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April 7, 2014

Via U.S. Mail and Email

Dr. Philip Bender
Superintendent
Park Ridge-Niles
Community Consolidated School District No. 64
164 S. Prospect Avenue
Park Ridge, Illinois 60068

RE: ***Intergovernmental Agreement between the City of Park Ridge & Park-Ridge Consolidated Community School District No. 64 dated September 8, 2003***

Dear Dr. Bender:

The City of Park Ridge ("*City*") and the Park-Ridge Consolidated Community School District No. 64 ("*District*") entered into an intergovernmental agreement, dated September 8, 2003 ("*Agreement*"), wherein the City agreed to make certain "New Property" and "New Student" payments to the School District. As you are aware, the City has undertaken a review of the payment history under the Agreement as well as the documentation that has been submitted by the School District in support thereof. In that regard, the City has identified certain "New Student" data inconsistencies that must be resolved before the City can responsibly authorize further "New Student" payments. Further, as it relates to "New Property" payments, the terms of the Agreement reference terms and conditions precedent, which create inherent and irreconcilable conflict. In the spirit of cooperation, the City is hereby disclosing with specificity the issues referenced above in order to allow the School District to prepare the necessary documentation to ameliorate the issues and/or concerns identified herein.

A. <u>New Student Payments</u>

In the original 2013 City of Park Ridge and School District staff to staff meeting, the City representatives requested copies of all materials available pertaining to Uptown TIF payments to the School District from the TIF Fund or the City. After further requests, some material was provided to the City in February and March of 2014. The City also managed to locate some documents. However, some documentation remains missing.

Therefore, the City requests further documentation or explanation as it relates to the following New Student Payment issues:

1. Section 4(A)(1) of the Agreement additionally requires that New Student Payments be based on pupils "who **reside in Project Area Residential Units.**" However, Section 4(A)(1) certifications have included pupils whose address clearly is not within the Uptown Project Area and thereby not eligible for payment.
   The City and School District must: (i) reconcile the payments issued for those pupils who were improperly included by the School District in prior-year Section 4(A)(1) certifications, and (ii) remove any pupils identified in the 2013-14 certification whose address is not within the Uptown Project Area, if any.

2. Pre-Kindergarten and Kindergarten pupils, who only attend for a one-half of a school day, have consistently been submitted within the list of pupils who attend for the full school day. The Home Rooms of all such students have "AM" or "PM" after the location number, further indicating half-days. These listings have led to full reimbursements. In addition, in some submissions Pre-Kindergarten and Kindergarten pupils have been grouped together as Grade 0, which leads to confusion about subsequent school year grade advancements.

3. The School District has asserted that pupils who move into the Project Area but who previously lived in the School District are subject to being included in at least some of the New Student calculations.

   The City disagrees with such assertions and denies any claims for payments relating thereto as such language is not included in the Agreement.

4. Section 4A. requires that the School District provide the City with its certification of "...the number of pupils enrolled for the first time in the School District for the current school year who reside in Project Area Residential Units..." by October 1st of each year.

   The City has neither any certifications of that number, nor any documentation of receiving the certifications in the timeframes provided. If such prior Section 4(A)(i) certifications are produced from the School District, any such pupils included must be reconciled.

5. Section 4 of the Agreement further requires, by November 1 of each year, that the School District provide the following items, along with proper written documentation for all items:

   a. The Net Tuition Cost (i.e. the per capita tuition costs, minus the per student General State Aid received by the School District for each year.)

   b. The New Student Payment (i.e. the number of Project Area Students certified by October 1st times the Net Tuition Cost)

   c. That the New Student Payment does not exceed 27% of all incremental property tax revenues attributable to Project Area Residential Units.

The City has been provided the per capita tuition costs and the General State Aid for each year. [The City reserves the right to reconcile the recent per capita tuition costs and GSA as provided by the School District to prior submissions from the School District.]

However, it appears that the City has not been given any New Student Payment amount, that proof of any such payment amount was given by November 1st of each year, and that proof that the New Student Payment amount was not capped was provided to the City.

The School District must provide the foregoing information as a condition precedent to payment and the City and District must reconcile all payments to ensure compliance.

6. In the documentation that has been submitted by the School District in support of New Student payments, the City has identified additional numerous counter-intuitive fact patterns that cause the City to question the accuracy of the matters asserted by the School District. For example:

   a. Pupils have been added improperly within a given year on submissions subsequent to the original submission and after the October 1 deadline;

   b. Pupils are deleted within a given year on subsequent submissions;

   c. Some pupils that have appeared on multi-year certifications have not advanced grades;

   d. Pupils listed on the certifications appear in more than one grade in different submissions within a given year;

   e. Pupil appeared on multi-year certifications show conflicting "school entry dates" from year to year;

   The City requests that the School District provide an explanation and supporting documentation for the issues identified above.

In sum, the City will require resolution to all of the foregoing issues before it can authorize any further New Student Payments under the Agreement. The City is committed to working with the School District in order to resolve these matters in an amicable and cooperative manner in order to reach optimal outcomes for our shared constituencies.

B. New Property Payments

Section 3 of the Agreement provides that the City shall make annual payments to the School District "based on New Property, as defined by 35 ILCS 200/18, and determined by the Cook County Clerk under the Property Tax Extension Law, within the Project Area." As stated above, this language creates inherent and irreconcilable conflict wherein the occurrence of the conditions precedent cannot occur as a matter of law and fact.

First, before there can be any obligation to make payment under Section 3 of the Agreement, "New Property," as defined by 35 ILCS 200/18-185 of the Property Tax Extension Limitation Law, must exist within the Project Area. The Illinois Department of Revenue ("IDOR") is charged with interpreting and administering the Property Tax Extension Limitation Law, including what constitutes New Property under 35 ILCS 200/18-185. As such, IDOR's interpretations are entitled to substantial weight and deference by Illinois courts. Since at least 1996, IDOR regulations have clearly stated that New Property, under 35 ILCS 200/18-185, "does not include *** [n]ew improvements or additions to existing improvements on property in a redevelopment project area, as defined in the Tax Increment Allocation Redevelopment Act *** that increased the assessed value of property during the levy year." Title 86, Section 110.90 of the Illinois Administrative Code.

In effect, New Property does not and cannot exist, as a matter of law, within the Uptown Project Area now or at any time during the term of the Agreement. As the existence of New Property within the Uptown Project Area is a condition precedent to the obligation to make payment under Section 3 of the Agreement and it is inarguable that New Property will never exist therein, the City does not, nor has it ever, had an obligation to make payments to the School District under Section 3 of the Agreement.

Additionally, before there can be an obligation to make payment under Section 3, the Cook County Clerk must determine the existence of New Property within the Project Area under the Property Tax Extension Limitation Law. However, the Cook County Clerk: (i) does not make New Property determinations for tax increment financing district project areas, because New Property cannot exist within such project areas; (ii) only makes New Property determinations for taxing districts as a whole, not for specific areas within taxing districts; and (iii) does not make New Property determinations for home rule units of local government, such as the City of Park Ridge, because such units are not subject to the Property Tax Extension Limitation Law.

In effect, the Cook County Clerk has never and will never, as a matter of fact and law, determine or recognize New Property within the Uptown Project Area. Since such determinations by the Cook County Clerk are conditions precedent to the obligation to make payment under Section 3 of the Agreement, the City does not, nor has it ever had, an obligation to make payments to the School District under Section 3 of the Agreement.

The foregoing conflicts are aptly illustrated in Section 4(B) of the Agreement wherein it was "assumed" that in 2006 the County would recognize New Property within the Project Area and such determination would be the basis upon which the New Property payment would be made. However, as discussed above, the assumption that those conditions precedent would ever occur were never grounded in fact or law.

When contracts contain express and unambiguous conditions precedent, as are contained in the Agreement, strict compliance with such conditions is required. If the condition does not occur, the obligation of the party under the contract comes to an end. Further, as the parties agreed in Section 10(B), no waiver of any term or condition of this Agreement shall be binding or effective for any purpose unless expressed in writing and signed by the party making the waiver, and then shall be effective only in the specific instances and for the purpose given. The City has clearly not waived these conditions precedent. Under the clear and unambiguous terms of the Agreement, the City has no obligation to make New Property payments under Section 3 of the Agreement.

Finally, Section 3(A) of the Agreement mandates that the total cumulative New Property Payments actually made shall not exceed 21% of the incremental taxes received by the City on New Property within the Project Area. Obviously, as explained above, New Property, under 35 ILCS 200/18-185, does not exist in the Project Area nor has the Cook County Clerk ever determined its existence therein, and thereby New Property cannot generate incremental taxes. As the New Property incremental taxes received is $0, any monies paid are thereby in excess of the 21% cap.

Notwithstanding the foregoing and similar to the New Student payments, the City is committed to working with the School District in order to resolve these matters in an amicable and cooperative manner in order to reach optimal outcomes for our shared constituencies.

Sincerely,

Shawn Hamilton, City Manager