



MEMORANDUM

TO: Mayor and Council

FROM: Rodney Gonzales, Deputy Director
Economic Growth and Redevelopment Services Office (EGRSO)
Sabine Romero, Assistant City Attorney
Leela Fireside, Assistant City Attorney

CC: Marc A. Ott, City Manager
Sue Edwards, Assistant City Manager

DATE: June 28, 2011

SUBJECT: Responses to Susan Moffat's June 24th email concerning the proposal for the City to participate as an endorsing municipality for the Major Events Trust Fund

On Friday, you received an email from Susan Moffat regarding the proposal for the City to participate as an endorsing municipality for the Major Events Trust Fund. In light of this proposal being considered Wednesday by City Council, the following responses are being submitted to you.

If you have questions concerning these responses, please do not hesitate to contact us: Rodney Gonzales (974-2313), Sabine Romero (974-2518), or Leela Fireside (974-2163).

Question

Is it an unconstitutional delegation of authority for the City to contract with CELOC?

Response

No. The City's agreement with Circuit Events Local Organizing Committee ("CELOC") is authorized by the Statute, and the Statute allows delegation of certain City Major Events Trust Fund ("METF") responsibilities as written in the City's agreement with CELOC. The City is constitutionally authorized to enter into agreements that are in the public interest; the Major Events Trust Fund Statute (the "Statute") and related agreements serve the public interest by helping attract national and international sporting events that benefit the state and local economy.

Comment

The city must have a direct contractual relationship with F1/Circuit of the Americas that includes iron-clad language obligating F1 to cover the entire cost of the city's increment for the full duration of the contract.

Response

No. CELOC is obligated to pay 100% of the Local Increment. The Statute allows but does not require a contract between the City and Formula One Management. The Statute allows the City to identify any source for purposes of paying the Local Increment.

Question

Under the Act, is the Site Selection Organization the beneficiary of the Major Events Trust Fund (“METF”)?

Response

No. The Act does not designate any particular entity as a beneficiary of the METF. Instead, it sets up the funds to be held in trust to be paid out for eligible expenses to entities as set out in the Statute and the Comptroller’s rules (see, e.g., Statute 5A(a) and 5A(k))

Question

Under the Act, does the Comptroller have a statutory duty to protect F1?

Response

No. Under the Act, the Comptroller has a statutory duty to protect its \$25,000,000 contribution and to make sure the funds in the METF are disbursed appropriately.

Question

Under the Act, must the Comptroller protect the state's interest in an METF agreement?

Response

Yes. Under the Act, the Comptroller has a statutory duty to protect its \$25,000,000 contribution and to make sure the funds in the METF are disbursed appropriately.

Question

Can the City obtain meaningful protection in the Major Events Trust Fund contract?

Response

Yes. The Statute requires an agreement between the City and the State and allows delegation of certain City responsibilities. The Agreement includes terms to protect the City, to fully fund payments of the Local Increment by CELOC, indemnity for the City, the delegation of certain City responsibilities to the Local Organizing Committee, and grounds for termination.

Question

Is a bond necessary to protect the city if CELOC defaults?

Response

No. The City will not put any money into the METF; therefore a bond is not necessary. If CELOC does not contribute the Local Increment, there is no state match, and the METF does not get funded. CELOC's contribution of the Local Increment is a performance measure, and non-performance is grounds for contract termination. The City is under no obligation to CELOC or the Comptroller to provide the Local Increment. The only bond required under the Statute is one to protect the State's \$25,000,000 contribution should an event not occur. That bond, or Assurance, is being provided by CELOC.

Question

Is the State required to continue administering the METF if CELOC defaults?

Response

No. If CELOC defaults, its contract with the City terminates. If the contract between the City and CELOC terminates, the contract between the State and City terminates.

Comment

Funds deposited into the METF can only be disbursed for expenses related to the event.

Response

Yes, this is a provision in the METF Statute.

Comment

The city cannot get funds back from the METF for other purposes.

Response

The city will not put any money into the METF and will not take any money out of the METF.

Comment

The City cannot discontinue its role as an Endorsing Municipality.

Response

The City can terminate its contract with the State if either the Event does not occur or the Local Organizing Committee does not meet its obligations.

Comment

The comptroller has the sole authority to set the amount of the city's increment and given that F1's sanctioning fees typically rise over time, the city would then be on the hook for whatever increment the comptroller sets for each year remaining in the contract.

Response

Deposit of the Local Increment is entirely voluntary. The State cannot force the City or any other entity to make a Local Increment contribution. Moreover, the City does not have a contract with Formula One Management, Ltd. ("FOM") and is under no obligation regarding payment of fees to FOM.

Comment

It is possible that the final race or races may not produce enough actual incremental revenue to repay the state its \$25,000,000.

Response

[From the Texas Comptroller's Office] The state's initial contribution is due at the end of the contract (unless the contract is terminated earlier) and could be the incremental increase in state taxes collected. Also, after each year, any "extra" State incremental increase can be retained in the METF, and held to ensure repayment of the initial contribution at the end.

Comment

A contract between the City and Formula One Management would ensure the city is not unconstitutionally delegating its authority to CELOC, as the city would then have the direct authority and relationship with F1.

Response

The City's agreement with CELOC is authorized by the Statute, and the Statute allows delegation of certain City METF responsibilities as written in the City's agreement with CELOC. The Statute defines a contract between an Endorsing Municipality (like the City) or LOC and a Site Selection Organization (like FOM) as an "Event Support Contract".

Comment

There is a contract between CELOC and Formula One Management.

Response

The Statute defines a contract between a Local Organizing Committee (like CELOC) and a Site Selection Organization (like FOM) as an "Event Support Contract." This contract is being developed by the LOC and the Site Selection Organization.
