

INFORMED GROWTH ACT INFORMATION SHEET

To assist Maine municipalities in complying with the new Informed Growth Act, 30-A M.R.S.A. §§ 4365-4371, the Institute for Local Self-Reliance (ILSR) retained Maine attorneys with experience in land use regulation and municipal law to prepare this package of sample documents for municipal officials, including planners and planning board members, to use at their discretion. The approach provided with this package is only one way to address the provisions of the Act, among a variety of other approaches. The package includes this information sheet, and the following sample forms:

1. Checklist
- 2a. Notice of Request for Proposals²
- 2b. Request for Proposals
- 2c. Proposal Form
3. Services Agreement
4. Specifications for Study
5. Notice of Public Hearing
6. Municipal Decision Form

***Municipal Exemption provision:** At the end of this Information Sheet is an explanation how a municipality can become exempt from the provisions of the Act.*

Informed Growth Act Generally. The Informed Growth Act is effective as of September 20, 2007. It requires a municipality to decide whether a proposed large-scale retail development, a proposed single retail development 75,000 sq. ft. in size or larger, seeking a municipal land use permit will have an "undue adverse impact" on the municipality and its abutting municipalities (the "comprehensive economic impact area"). If the municipality decides that the project will cause an undue adverse impact, the permit cannot be approved.

The municipality's permitting authority (referred to below as "the board") is the body that decides if the project will have an undue adverse impact or not.

The Act lists a number of economic and environmental impact factors for the board to consider in making its decision. The economic impact factors relate to impacts on retail businesses, jobs, wages and municipal costs. The environmental impact factors relate to more general impacts on residential neighborhoods, traffic, noise, air, water, and wildlife habitat.

To assist the board's review, the applicant must fund a "comprehensive economic impact study" commissioned by the board. The applicant pays a \$40,000 fee to the State Planning

¹ This information sheet is provided to assist municipalities in applying the Informed Growth Act to large-scale retail development permit applications. It describes only one way, among other possible ways, to apply the Act. ILSR and Perkins, Thompson, P.A. disclaim any liability arising from the use of, or reliance upon, this sheet and its companion forms and explanations

² Forms 2a, 2b and 2c, are provided only for use by municipalities that have an RFP process.

Office ("SPO"). The SPO pays up to \$39,000³ of the fee to the municipality upon the board's request to cover the board's cost to hire the study's preparer, as well as its cost of public hearing notice and staff support. The SPO also provides the board a list of qualified preparers from which the board can select a consultant to prepare the study.

The study is presented at a public hearing held by the board within 4 months of the applicant's filing of its permit application and its payment to the SPO of the \$40,000 fee.

At the hearing, anyone, including other municipalities, the applicant, and businesses and residents, can submit evidence and testimony about the anticipated economic and environmental impacts of the proposed project within the comprehensive impact area.

After considering the study and all other related evidence and testimony, the board decides if the project's impact will be unduly adverse or not. If the board finds that the project's impact will not be unduly adverse, the applicant must still meet the board's other permit standards to obtain the permit.

There is a two-step "findings of fact" process for the board to complete to reach a conclusion of undue adverse impact or no undue adverse impact.

The first step is to find whether the project will have a negative effect on any of 11 economic factors. There can be no undue adverse impact conclusion unless the board finds that the proposed development will have an estimated negative effect on at least two of the 11 factors.

The second step is to find whether the project's overall negative effects on the economy and the environment will outweigh the overall positive effects. There can be no undue adverse impact conclusion unless the board also finds that there will be an overall negative impact on the economy and the environment.

Thus, a conclusion of "undue adverse impact" requires negative findings in both steps---that is, (1) two or more negative findings as to the economic impact factors, and (2) a negative impact finding overall. Otherwise, the conclusion must be that there is no undue adverse impact.

The sample municipal decision form (Form 6) is in a "checkbox" format to provide the board a logical progression through its decision making process. For more information regarding the implementation of the Informed Growth Act, please refer to the Informed Growth Act Guidebook brochure.

Explanation of Sample Informed Growth Act Forms:

1. Sample Checklist (Form 1). This Checklist is to help municipal planners and planning boards keep track of the administrative steps in reviewing large-scale retail development permit applications under the Informed Growth Act.

³ The SPO may charge up to \$1,000 against the fee to cover its costs "to record, administer and disburse the fee". 30-A M.R.S.A. §4367(3).

2 a., b. and c. Sample Notice of Request for Proposals (Form 2a.), Request for Proposals (Form 2b.), Proposal Form (Form 2c.) Municipalities that have charter, ordinance or policy provisions requiring competitive bidding for contracts for professional services at the level contemplated here (a comprehensive economic impact study costing up to \$39,000) will need this set of contract documents, and the Services Agreement (Form 3), and can complete them as appropriate. Municipalities without competitive bidding requirements or whose requirements are inapplicable here simply may use the Services Agreement (Form 3). In either case, the municipality will want to prepare a set of specifications (see Sample Specifications, Form 4) to accompany the request for proposals (if proposals are required) and the services agreement (whether or not proposals are required) to detail the requirements of the comprehensive economic impact study.

3. Sample Services Agreement (Form 3). This is a sample contract for use by the municipality in contracting with the selected preparer of the Comprehensive Economic Impact Study

4. Sample Specifications (Form 4). This sample specifications document informs the consultant of the scope of services expected in the preparation of the Comprehensive Economic Impact Study.

5. Sample Notice of Informed Growth Act Public Hearing (Form 5). This sample notice form is drafted with reference to the Act's requirement *"that the comprehensive impact study will be presented at the hearing and that the municipal reviewing authority will take testimony on the comprehensive impact of the proposed large-scale retail development, and the notice must include the name of any potential retailer, a map of the development location and a map of the comprehensive impact area."* The Act states further that the municipality shall send the notice of public hearing *"by regular mail to municipal officers [selectmen or councilors] of adjacent municipalities, to all persons residing in the municipality within 5,000 feet of the proposed development and to persons who have made timely requests to be notified of a specific application."*

6. Sample Municipal Decision Form (Form 6). This sample form is designed to assist the municipal reviewing authority in making the findings and conclusions called for by the Act as to whether the proposed large-scale retail development is likely to present an undue adverse impact within the comprehensive economic impact area. The findings and conclusions do not replace, but are in addition to, the municipality's usual permitting standards.

MUNICIPAL EXEMPTION FROM THE INFORMED GROWTH ACT⁴

Under the terms of the exemption provision of the Informed Growth Act, 30-A M.R.S.A. §4371, municipalities that wish to be exempt from the Act, need only to have adopted "economic and community impact review criteria that apply to large-scale retail

⁴ This explanation is provided to assist municipalities in responding to the Informed Growth Act, 30-A M.R.S.A. §§ 4365-4371. ISLR and Perkins, Thompson, P.A. disclaim any liability arising from the use of, or reliance upon, this explanation, or its companion forms and explanations

development land use permit applications and that require a study of the comprehensive economic and community impacts of the proposed large-scale retail development for consideration, among other evidence, in applying the review criteria to the application".

To be exempt from the Act, a municipality would have a land use permit ordinance that:

- applies to large-scale retail development as defined by the Act (§ 4365(6));
- applies to the same impact area as defined by the Act (§4366(1));
- applies the same, or substantially similar, economic and community impact review criteria and review factors as described in the Act (§§4366(10) and 4367 (4));
- requires the same, or a substantially similar, comprehensive economic impact study as required by the Act (§4366(2)).

The municipality's land use permit ordinance is not required to have any of the following provisions in order to be exempt from the Act:

- any applicant fee requirement to finance the study; or, conversely;
- a \$40,000 limit on an applicant fee to finance the study;
- any requirement that the fee be paid to the State Planning Office, or anyone else other than the municipality;
- any study preparer qualifications, including any State Planning Office prequalification standards;
- any study preparer selection limitations;
- any time limit for the study to be completed and presented;
- any additional public hearing notice requirements, including those stated in the Act;
- any requirement that the name of the potential retailer be disclosed.

INFORMED GROWTH ACT CHECKLIST For Large Scale Retail Development Permit Applications

Check upon Completion

- 1. On _____ (date), _____ (Applicant) filed an application for a _____ (subdivision/site plan/other) permit for a large-scale retail development.²
- 2. The State Planning Office (hereafter "SPO") confirmed on _____ (date) that the Applicant paid it a fee of \$40,000.³
- 3. On _____ (date) the _____ (municipal permitting authority or its designee, hereafter "Board") determined that the Board's projected costs of the comprehensive economic impact study (hereafter "CEIS") contract, notice of the public hearing, and related municipal staff support is _____ (dollar amount, up to a limit of \$40,000 minus SPO costs⁴).
- 4. On _____ (date), the SPO disbursed the amount of _____ to the Board.

5. By mutual agreement with the Applicant, on _____ (date), the Board retained _____ (name) to be the CEIS preparer who/which is listed by the SPO as qualified to prepare such a study.

Alternative 5. The Board and the Applicant having failed to reach mutual agreement on the selection of a preparer of the CEIS and 15 days having passed since either the Board or the Applicant first proposed a preparer for the Board's selection, on _____ (date) the Board retained _____ (name) to be the CEIS preparer, who/which is listed by the SPO as qualified to prepare such a study.

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² "Large scale retail development" is "any retail business establishment having a gross floor area of 75,000 square feet or more in one or more buildings at the same location, and any expansion or renovation of an existing building or buildings that results in a retail business establishment's having a gross floor area of 75,000 square feet or more in one or more buildings except when the expansion of an existing retail business establishment is less than 20,000 square feet. Other retail business establishments on the same site as the large-scale retail business establishment are not included in this definition unless they share a common check stand, management, controlling ownership or storage areas." 30-A M.R.S.A. § 4366 (6).

³ The development application is not complete for processing until the SPO confirms that the fee has been paid. 30-A M.R.S.A. § 4367 (3).

⁴ SPO's charge against the \$40,000 fee to cover SPO costs may not exceed \$1,000. Any unused funds must be returned to the Applicant. 30-A M.R.S.A. § 4367 (3). Should the Board's initial estimate be too low, there is nothing to prevent it contacting the SPO for a supplementary disbursement, so long as the total payment does not exceed the \$40,000 fee minus the SPO charge.

6. On _____ (date), being within four (4) months of the later of the date the SPO confirmed that the Applicant paid the \$40,000 fee and the date the application was filed, the Preparer submitted the CEIS to the Board.

7. On _____ (date), the Board held a public hearing on the proposed development's impacts as defined in the Informed Growth Act, in accordance with the notice requirements of the Act's § 4368(2)⁵, at which hearing the CEIS was presented, and an opportunity to testify was provided to all persons, including the Applicant, other municipalities, businesses, state agencies, nonprofit organizations and members of the public.

8. Following the hearing, on _____ (date) the Board considered all evidence submitted, including the CEIS, and made findings of fact and conclusions of law as to whether the proposed development would have an undue adverse impact as defined in the Informed Growth Act.⁶

⁵ Under § 4368 of Title 30-A M.R.S.A., notice of the public hearing "must state that the comprehensive impact study will be presented at the hearing and that the municipal reviewing authority will take testimony on the comprehensive impact of the proposed large scale retail development, and the notice must include the name of any potential retailer, a map of the development location, and a map of the comprehensive impact area. The municipality shall also provide notice by regular mail to municipal officers of abutting municipalities, to all property owners within 1,000 feet of the proposed development."

⁶ Under § 4366 (10) of Title 30-A M.R.S.A., an "undue adverse impact" means that within the comprehensive economic impact area (which includes the municipality and abutting municipalities), "the estimated overall negative effects on the factors listed for consideration in § 4367, subsection 4 outweigh the estimated overall positive effects on those factors and that the estimated negative effects of at least 2 of the factors listed in § 4367, subsection 4, paragraph A outweigh the positive effects on those factors." If the Board finds that the proposed development will have an undue adverse impact, the Application may not be approved. If the Board finds that the proposed development will not have an undue adverse impact, then the Application is eligible for approval, so long as it meets the Board's other permit standards. See sample Form 6, Municipal Decision Form, and Informed Growth Act Information Sheet.

Form 2a

NOTICE OF REQUEST FOR PROPOSALS

FOR PREPARATION OF COMPREHENSIVE ECONOMIC IMPACT STUDY

The Town/City of _____, Maine will receive sealed proposals for consultant services to prepare a Comprehensive Economic Impact Study until ____ a.m. on _____, _____ at the Town/City of _____ Office, _____, Maine, at which time and place all proposals will be publicly opened.

Contract documents and specifications and the Request for Proposals are on file at the Town/City of _____ Office at _____, _____, Maine.

Date: _____,

Town/City of _____, Maine

By: _____

Town/City Manager

[Note: This sample form is for use by the Municipality to provide notice of the Request for Proposals by publication as a legal advertisement, by posting and by mailing to potential proposers.]

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Form 2b

**REQUEST FOR PROPOSALS FOR
PREPARATION OF A COMPREHENSIVE ECONOMIC IMPACT STUDY**

[Note: Form for Municipality to Provide to Proposers Along with Form 2c (Proposal Form), Form 3 (Services Agreement) and Form 4 (Specifications)]

I. INTRODUCTION

The Town/City of _____, Maine (hereinafter, the "Town/City") will receive sealed Proposals for the Preparation of Comprehensive Economic Impact Study (brief description of work or services to be performed).

All Proposals are to be submitted in sealed envelopes marked "Comprehensive Economic Impact Study" to the Town/City Office, _____, Maine _____, by _____ a.m. on _____, _____. **[Choose a date two weeks from the date of issuance of this Request for Proposals, so that the proposer can be selected and the study can be prepared within four months of the application's filing of the application and confirmation by the Stgate Planning Office of the applicant's payment of the \$40,000 fee.]** Proposals received after the scheduled opening time shall not be considered. The Proposal must be signed by the Proposer with its full name and address and enclosed in a sealed envelope.

Questions regarding this Request for Proposals should be directed toward _____, Town/City Manager. All questions by prospective proposers pertaining to this Request for Proposals must be received, in writing, by the Town/City Manager at least five (5) days before the date set for the opening of the Proposals. Any questions which, in the opinion of the Town/City Manager, request interpretation, will be addressed by a written interpretation in the form of a numbered Addendum, sent by registered mail to each person or firm who has taken out a Request for Proposals not later than three (3) days prior to the scheduled opening of the Proposals. Addenda issued later than three (3) days prior to the scheduled opening of the Proposals may be by telephone. Proposers shall acknowledge receipt of all Addenda in the space provided therefor in the Proposal Form (a copy of which is attached hereto as Form 2c), whether the Addenda are in response to questions or otherwise issued by the Town/City of _____ (hereinafter the "Town/City") and whether the Addenda are received by mail or telephone.

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Each Proposer is required to state in its Proposal: the Proposer's name and place of business and the names of persons or parties interested as principals and /or as contractors or subcontractors with it; that the Proposal is made without any connection with the Applicant, or with any other Proposer making any proposal for the same Services; and that no person acting for or employed by the Town/City is directly or indirectly interested in the Proposal or any agreement which may be entered into to which the Proposal relates or in any portion of the profits herefrom.

The successful Proposer shall be required to sign an agreement substantially similar to the Services Agreement, a copy of which is attached hereto as Form 3.

Each Proposer must demonstrate in its Proposal that it is a "qualified preparer" under 30-A M.R.S.A. § 4367.

Before commencing work under the Services Agreement, the successful Proposer shall produce evidence satisfactory to the Town/City that it and its subcontractors, if any, have secured public liability, automobile and workers' compensation insurance coverages (and for professional service contracts, professional liability insurance coverage) as set forth in Form 3. In addition, before signing the contract, the successful Proposer shall provide a performance bond in the full Contract Price, guaranteeing the Proposer's performance.

The Town/City disclaims any and all responsibility for injury to Proposers, their agents or others while examining the work site or at any other time. Proposers are responsible for all of their costs in preparing and submitting proposals hereunder.

No Proposals may be withdrawn within a period of twenty-one (21) days after the opening of bids.

Proposers must submit their Proposals in triplicate. Proposal forms furnished by the Town/City (Form 2c) or copies thereof shall be used, and strict compliance with the requirements of this Request for Proposals is necessary.

II. SCOPE OF SERVICES

The Scope of Services to be performed hereunder is described in the Specifications attached hereto as Form 4 (hereinafter, the "Services"). **[Note to Municipality: Be sure to complete "Form 4" entitled "Specifications" containing the scope of comprehensive economic impact study services that the Municipality wishes to obtain, and to attach the completed Form 4 3 to this "Request for Proposals" Form.]**

III. GENERAL

The Proposal must include all materials, equipment and labor necessary to perform the Services and must state the name of the person(s) or entity(entities) owning the materials and equipment and/or providing the personnel that forms the basis for its proposal.

IV. ACCEPTANCE/REJECTION

The Town/City reviewing authority reserves the right to waive any informalities in proposals, to accept any proposal and to reject any or all proposals, should it be deemed in the best interest of the Town/City reviewing authority to do so.

Proposals may be held by the Town/City reviewing authority for a period not to exceed twenty-one (21) days from the date of the opening of proposals for the purpose of reviewing proposals and investigating the qualifications of the Proposers prior to the award of a contract. Pursuant to the Informed Growth Act (30-A M.R.S.A. § 4367 (2) (“Selection of preparer”), “The selection of the preparer must be mutually agreed upon by the municipal reviewing authority and the applicant. If no mutual agreement is reached within 15 days, the municipal reviewing authority shall select the preparer.”

Date: _____, _____

By: _____
Town/City Manager

Form 2c

**PROPOSAL FORM FOR PREPARATION OF
COMPREHENSIVE ECONOMIC IMPACT STUDY SERVICES**

[Note: Form for Municipality to Provide to Proposers Along with Form 2b (Request for Proposals), Form 3 (Services Agreement) and Form 4 (Specifications)]

TO: _____, Town/City Manager
Town/City Office

_____, ME 04 _____

Dear Sir or Madam:

The undersigned hereby declares that it has carefully examined the Request for Proposals for Preparation of Comprehensive Economic Impact Study dated _____, _____, and the "Specifications" and the proposed Services Agreement attached thereto, and that it proposes and agrees, if this Proposal is accepted, in whole or in part, with the Town/City of _____ (hereinafter the "Town/City") to perform the Services, as defined in the said Request for Proposals, Specifications and Services Agreement, and that it will accept as payment in full for said Services or portion of the Services the following sum(s) (the "Contract Price"): _____ Dollars (\$ _____).

The undersigned acknowledges the receipt of Addenda numbered _____

The undersigned hereby represents that it is a "qualified preparer" as defined by 30-A M.R.S.A. § 4367.

The undersigned further agrees that, within twenty-one (21) days from the date of opening of the Proposals, it will execute the Services Agreement and furnish the required Bonds if the Town/City reviewing authority accepts its Proposal.

The undersigned hereby further declares that the only persons or parties interested in this Proposal as principals are named below; that the Proposal is made without any connection with the Applicant or any other person or party making any proposal for the same work; and that no person acting for or employed by the Town/City is directly or indirectly interested in this Proposal or in any Agreement which may be awarded under it or in profits expected to arise therefrom, except as provided by the Town/City Charter. The full names and addresses of all

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persons and parties interested in this Proposal, as principals, contractors and subcontractors, are as follows: (give first and last names in full; and in the case of a Corporation, give names and addresses of President, Treasurer and Manager; and in case of a Partnership, give names and addresses of members):

Date: _____, _____

By: _____

(Signature of Proposer)

(Title)

(Name of Entity)

(Legal Address)

(Principal place of business)

(Firm's IRS Identification No.)

Address to which all correspondence and notifications to Proposer are to be sent:

Proposer's Telephone Number: _____

Form 3

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (hereinafter "Agreement") is made this _____ day of _____, _____ by and between the municipal reviewing authority of the Town/City of _____, a municipal corporation existing under the laws of the State of Maine and located in the County of _____, State of Maine (hereinafter "MUNICIPALITY") and _____ (hereinafter "CONTRACTOR"),

WITNESSETH:

In consideration of the mutual covenants and conditions contained herein, the MUNICIPALITY and the CONTRACTOR agree as follows:

I. SCOPE OF SERVICES

The CONTRACTOR shall furnish all of the services, materials and perform all of the work as described in the Request for Proposals and Specifications entitled:

_____ issued under date of _____, _____ by _____, Town/City Manager and shall do so in accordance with the Contractor's Proposal dated _____, _____ which Request for Proposals, Specifications and Proposal are attached hereto and made a part hereof (hereinafter, collectively referred to as the "Services"), and the CONTRACTOR covenants that it shall do everything required by this Agreement, the conditions of the Agreement (together with the General, Supplementary and other Conditions, if any), the Request for Proposals, the Specifications and the Proposal in return for payment as provided herein.

A. The CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all analyses, reports, and other Services furnished by the CONTRACTOR under this Agreement. The CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in its analysis, reports, and other Services. Deficiencies are defined as willful or negligent acts that distort or falsify the state of the art of the products and Services developed and provided hereunder, or willful or negligent nonassignment of personnel or assignment of unqualified personnel to perform the duties hereunder.

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B. Approval by MUNICIPALITY of analyses, reports, and other services furnished hereunder shall not in any way relieve the CONTRACTOR of responsibility for the technical adequacy of the work. Neither MUNICIPALITY's review, approval or acceptance of, nor payment for, any of the Services shall be construed to operate as a waiver of any rights under this Agreement or any cause of action arising out of the performance of this Agreement, and the CONTRACTOR shall remain liable in accordance with applicable law for all damages to MUNICIPALITY caused by the CONTRACTOR's willfully negligent performance of any of the Services furnished under this Agreement.

II. CONTRACTOR OBLIGATIONS

The CONTRACTOR warrants:

A. That it will furnish all vehicles, materials, personnel, tools and equipment, except as otherwise specified herein, and do everything necessary and proper to satisfactorily perform the Services required by this Agreement.

B. That it is financially solvent, is experienced in and competent to perform the Services and is able to furnish the vehicles, materials, personnel, tools and equipment to be furnished by it.

C. That it is familiar with all federal, State and local statutes, laws, rules, regulations, ordinances and orders which may in any way affect the Services.

D. That it has carefully examined the Request for Proposals, the Specifications, and this Agreement and has conducted its own investigation of the nature and location of the Services, the character of equipment and personnel needed to perform the Services and all conditions which may in any way affect the performance of the Services.

E. That any increase in CONTRACTOR's costs during the term of this Agreement shall be the sole responsibility of the CONTRACTOR.

III. COMPLETION OF SERVICES/COMPLETION DATE

The Services to be performed under this Agreement shall be commenced by _____ and completed within sixty (60) days from the date of this Agreement. _____². Due to the difficulty of calculating damages for late completion, liquidated damages in the amount of \$ 100 per day for late completion after the date for substantial completion shall be awarded to the MUNICIPALITY for delay in substantial completion not otherwise excused or permitted under this Agreement.

IV. CONTRACT PRICE

² The Informed Growth Act states that the "comprehensive economic impact study must be completed within 4 months of the filing of the application" and that the "application is not complete for processing" until the State Planning Office confirms that the application has paid the \$40,000 fee. 30-A M.R.S.A. § 4367 (3) and (4).

The MUNICIPALITY shall pay the CONTRACTOR for the performance of Services under this Agreement the sum of \$ _____ (the "Contract Price").

CONTRACTOR shall submit for MUNICIPALITY'S Approval, monthly invoices for the Services performed hereunder in the previous month. The MUNICIPALITY shall pay CONTRACTOR such approved amounts within thirty (30) days from MUNICIPALITY's receipt of said invoice.

Payments due and unpaid under this Agreement shall bear interest from the date payment is due at the maximum rate permitted under Maine law at the time of the delinquency for unpaid municipal taxes.

VI. GUARANTEE

The CONTRACTOR represents that in the performance of the Services hereunder, it will perform in accordance with applicable standards of conduct for professionals in the field.

VII. PERMITS AND LICENSES

Permits and licenses necessary for the performance of the Services shall be secured and paid by the CONTRACTOR.

VIII. OWNER'S RIGHT TO TERMINATE CONTRACT

Without prejudice to any other right or remedy, the MUNICIPALITY may terminate this Agreement for cause by providing the CONTRACTOR and its surety with seven (7) days' written notice of termination. For purposes of this Agreement, cause includes, but is not limited to: the adjudication of the CONTRACTOR as a bankrupt; the making of a general assignment by the CONTRACTOR for the benefit of its creditors; the appointment of a receiver because of the CONTRACTOR's insolvency; the CONTRACTOR's persistent or repeated refusal or failure, except for cases in which extension of time is provided, to supply enough properly-skilled workers or proper materials to perform the Services; the CONTRACTOR's persistent disregard of federal, state or local statutes, laws, codes, rules, regulations, orders or ordinances; and the CONTRACTOR's substantial violation of any provisions of this Agreement. In the event of a termination for cause, the OWNER may take possession of all materials and documents and finish the Services by whatever method it may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the Services are finished. If the unpaid balance of the Contract Price shall exceed the expense of finishing the Services, including compensation for additional managerial and administrative services, such excess shall be paid to the CONTRACTOR. If such expense shall exceed such unpaid balance, the CONTRACTOR shall pay the difference to the MUNICIPALITY.

Further, the MUNICIPALITY may terminate this Agreement for convenience upon thirty (30) days' written notice to the CONTRACTOR, in which case, the MUNICIPALITY shall pay the CONTRACTOR for all Services satisfactorily performed and materials purchased up to the date of receipt of such notice by the CONTRACTOR. In the event that the MUNICIPALITY

terminates this Agreement for cause and it subsequently is determined that cause did not exist, such termination shall be deemed to be for convenience.

IX. INSURANCE

Except as otherwise provided by this Agreement, the CONTRACTOR and its subcontractors and consultants shall obtain and maintain, throughout the term of this Agreement and for a period of at least two years following the completion of Services under this Agreement, at no expense to the MUNICIPALITY, the following insurance coverages:

a. **Public Liability Insurance** in the amount of not less than Four Hundred Thousand Dollars (\$400,000) or such other amount as is established by the Maine Tort Claims Act (14 M.R.S.A. §8101 *et seq.*) as amended from time to time, combined single limit, to protect the CONTRACTOR, any subcontractor performing Services under this Agreement, and the MUNICIPALITY from claims and damages that may arise from operations under this Agreement, whether such operations be by CONTRACTOR or by a subcontractor or by anyone directly or indirectly employed by them.

b. **Automobile Liability Insurance** in the amount of not less than Four Hundred Thousand Dollars (\$400,000) or such other amount as is established by the Maine Tort Claims Act (14 M.R.S.A. §8101 *et seq.*) as amended from time to time, combined single limit, to protect the CONTRACTOR, any subcontractor performing work covered by this Agreement, and the MUNICIPALITY from claims and damages that may arise from operations under this Agreement, whether such operations be by CONTRACTOR or by a subcontractor or by anyone directly or indirectly employed by them.

c. **Workers' Compensation Insurance** in amounts required by Maine law and **Employer's Liability Insurance**, as necessary, as required by Maine law. In case any class of employees engaged in hazardous work under this Agreement is not protected under the Workers' Compensation Act, the CONTRACTOR shall, at its own expense, provide for the protection of its employees not otherwise protected.

d. All such insurance policies shall name the MUNICIPALITY and its officers, agents and employees as additional insureds, except that for purposes of workers' compensation insurance, the CONTRACTOR and its subcontractors instead may provide a written waiver of subrogation rights against the MUNICIPALITY. The CONTRACTOR, prior to commencement of Services under this Agreement, and any of its subcontractors, prior to commencement of Services under any subcontract, shall deliver to the MUNICIPALITY certificates satisfactory to the MUNICIPALITY evidencing such insurance coverages, which certificates shall state that the CONTRACTOR and its subcontractors must provide written notice to the MUNICIPALITY at least thirty (30) days prior to cancellation, non-renewal, material modification or expiration of any policies, evidenced by return receipt of United States Certified Mail. Replacement certificates shall be delivered to the MUNICIPALITY prior to the effective date of cancellation, termination, material modification or expiration of any such insurance policy. The CONTRACTOR shall not commence Services under this Agreement until it has obtained all insurance coverages required under this subparagraph and such insurance policies have been

approved by the MUNICIPALITY, nor shall the CONTRACTOR allow any of its subcontractors to commence Services on any subcontract until all such insurance policies have been obtained by the subcontractor and approved by the MUNICIPALITY. All such insurance policies shall have a retroactive date which is the earlier of the date of this Agreement between the parties or the CONTRACTOR's Commencement of Services hereunder.

X. INDEMNIFICATION

The CONTRACTOR agrees to defend, indemnify, and hold harmless the MUNICIPALITY, its officers, agents, and employees against any and all liabilities, causes of action, judgments, claims or demands, including attorney's fees and costs, for personal injury (including death) or property damage arising out of or caused by the performance of Services under this Agreement by CONTRACTOR, its subcontractors, agents or employees.

XI. LIENS

Neither the final payment nor any part of the retained percentage shall become due until the CONTRACTOR delivers to the MUNICIPALITY a complete release of all liens arising out of the Agreement, or receipts in full in lieu thereof and, in either case, an affidavit that so far as it has knowledge or information the releases and receipts include all the labor and material for which a lien could be filed, but the CONTRACTOR may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the MUNICIPALITY to indemnify it against any lien. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to the MUNICIPALITY all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

XII. ASSIGNMENT

Neither party to the Agreement shall assign this Agreement or sublet it as a whole without the written consent of the other, nor shall the CONTRACTOR assign any prior moneys due or to become due to it hereunder, without the previous written consent of the MUNICIPALITY.

XIII. SUBCONTRACTS

The CONTRACTOR shall not sublet any part of this Agreement without the prior written permission of the MUNICIPALITY. The CONTRACTOR agrees that it is fully responsible to the MUNICIPALITY for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

XIV. FINAL PAYMENT

Final payment, constituting the entire unpaid balance for the Contract Price, shall be paid by the MUNICIPALITY to the CONTRACTOR when the Services have been completed, and the Agreement fully performed.

XV. OWNERSHIP OF DOCUMENTS

All drawings, notes, documents, plans, and specifications or other material to be developed under this Agreement shall become the property of the MUNICIPALITY and be promptly delivered to the MUNICIPALITY upon the completion of Services under this Agreement or sooner upon MUNICIPALITY's request or the termination of this Agreement. The CONTRACTOR shall be responsible for the protection and/or replacement of any work or materials in its possession, including work or materials provided to the CONTRACTOR by the MUNICIPALITY.

XVI. FORCE MAJEURE

Provided such party gives written notice to the other of such event, a party shall not be liable for its failure to perform its respective obligations under this Agreement, if prevented from so doing by any cause beyond the reasonable control of such party such as, but not limited to, strikes, lockouts, or failure of supply or inability by the exercise of reasonable diligence, to obtain supplies, parts, or employees necessary to perform such obligations, or because of war or other emergency. The time within which such obligations shall be performed shall be extended for a period of time equivalent to the delay from such cause.

XVII. NON-WAIVER

Except as expressly provided in this Agreement, the failure or waiver, or successive failures or waivers on the part of either party hereto, in the enforcement of any paragraph or provision of this Agreement shall not render the same invalid nor impair the right of either party hereto, its successors or permitted assigns, to enforce the same in the event of any subsequent breach thereof.

XVIII. NOTICES

Notices hereunder shall be deemed sufficient if sent by U.S. Certified mail as follows:

TO MUNICIPALITY: _____, Town/City Manager
Town/City of _____

TO CONTRACTOR: _____

XIX. REMEDIES

Except as otherwise agreed by the parties in writing, all disputes, claims, counterclaims and other matters in question between the MUNICIPALITY and the CONTRACTOR arising out of or relating to this Agreement shall be decided by a Maine court of competent jurisdiction. This Agreement is made and shall be construed under the laws of the State of Maine. Except as otherwise expressly agreed by the parties in writing, exclusive venue for any such civil action shall be in Maine.

XX. COMPLIANCE WITH APPLICABLE LAWS

The CONTRACTOR agrees that it and its subcontractors, if any, shall comply with all applicable federal, State and local statutes, laws, rules, regulations, codes, ordinances, orders and resolutions in the performance of Services under this agreement.

XXI. RELEASE OF INFORMATION

During the performance of the Services, any material, prepared or assembled by the CONTRACTOR under this Agreement shall not be made available to any individual or organization by the CONTRACTOR other than as called for herein without prior written authorization from the MUNICIPALITY.

XXII. EXTENT OF AGREEMENT

This Agreement (and the _____ attached hereto and hereby incorporated into this Agreement) represent(s) the entire and integrated Agreement between MUNICIPALITY and the CONTRACTOR and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both MUNICIPALITY and the CONTRACTOR.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

Witness MUNICIPALITY
By: _____

Chair, Town/City Reviewing Authority

CONTRACTOR
Witness By: _____
Its _____

SPECIFICATIONS FOR COMPREHENSIVE ECONOMIC IMPACT STUDY

[Form for Municipality to Provide to Proposers Along with Form 2b (Request for Proposals), Form 2c (Proposal Form) and Form 3 (Services)]

I. A consultant preparing a Comprehensive Economic Impact Study ("CEIS") shall complete the following general tasks:

- 1) Locate, research, and summarize existing relevant environmental and economic reports and data;
- 2) Identify the Comprehensive Economic Impact Area;
- 3) Conduct a survey to generate relevant local retail economic data;
- 4) Make general projections as to the proposed large-scale retail development's environmental impacts from existing data and studies; and,
- 5) Make specific projections as to the proposed large-scale retail development's economic impacts from existing and surveyed data and studies.

The CEIS will cover and be in a format substantially similar to the attached Prototype Study, Attachment A.

II. The consultant's specific tasks in preparing the CEIS include the following:

A. Project specific economic impacts:

- **Prepare Inventory of existing economic conditions related to the Informed Growth Act Section 4367(4)(A) economic impact factors within the comprehensive impact area** from such documents as municipal comprehensive plans, economic development plans, news articles; data, studies, surveys from federal, state and local agencies, the retail industry, stakeholder organizations, academic institutions and think tanks, and from the State DECD, Maine Merchants Association, Maine Tourism Association, state and local chambers of commerce, local businesses and realtors, and information provided by the applicant and the public.
- **Conduct survey within the comprehensive impact area to obtain data about existing economic conditions related to the Informed Growth Act Section 4367(4)(A) economic impact factors, to the extent that such data is not otherwise available:** To assess the proposed development's economic impacts

¹ This sample form is provided to assist municipalities in applying the Informed Growth Act to large-scale retail development permit applications. It provides only one way, among other possible ways, to apply the Act. ISLR and Perkins, Thompson, P.A. disclaim any liability arising from the use of, or reliance upon, this form and its companion forms and explanations.

on the economy, the consultant must be able to conduct a survey within the comprehensive impact area to obtain data that is not otherwise available about existing retail operations; supply and demand for retail space; number of location of existing retail establishments where there is an overlap of goods and services offered by the proposed development; retail employment, wages and benefits; existing retail sales; sales revenue currently retained and reinvested in the area; and existing public water utility, sewage disposal and solid waste disposal capacity.

- **Obtain information about the proposed large-scale retail development from which to project its immediate and long-term impact on the Informed Growth Act Section 4367(4)(A) economic factors**, including employment, wage and benefits; goods to be sold; projected property taxes and other fees paid to the municipality; costs incurred from use of roads, police, fire, rescue and sewer services; amount of public subsidies; and degree of use of public utilities--which data may come directly from the applicant, or may be inferred from similar development in Maine and elsewhere.
- **Make specific projections of the development's immediate and long-term impact on the Informed Growth Act Section 4367(4)(A) economic factors** from the Inventory, survey data and information about the proposed development and/or similar projects.

B. Project general environmental impacts:

- **Identify and summarize existing studies and data relating to any of the proposed development's general environmental effects within the comprehensive economic impact area on any of the factors referenced in Section 4367 (4)(B) of the Informed Growth Act.**

III. Present Study to the municipal reviewing/permitting authority at a public hearing.

Form 5

NOTICE OF INFORMED GROWTH ACT PUBLIC HEARING

Town/City of _____

The _____ (Town/City) _____ Municipal Reviewing Authority will hold a public hearing on an application for a (permit, appeal, variance) as requested by (insert details) _____

Date of Public Hearing: _____, _____

Time: _____ am/pm

Place: _____

The application requests that (insert specifics): _____

The application is for a large-scale retail development, and the potential retailer is _____. The comprehensive impact study for this proposed development will be presented at the hearing. The municipal reviewing authority will take testimony on the comprehensive impact of the proposed large-scale retail development. Maps of the proposed development location and of the comprehensive impact area are shown below.

[Insert maps of the proposed development location and of the comprehensive impact area]

Chairman, Board of Appeals

cc: Municipal Officers, each adjacent municipality
All property owners within 5,000 feet of proposed development
All persons making timely requests to be notified of a specific application

(For Newspaper Use Only)
Publish the above notice on the following date:

and charge to: _____

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MUNICIPAL INFORMED GROWTH ACT DECISION FORM
FOR A LARGE-SCALE RETAIL DEVELOPMENT APPLICATION

Having held a public hearing on the comprehensive impacts of the proposed large-scale retail development within the comprehensive economic impact area in accordance with the Informed Growth Act, 30-A M.R.S.A. §§ 4365 - 4371, at which was presented the Comprehensive Economic Impact Study (hereinafter "the Study") commissioned by the municipal reviewing authority (hereinafter "the Board"), and at which an opportunity was provided to all persons, including the applicant, state agencies, nonprofit organizations, and members of the public, to provide testimony and materials regarding the economic and environmental impacts of the proposed large-scale retail development and to comment on the Study, and having considered all the evidence and comments submitted, the Board makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

A. ESTIMATED ECONOMIC EFFECTS. The Board finds that within the comprehensive economic impact area, the proposed large-scale retail development will have an estimated negative effect on the following factors [*check only those factors where an estimated negative effect is found*]: ___ existing retail operations; ___ supply and demand for retail space; ___ number and location of existing retail establishments where there is overlap of goods and services offered; ___ employment, including projected net job creation and loss; ___ retail wages and benefits; ___ captured share of existing retail sales; ___ sales revenue retained and reinvested in the comprehensive economic impact area; ___ municipal revenues generated; ___ municipal capital, service and maintenance costs caused by the development's construction and operation, including costs of roads and police, fire, rescue and sewer service; ___ the amount of public subsidies, including tax increment financing; ___ public water utility, sewage disposal and solid waste disposal capacity.

Supporting Evidence: _____

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B. ESTIMATED GENERAL ENVIRONMENTAL EFFECTS. The Board finds that the proposed large-scale retail development would have the following general environmental effects within the range of factors listed in 30-A M.R.S.A. Section 4404, and 38 M.R.S.A. Sections 480-D and 484, such as existing uses, water, soil, and air quality, traffic congestion and safety, wildlife, utilities, scenic character, historic sites, noise, and conformity with the municipality's comprehensive plan:

General Environmental Effects: _____

Supporting Evidence: _____

C. ESTIMATED OVERALL ECONOMIC AND ENVIRONMENTAL EFFECTS
The Board finds that the proposed development's estimated overall negative effects on the factors considered in Sections A and B ___ outweigh/ ___ do not outweigh [*check only one*] the development's estimated overall positive effects on those factors.

II. CONCLUSIONS OF FACT AND LAW: Therefore, by vote of ___ to ___, the Board concludes that there is ___ likely/ ___ not likely [*check only one*] to be an undue adverse impact from the proposed large-scale retail development.

[To reach the conclusion that there is likely to be an undue adverse impact, two or more of the factors in Section A must be checked "negative", and the finding in Section C must be that the proposed development's estimated overall negative effects on the factors considered in Sections A and B outweigh the estimated overall positive effects on those factors. With a conclusion that there is likely to be an undue adverse impact, the land use permit may not be issued. With a conclusion that there is not likely to be an undue adverse impact, the applicant must still meet the Board's other land use permit standards before the permit may issue.]

Date: _____

By: _____

(Print Name) Chair, Municipal Reviewing Authority