The City of Sparks

CHET ADAMS
CITY ATTORNEY

M E M O R A N D U M

TO: Councilwoman Judy Moss

CC: Sparks City Council Members
Mayor Geno Martini
City Manager Shaun Carey
Redevelopment Manager Armando Ornelas
Acting Finance Director, Joyce Farley

FROM: Chester H. Adams, City Attorney

DATE: April 7, 2006

SUBJECT: Tourism Improvement District/STAR Bonds
Legends at Sparks Marina Project

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I. Introduction

This Memorandum is prepared at the recent request of Councilwoman Moss. Its purpose is to advise that the creation of a Tourism Improvement District (TID) and the subsequent issuance of Sales Tax Anticipation Revenue (STAR) bonds must comply with not only Nevada law and the below-described legal standards against which the City Council's findings are subject to review, but also must be viewed in the greater context of federal legislation regulating the issuance and exchange of municipal bonds and notes, also known as federal securities law.

The City Attorney's Office has prepared this Memorandum for two primary reasons. First, this Memorandum is prepared in direct response to a copy of a December 30, 2005 report, recently provided to the City Attorney's Office on March 30, 2006 (the "Fraser Report," attached hereto as "Exhibit A"), in which Ms. Kim Fraser, the author of the report, questions the accuracy of previous projections of taxable sales in the proposed TID to tourists who are not residents of this State. The specific projections she questioned were contained in a prior report entitled "Projected Project Market Capture, Part II of a 3-report Series on The Legends At Sparks Marina" prepared by McClure Consulting LLC (the "McClure Report"). The McClure Report formed the basis for a proposed list

of tenants, along with corresponding estimates of sales to both Nevada residents and non-residents of Nevada.

The second reason for this memorandum is to address an apparent widely-held, and mistaken, belief that the TID legislation absolves the City of all liability in the event of a default or a failure to make obligatory payments on TID STAR bonds.

II. Background

The Sparks City Council is expected to soon be tasked with the duty to create a TID in which the recently-proposed Legends at Sparks Marina Project is to be located. A TID is created by ordinance, after a number of determinations have been made by the City Council. For the purposes of this Memorandum, the most significant initial determination to be made by the City Council in the creation of a TID is the determination, at a public hearing, that as a result of the project "'[t]here will be a substantial increase in the proceeds from sales and use taxes remitted by retailers with regard to tangible personal property sold at retail, or stored, used or otherwise consumed in the district ... and [that] ... [a] preponderance of that increase in the proceeds from sales and use taxes will be attributable to transactions with tourists who are not residents of this State." NRS 271A.080(6). This required determination is commonly referred to as the "preponderance" finding.

The preponderance finding is significant because, under the legislation authorizing the creation of a TID, if the preponderance finding can be made, the City of Sparks may authorize the issuance of special obligation STAR bonds to finance or refinance projects for the benefit of the TID. These special obligation bonds are secured by pledged sales tax proceeds related to the TID and/or revenues received by the City of Sparks from any revenue-producing projects in the TID. Before the issuance of special obligation bonds, the City of Sparks must obtain the results of a feasibility study demonstrating that a sufficient amount of sales tax revenues will be generated in the TID. These sales tax revenues are used to make timely payment on the bonds. If there is an insufficient amount of sales tax revenue to make timely payment on the bonds, the City does not default on the loan because the STAR bonds are not secured by or payable from the general fund of the City.

III. Legal standards applicable to findings required by Nevada law

The statutes governing the creation of a TID, and the preponderance finding itself, provide that the City Council's preponderance finding "... is conclusive in the absence of fraud or gross abuse of discretion." NRS 271A.090. This legal standard is different from the usual and customary "substantial evidence" standard that the City Council is generally required to abide by. Typically, under the substantial evidence standard, City Council decisions are presumed to be correct upon judicial review and a Court reviewing a challenged decision of the City Council is to determine whether the evidence upon which the decision is based supports the decision. *State Engineer v. Morris*, 107 Nev. 699, 819 P.2d 203 (1991). This standard is very deferential to the government agency (in this case the City of Sparks) and establishes that a reviewing Court "... will [not] substitute its judgment for the judgment of the ... [challenged governmental agency]." The Court does "... not pass on the credibility of the witnesses nor reweigh the evidence, but limit[s itself] ...

to a determination of whether substantial evidence in the record supports the ... decision." *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979).

In contrast to the substantial evidence standard, NRS chapter 271A's "gross abuse of discretion" and "fraud" standards are considerably higher, and more difficult to achieve, than the substantial evidence standard. The abuse of discretion standard is best described as synonymous with a failure to exercise sound, reasonable and legal discretion. This legal standard does not imply intentional wrong doing or bad faith, or any misconduct, but instead involves a decision which is clearly erroneous or one that is clearly against the weight of logic. A Court takes a more probing look into the City Council's determination and will determine if the effect of the facts as they were presented to the City Council permitted the reasonable and probable deductions which were ultimately drawn by the City Council from those facts. *See generally, Starr v. State*, 5 Okl. Crim. 440, 115 P. 356, 363 (1911); *Root v. Bingham*, 26 S.D. 118, 128 N.W. 132 (1910); *Quinn v. Gardner*, 32 F.2d 772 (8th Cir. 1929).

Fraud is more of a generic term which embraces multifarious means used to obtain advantage over another by false suggestions or by the "suppression of the truth." Fraud includes all surprises, tricks, false representations of matters of fact, whether by words or conduct, by false or misleading allegations, including that which should have been disclosed, which deceives and which is intended to deceive another. *See generally, Goldstein v. Equitable Life Assur. Society of U.S.*, 160 Misc. 364, 289 N.Y.S. 1064, 1067 (1936); *Johnson v. McDonald*, 170 Okl. 117, 39 P.2d 150 (1934).

IV. Relevant Federal Legislation

The Securities Act of 1933, 48 Stat. 82 (May 27, 1933), codified at 15 U.S.C. §77a et seq., and the Securities Exchange Act of 1934, 48 Stat. 881 (June 6, 1934), codified at 15 U.S.C. §78a et seq., both set the standard and define minimum acceptable levels of conduct associated with the issuance of bonds and notes by local governments. According to the City's Bond Counsel, these federal laws apply to the City of Sparks in its issuance of STAR bond obligations. Without exception, a hallmark of the federal legislation is that securities transactions should be conducted, by all parties to the transactions, in as open and informed a manner as possible. Serious criminal, financial and legal consequences may flow from a failure to abide by these standards.[1]

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[1] Public officials across the nation are being held accountable for their actions under the 1933 and 1934 Acts. For example, the Orange County, California, Board of Supervisors and its Treasurer/Tax Collector and Assistant Treasurer faced both civil penalties and prison sentences as a result of violating the anti-fraud provisions of the federal securities laws which impose responsibilities on public officials authorizing the offer and sale of securities. In that case it was held that a public official who approves the issuance of securities and related disclosure documents may not authorize a disclosure that the public official knows to be materially false or misleading, nor may that public official recklessly disregard facts that indicate there is a risk that the disclosure may be misleading. *SEC v. Robert L. Citron and Matthew R. Raabe*, SEC Civ. Action No. SACV 96-74 GLT (C.D.Cal. 1996); *Report of Investigation in the Matter of county of Orange, California as it Realtes to the Conduct of the Members of the Board of Supervisors*, Exchange Act Release No. 36761 (January 24, 1996). Meanwhile, misrepresentations related to Redevelopment Authority bond offerings made by officials of a small Alabama town resulted in a SEC injunction being issued against the public officials of the town and an order imposing civil penalties on the public officials. *SEC v. Louis Bethune, Charles L. Howard and*

A. The Securities Act of 1933

Congress enacted the Securities Act of 1933 ("1933 Act") in the aftermath of the stock market crash of 1929 and the ensuing economic depression. It was the first major federal legislation to regulate the sale of securities. Prior to that time, the regulation of securities was chiefly governed by the states.

The 1933 Act has two basic objectives:

require that investors receive significant (or "material") information concerning securities being offered for public sale; and

prohibit deceit, misrepresentations, and other fraud in the sale of securities

Underlying the 1933 Act is the principle that an issuer offering securities must provide potential investors with sufficient information about the issuer to make an informed decision. Congress intended the law to empower investors, and not the government, to make informed investment decisions. To assist with its objectives of informing potential investors and fair dealing in the market place, the 1933 Act requires issuers to disclose significant information. Disclosure has the added benefit of discouraging bad behavior. Supreme Court Justice Louis Brandeis coined the phrase "sunlight is said to be the best disinfectant," L. Brandeis, "Other People's Money 62" (National Home Library Foundation ed. 1933), which is part of the philosophy underlying the 1933 Act.

The 1933 Act requires that many securities sold in the United States must be registered by filing a registration statement with the Securities and Exchange Commission. Some securities are exempt from the registration requirement, including municipal bonds such as those issued by the City of Sparks. However, regardless of whether securities must be registered, the 1933 Act makes it illegal to commit fraud in conjunction with the sale of securities. A defrauded investor can sue for recovery under the 1933 Act.

B. The Securities Exchange Act of 1934

The Securities Exchange Act of 1934 ("1934 Act") extended federal regulation to trading in securities which are already issued and outstanding. The 1934 Act is a more comprehensive statute and regulates the secondary markets and many market participants. The 1934 Act provides for the creation of the Securities and Exchange Commission (SEC), a system for regulating the markets and those who trade in those markets. The 1934 Act also requires issuers of securities to comply with a continuous disclosure system and makes anti-fraud provisions applicable to all issuers of securities.

John Jackson, Civ. Action No. CV95-B2509 (N.D.Ala.), Litigation Release No. 14675 (October 2, 1995). Another example occurred in the State of Florida in which an elected member of a county utility authority was enjoined from future violations of the anti-fraud provisions of both the 1933 and 1934 Acts, ordered to pay a civil monetary penalty of $25,000.00 and sentenced to twenty seven months in prison on criminal charges related to his securities violations. *SEC v. Terry D. Busbee and Preston C. Bynum*, Litigation Release no. 14508 (May 24, 1995)(settled final order).

The SEC is an independent federal agency. The 1934 Act grants the SEC broad authority over all aspects of the securities industry and markets. Congress intended the SEC to be the regulator that establishes national policy over the securities markets of the United States. The SEC adopts rules implementing the provisions of the federal securities laws. It brings civil enforcement cases against persons, including governmental and municipal entities, charged with violations of the federal securities laws. The SEC also cooperates with the United States Department of Justice which has responsibility for criminal enforcement of the federal securities laws.

Finally, the 1934 Act also provides investors broad protection through anti-fraud provisions. The anti-fraud provisions are applicable to all securities transactions, including non-registered muncipal bond transactions. In particular, the 1934 Act and the SEC's rules prohibit fraudulent activities that defraud investors by any person, regardless of how clever or novel the scheme. These provisions are supplemented by prohibitions on certain types of trading. For example, a number of provisions of the federal securities laws prohibit market manipulation. The SEC may bring cases against wrongdoers and investors may bring private lawsuits under many provisions of the 1934 Act.

V. Discussion of the relevance of the Federal Legislation

Section 17(a) of the 1933 Act and Section 10(b) of the 1934 Act and Rule 10(b)(5) adopted by the SEC under the 1934 Act make it unlawful for any person, in the offer or sale (Section 17(a)) or in connection with the purchase or sale of any security (Section 10(b) and Rule 10(b)(5)), to employ any device, scheme, or artifice to defraud, to make any untrue statement of a material fact, to omit to state a material fact, or to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person through the means or instruments of interstate commerce or the mails.

It is the opinion of this office that the STAR notes and bonds anticipated to be issued by the City of Sparks are "securities" as that term is used under Section 2(1) of the 1933 Act and under Section 3(a)(10) of the 1934 Act. Information is material if there is a substantial likelihood that a reasonable investor would consider it important to an investment decision. *See Basic Inc. v. Levinson*, 485 U.S. 224, 231 - 232 (1988); *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). Furthermore, when the information pertains to a possible future event, "materiality 'will depend upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the ... activity.'" *Basic Inc.*, 485 U.S. at 238 (quoting *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 849 (2d Cir. 1968), *cert. denied*, 394 U.S. 976 (1969)).

Scienter is required to establish violations of Section 17(a)(1) of the 1933 Act and Section 10(b) of the 1934 Act and Rule 10(b)(5) thereunder. *See Aaron v. SEC*, 446 U.S. 680, 701 702 (1980). Scienter is "a mental state embracing intent to deceive, manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n. 12 (1976). In the Ninth Circuit Court of Appeals, recklessness satisfies the scienter requirement. *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564 (9th Cir. 1990) (en banc), *cert. denied*, 499 U.S. 976 (1991). Recklessness is "an extreme departure from the standards of ordinary care, and which presents a danger of misleading [investors] that is either

known to the defendant or is so obvious that the actor must have been aware of it." *Id.*, 914 F.2d at 1569.

VI. Conclusion

Applying the above-referenced legal standards and federal laws to the City Council's task in creating a TID, along with the Council's obligation to make specific findings relating to the preponderance finding, it is the opinion of this office that the City Council cannot now make a legally defensible finding based upon the information provided to the City as of the date of this Memorandum. Additionally, due to the knowledge that the City now possesses concerning the Fraser Report, a well-presented and credible contrary opinion of projected market capture in the proposed TID, coupled with the policy of the federal securities laws encouraging openness through disclosure, the City, and the developer of the TID, are now obligated to fully and openly address that contrary opinion, after divulging its existence, before the City may proceed further in creating the TID.

This opinion is not arrived at lightly as I understand the significance of the proposed TID to the City of Sparks. However, based upon the best available information provided to this office, the requested STAR bonds represent more than $160,000,000.00 of taxpayer money. Federally protected investors will ultimately be solicited with offers to invest in the City's STAR bond offerings. The "future event" of potential out-of-state tourist generated sales and use tax revenue must, therefore, be sufficiently based upon reliable, logical and dependable data. This data should include somewhat identifiable and reasonably foreseeable tenants at the Legends at Sparks Marina project who can logically be expected to generate sales to non-residents of Nevada in amounts and at levels sufficient to support a preponderance finding by the City Council.

This office is in no position at this time to resolve the discrepancies between the McClure Report and the Fraser Report. As the proposed TID is currently anticipated to be structured, Nevada law requires that a minimum of slightly more than 50% of the anticipated sales and use tax revenues derived from the project must be generated from non-residents of the State of Nevada who shop and dine in the various venues within the TID. However, given the Fraser Report's suggestion that the out-of-state sales and use projections set forth in the McClure Report are inflated, the possible consequence of relying on such figures (if, in fact, they are inflated) is that the STAR bonds may not be repaid. If the STAR bonds are not repaid, the investors who suffer financially will likely turn to the City for reimbursement under a variety of legal theories, including the above-mentioned federal securities laws.

It is the opinion of this office that the conflicting reports prevent the City Council from determining whether there is sufficient evidence upon which it may make a rational and legally defensible decision whether a preponderance of the sales and use taxes in the TID will be derived from non-

residents of the State of Nevada[2]. Until the conflict between these reports is resolved, this office believes the City Council could ultimately face potential liability — both civil and criminal — under federal securities laws. A determination of such liability will necessarily involve investigation into all the events leading to the issuance of STAR bonds, including a review of all the facts surrounding the process leading to the City Council's preponderance finding.

Thank you for your interest in this matter. If you find you have additional questions, comments or concerns regarding anything contained in this Memorandum, please feel free to contact me.

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[2] The opinion of this office is supported by the April 7, 2006 memorandum provided by the City's bond counsel, Swensied & Stern, L.L.C. (Attached hereto as "Exhibit B"). The City's bond counsel has expressed concern over the existing conflict between the projected sales tax revenues contained in the Frazier and McClure Reports. Absent a resolution of the conflicts and a subsequent showing of a "reasonable, logical determination" of the projected tax revenues, Bond Counsel will be unable to provide the City with an "unqualified bond opinion" supporting the issuance of STAR bonds.

December 30, 2005

Mr. Armando Ornelas
Redevelopment Manager
City of Sparks Redevelopment Agency
431 Prater Way
Sparks, NV 89431

SUBJECT: Review Of Sales Projections For The Legends At Sparks Marina

Dear Mr. Ornelas:

The purpose of this letter is to summarize our review of the sales projections for potential tenants at The Legends at Sparks Marina with respect to the issue of sales derived from tourists to the Reno/Sparks region.

Background

Kim Fraser Associates, located in San Francisco, California, is a retail consulting firm specializing in marketing, consumer research, merchandising plans, advertising and on-going management optimization consultation for shopping centers. Kim Fraser, principal of the firm, has over 30 years of experience and has frequently been an instructor at International Council of Shopping Centers ("ICSC") programs, both in the U.S. and abroad. Ms. Fraser has authored a book titled, *Marketing Small Shopping Centers*, published by ICSC, and is a frequent speaker on customer segmentation and marketing issues. Her experience includes both permanent resident shopping centers, as well as visitor/tourist centers, including several years' marketing consultation for Seaside, Florida, a visitor-oriented project in the Panhandle area of Florida in South Walton County that is a short drive from Destin, Florida. Ms. Fraser's other tourist-oriented experience includes projects in other parts of Florida as well as Hawaii, Las Vegas, Portland, and Monterey, Napa, the San Francisco Bay Area and Palm Springs, California. Many of Ms. Fraser's assignments have included consumer research of the customers who shop the centers, including intercept studies to determine the shopping frequency and spending patterns of those shoppers. Current client projects include several mixed-use, lifestyle and entertainment-oriented shopping centers.

Work Conducted & Critical Assumptions

As a part of this assignment, we have reviewed the report titled *Projected Project Market Capture, Part II of a 3-Report Series on The Legends At Sparks Marina* prepared by McClure Consulting LLC. This letter, however, focuses only on the issue of preponderance of sales from tourists, as predicted in Table II-6, page 16, of the McClure report. Our observations regarding this specific issue are based entirely upon our 30 years' experience in the retail industry and the data as presented by McClure in that Table. No independent study or market research has been conducted for the project or for the project's market area, the Reno/Sparks region.

EXHIBIT
A

Summary Conclusions

Given our extensive experience with existing shopping centers and intercept surveys of customer shopper patterns, we have the background for making a number of observations with respect to Table II-6, *Sales Projections for Potential Tenants at The Legends at Sparks Marina*, attached as EXHIBIT 1. Specifically, we would question several of the percentages subjectively ascribed to Tourists from 100+ miles away, and California tourists from 35-100 miles away, in Table II-6 for the following reasons:

- The Table lists a number of potential tenants for The Legends project that are easily accessible to tourists in their home towns. These potential tenants include Wal-Mart, Target, Sears Grand, Fry's, Costco, Sam's Club, Home Depot, Kohl's, JC Penney, TJ Maxx, Marshalls, Linens & Things, Bed Bath And Beyond, and Border's Books. Our experience has shown that tourists on vacation are not likely to be attracted to stores that are found in their home towns. Therefore, we would question the high percentage of tourist sales (i.e., 37.5%) ascribed to these stores.

- Our tourist-related retail work has shown that tourists on vacation typically do not shop furniture stores or electronics stores selling large merchandise. The reason for lack of patronage is usually practical: Visitors cannot easily take the goods home with them, particularly if they came by plane or by a modest-sized car, and it is not practical or it is too expensive to have the goods shipped to their home. Therefore, we would question the high percentage of tourist sales (i.e., 37.5%) allocated to stores such as Fry's, Nebraska Furniture Mart, Ikea and Home Depot.

- Tourists may shop at in-line specialty stores most frequently found in regional malls if these stores are located in unique natural or historic settings, such as some of the shops in Harborplace at the Baltimore Harbor or in the historic Freedom Trail buildings of Faneuil Hall in downtown Boston. However, it is our understanding that The Legends at Sparks Marina will not be located adjacent to a unique natural setting that attracts tourists and that the project will be housed in newly constructed buildings. Moreover, The Legends location is not part of a major visitor attraction and the project's proposed entertainment/attractions venues are not substantial enough to draw tourists in high numbers. Therefore, the percentage of tourist sales (62.5%) allocated to in-line shops appears excessive.

- Restaurants with over 50% of their sales from tourists are typically located extremely close to high numbers of hotel rooms or near condominiums catering to overnight guests. Examples include the restaurants along the Las Vegas Strip, as well as the Las Vegas restaurants housed in the major hotel properties and within the major retail projects, such as The Venetian Grand Canal Shoppes and The Forum Shops at Caesar's Palace. Other examples include restaurants located in the Hawaiian Islands located adjacent to major hotels or large condominium properties. The Legends at Sparks Marina project does not benefit from the immediate adjacency of many hotel properties. Therefore, we would question the high percentage of tourist sales (72.5%) ascribed to restaurants.

Concluding Remarks

Based on our review of the Reno-Sparks Visitor Profile Study, the average length of stay for Reno-Sparks visitors has ranged from about 2.7 to 3.2 days. In contrast, tourist locations with the highest propensity to shop retail locations exhibit average lengths of stay of about 5-7 days. Examples include Orlando, Florida; the Hawaiian islands; and the Panhandle area of Florida, including Destin. Typically, the longer a tourist stays overnight, the greater the chance the visitor will shop.

In the case of tourists to the Reno-Sparks market, the challenge will be to attract tourists who primarily come for gaming purposes to visit a shopping center that is not located immediately adjacent to high numbers of casino/hotel properties.

We believe the report's projection (on page ii of Part III) that the Legends project should play a role in attracting "800,000 to 1,000,000 new visitors to Reno-Sparks over the course of 5 years" is unrealistic, given the tenant mix proposed and the characteristics of the project's location. In addition, the report's projection that the "Legends should have an average daily tourist-visitor attendance of over 10,000" or about 3.65 million persons a year, is unsupportable, in our experience, particularly given that the total tourist visitation to the region is about 4.8 million persons. This projection implies that 75% of all visitors coming to Reno-Sparks patronize The Legends project, an extraordinary capture rate. We are not aware of any comparable market in which a shopping center has succeeded in capturing such a high share of visits.

We question the final conclusions shown on Table II-6 that show that over 50% of the sales derived from the project are expected to be derived by tourists. The largest tenants proposed, as well as many of the in-line shops, for The Legends project traditionally merchandise their stores to permanent residents, not tourists. Moreover, tourists to Reno-Sparks stay a relatively short time period and will have to be induced to travel by car to the site because The Legends site is not located within walking distance of numerous overnight hotel properties.

We hope our observations are useful. Please give us a call if you have any questions.

Very truly yours,

Kim Fraser
Principal
Kim Fraser Associates

Swendseid & Stern

a partnership of professional corporations
a member in

Sherman & Howard L.L.C.

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April 7, 2006

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E-Mail: sshaver@sah.com

Chet Adams
City Attorney
City of Sparks
431 Prater Way
Sparks, NV 89431

Via E-Mail

Re: Preponderance Finding for Proposed Legends at Sparks Marina Project.

Dear Chet:

One of the requirements for creating a "Tourism Improvement District" under Chapter 271A of NRS (the "Act") is that the City Council make a finding that as a result of financing a project under the Act, there will be a substantial increase in retail sales taxes in the District and that a "preponderance" of this increase will be attributable to transactions with tourists who are not residents of Nevada. See NRS 271A.080(6). In order to assist the City in deciding whether it could make the finding for the proposed Legends at Sparks Marina Project (the "Project"), McClure Consulting LLC ("McClure") has prepared a draft report for the City concerning expected sales to tourists at the Project.

On Friday, March 31, 2006, we received a copy of a letter from Kim Fraser Associates ("Fraser") dated December 30, 2005 summarizing Fraser's review of the sales projections for potential tenants at the Project with respect to sales derived from tourists to the Reno/Sparks region. We understand this letter was also prepared for the City to assist it in determining whether it could make the "preponderance" finding. Fraser reviewed a draft of a report prepared by McClure and focused on the issue of whether a preponderance of sales taxes derived from the Project would be derived from non-Nevada tourists. The Fraser report questioned a number of the findings of the draft McClure report and called into question whether the Project could produce a preponderance of its sales tax revenues from non-Nevada residents.

We believe that the City needs to share the Fraser report with RED Development LLC and with McClure. We also believe that Fraser and McClure need to discuss their differences of opinions and that Fraser's concerns need to be addressed in the next draft of McClure report. After the next draft of the McClure report is prepared, we believe that Fraser should update its letter in light of the revised McClure report.

EXHIBIT
B

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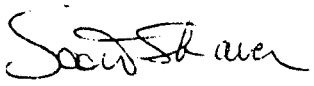
Once the revised McClure report and Fraser letter are prepared, we will need to review them. If either the revised McClure report or Fraser letter indicates that the preponderance test is not likely to be met and has a reasonable, logical approach to making this determination, we may be unable to advise the City Council that it has a sufficient basis upon which to make the preponderance finding required by NRS 271A.080(6).

Also, as you know, we will eventually be asked to give an unqualified opinion on the bonds issued under the Act to finance portions of the Project. In order to do so, we need to be comfortable that all of the steps required to be taken under the Act, including making the preponderance finding, have been taken and that there is a sufficient factual basis for each of the City Council's findings under the Act.

The standard we must follow to render this opinion is as follows: "Bond counsel may render an "unqualified" bond opinion if it is firmly convinced (also characterized as having a "high degree of confidence") that, under the law in effect on the date of the opinion, the highest court of the relevant jurisdiction, acting reasonably and properly briefed on the issues, would reach the legal conclusions stated in the opinion." See *Model Bond Opinion Report,* National Association of Bond Lawyers Committee on Opinions and Documents (2003). This is a high standard and it requires that we be very careful and conservative in reviewing the issues we are required to review to give the legal opinion. If either the revised McClure report or Fraser letter indicates that the preponderance test is not likely to be met, and that report or letter, as the case may be, has a reasonable, logical approach to making this determination, it is very possible that we will be unable to render a legal opinion on the bonds with the level of certainty required by the above standard.

If you have any questions about the above, please do not hesitate to contact John Swendseid or me.

Sincerely,



Scott W. Shaver

SWS/sw
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Randy Mellinger
Greg Salter
John Swenseid
Jennifer Stern
Kendra Follett