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December 12, 2014

Alderman Robert Donovan
Eighth Aldermanic District
City Hall, Room 205
200 East Wells Street
Milwaukee, WI 53202

Re: Common Council File No. 141320 – Cooperation Agreement
(TID Project Plan – Financing)

Dear Alderman Donovan:

On December 10, 2014, you requested a legal opinion regarding Common Council File No. 141320, which provides for approval of a (TID Project Plan – Financing) Cooperation Agreement (the “Cooperation Agreement”) that would allow revenue bonds issued by the Redevelopment Authority of the City of Milwaukee (“RACM”) to fund project costs of tax increment districts (“TIDs”). Such RACM revenue bonds (“RACM Bonds”) would be secured, in part, by a City moral obligation pledge which would in turn be subject to annual appropriation. Your request included two questions which are addressed below. However, because your request also mentioned the proposed streetcar project, it is necessary to clarify some points regarding the purpose of Common Council File No. 141320 before answering your specific questions.

The purpose of File No. 141320 is to approve a Cooperation Agreement between the City and RACM in order to allow RACM Bonds to be used to fund project costs for any TID. The concept is not specific to any particular TID and instead is intended to open the door for RACM Bonds to be considered as an alternative financing source for TID projects, including potentially TID project costs incurred for the proposed streetcar project. The Cooperation Agreement does not expressly approve the use of RACM Bonds for the streetcar or any other specific TID project.

As of the date of this opinion, although it is our understanding that multiple options are being considered, no final determinations have been made about which funding mechanisms will be utilized to finance the project costs for TID 82 (East Michigan Street District) or the amended TID 56 (Eric/Jefferson Street District). However, if File No. 141320 is approved, RACM Bonds could be considered as a potential financing source



for those TIDs as well as other future TIDs. The project plans for the amended TID 56 and for TID 82 were drafted to allow for consideration of a broad range of financing mechanisms including RACM Bonds, City general obligation bonds and notes or any other funding source that may be available.

In the event that RACM Bonds are to be utilized to fund any TID project costs, a financing structure will first have to be established with the assistance of bond counsel and that structure approved by both the Common Council and RACM. As you alluded to in your opinion request, marketability is an important consideration in developing the financing structure for any RACM Bonds.

With that background clarified, here are the answers to your questions. First you asked whether the RACM Bonds would be subject to the ruling in *City of Hartford v. Kirley*, 172 Wis. 2d 191, 433 N. W.2d 45 (1992). That question was predicated on the assumption that TID revenues would be pledged to secure the RACM Bonds. In the *Kirley* case, the Wisconsin Supreme Court ruled that because tax increments are collected as general property tax revenues, any pledge of the tax increments to pay debt service on bonds issued to finance TID project costs would create City constitutional debt which would be subject to the state's constitutional debt limit. Using the assumption made in your opinion request, if TID revenues are pledged to secure the RACM Bonds, then the financing structure including the RACM Bonds would be subject to the ruling in *Kirley* and thus would give rise to City constitutional debt subject to the City's debt limit.

We note, however, that there are other ways to structure financing involving RACM and the City without pledging TID revenues, which could avoid the creation of City constitutional debt. Because the Cooperation Agreement in File No. 141320 does not authorize the issuance of any bonds at this time, it is premature to speculate concerning the exact financing structure that will ultimately be used if RACM Bonds are utilized to fund any particular TID project costs.

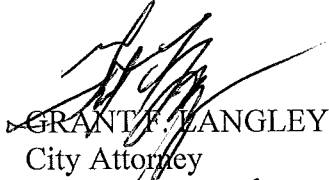
Your second question also assumed that TID revenues would be pledged to secure RACM Bonds and asks whether the resolution authorizing such a pledge would be considered an initial resolution under section 67.05(5), Wis. Stat., and thus be subject to referendum pursuant to section 67.05(7)(b), Wis. Stat. Section 67.05 addresses issuance of bonds by municipalities. Section 67.01(5) defines "municipality" to be "any of the following which is authorized to levy a tax" and includes a list of entities that can levy taxes, but does not include a redevelopment authority. RACM does not have the authority to levy taxes. Because RACM is not a municipality under chapter 67 of the Wisconsin Statutes, its bonds are not subject to the requirements of chapter 67, and thus are not subject to referendum under section 67.05(7)(b).

A City resolution pledging TID revenues to pay debt service on RACM Bonds would create City constitutional debt but would not automatically constitute an "initial


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resolution,” as that term is defined in section 67.01(3), or trigger the referendum process set forth in section 67.05(7)(b). Until such time as a financing structure for any RACM Bonds to be issued pursuant to the Cooperation Agreement has been finalized and a City resolution drafted, we do not have a sufficient factual basis to opine on applicability of the referendum process set forth in section 67.05(7)(b). Notwithstanding the foregoing, we conclude that neither the adoption of Common Council File No. 141320 nor the execution of the Cooperation Agreement constitutes the adoption of an “initial resolution,” creates City constitutional debt or triggers the referendum process set forth in section 67.05(7)(b).

Very truly yours,



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c: City Clerk

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