

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: William T. Lichter, Village Manager

DATE: March 12, 2004 (B of T) Date: March 18, 2004

TITLE: Convention Center and Hotel - Construction Monitor Award

SUBMITTED BY: Department of Community Development

BACKGROUND/POLICY IMPLICATIONS:

The Department of Community Development requests Village Board to review, comment, amend a proposed Construction Monitor Agreement between the Lombard Public Facilities Corporation and Hanscomb, Inc. (DISTRICT #3)

Please place this item on the March 18, 2004 Board of Trustees agenda.

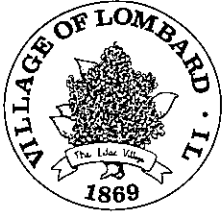
Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X \_\_\_\_\_ Date \_\_\_\_\_  
Finance Director X \_\_\_\_\_ Date \_\_\_\_\_  
Village Manager X William T. Lichter Date 3/12/04

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.





## MEMORANDUM

**TO:** William T. Lichter, Village Manager

**FROM:** David A. Hulseberg, AICP, Director of Community Development *DH*

**DATE:** March 12, 2004

**SUBJECT: CONSTRUCTION MONITOR AGREEMENT**

Staff solicited a request for proposals for construction monitor services. As a result of that request, five (5) proposals were received. They included:

- Bovis Land Lend Lease, Inc.
- Hanscomb Faithful & Gould
- HDL International
- Levien-Rich Associates Inc.
- SNP Development LLC

A review team consisting of William Lichter, David Hulseberg, and Ed Seagraves narrowed the proposals to two and then interviewed Hanscomb Faithful & Gould and Levien-Rich. After careful consideration, staff selected Hanscomb Faithful & Gould. This firm was the most local firm, had the greatest amount of experience with similar projects and was the most responsive bid. Staff has negotiated an agreement for services which provides for the following:

- Services not to exceed \$240,000
- Full-time representation on-site
- Payment contingent of bonds closing
- Assistance with bond document review/coordination
- Assistance Pre-Construction/Design
- Monitor all procurement
- Coordinate, monitor, review aspects of construction
- Assist the loss prevention service provider

March 12, 2004  
Construction Monitor Agreement

**Experience:**

Hanscomb Faithful & Gould has been contracted to work on similar projects which include:

	<u># of Rooms</u>	<u>S.F. Meeting</u>
Omaha Hilton Hotel	450	30,000
Chicago Peninsula Hotel	339	N/A
Hilton Americas Houston	1,200	82,600
Adrian's Landing Marriott Hotel	409	200,000
Four Seasons Hotel San Francisco	270	16,000

**Recommendation:**

Staff recommends that the Village Board concur with staff's recommendation to the Lombard Public Facility Corporation to hire Hanscomb Faithful & Gould. Additional company information is available upon request.

DAH/jd

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**AGREEMENT FOR CONSTRUCTION MONITORING SERVICES**

**AGREEMENT**

Made as of the twenty-ninth day of March in the year two thousand and four.

BETWEEN the Owner:

Lombard Public Facilities Corporation (LPFC)

and the Construction Monitor:

HANSCOMB INC.  
222 South Riverside Plaza, Suite 2240  
Chicago, Illinois 60606

For support services in connection with the following Project:

Convention Center and Hotel  
Lombard, Illinois

The Owner and the Construction Monitor agree as set forth below:

- I. The Construction Monitor acting in a support role to the Owner, shall provide services in accordance with the Terms and Conditions of this Agreement and as outlined in Article 1.

The Construction Monitor accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Construction Monitor covenants with the Owner to furnish its professional skill and judgment in furthering the interests of the Owner. The Construction Monitor agrees to furnish efficient business administration and management and to use its professional efforts at all times in an expeditious and economical manner consistent with the interest of the Owner.

The Construction Monitor agrees it may not obligate the Owner except as provided herein and shall not engage in any conduct which makes the Owner liable to any person except as specifically provided for herein, or as instructed by Owner from time to time.

II. The Owner shall compensate the Construction Monitor in accordance with the Terms and Conditions of this Agreement, and as set forth below:

A. For the services described in Article 1, Professional Fees as follows:

Construction Monitoring Services – An amount not to exceed: TWO HUNDRED AND FORTY THOUSAND AND NO/100 DOLLARS (\$240,000), to be paid in accordance with Paragraph 4.5 below.

B. In addition to the fee set forth in Section II.A. above, Reimbursables and general condition items as described in Article 3 below shall be billed to Owner at the actual cost. Any required consultants contracted through the Construction Monitor will be billed at a rate of 1.15 x cost.

On-site accommodations including, telephone, facsimile machine, etc., to be provided by Owner.

The following is included in the Scope of Services. As such, payment in relation thereto shall be agreed upon at the appropriate time, should any of the following services be required. This list is not meant to be exhaustive, but to provide general guidelines:

- Manpower for services after June 30, 2006, unless the Construction Monitor is the sole cause of a delay past this date, as determined amicably by the parties.
- Time to travel to suppliers locations.
- Full-time representation on-site.
- Environmental engineering consultant's services, if required.
- Site secretarial work.

C. In relation to any such services beyond those described in Article 1 below, compensation to the Construction Monitor shall be computed using the following Schedule of Rates:

(1.) Hourly Billing Rates:

Principals/Executives.....	\$140.00 per hour
Construction Monitor/Contract Administrator .....	\$105.00 per hour
Construction Inspector.....	\$100.00 per hour
Sr. Estimator/Scheduler/Value Specialist.....	\$105.00 per hour
Estimator/Scheduler/Value Specialist .....	\$ 90.00 per hour
Technical Assistant.....	\$ 45.00 per hour

(2.) All other hourly rates will be established by the following formula:

$$\text{Payroll cost (salary plus fringe) / 2080 x 2.5}$$

(3.) Special rates apply when preparing for and acting as an Expert Witness.

The foregoing rates are subject to review and adjustment on January 1, 2005, with said adjustment to be no greater than a five percent (5%) increase.

TERMS AND CONDITIONS OF AGREEMENT  
BETWEEN  
OWNER AND CONSTRUCTION MONITOR

- III. The parties hereto agree, in accordance with the Terms and Conditions of this Agreement as follows:
- A. The term of this Agreement shall be from April 1, 2004 through June 30, 2006 ("Term").
  - B. If the scope of the Project is changed materially such that the cost or time for Construction Monitor performance hereunder is increased, compensation for as set forth in Section II.A. above shall be subject to renegotiation.
  - C. If the Scope of Services covered by this Agreement have not been completed within twenty-seven months commencing April 1, 2004 and finishing June 30, 2006, through no fault of the Construction Monitor, (with fault being determined mutually by the parties hereto), the amounts of compensation, rates and multiples set forth in Section II above shall be subject to a fair and equitable adjustment using the present formulation for monies payable to the Construction Monitor as the basis for adjustment, taking into account price and rate increases which the Construction Monitor has in effect for customers other than Owner as of June 30, 2006.
  - D. If the Construction Monitor is delayed at any time in progress of the Scope of Services by an act or neglect of the Owner or any of owner's contractors in relation to the Project, , or by changes ordered in the Scope of Services, or by labor disputes, acts of God, unusual delay in deliveries, unavoidable casualties or other causes beyond the Construction Monitor's control, , then the term shall be extended automatically from the date of delay for a period not to exceed sixty (60) days, and no such extension shall affect the Owner's right to terminate this Agreement.
  - E. The Village of Lombard, Illinois ("Village") and the bond trustee under the financing transaction relative to the Project ("Bond Trustee") shall be third party beneficiaries of this Agreement.



TERMS AND CONDITIONS OF AGREEMENT  
BETWEEN  
OWNER AND CONSTRUCTION MONITOR

ARTICLE 1

SCOPE OF SERVICES OF CONSTRUCTION MONITORING

The Scope of Services set forth below contains a breakout of separate activities for convenience only. The primary task of the Construction Monitor is to make Owner aware of any plan, change order or activity that would result in the Project being completed and delivered as anything less than a 4-star quality convention hotel, and to assist in correcting or preventing such plan, change order, or activity. The Construction Monitor shall also approve payout requests on behalf of the Owner the Village and/or Bond Trustee.

**Initial Activity**

- Review Owner's needs, goals and requirements.
- Review all relevant contracts to verify that contracting parties are able to comply with the terms and obligations of their respective contracts.
- Become familiar with the Westin hotel standards pursuant to which the Project will be constructed.
- Review the policy and procedure manual defining the smooth coordination and flow of information between Construction Monitor, Owner, Westin and the contractors selected by Owner relative to the Project
- Assist in establishing procedure for payment draws and other Bond Trustee requirements consistent with the provisions of the construction contracts and financing documents relative to the Project.

**Pre-construction / Design**

- Assist the Owner in reviewing the program, project budget, and master program schedule.
- Assist the Owner in the evaluation of "front end" documents including general and special conditions, contract formats, and temporary specifications.
- Review designs and drawings throughout design period for conformance with Owner requirements and recommend value enhancements consistent with these requirements and sound construction practices.
- Review the Project budget and cost estimates periodically as design develops, as it relates to the payment draw schedule.
- Review the master schedule for the Project and monitor progress on design, construction, and commissioning activities.
- Review projected cash flow analysis for the construction of the Project. Analyze and update as required and requested by Owner.

**Procurement**

It is anticipated that the Owner's contractors shall be responsible for all procurement. The Construction Monitor will be expected to monitor all procurement and the coordination between the Westin and the Owner's contractors for timely procurement of proper materials.

TERMS AND CONDITIONS OF AGREEMENT  
BETWEEN  
OWNER AND CONSTRUCTION MONITOR

**Construction**

- Coordinate preparation and completion of punch lists of incomplete or unsatisfactory items. Monitor progress on corrective action.
- Monitor Owner's contractors commissioning and closeout activities such as definition of warranty and maintenance management systems, preparation of "as-built" drawings and record documentation, and architect/engineer inspections.
- Review and approve all requests for payment draws. The Owner the Village and the Bond Trustee will rely on such approvals.
- Review and forward to Owner all releases of claims prior to issuance of certificate of completion final payment to Owner's contractors and any subcontractors. Make recommendations on the withholding of payments to the Owner's contractors and any subcontractors where deemed necessary to protect Owner and the successful completion of the Project. Determine value of uncorrected work.
- Coordinate with the Owner's asset manager relative to the Project to achieve smooth completion, transition and start-up of Project.
- Alert the Village's Building and Inspection Department and Owner to any possible building irregularities.
- As required by the LPFC monthly reports shall be provided documenting construction activity at the Project.

**Owner's Controlled Insurance (OCIP)**

- Become familiar with the OCIP and assist the loss prevention service provider on the Owner's behalf.

TERMS AND CONDITIONS OF AGREEMENT  
BETWEEN  
OWNER AND CONSTRUCTION MONITOR

ARTICLE 2

THE OWNER'S RESPONSIBILITY

- 2.1 The Owner shall provide full information regarding his requirements for the Project.
- 2.2 The Owner shall designate a single person who shall be fully acquainted with the scope of the work relative to the Project and who has authority to render decisions promptly and furnish information expeditiously.
- 2.3 The Owner shall furnish such legal, accounting and insurance counseling services as may be necessary for the Project, and such auditing services as Owner may require to ascertain how or for what purposes the Owner's contractors have used the monies paid to them under the contracts for construction of the Project ("Contract Documents").
- 2.4 The Owner shall furnish the Construction Monitor with a sufficient quantity of designated Contract Documents.
- 2.5 If the Owner becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents, Owner shall give prompt written notice thereof to the Construction Monitor.

ARTICLE 3

REIMBURSABLE EXPENSES

- 3.1 Reimbursable Expenses include actual expenditures made by Construction Monitor, his employees, or his professional consultants in the interest of the Project, including, but not limited to:
  - 3.1.1 Fees paid for securing approval of authorities having jurisdiction over the Project.
  - 3.1.2 Handling, shipping, mailing and reproduction of Project related materials.
  - 3.1.3 Transportation, long-distance communications, and living when traveling in connection with the Project, and overtime work requiring higher than regular rates but only if authorized in advance by the Owner.
  - 3.1.4 Expense of additional insurance coverage or limits, requested by the Owner in excess of that normally carried by Construction Monitor.
  - 3.1.5 Relocation and living expenses for full-time site staff.

TERMS AND CONDITIONS OF AGREEMENT  
BETWEEN  
OWNER AND CONSTRUCTION MONITOR

3.1.6 Expenses will be billed at net cost.

ARTICLE 4

PAYMENTS TO THE CONSTRUCTION MONITOR

- 4.1 The Construction Monitor shall present a monthly statement of services which shall be paid by the Owner within thirty (30) days of receipt, subject to paragraph 4.6 below.
- 4.2 No deductions shall be made from the Construction Monitor compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractors.
- 4.3 If the Project is suspended for more than two (2) months or abandoned in whole or in part, the Construction Monitor shall be paid his compensation for services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due, and all termination expenses as defined in Article 5.2 hereof resulting from such suspension or abandonment. If the Project is resumed after being suspended for more than two (2) months, the Construction Monitor compensation shall be subject to re-negotiation.
- 4.4 If construction of the Project has started and is delayed by reason of strikes, or other circumstances not due to the fault of the Construction Monitor, as mutually determined by the parties, the Owner shall reimburse the Construction Monitor for the costs of his project staff as provided for by this Agreement. The Construction Monitor shall reduce the size of his Project staff after a sixty-day (60) delay, or sooner if feasible, for the remainder of the delay period as directed by the Owner and, during the period, the Owner shall reimburse the Construction Monitor for the direct personnel expense of such staff. Upon the termination of the delay, the Construction Monitor shall restore his Project staff to its former size, subject to the approval of the Owner.
- 4.5 Payments to the Construction Monitor will be based upon actual hours expended at the hourly rates noted in Section II above, plus Reimbursable Expenses, subject to the not-to-exceed amount set forth in Section II.A. above.
- 4.6 It is understood by the Construction Monitor that execution of this Agreement between the Owner and Construction Monitor may occur prior to the bond closing relative to the financial transaction that will fund the Project. Construction Monitor further understands that no payment can be issued to the Construction Monitor prior to such bond closing and that if bonds are not issued and the Project is terminated, the Owner will not be liable for any payment to Construction Monitor, including, but not limited to, any costs (Reimbursable Expenses) incurred by the Construction Monitor.

TERMS AND CONDITIONS OF AGREEMENT  
BETWEEN  
OWNER AND CONSTRUCTION MONITOR

ARTICLE 5

TERMINATION OF AGREEMENT

- 5.1 This Agreement may be terminated by either party upon thirty (30) day's prior written notice, should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating termination. In the event of termination due to the fault of other than the Construction Monitor, the Construction Monitor shall be paid his compensation plus Reimbursable Expenses for services performed to termination date and all termination expenses, subject to the limitations of section 4.6 above.
- 5.2 Termination expenses are defined as Reimbursable Expenses directly attributable to termination, plus an amount computed at ten percent (10%) of the total compensation earned to the time of termination.

ARTICLE 6

SUCCESSORS AND ASSIGNS

- 6.1 The Owner and the Construction Monitor each binds itself, its partners, successors, assigns and legal representatives to the other party to the Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Construction Monitor shall assign, sublet or transfer its interest in this Agreement without the written prior consent of the other.

ARTICLE 7

INSURANCE

- 7.1 The Construction Monitor shall purchase and maintain, during the period of this Agreement, Comprehensive Insurance insuring the Construction Monitor.

**Construction Monitor Insurance Requirements.** The Construction Monitor agrees, at no additional cost to the LPFC, to secure and deliver to the LPFC's risk management administrator (the "Risk Administrator") prior to the execution of this Agreement by Construction Monitor, and to keep in force at all times during the term of this Agreement, as the same may be extended, the following insurance:

(a). **Professional Liability.** Professional Liability Insurance in the amount of \$1,000,000.00 with the deductible no greater than \$25,000.00. (The LPFC's Risk Administrator

TERMS AND CONDITIONS OF AGREEMENT  
BETWEEN  
OWNER AND CONSTRUCTION MONITOR

may later direct enrollment in a LPFC owned and paid, project specific, professional liability program.);

**(b.) Commercial General Liability.** A Commercial General Liability Insurance policy, with the Village and the LPFC, and their respective officers, agents and employees endorsed as additional insureds, in form and company acceptable to and approved by the Risk Administrator, covering the scope of operations hereunder, with amounts of coverage not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate; and

**(c.) Automobile Liability.** Comprehensive Auto Liability insurance, in form and company acceptable to and approved by the Risk Administrator covering the scope of operations hereunder with limits of liability no less than \$1,000,000.00 The Village and the LPFC, and their respective its officers, agents and employees shall be additional insureds under the policy.

**Other Requirements.** The Construction Monitor agrees to provide the LPFC's risk administrator with an original copy of certificates of insurance satisfactorily evidencing all of above described coverage at least three (3) days before work begins. The Construction Monitor also agrees to provide to the risk administrator, certified copies of any or all such policies, if requested to do so by the LPFC.

In order to be acceptable to the LPFC, insurance companies utilized must be rated at least A VIII by the A.M. Best Company. All insurance required hereunder shall contain provisions wherein all rights of subrogation or recovery of any kind against the Village and the LPFC, and their respective agents, employees, officers, successors and assigns are specifically waived by the Construction Monitor.

All subcontractors shall be included as insureds under Construction Monitor's policies or separate certificates and endorsements shall be furnished for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

Professional errors and omissions insurance coverage, may be structured to provide coverage on a "claims made" basis; provided, however, that the Construction Monitor shall be required to maintain and keep in effect said professional errors and omissions insurance coverage for at least five (5) years after termination date of this Agreement through the purchase of an extended reporting period.

Insurance coverage specified herein constitutes the minimum requirements and those requirements do not lessen or limit the liability of the Construction Monitor under this Agreement. The Construction Monitor shall obtain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary. The insurance requirements above shall not be deemed to limit or define the obligations of the Construction Monitor and it is solely responsible for payment of any deductibles.

TERMS AND CONDITIONS OF AGREEMENT  
BETWEEN  
OWNER AND CONSTRUCTION MONITOR

- 7.2 The Construction Monitor shall provide a certified copy of all policies or a certificate evidencing the existence of such policies, or binders, to the Owner within thirty (30) days of the date of this Agreement.
- 7.3 The Owner shall procure and maintain or cause the Owner's contractor(s) to procure and maintain, builders risk (all risk) completed value insurance covering the Project during the performance thereof including material delivered to the Premises but not attached to the realty. The Owner will be responsible for any co-insurance penalties or deductibles. Owner agrees to indemnify and hold harmless Construction Monitor from any and all such claims, provided that such claims do not arise due to willful, wanton, or negligent acts on the part of the Construction Monitor.
- 7.4 The Owner shall cause any other contractor who may have a contract with the Owner to perform construction or installation work in the areas where Scope of Services will be performed under this Agreement, to agree to indemnify the Owner and the Construction Monitor and hold them harmless from all claims for bodily injury and property damage that may arise from that contractor's operations.

TERMS AND CONDITIONS OF AGREEMENT  
BETWEEN  
OWNER AND CONSTRUCTION MONITOR

ARTICLE 8

INDEMNIFICATION

- 8.1 The Owner agrees to indemnify the Construction Monitor, and to hold the Construction Monitor harmless, against any and all losses, damages, costs, expenses (including reasonable attorney's fees), liabilities and other obligations which the Construction Monitor incurs as a result of any third-party claim, action or proceeding other than one arising out of the Construction Monitor's sole negligence or willful misconduct in the performance of services; provided, however, that the Construction Monitor shall promptly notify the Owner in writing of any claim or threatened or actual action or proceeding. The Construction Monitor shall control the defense of such claim, action or proceeding including the selection of counsel, but the Owner shall have the right to participate in any action or proceeding with counsel of the Owner's selection.
- 8.2 The Construction Monitor agrees to indemnify the Owner, and to hold the Owner harmless, against any and all losses, damages, costs, expenses (including reasonable attorney's fees), liabilities and other obligations which the Owner incurs as a result of any third-party claim, action or proceeding other than one arising out of the Owner's sole negligence or willful misconduct in the performance of services; provided, however, that the Owner shall promptly notify the Construction Monitor in writing of any claim or threatened or actual action or proceeding. The Owner shall control the defense of such claim, action or proceeding including the selection of counsel, but the Construction Monitor have the right to participate in any action or proceeding with counsel of the Construction Monitor's selection.

ARTICLE 9

EXTENT OF AGREEMENT

- 9.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Monitor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall not be superseded by provisions of contracts for construction and may be amended only by written instrument signed by both Owner and Construction Monitor.
- 9.2 Nothing contained herein shall be deemed to create any contractual relationship between the Construction Monitor and any of the contractors, subcontractors or material suppliers on the Project; nor shall anything contained herein be deemed to give any third party any claim or right of action against the Owner or the Construction Monitor which does not otherwise exist without regard to this Agreement.



TERMS AND CONDITIONS OF AGREEMENT  
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OWNER AND CONSTRUCTION MONITOR

GOVERNING LAW

GOVERNING LAW

Unless otherwise specified, this Agreement shall be governed and construed in accordance with the laws of Illinois, and any court action in relation to this Agreement shall be brought in DuPage County, Illinois.

This Agreement executed the day and year first written above.

OWNER

CONSTRUCTION MONITOR

By \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_