

CITY OF COFFEYVILLE COMMISSION SPECIAL MEETING AGENDA
WEDNESDAY, APRIL 17, 2019
5:30 P.M.

A. CALL TO ORDER – Mayor Paul Bauer

B. NEW BUSINESS

1. Resolution No. R-19-26– A Resolution to execute a special counsel engagement letter with Gilmore & Bell in connection with Coffeyville’s Reawakening project to rehabilitate commercial properties in the City’s downtown area.

C. ADJOURN



GILMORE & BELL PC
ONE MAIN PLACE – 100 NORTH MAIN, SUITE 800
WICHITA, KANSAS 67202-1311
316-267-2091 | 316-262-6523 FAX
GILMOREBELL.COM

April 17, 2019

Mr. Paul Bauer, Mayor
City of Coffeyville, Kansas
102 W. 7th Street
Coffeyville, Kansas 67337

Re: Coffeyville Reawakening – Special Counsel Engagement Letter

Dear Mr. Bauer,

We are pleased to submit this proposal to serve as special counsel to the City of Coffeyville, Kansas (the “City”) in connection with the Coffeyville Reawakening project to rehabilitate commercial properties in the City’s downtown area (the “Project”). The purpose of this letter is to set forth our responsibilities and fees with respect to this Project.

Special Counsel Engagement. As special counsel, we will perform the following services:

1. We will advise the City’s staff and governing body with respect to the various economic development tools and incentives that may be used by the City to incentivize the Project, including the following:
 - A. Industrial Revenue Bonds (K.S.A. 12-1740 *et seq.*)
 - B. Community Improvement Districts (K.S.A. 12-6a26 *et seq.*)
 - C. Sales or Transient Guest Tax Rebate Agreements (City Home Rule)
 - D. Tax Increment Financing (K.S.A. 12-1770 *et seq.*)
 - E. Neighborhood Revitalization (K.S.A. 12-17,114 *et seq.*)
 - F. Downtown Redevelopment (K.S.A. 12-17,121 *et seq.*)
 - G. Business Improvement Districts (K.S.A. 12-1781 *et seq.*)
 - H. Self-Supported Municipal Improvement Districts (K.S.A. 12-1794 *et seq.*)
2. Depending on the incentives selected by the City for the Project, we will draft, review and provide advice on the necessary ordinances, resolutions and other documents calling for and providing notice of the required public hearings, creating the respective districts, if any, and providing for the special revenues (e.g., special assessments, sales taxes, tax increments), if any.
3. We will draft, review, help negotiate and provide advice on a funding agreement between the City and the developer of the Project (the “Developer”) and a development agreement among the same parties, and we will review all materials and documents prepared by third parties necessary or appropriate to the incentives to be provided for the Project and provide comments thereon.
4. At the City’s request, we will provide a representative to attend any public hearings and other public meetings at which the subject of providing incentives for the Project are considered by the City’s staff and governing body.

5. If general obligation or special obligation bonds of the City are to be issued to finance incentives for the Project, we will act as bond counsel to the City and will expect to perform the duties set forth below.
 - A. Subject to the completion of proceedings to our satisfaction, render our legal opinion (the “Bond Opinion”) regarding the validity and binding effect of the bonds, the excludability of interest on the bonds from gross income for federal and Kansas income tax purposes, if applicable, and such related matters as we deem necessary or appropriate.
 - B. Examine applicable law as it relates to the authorization and issuance of the bonds and our Bond Opinion and advise the City regarding the legal authority for the issuance of the bonds and other legal matters related to the structure of the bonds.
 - C. Assist the City in seeking from other governmental authorities such approvals, permissions, and exemptions as we determine are necessary or appropriate in connection with the authorization, issuance and delivery of the bonds, except that we will not be responsible for any required Blue Sky filings or any permits or approvals relating to construction and operation of the project.
 - D. Attend meetings and conferences related to the bonds and otherwise consult with the parties to the transaction prior to the issuance of the bonds.
 - E. Review those sections of any official statement, private placement memorandum or other form of offering or disclosure document to be disseminated in connection with the sale of the bonds involving a description of the bonds, security for the bonds, tax matters, legal matters, and summaries of the principal financing documents.
 - F. Coordinate the closing of the transaction, and after the closing assemble and distribute transcripts of the proceedings and documentation relating to the authorization and issuance of the bonds.
 - G. Undertake such additional duties as we deem necessary to complete the financing and to render our Bond Opinion.

Our Bond Opinion will be addressed to the City and the purchaser of the bonds and will be delivered by us on the date the bonds are exchanged for their purchase price. The Bond Opinion will be based on facts and law existing as of its date. In rendering our Bond Opinion, we will rely upon the certified proceedings and other certifications of public officials, the purchaser and other persons furnished to us without undertaking to verify the same by independent investigation, and we will assume continuing compliance by the City with applicable laws relating to the bonds and the use of the proceeds of the bonds.

6. If industrial revenue bonds of the City are to be issued to finance incentives for the Project, we will act as bond counsel to the City and will expect to perform the duties set forth below.
 - A. Subject to the completion of proceedings to our satisfaction, render our Bond Opinion regarding the validity and binding effect of the bonds, and the source of payment and security for the bonds.
 - B. Draft the basic agreements governing the issuance of the bonds and lease of the project to the tenant (the “Tenant”).

- C. Prepare and review other documents necessary or appropriate to the authorization, issuance and delivery of the bonds, and coordinate the authorization and execution of documents.
- D. Assist the City in seeking from other governmental authorities such approvals, permissions and exemptions as we determine are necessary or appropriate in connection with the authorization, issuance, sale and delivery of the bonds, except that we will not be responsible for any required Blue Sky filings or any permits or approvals relating to construction and operation of the project.
- E. Review legal issues relating to the structure of the bond issue.
- F. Review those sections of any official statement, private placement memorandum or other form of offering or disclosure document to be disseminated in connection with the sale of the bonds involving a description of the bonds, security for the bonds, tax matters, legal matters, and summaries of the principal financing documents.

Our Bond Opinion will be addressed to the City, the Tenant and the purchaser, and will be delivered by us on the date the bonds are exchanged for their purchase price. The Bond Opinion will be based on facts and law existing as of its date. In rendering our Bond Opinion, we will rely upon the certified proceedings and other certifications of public officials, officers of the Tenant, the purchaser and other persons furnished to us without undertaking to verify the same by independent investigation, and we will assume continuing compliance by the Issuer and the Tenant with applicable laws relating to the bonds and the use of the proceeds of the bonds. During the course of this engagement, we will rely on the Tenant to provide us with complete and timely information on all developments pertaining to any aspect of the Project, the Bonds, and the security for the Bonds.

During the course of this engagement, we will rely on you and certain other parties to provide us with complete and timely information on all developments pertaining to any aspect of the Project, the incentives therefor, the issuance of the bonds, and the security therefor. We understand that you will direct members of your staff and other employees of the City to cooperate with us in this regard. In rendering our Bond Opinion, we may need to expressly rely upon the opinion of counsel to the Developer and/or Tenant as to (a) the existence and good standing under the laws of the State of Kansas or one of the other states comprising the United States, and the adequacy of its corporate powers to carry on the business now conducted by them, and (b) the power and authority possessed by the Developer and/or Tenant to execute and deliver the transaction documents to be executed and delivered by them and the authorization, execution and delivery by the Developer and/or Tenant of such documents, and the binding effect of them upon, and enforceability against, the Developer and/or Tenant of the transaction documents.

Our duties in this engagement are limited to those expressly set forth above. Among other things, our duties do not include:

- 1. Preparing requests for tax rulings from the Internal Revenue Service or no-action letters from the Securities and Exchange Commission, or representing the City in Internal Revenue Service examinations or inquiries or Securities and Exchange Commission investigations.
- 2. Drafting state constitutional or legislative amendments or pursuing test cases or other litigation.

3. Making an investigation or expressing any view as to the creditworthiness of the bonds, the Developer or the Tenant or the feasibility of the Project or related incentives.
4. After creation of a special taxing district, providing continuing services to the City or any Developer regarding the collection of special assessments, sales taxes, tax increments, or the disbursement of such funds for payment of qualified expenditures.
5. After the issuance of any bonds, providing continuing advice to the City or any other party concerning any actions necessary to assure that interest paid on the bonds will continue to be excludable from gross income for federal income tax purposes (e.g., our engagement does not include rebate calculations for the bonds).
6. Drafting of proceedings of the governing body of the Developer or Tenant authorizing them to enter into the transaction documents necessary in connection with the issuance of the bonds or the provision of incentives by the City.
7. Drafting of any instruments of conveyance necessary to convey to the City title to the land on which the Project is or will be located.
8. Rendering any advice to the Developer or Tenant regarding marketability of title to the land on which the Project is or will be located, or rendering any opinion with respect to such conclusion.
9. Except as described above, assisting in the preparation and review of an official statement, private placement memorandum or any other disclosure document with respect to the bonds, or performing an independent investigation to determine the accuracy or completeness or sufficiency of any such document or rendering advice that the official statement, private placement memorandum or other disclosure document does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

Attorney-Client Relationship. Upon execution of this engagement letter, the City will be our client and an attorney-client relationship will exist between us. We assume that all other parties will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction. We further assume that all other parties understand that in this transaction we represent only the City, we are not counsel to any other party, and we are not acting as an intermediary among the parties. Our services as counsel to the City are limited to those contracted for in this letter; the City's execution of this engagement letter will constitute an acknowledgment of those limitations. Our representation of the City will not affect, however, our responsibility to render an objective Bond Opinion.

Conflicts. As you are aware, our firm represents many political subdivisions, underwriters and others. It is possible that during the time that we are representing the City, one or more of our present or future clients will have transactions with the City. We also may represent, in unrelated matters, one or more of the entities involved in the issuance of the bonds. We do not believe any such representation will adversely affect our ability to represent you as provided in this letter, either because such matters will be sufficiently different from transactions described herein so as to make such representations not adverse to our representation of the City or because the potential for such adversity is remote or minor and outweighed

Mr. Paul Bauer, Mayor
April 17, 2019
Page 5

by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the Project, the incentives related thereto, or the issuance of bonds, if any. Execution of this letter will signify the City's consent to our representation of others consistent with the circumstances described in this paragraph.

Compensation. Our fees for acting as special counsel will be on an hourly basis at \$290 per hour. In addition, we will expect to be reimbursed for all out-of-pocket expenses, including travel costs, photocopying, deliveries, long distance telephone charges, postage, filing fees, and other necessary office disbursements. If bonds are issued in connection with the Project or any of the incentives related thereto, we will charge an additional fee for our services as bond counsel in an amount to be negotiated with the City prior to the issuance of such bonds.

Unless other arrangements have been made, we will render periodic statements for legal services on a monthly basis. We will base these interim statements on the hourly rate set forth above of the lawyers working on the matter. Statements will be due upon presentation, and are to be paid no later than 30 days following the invoice date. If any statement amount remains unpaid 90 days after the invoice date, the firm reserves the right to terminate its services, consistent with applicable Rules of Professional Conduct.

Records. At your request, papers and property furnished by you will be returned promptly upon receipt of payment for outstanding fees and client charges. Our own files, including lawyer work product, pertaining to the transaction will be retained by us. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to dispose of any documents or other materials retained by us after the termination of this engagement.

If the foregoing terms of this engagement are acceptable to you, please indicate by returning a copy of this letter signed by an appropriate official and retain an original for your files. We look forward to working with you, and please feel free to contact me if you have any questions.

Very truly yours,



Garth J. Herrmann

cc: Mark Hall, City Manager
Stephanie Richardson, Director of Finance
Paul M. Kritz, Esq., City Attorney

ACCEPTED and APPROVED:

CITY OF COFFEYVILLE, KANSAS

By: _____
Name: Paul Bauer
Title: Mayor

Dated: _____, 2019

RESOLUTION NO. R-19-26

A RESOLUTION TO AUTHORIZE THE EXECUTION OF A SPECIAL COUNSEL ENGAGEMENT LETTER WITH GILMORE & BELL IN CONNECTION WITH COFFEYVILLE'S REAWAKENING PROJECT TO REHABILITATE COMMERCIAL PROPERTIES IN THE CITY'S DOWNTOWN AREA.

BE IT RESOLVED, by the Board of Commissioners of the City of Coffeyville, Kansas that the Mayor is hereby authorized and directed to execute a Special Counsel Engagement Letter with Gilmore & Bell in connection with Coffeyville's Reawakening project to rehabilitate commercial properties in the City's downtown area

ADOPTED THIS 17th DAY OF APRIL 2019.

Paul Bauer, Mayor

ATTEST:

Cindy Price, City Clerk

APPROVED AS TO FORM AND LEGALITY:

Paul Kritz, City Attorney