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MEMORANDUM

TO: Art Alfaro
FROM: Bob Dransfield
DATE: May 4, 2009
RE: Use of Special Motor Vehicle Rental Tax authorized November 3, 1998

Art, you have asked me to look at the provisions of the previously adopted ordinances of the City in connection with a question relating to whether the City is able to use the approved Special Motor Vehicle Rental Tax to fund operating expenses associated with the Town Lake Park Community Events Center should the City elect to do so.

The City submitted to the votes at a November 3, 1998 election Proposition 11 which reads as follows:

PROPOSITION 11

SHALL THE CITY COUNCIL OF THE CITY OF AUSTIN BE AUTHORIZED TO PROVIDE FOR THE PLANNING, ACQUISITION, ESTABLISHMENT, DEVELOPMENT, CONSTRUCTION, AND FINANCING OF THE TOWN LAKE PARK COMMUNITY EVENTS CENTER, A VENUE PROJECT OF THE TYPE DESCRIBED AND DEFINED IN SECTION 334.001(4)(A) OF CHAPTER 334, LOCAL GOVERNMENT CODE (THE "ACT"), DESIGNATED BY RESOLUTION NO. 980902-17 (THE "RESOLUTION"), AND DESCRIBED GENERALLY TO CONSIST OF CONSTRUCTION OF A NEW TOWN LAKE PARK COMMUNITY EVENTS CENTER, WHICH INCLUDES PARKLAND DEVELOPMENT AND CONSTRUCTION OF PARKING FACILITIES, INCIDENTAL CONCESSIONS COMPATIBLE WITH THE USE OF THE FACILITY, AND RELATED INFRASTRUCTURE AS DEFINED IN THE ACT, AND TO SECURE THE PAYMENT OF NOT MORE THAN \$40,000,000 OF MOTOR VEHICLE RENTAL REVENUE BONDS OF THE CITY ISSUED TO PAY THE COSTS OF THE PROJECT BY IMPOSING A TAX ON SHORT-TERM MOTOR VEHICLE RENTAL REVENUE BONDS OF THE CITY ISSUED TO PAY THE COSTS OF THE PROJECT BY IMPOSING A TAX ON SHORT-TERM MOTOR VEHICLE RENTALS (RENTAL CARS ONLY) WITHIN THE CITY, AT A RATE NOT TO EXCEED FIVE PERCENT (5%) OF THE GROSS RENTAL RECEIPTS FROM THE RENTAL?

At the election, the voters approved Proposition 11 and in December 1998, the City Council passed Ordinance 981210-A that, among other things, created a venue project fund for the Town Lake Park Community Events Center Venue Project. The revenue derived from the 5% motor vehicle rental tax imposed by Ordinance 981210-A are to be deposited in the venue project fund created by that ordinance.

On October 28, 1999, the City Council adopted Ordinance No. 991028-88 that authorized the issuance of the City of Austin, Texas, Town Lake Park Community Events Center Venue Project Bonds, Series 1999 in the amount of \$40,000,000. Ordinance No. 991028-88 recognizes that the City has imposed and while the Bonds remain outstanding will continue to impose the Special Motor Vehicle Rental Tax of 5%.

Ordinance No. 991028-88 confirms the establishment of the Venue Project Fund for the Town Lake Park Community Events Center Venue Project and establishes the following subaccounts in the Venue Project Fund:

- (i) Town Lake Park Community Events Center Venue Project Special Motor Vehicle Rental Tax Account ("Tax Account");
- (ii) Town Lake Park Community Events Center Venue Project Parking Garage Account ("Parking Garage Account");
- (iii) Town Lake Park Community Events Center Venue Project Gross Revenue Accounts ("Events Center Revenue Account");
- (iv) Town Lake Park Community Events Center Venue Project Bond Debt Service Account ("Debt Service Account");
- (v) Town Lake Park Community Events Center Venue Project Bond Debt Service Reserve Account ("Debt Service Reserve Account");
- (vi) Town Lake Park Community Events Center Venue Project Repair and Replacement Account ("Repair and Replacement Account"); and
- (vii) Town Lake Park Community Events Center venue Project Operating Account ("Operating Account").

Ordinance No. 991028-88 also provides for the flow of funds for the funds received from the Special Motor Vehicle Rental Tax, the Parking Revenues and the Events Center Revenues, all of which are to be deposited to the credit of the Venue Project Fund and more particularly to the credit of the Tax Account, the Parking Garage Account and the Events Center Revenue Account, respectively.

While the Bonds remain outstanding, money in the Tax Account shall be applied in the following order of priority:

First, to the payment of the amounts to be deposited to the credit of the Debt Service Account required by Ordinance No. 991028-88 and any ordinance authorizing the issuance of Additional Bonds;

Second, to the payment of the amounts to be deposited to the credit of the Debt Service Reserve Account required by Ordinance No. 991028-88 and any ordinance authorizing the issuance of Additional Bonds;

Third, to the payment of the amounts to be deposited to the credit of the Repair and Replacement Fund required by Ordinance No. 991028-88 and any ordinance authorizing the issuance of Additional Bonds;

Fourth, to pay amounts to be deposited to the credit of the Operating Account, including the establishment and maintenance of an operating reserve to operate and maintain the Town Lake Community Events Center and Parking Garage, as required by Ordinance No. 991028-88 and any ordinance authorizing the issuance of Additional Bonds; and

Fifth, for any lawful purpose under the Act [Chapter 334, Local Government Code] and as authorized by the election held November 3, 1998.

The Parking Revenues and the Events Center Revenues are to be deposited to the credit of the Venue Project Fund and the Parking Garage Account and Events Center Revenue Account in essentially the same priorities as the money in the Tax Account.

The City authorized the issuance of its Town Lake Park Community Events Center Venue Project Refunding Bonds, Series 2005 with adoption of Ordinance No. 050512-53. These bonds refunded the Series 1999 Bonds referred to above that were scheduled to mature on November 15 in each of the years 2010 through 2025 and 2029. The flow of funds associated with the Series 2005 Bonds mirrors the flow of funds associated with the Series 1999 Bonds. Both the Series 1999 Bonds and the Series 2005 Bonds were approved by the Attorney General of the State of Texas.

Section 334.042 of the Texas Local Government Code provides, in part, that money in a venue project fund may be used to (1) reimburse or pay the cost of planning, acquiring, establishing, developing, constructing or renovating one or more approved venue projects, (2) to pay principal of and interest on and other costs relating to bonds or other obligations issued by the municipality or to refund bonds, notes or other obligations or (3) pay the costs of operating or maintaining one or more approved venue projects. The ordinances associated with the issuance of the Series 1999 Bonds and the Series 2005 Bonds recognized and incorporated this authorization in the flow of funds described above and Ordinance No. 991028-88 and Ordinance 050512-53 authorized money on deposit in the Venue Project Fund to be so applied.

The ballot language submitted to the voters in 1998 was consistent with the statutory directive set forth in Section 334.024, Texas Government Code and with the approval by the voters, the City was authorized to impose the Special Motor Vehicle Rental Tax in support of the approved venue project, the Town Lake Park Community Events Center. The statute under which the City was authorized to submit the proposition also provides how the City may use the revenues it deposits to the Venue Project Fund established after the approval of a venue project. This use includes the costs of operating and maintaining an approved venue project and is consistent with prior actions of the City taken in the ordinances referenced above.

We have not seen any information materials that might have accompanied the election and are not currently in a position to advise as to whether any such materials could be construed as a part of the contract with the voters.

If you have any questions or would like to discuss this further, please do not hesitate to contact us.