

**RESOLUTION
R 93-15**

**RESOLUTION ADOPTING WADDELL AND REED
457(b) DEFERRED COMPENSATION PLAN**

WHEREAS, the Village of Lombard ("Village") has employees rendering valuable services; and

WHEREAS, the Village desires to establish a Section 457(b) Deferred Compensation Plan ("Plan") for its employees, which serves the interests of the Village by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management systems, and by assisting in the attraction and retention of competent personnel; and

WHEREAS, the Village has previously issued a Request for Proposal ("RFP") requesting information from potential Plan sponsors regarding their ability and willingness to assist the Village in administering the Plan; and

WHEREAS, after reviewing the responses to the RFP, the Village has determined that it is in its best interests to utilize Waddell and Reed, Inc. as the sponsor of the Plan by executing the Administrative Services Agreement attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That the Recitals set forth above are hereby incorporated herein by reference.

SECTION 2: The Board of Trustees hereby authorizes and approves of the Plan; to be effective as of the date stated in the Plan Documents.

SECTION 3: That the Village Manager or his designee is hereby authorized and directed to take such actions that are deemed necessary and proper in order to implement

the Plan, including, but not limited to, (a) executing the Administrative Services Agreement in a form substantially similar to the exhibit attached hereto, (b) executing the Plan Documents in a form substantially similar as those attached to the Administrative Services Agreement; and (c) implementing adequate accounting and administrative procedures to offer the Plan to Village employees under the Plan Documents.

Adopted this 17th day of December, 2015.

Ayes: Trustee Whittington, Fugiel, Johnston, Pike and Ware

Abstained: Trustee Foltyniewicz

Nays: None

Absent: None

Approved this 17th day of December, 2015.


Keith T. Giagnorio
Village President

ATTEST:


Sharon Kuderna
Village Clerk

ADMINISTRATIVE SERVICES AGREEMENT

THIS ADMINISTRATIVE SERVICES AGREEMENT ("Agreement") is entered into this 17th day of December, 2015, by and between the VILLAGE OF LOMBARD, a non-home rule Illinois municipal corporation ("Village") and WADDELL & REED, INC., and affiliates, a Delaware business corporation with a principal place of business in Overland Park, Kansas ("Waddell"). Village and Waddell are individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, Village is a non-home rule municipality that desires to offer a 457(b) deferred compensation plan that is an eligible plan as defined in Section 1.457-2(f) of the Treasury Regulations and meets the requirements of Section 457(b) of the Internal Revenue Code and Sections 1.457-3 through 1.457-10 of the Treasury Regulations; and

WHEREAS, Waddell has responded to a request for proposal issued by the Village and desires to act as the vendor (a) providing the Plan to the Village, (b) administering the Plan with the Village's assistance, and (c) advising the participants of the Plan with respect to investing their Plan accounts; and

WHEREAS, it is in the best interest of the Village to enter into this Agreement; and

WHEREAS, both Parties recognize that it is desirable to memorialize the conditions of their relationship with respect to the Plan and their respective duties and responsibilities concerning the Plan in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, being represented by counsel, hereby agree as follows:

ARTICLE I – DEFINITIONS

1.1. Defined Terms. For the purposes of this Agreement, the following terms have the meaning set forth below:

- a. **"Adoption Agreement"** means the document executed by the Village that adopts the Plan.
- b. **"Code"** means the Internal Revenue Code of 1986, as amended.
- c. **"Participant"** means any employee of the Village that is eligible to participate in the Plan in accordance with the Plan's Adoption Agreement.
- d. **"Plan"** means the 457(b) deferred compensation plan that is an eligible plan as defined in Section 1.457-2(f) of the Treasury Regulations and meets the requirements of Section 457(b) of the Code and Sections 1.457-3 through 1.457-

10 of the Treasury Regulations and is provided to and administered by Waddell for the benefit of the Employees.

- e. **"Plan Document"** means the written document that describes the terms and conditions related to the operation and administration of the Plan.
- 1.2. **Other Terms.** Any capitalized term used in this Agreement, but not explicitly defined herein, shall have the meaning set forth in the Plan Document.

ARTICLE II – GENERAL PROVISIONS

- 2.1. **Incorporation of Recitals.** The recitals set forth above are true and correct and are hereby incorporated into this Agreement as if set forth at length herein.
- 2.2. **Village Fees.** The Village shall not pay any fees to Waddell for the services provided by Waddell pursuant to or in connection with this Agreement. All fees charged by Waddell for the services it provides shall be charged to the Participant's Accounts. Waddell acknowledges that it has received sufficient consideration for entering into this Agreement by receiving the opportunity to collect the Participant fees described in Section 2.3 below.
- 2.3. **Participant Fees.** At all times during the Term of this Agreement, the only fees charged to the Participant's Accounts shall be those listed on the "Waddell & Reed Schedule of Fees IRC § 457 Plans," which is attached as Exhibit A and hereby incorporated into this Agreement. Waddell may not increase the amount or add additional types of Participant fees during the Term.
- 2.4. **Term.** The term of this Agreement will begin as of the date of this Agreement and will continue for three (3) years ("Term"). At the conclusion of the Term, the Village will have the option to renew the Agreement for an additional three (3) years.

ARTICLE III – RESPONSIBILITIES OF WADDELL

Waddell shall have the responsibilities and duties outlined in this Article III below:

- 3.1. **Sponsor.** Waddell shall assume the role of and carry out the responsibilities required of the "Sponsor" in the Plan Document. Waddell shall also, as the Sponsor of the Plan Document, provide reasonable assistance to the Village in its carrying out of the Employer's responsibilities under the Plan Document. Waddell shall follow all of the terms of the Plan Document regardless of the capacity in which it is acting.
- 3.2. **Provide Plan-Related Documents.** Waddell shall provide all of the documents necessary to organize and operate the Plan, including, but not limited to, a Plan Document and Adoption Agreement substantially similar to those attached hereto as Exhibit B and Exhibit C, as well as any amendments thereto.

- 3.3. **Legal Obligations of the Plan.** Waddell possess the ultimate responsibility for the Plan Document compliance with all applicable laws and regulations, and Waddell explicitly warrants that the Plan is an eligible plan as defined in Section 1.457-2(f) of the Treasury Regulations and meets the requirements of Section 457(b) of the Code and Sections 1.457-3 through 1.457-10 of the Treasury Regulations, or any other statutes, regulations, or rules applicable to 457(b) deferred compensation plans. Waddell assumes the responsibility for preparing and filing reports, if required by law.
- 3.4. **Participant Accounts.** Waddell shall create and maintain Accounts for the Participants in accordance with the Plan Document. Waddell shall receive Employee Deferrals through ACH using the Waddell & Reed Plan Sponsor Connect service, and wire transfers and deposit Employee Deferrals into the respective Participant accounts, and conduct all necessary record keeping with respect to the Accounts.
- 3.5. **Online Access.** Waddell shall provide online access to Accounts whereby Participants can (a) select investment options, (b) make changes to the investment selections and amounts, (c) view their current investment options and Account portfolio, and (d) review the performance their investment selections and all of the Plan's investment options. The Village can view investment option performance at its discretion at www.waddell.com.
- 3.6. **Investment Options.** Waddell shall provide investment options for each Participant to invest the balance of the Participant's Account. Waddell shall consult with the Village on the investment options available. Waddell shall continually monitor and review the investment options and remove any imprudent investment options.
- 3.7. **Provide Investment Advice.** Waddell shall provide education to the Participants regarding the investment options available in the Plan by appointing designated financial advisors to meet with Participants to provide one-on-one financial consultations. Waddell's financial advisors shall be available to meet with each Participant in person on at least a quarterly basis. Waddell shall also have a representative present at the Village's annual employee fair to provide general information regarding the operation of the Plan and how the Plan benefits Participants.
- 3.8. **Coordinate with Other Service Providers.** Waddell shall coordinate the Plan's interactions with any other various providers of services and products related to the Plan, including, but not limited to, trustees, record keepers, investment advisors, product vendors, and legal, accounting, actuarial, and other service providers as necessary to carry out its duties and responsibilities under this Agreement. Waddell shall be responsible for all fees, costs, and expenses charged by or associated with the use of said providers. Waddell shall bear the same liability for any services rendered by an outside professional on behalf of the Plan as Waddell would if Waddell had rendered the services itself.
- 3.9. **Coordinate Enrollment Meetings and Participant Communications.** Waddell shall organize and coordinate enrollment meetings with the Village's employees and communications between Participants and the Plan.

- 3.10. **Maintain Relevant Records: Make Records Available for Inspection.** Waddell shall maintain reasonable records regarding its administration of the Plan. Waddell shall ensure that the Village may, if it so desires, periodically inspect all relevant records relating to the administration of the Plan. Such inspections may be done at a time mutually agreeable to the Parties.

ARTICLE IV – RESPONSIBILITIES OF VILLAGE

The Village shall have the responsibilities and duties outlined in this Article IV below:

- 4.1. **Employee Benefit.** The Village shall offer the Plan as an employee benefit to its employees and allow Employees to make Elective Deferrals into Plan Accounts.
- 4.2. **Plan Created Responsibilities.** The Village shall, with reasonable assistance from Waddell, carry out the responsibilities required of the "Employer" in the Plan Document.
- 4.3. **Plan Interpretation.** As the employer of the Plan, the Village possesses the ultimate authority to interpret the Plan for decisions involving eligibility for Plan participation, termination of Plan participation, and the payment of benefits to Participants. Nevertheless, the Village will not direct Waddell to take any action that would violate federal or state laws.
- 4.4. **Salary Reduction Agreements.** The Village shall enter into Salary Reduction Agreements with Participants that allow Participants to make Elective Deferrals into the Plan. The Village shall timely transfer all Elective Deferrals to Waddell for depositing into the Participant's Accounts.
- 4.5. **Amend and Terminate the Plan.** The Village has complete discretion for all decisions involving the establishment, amendment, and termination of the Plan.
- 4.6. **Provide Reporting Data.** The Village shall provide Waddell with all information that is reasonably necessary for Waddell to fulfill the compliance and legal obligations described in Section 3.3 of this Agreement.

ARTICLE V - REPRESENTATIONS

- 5.1. **Authority.** Each Party hereby represents, warrants, and consents that (a) it is authorized to enter into this Agreement and perform its obligations under this Agreement, and (b) this Agreement has been duly executed and delivered.
- 5.2. **Licenses and Registrations.** Waddell represents and warrants that (a) any actions by, or filings with, any entity, agency, or governmental body required for Waddell to enter into and perform its obligations under this Agreement have been taken or made or will be taken or made when required, and (b) Waddell and its employees, agents, and representatives have obtained all licenses, registrations, and accreditations required to

perform Waddell's obligations under this Agreement.

ARTICLE VI – LIABILITY AND INDEMNITY

- 6.1. **Limitation on Liability.** Waddell assumes and retains the responsibility for performing all obligations assigned to it under or related to the Plan Document and this Agreement, except as specifically assumed in this Agreement by the Village.
- 6.2. **Gross Indemnification.** Waddell agrees to indemnify and hold harmless the Village and its elected officials, officers, agents, and employees against any and all claims, lawsuits, settlements, judgments, costs, taxes, interest, penalties, and expenses, including reasonable attorneys' fees, incurred by them resulting from or arising out of or in connection with any function or action of Waddell under this Agreement or related to the administration of the Plan or the investment options offered by the Plan, including, but not limited to, any failure of the Plan Document to satisfy applicable Treasury Regulations and/or Section 457(b) of the Code and Sections 1.457-3 through 1.457-10 of the Treasury Regulations, or any other statutes, regulations, or rules applicable to 457(b) deferred compensation plans.

ARTICLE VII - MISCELLANEOUS PROVISIONS

- 7.1. **Termination of Agreement for Cause.** Both Parties shall have the right to terminate this Agreement with fourteen (14) days written notice, if the other Party fails to materially comply with the terms of this Agreement. Parties will have fourteen (14) days to correct a breach upon notification prior to termination. An extension of this period may be allowed upon mutual agreement of the Parties if the breach cannot be reasonable cured with the fourteen (14) days provided.
- 7.2. **Termination of Agreement without Cause.** This Agreement may be terminated by the Village at any time, for any reason, upon thirty (30) days written notice to Waddell.
- 7.3. **Delay Not a Waiver.** No failure by either Party to exercise, or delay by either Party in exercising, any right, power, or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise thereof, or the exercise of any other right, power, or privilege.
- 7.4. **Agreement Binding on Successors; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the Parties, their respective successors, permitted assigns, and grantees. Waddell agrees that it will not assign this Agreement without the written consent of the Village.
- 7.5. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts by the Parties in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

7.6. **Notices.** Any notices to be served pursuant hereto shall be deemed properly delivered if delivered personally, by United States certified or registered mail, postage prepaid, or by Federal Express or comparable overnight courier service fare prepaid, or by legible facsimile transmission, or via email, to the Parties to whom copies of such notices are to be served at the addresses set forth below or to such other addresses as the Parties may direct in writing:

To Village: Kathleen Dunne, Human Resources Administrator (or her successor)
Village of Lombard
255 East Wilson Avenue
Lombard, IL 60148
630-620-5929 (phone)
630-873-4735 (facsimile)
dunnek@villageoflombard.org

With a copy to: Tom P. Bayer, Village Attorney
Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive
Chicago, IL 60606
312-984-6418 (phone)
312-984-6444 (facsimile)
tpbayer@ktjlaw.com

To Waddell: Derek Burke, President
Waddell & Reed, Inc.
6300 Lamar Avenue
Overland Park, KS 66201
913-236-1917 (phone)
913-236-2552 (facsimile)
dburke@waddell.com

Such notices shall be deemed received the same day if delivered personally, three (3) business days after delivery by certified or registered mail, the next business day if delivered by overnight courier, the same day if delivered by legible facsimile transmission, and the same day if delivered by email.

7.7. **Choice of Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois, without giving effect to any choice of law principles.

7.8. **Captions.** The captions of various articles and sections herein are for convenience only and are not to be utilized in construing the content or meaning of the substantive provisions hereof.

7.9. **Potential Invalidity.** If one or more provisions of this Agreement are held by a proper

court to be unenforceable under applicable law, portions of such provisions, or such provisions in their entirety, only to the extent necessary and required by law, shall be severed herefrom, and the balance of this Agreement shall be enforceable in accordance with its terms.

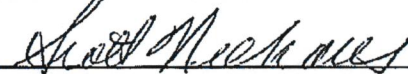
7.10. Entire Agreement. This Agreement sets forth the entire agreement of the Parties relating to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings, and communications of the Parties, oral or written, with respect to such subject matter.

7.11. Amendment. This Agreement shall not be amended or modified except by an agreement in writing duly executed by all Parties.

[SIGNATURE PAGE FOLLOWS]

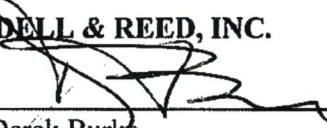
Village and Waddell have executed or caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

VLLAGE OF LOMBARD

By: 
Scott Niehaus,
Village Manager

Date: 12/18/15

WADDELL & REED, INC.

By: 
Derek Burke,
President

Date: 1/4/16