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December 6, 2018

DeKalb County State's Attorney Rick Amato  
Assistant State's Attorney David Berault  
(Via E-Mail Only)

RE: City of DeKalb Tax Increment Financing

Dear Rick and David,

The past few months have been a challenging and tumultuous time for the City of DeKalb and this administration. I received your letter of December 4, 2018 and considered its contents at length, as the City and this Mayor have a deep and abiding respect for your office and its recommendations. I will both start and conclude this letter by indicating the City's request to meet with your office and with the County, to discuss tax increment financing (TIF) as it relates to the City's past, present, and future needs. I could not concur any more strongly with your conclusion that the strength and success of the City and County are intertwined. Achieving success will require collaboration from both parties.

From the tone of your letter, it appears that you believe the City has taken a turn away from transparency and collaboration. Given the positive discussions that you had engaged in with both myself and the City Attorney, I was surprised at your letter. I am hopeful you will see, on greater reflection, that the City remains committed to doing what is both legal and ethical.

Over a year ago, the City identified that, from a best-practices perspective, it was overly-reliant on use of TIF to cover administrative expenses. While the TIF covers a significant area of the City and thus requires significant City effort to administer, the goals of this City Council are, and have been, to reform use of TIF so as to direct as much of the funding as possible at transformative projects that truly embody the spirit of the TIF Act. It is worth recalling that the discussions regarding administrative expenses being paid by TIF are not the product of the events of the past several months. Rather, *the City initiated those discussions, publicly, more than a year ago.*

The City discussed that topic at City Council meetings and identified that application of best practices would reduce the City's use of TIF for administrative costs. The City's Economic Development Planner presented a Powerpoint presentation to the School District, in April 2018, identifying *this very issue* and indicating the City's commitment to reducing the utilization of TIF for administrative expenses. That the City initiated this discussion seems to have been forgotten in recent months. That more people are now involved in the discussion is something that we view as a positive, but it has to be remembered that the City identified this issue and began the discussion of it—as well as beginning early steps to reduce the City's utilization of TIF for administrative expenses. As Mayor of the City, I have worked hard to acknowledge the City's past actions that failed to meet current expectations of the Council, the public, and our partner tax districts. I have acknowledged, repeatedly, verbally and in writing, that the City can and must do better. There has not been any reluctance by the City to acknowledge that reality.

Several months ago, when discussions relating to TIF 3 and the City's other TIF Districts began to turn negative, the City evaluated its options. Even if the Joint Review Board (JRB) had made a negative

recommendation, the City could have pushed forward and created TIF 3 on its own. However, the City elected to not do so. Rather, the City worked to collaborate with all other taxing districts and attempt to devise a plan that was mutually acceptable. The City created a working group that was larger than the JRB, and to embrace feedback from each affected taxing district. The City received and incorporated feedback from each district. The collaboration and agreement that was built out of those informal discussions led to a position where the JRB ultimately made a positive recommendation, and where it appeared as though the taxing districts would be able to reach consensus on the intergovernmental agreement. Unfortunately, the turn of events at the City, unrelated to TIF, understandably weakened the resolve of our partners to join in that agreement.

In the aftermath of that agreement losing support, the City had to evaluate what options were available. Your letter notes that regardless of the agreement, the City has indicated that it must declare roughly \$5.4M in surplus from TIF 2. Gentlemen, you must have read that and assumed that the City was concealing this information—that the City was driving a false bargain with the proposed agreement. I write to you, and wish to meet with you face to face, so that I can explain that this reaction, while understandable, is simply not true. The unfortunate fact of the matter is that the City was utilizing specialized TIF legal counsel that had simply not identified this obligation of the City. When the City initially began discussing the payment of a supplemental surplus, this topic had not been broached. It is only after the City changed counsel on TIF and took a more conservative view of its position that this obligation was identified. As soon as that obligation was discovered, the City publicly disclosed it. The City could have continued conversations about paying an \$11.25M surplus and simply not engaged in a public discussion of this obligation at this time. It could have been delayed weeks, or even months, while the larger picture played out. However, as we did with the administrative expenses, our first step was to publicly discuss this obligation and ensure that the Council, the public and our partner tax districts understood the matter.

That leaves us in a position where a surplus will be declared and the remaining question is how much will be paid. As you know, and as has been widely reported, the City has faced some financial challenges this year, relating to budgetary projections and financial forecasts. From a practical perspective, for every dollar or surplus that is paid out, roughly 9% returns back to the City. If the objective of the City were to take the action that was most expedient in the short term, the declaration of an \$11.25M surplus would both help the City's bottom line and would provide a convenient way of indicating that any concerns over administrative expenses have been addressed. But this Council is working hard to ensure that the decisions we make are not simply expedient, but are in the best interests of the community as a whole in the long-term. Making that declaration of surplus, while legal, does nothing to advance the policy goals that underlie the TIF Act. It does nothing to support or promote redevelopment, to expand the tax base, or to create jobs. While it may be beneficial to the City to declare a large surplus and essentially put a million dollars back into the FY2019 budget, we are working to do what is right, even though it may be challenging.

As you have noted, the intergovernmental agreement that we were working on was developed and refined on a very short timeline. While that timeline is unfortunate, it was not put into place because of the wish of the City. You understand the TIF Act and the obligations in it. With the impending end of TIF 2, if the City was to take action on the agreement, it had to be resolved this year. Similarly, if the City is to take action to put TIF 2 proceeds towards transformative redevelopment projects, that action has to be taken immediately.

It would be incredibly convenient if we could put all of these TIF timelines on pause and allow everyone to get back to talking. That's what we tried to do a couple months ago. But the reality of this current situation is that we can't pause the timeline imposed by the TIF Act. If the City does nothing, it will result in the surplus being paid. We can't stop that result by putting money into an escrow account, even if the TIF Act allowed the City to move funds out of the TIF account that they're required to be held in. And so this Council has to evaluate what the right thing to do is, and make hard decisions, in a very short timeframe. Those decisions are even harder to make when partners such as your office indicate an unwillingness to even meet and discuss the topic.

Your statements related to the City's discussions on how to expend remaining TIF funds and our motivation behind our direction to staff gave me great pause. Requesting staff to return with a list of viable projects for



our consideration is not intended to prevent other taxing districts from receiving those funds. Rather, we feel that it is absolutely necessary for the City to consider and weigh the benefits of investing available TIF funds for the public good, as they are intended under the TIF Act. It is neither a loose interpretation of the TIF Act, or unethical, for the City to engage in public dialog about the merits of our options related to expiration of TIF 2. The outcome of that discussion is still unknown, but I feel that we owe it to the residents of our community to be transparent about what our options are.

At heart, I am a collaborator. I dislike conflict, and I look for opportunities to engage others and involve them in the City's operations, even when I may disagree with their perspectives. I have found that doing so expands my own perspectives and enriches the conversation. Being Mayor can be challenging at times, just as I'm sure being State's Attorney can be. My natural tendency is to be a leader who involves others, who talks openly and who tries to ensure that each process is collaborative and cooperative. But from time to time, I have to temper that tendency and make sure that the actions I take do not create or expand liabilities of the City.

If you go back and look at my words and actions relating to TIF over the past several months, you will find that at every opportunity, I have been candid, forthright and open. Neither I nor this Council have shrunk away from our obligations. But the further that the discussion of an audit goes, the more the City has to consider the ramifications of that request.

The City is presently working to implement the most progressive, restrictive and transparent limitations on the use of TIF funding of any community in the State of Illinois, from what our research has shown. The City has already implemented major, substantive changes in its use of TIF to support administrative costs incurred by the City in operating its TIF districts and promoting redevelopment therein. The City is working to implement restrictions that prohibit it from paying costs of road repair and infrastructure replacement out of TIF, even though they are TIF eligible, in an effort to implement best practices. The public's focus has clearly been drawn to the importance of TIF, the need for detailed expense reporting that exceeds the minimum standards of the TIF Act, and the significance of an active JRB. As the City looks at future TIF districts, such as TIF 3, they are narrowly drawn to cover a limited geographic area and clearly defined redevelopment goals. In short, if the purpose of the audit is to drive future changes, we are well down the road to implementing them already and we welcome your thoughts and comments on that topic.

If the purpose of the audit is to have the City engage in a public discussion of its past practices, and to acknowledge that, even if they were defensible under the TIF Act, they failed to meet the community expectations and the standards of this City Council, then we have certainly achieved that result as well.

If the purpose of the audit is to determine the exact dollar amount that has been spent on administrative costs, as indicated by your letter, we can look to the annual reports prepared by the City and clearly indicate that total, as those numbers are annually certified by an auditor. An audit will not aid in the determination of what portions of those costs are attributable to what specific purpose beyond the records that the City already has in place. I asked our City Attorney whether there is any law on this point. He pointed out that the City of Bloomington went through a very similar discussion a few years back that ended in litigation. In the lawsuit, the Court noted that requiring an accounting of funds would not produce any clearer result than the records that were already available, and the Court refused to order an audit. I hope we don't end this in litigation, but I can't see what purpose is served by an audit here.

If the purpose of the audit is to look at City leaders that were in place over a 20-year period and call them to task for following minimum standards and not earlier implementing best practices, then I can't say that I see the benefit. We are challenged by the actions and decisions of the past on a daily basis, and our only option is to accept that they were made, and to shape our future decisions based on the best available information.

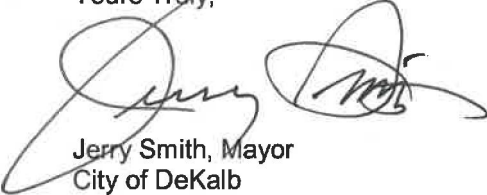
Finally, the purpose of the audit may be to determine if the City complied with the law or not. That is where I have to find that uneasy balance between my natural inclination to be cooperative and my obligations as Mayor to be mindful of the City's liabilities. However, I am willing to engage in discussion, provided that you are willing to meet.



We are working to do what is legal, what is ethical, and certainly to avoid what is outrageous. We face a series of unfortunately intertwining deadlines, the complications of the interests of many parties, and the events of the past several weeks, all in addition to the normal challenges associated with running a City. Rick, we can't succeed at surmounting those challenges unless we do so together with our partners. I emphasize the word partners, because I firmly believe that the best path forward is one in which we all walk together. It is for that reason that I renew my request that we get together and meet to talk, in a small group, with your office and County officials. Given time constraints, I would like to suggest we convene that meeting early next week, the week of December 10.

We have, in very short order, come a very long ways with regards to the City's TIF practices. I simply ask that you continue to engage with us to enable the City to continue making progress.

Yours Truly,



Jerry Smith, Mayor  
City of DeKalb

Cc: Bill Cummings – President, DeKalb Public Library; Victoria Newport – School Board President, DeKalb Community School District 428; Jennifer Jeep Johnson – Township Supervisor, DeKalb Township; Craig Smith – Highway Commissioner, DeKalb Township Road and Bridge District; Phil Young – President, DeKalb Park District; Dr. Laurie Borowicz – President, Kishwaukee College; Mark Pietrowski Jr. – Chairman, County of DeKalb and DeKalb Forest Preserve; Dennis J. Collins – President, Kishwaukee Water Reclamation District; Gary Hanson – DeKalb County Administrator

