

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

_____ Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
_____ Recommendations of Boards, Commissions & Committees (Green)
 X _____ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott Niehaus, Village Manager

DATE: February 19, 2019 (COW)(B of T) February 21, 2019

TITLE: Waiver of Conflict of Interest

SUBMITTED BY: Timothy Sexton, Director of Finance

BACKGROUND/POLICY IMPLICATIONS:

Staff recommends that the Village Board approve the Waiver of Conflict of Interest. Additional information is attached.

Review (as necessary):

| | |
|--------------------------|------------|
| Village Attorney X _____ | Date _____ |
| Finance Director X _____ | Date _____ |
| Village Manager X _____ | Date _____ |

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



To: Village President and Board of Trustees

From: Scott Niehaus, Village Manager
Timothy Sexton, Director of Finance

Date: February 19, 2019

Subject: Waiver of Conflict of Interest

Pursuant to the Restructuring Support Agreement (RSA) that was previously approved as part of the Lombard Public Facilities Corporation (LPFC) restructuring, the Village and the LPFC are working on a TIF Redevelopment Agreement (RDA) containing the terms as set forth in the RSA. As the Village Attorney and counsel for the LPFC both are of the law firm Klein, Thorpe & Jenkins, Ltd. (KTJ), there exists a potential for a conflict of interest in KTJ representing both parties in the negotiation of the TIF RDA. The Village Manager and Director of Finance are also involved with these negotiations and the drafting of the RDA.

Staff recommends that the Village Board approve the Waiver of Conflict of Interest to have the Village Attorney continue to represent the Village in this matter.

WAIVER OF CONFLICT OF INTEREST

This Waiver of Conflict of Interest (“Waiver”) is hereby entered into this ____ day of February, 2019 by and between the Village of Lombard, an Illinois municipal corporation (the “Village”) and the Lombard Public Facilities Corporation, an Illinois not for profit corporation (the “LPFC”) (the Village and the LPFC are sometimes referred to herein individually as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, the LPFC was formed to issue tax-exempt bonds for the construction, maintenance and operation of a hotel and convention center within the Village of Lombard (the “Project”); and

WHEREAS, the LPFC issued tax-exempt bonds in 2005 for the construction, operation and maintenance of the Project (the “2005 Bonds”); and

WHEREAS, in connection with the issuance of the 2005 Bonds, the Village and LPFC entered into that certain Tax Rebate Agreement, in which, amongst other agreements, the Village pledged to rebate certain taxes collected from the Project back to the LPFC in support of paying debt service on the Series B bonds of the 2005 Bonds; and

WHEREAS, on or about 2014, the LPFC defaulted in the payment of the debt service on the 2005 Bonds; and

WHEREAS, the LPFC entered into restructuring negotiations with the various stakeholders surrounding the LPFC’s default on the 2005 Bonds, including the Village; and

WHEREAS, in connection with the restructuring negotiations, the LPFC, the Village and other various stakeholders entered into that certain Restructuring Support Agreement (the “Global RSA”); and

WHEREAS, under the terms of the Global RSA, amongst other agreements, the LPFC agreed to file for a Chapter 11 Bankruptcy and the Parties agreed to make reasonable efforts to enter into a TIF Redevelopment Agreement containing the terms as set forth in the Global RSA, and in a form reasonably acceptable to the Required Plan Support Parties (as defined in the Global RSA); and

WHEREAS, in connection with the Chapter 11 Bankruptcy, a Plan of Reorganization was approved by the Bankruptcy Court, in which the Parties were mandated to make reasonable efforts to enter into a TIF Redevelopment Agreement containing the terms as set forth in the Global RSA, as incorporated into the Plan of Reorganization, and in a form reasonably acceptable to the Required Plan Support Parties (as defined in the Global RSA, as incorporated into the Plan of Reorganization); and

WHEREAS, Thomas P. Bayer ("Bayer") of the law firm of Klein, Thorpe & Jenkins, Ltd. ("KTJ") serves as legal counsel to the Village; and

WHEREAS, Donald E. Renner III ("Renner") of KTJ serves as legal counsel to the LPFC; and

WHEREAS, there exists a potential conflict of interest in KTJ representing both Parties in the negotiation and drafting of the TIF Redevelopment Agreement; and

WHEREAS, the Parties desire to enter into this Waiver, as the Parties are inclined to have KTJ represent their respective interests in the negotiation of the TIF Redevelopment Agreement, although both Parties have been informed of and are cognizant of the potential conflict of interest;

NOW, WHEREFORE, in consideration for the acts, covenants and mutual agreements herein described and agreed to be performed, the sufficiency of which is hereby acknowledged, and the Parties having been represented by counsel, the Parties agree as follows:

AGREEMENT

1. The Parties hereby provide their informed consent and waive any conflict of interest that is currently present, if any, or may arise in the future, in connection with the negotiation of the terms of the TIF Redevelopment Agreement.

2. The Parties agree and understand that the Village has directed Bayer to maintain a separation of confidentiality in regard to communications made by and between the Village and Bayer, such that Renner will not have access to confidential communications between the Village and Bayer.

3. The Parties agree and understand that the LPFC has directed Renner to maintain a separation of confidentiality in regard to communications made by and between the LPFC and Renner, such that Bayer will not have access to confidential communications between the LPFC and Renner.

4. Either Party may revoke this Waiver at any time. In the event that a Party revokes this Waiver, KTJ shall withdraw as legal counsel to both the Village and the LPFC with respect to the negotiation of the TIF Redevelopment Agreement, and the Parties shall both retain separate counsel to make reasonable efforts to negotiate and complete the same.

5. The Parties represent that they, or the representatives signing this Waiver, have the authority to enter into this Waiver.

6. The recitals to this Waiver are true and correct, and are incorporated herein by reference and this Waiver shall be construed in light of those recitals.

7. This Waiver may be executed by signatures on counterparts, which shall be considered as one instrument. Electronic signatures shall be deemed to be an original signature on behalf of a Party.

8. This Waiver and the rights and obligations of the Parties will be governed by and construed according to the laws of the State of Illinois, without regard to its choice of law provisions. The Parties agree to submit to the exclusive jurisdiction of any federal or state court located in DuPage County, Illinois and agree that any action or proceeding arising out of or relating to this Waiver will be litigated only in such courts.

9. Notices under this Waiver shall be made as follows:

If to the Village:

Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60140
ATTN: Village Manager

with a copy to:

Thomas P. Bayer
Klein, Thorpe & Jenkins, Ltd.
20 North Wacker Drive
Suite 1660
Chicago, Illinois 60606

If to Lombard Public Facilities Corporation:

Lombard Public Facilities Corporation
c/o Donald E. Renner III
20 North Wacker Drive
Suite 1660
Chicago, Illinois 60606

[THE REMAINDER OF THIS PAGE LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Waiver to be executed as of the day and year first above written.

VILLAGE OF LOMBARD

By: _____
Keith Giagnorio
Village President

Attest: _____
Sharon Kuderna
Village Clerk

LOMBARD PUBLIC FACILITIES CORPORATION

By: _____
Paul Powers
President

Attest: _____
Joseph Biewer
Secretary