is a copy of a document that contains the **Standard Terms of Engagement** that apply to all engagements undertaken by the firm. I encourage you to read this document carefully, as it is an integral part of our agreement with you regarding this engagement and contains important provisions governing our relationship.

We look forward to our working together. Please acknowledge your agreement to the terms of this letter and the enclosed **Standard Terms of Engagement** by signing the enclosed copy of this letter and returning it in the enclosed envelope. If you have any questions about this engagement or any aspect of our work or charges, I encourage you to contact me promptly.

Very truly yours,

MILLER, CANFIELD, PADDOCK AND STONE,
P.L.C.

By: 
Darryl R. Davidson

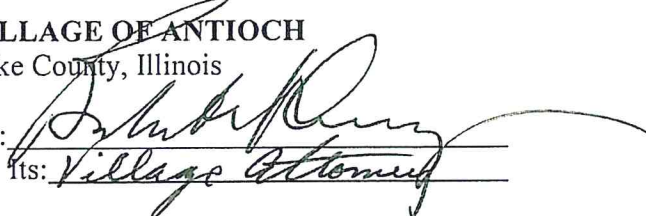
/cme

Enclosures

cc: James Keim (via email)
Patrick F. McGow, Esq. (via email)
Paul D. Durbin, Esq. (via email)

AGREED AND ACCEPTED:

VILLAGE OF ANTIOCH
Lake County, Illinois

By: 
Its: Village Attorney

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

STANDARD TERMS OF ENGAGEMENT

Includes information provided in accordance with the Illinois Rules of Professional Conduct

This statement sets forth certain standard terms of our engagement as your lawyers in this matter. It supplements our engagement letter with you and is an integral part of our agreement. Therefore, you should review this statement carefully and contact us promptly if you have any questions. Unless modified in writing by mutual agreement, these terms and those in the engagement letter will control our relationship. We suggest that you retain this statement and our engagement letter in your file. Our engagement is also subject to and governed by the applicable rules of professional conduct.

How We Approach Our Work for You

We will perform our legal services for you in accordance with our professional judgment. Any expressions by us concerning the outcome of your legal matters are expressions of that judgment but are not guarantees. Such opinions are necessarily limited by the facts that you and others disclose to us and the state of the law at the time our opinions are expressed.

The person or entity we represent is the person or entity identified in our engagement letter, and the word "you" in this statement means that person or entity only. Unless we agree with you in writing, our engagement does not include representation of any affiliates of such person or entity. For example, if you are a corporation, a partnership, or a limited liability company, our representation of you does not include representation of any parents, subsidiaries, employees, officers, directors, shareholders, members or partners. If you are a trade association or other voluntary organization, our engagement does not include representing any of your members. If you are an individual, our representation does not include your spouse or other family members. If you believe this engagement includes additional entities or persons as our clients, you should inform us immediately and ask us to include those persons in our engagement letter.

Who Will Provide the Legal Services

Customarily, each client of the firm is served by a principal attorney contact. The principal attorney should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of principal attorney at any time. Subject to the supervisory role of the principal attorney, your work or parts of it may be performed by other lawyers and legal assistants in the firm. Such delegation may be for the purpose of involving lawyers or legal assistants with special expertise in a given area or for the purpose of providing services on the most efficient and timely basis.

How Our Fees Will Be Set

Generally, our fees are based on the time spent by the lawyers and paralegal personnel who work on your matter. We will charge for all time spent performing professional services for you including, by way of illustration, telephone and office conferences with you, your representatives, consultants, opposing counsel, and others; conferences among our legal and paralegal personnel; factual investigation; legal research; drafting letters, agreements, pleadings, briefs, and other documents; responding to requests by your auditors; and travel. We will keep accurate records of the time we devote to your work. If you have insurance relating to the matter on which you have engaged us, and your insurance carrier pays less than the rates on which we have agreed or declines to pay for any matter on which you have engaged us, you agree to pay the difference.

The hourly rates of our lawyers and legal assistants are reviewed and adjusted periodically on a firm-wide basis to reflect current levels of legal experience, changes in overhead costs, and other factors. Because these changes are made on a firm-wide basis, we customarily do not inform each client of the specific changes in the hourly rates of the personnel working on their matters. However, the rates charged by our personnel will be reflected on the invoices we send you, and we encourage you to raise promptly any questions you may have regarding our rates and any changes to them.

From time to time you may request and we may furnish estimates of legal fees and other charges that we anticipate will be incurred in representing you. Due to a wide range of variables, many of which are unforeseeable, these estimates are by their nature inexact and cannot be considered as limitations on the fees we will charge. The actual fees and charges ultimately billed may vary from such estimates.

With your advance written agreement, the fees ultimately charged may be based upon a number of factors, including: the time and effort required, the novelty and complexity of the issues presented, the value of the services to you, the amount of money or value of property involved, the results obtained, and the time constraints imposed by you and other circumstances, such as an emergency closing or the need for injunctive relief from a court.

For certain well-defined services and special circumstances, we will, if requested, quote a flat fee. In all such situations, both the amount of the fee and the scope of the services to be provided must be expressed in the engagement letter. In appropriate circumstances, we may agree to provide legal services on a contingent fee basis. The terms of any contingent fee representation must be set forth in the engagement letter.

Additional Charges

In addition to our fees, our invoices will include charges for expenses incurred in the performance of our legal services. Generally, charges which reflect the use of resources provided by outside vendors (courier services, court reporters, etc.) are charged at the vendor's charge to us without markup. Certain other charges reflect the utilization of firm resources or involve an integral combination of firm's resources and outside vendors (photocopying, computer research, etc.). These services are charged at standard rates which encompass both the direct vendor charge and an amount equal to the firm's estimate of an appropriate charge for the firm resources allocated to the service. While these charges may not match the firm's exact cost of providing these services in each instance, we believe that these charges are fair and generally comparable to the charges made by other firms for similar services. The current basis for these charges is set forth below. The firm will review this schedule of charges on an annual basis and adjust them to take into account changes in the firm's costs and other factors.

Photocopying: The firm charges \$.10 per page.

Computer Research: The firm uses computer assisted research services such as Westlaw. We charge for computer research at 80% of the retail rates published by the computer assisted research services. We believe that this charge compensates the firm for providing support and ancillary services, yet provides these services to our clients at a discount from retail prices.

Mail: Clients are charged the actual cost of postage for the U.S. Postal Service and foreign postal carriers, as well as the actual cost of air express couriers.

Overtime: Staff overtime is charged only when required by the time constraints of the specific project.

Facsimile: The firm reserves the right to charge up to \$1.00 per page for outgoing faxes, which includes all telephone costs. There is no charge for incoming faxes.

Telephone Calls: The firm does not charge for local or long-distance calls made or received at our office locations via land line. In cases in which a substantial number of cellular telephone calls are required in an engagement, the firm may pass on the cost of such calls charged to the subscriber.

Travel-Related Expenses: Airfare, meals, and related travel expenses are charged to you at the firm's actual, out-of-pocket cost. Automobile mileage is charged at the IRS approved rate. Credits earned under the Frequent Flyer Programs accrue to the individual traveler and not to the firm or you.

Firm Messengers: Walking messenger trips are charged at a flat rate per delivery. Driving messenger trips are charged at the firm's standard automobile mileage charge plus parking and toll charges if imposed.

Other Costs: The firm charges actual disbursements for third-party services like court reporters, expert witnesses, database services, and the like.

Unless special arrangements are otherwise made, payment of the fees and expenses charged by others (such as experts, investigators, consultants and court reporters) will be your responsibility and billed directly to you. All invoices in excess of \$1000 will be forwarded to you for direct payment unless other payment arrangements are made with us in advance.

Payment

Our billing rates are based on the assumption of prompt payment. Consequently, unless other arrangements are made, fees for services and other charges will be billed monthly and are payable within thirty days of receipt. We reserve the right to charge interest at the maximum legally permissible rate up to 1% per month or 12% per annum on amounts past due.

Representation in Other Matters

We are a relatively large law firm and we represent many other companies and individuals. It is possible that, during the time that we are representing you or afterward, the interests of another client of the firm may require the assertion in litigation, business transactions, or other legal matters of positions which conflict with yours. Additionally, subject to the requirements of the rules of professional conduct which govern us, you agree that our representation of you in this matter will not disqualify the firm from opposing you in other matters, including litigation or other dispute resolution proceedings, that are unrelated to the subject matter of this representation. You waive any conflict of interest with respect to the assertion of positions and the undertaking of unrelated, but adverse, representations described in the previous sentences. You also agree that we may

disclose to prospective clients the general nature of this engagement with you and the fact that you have acknowledged our ability to undertake engagements of the type described above. We will not, of course, use to your disadvantage any proprietary or confidential information we acquire from you as a result of our representation of you in this or other matters.

Attorney-Client Privilege

Sometimes in the course of our representation of clients, we confront ethical or other legal issues that require that we seek the advice of an attorney, either one of our own attorneys or an attorney from another firm. As part of our agreement regarding your representation by the firm, you agree that such discussions, whether they occur during or after our engagement, are protected by the attorney-client privilege.

Termination of Engagement

Our engagement as your attorneys terminates upon our completion of the services you have retained us to perform, whether or not our final invoice has been rendered or paid. If you later retain us to perform further or additional services, our attorney-client relationship will begin again with the signing of a new engagement letter.

You may terminate our engagement with or without cause at any time on by notifying us of your decision to do so. Termination of our services will not affect your responsibility to pay for services rendered and expenses and other charges incurred up to the date when we receive notice of termination, and for any further work required of us in order to facilitate an orderly turnover of matters in process at the time of termination.

We may terminate our engagement for any of the reasons permitted under the rules of professional conduct which govern us, including: your failure to pay our invoices promptly, misrepresentation of (or failure to disclose) any material facts, action taken contrary to our advice, or any other conduct or situation that in our judgment impairs an effective attorney-client relationship between us or presents conflicts with our professional responsibilities. Subject to the rules of professional conduct which govern us, we may also terminate our engagement by reason of your failure to abide by your consent to our representation of a client in accordance with the terms of the section entitled "Representation in Other Matters" above. If required, we will request a stipulation executed by you allowing us to withdraw as attorney of record in any judicial, arbitration, or similar proceedings. We may also apply for a court order approving our withdrawal from representing you, and you agree in advance to our withdrawal.

Subsequent Engagements

If, during this engagement or thereafter, you retain us for an additional engagement, it will be presumed, absent a written agreement between us to the contrary, that the terms and conditions contained in this document will apply to such subsequent engagements.

Alternative Dispute Resolution: Mandatory Arbitration

Should any dispute arise concerning the services provided to you by us or the charges we make for those services and related expenses, you and we shall first try in good faith to settle the dispute directly. If the dispute is not resolved, it shall be submitted to third party neutral facilitation in accordance with the mediation rules of the American Arbitration Association. If the dispute is not resolved through mediation, the dispute shall be settled by binding arbitration in accordance with the laws of the State of Illinois. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association except as modified here. Judgment upon the award rendered by the arbitrators may be entered in any court of record having jurisdiction thereof. The mediation and arbitration proceedings, including any hearings, shall be held in the Chicago metropolitan area. Both you and we agree that neither of us is entitled to or shall request or claim punitive or exemplary damages and that the arbitrators shall not have the authority to award punitive or exemplary damages or any other damages in excess of actual pecuniary damages.

Client Documents

We will maintain any documents you furnish to us in our client file (or files) for this matter. At the conclusion of the matter (or earlier, if appropriate), it is your obligation to advise us as to which, if any, of the documents in our files you wish us to turn over to you. These documents will be delivered to you within a reasonable time after receipt of payment for outstanding fees and costs. We will retain any remaining documents in our files for a certain period of time and ultimately destroy them in accordance with our record retention program schedule then in effect.

We are not advising you with respect to this statement of the terms of our engagement. If you wish advice, you should consult independent counsel of your choice.