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March 2, 2001

Laurel H. Siddoway, Esq.
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1500 Seafirst Financial Center
West 601 Riverside
Spokane, Washington 99201

Re: *City of Spokane v. Walker, et al.*
Cause No. 00-2-04173-4

Dear Laurie:

Thank you for the notice of change of hearing that we received earlier today. As you prepare for next week's hearing, I hope the following observations will be beneficial.

When we last spoke about this issue, you seemed confident that the testimony of a majority, if not all, of the 1997 City Council, will support the City's position on Claim I of the Second Amended Complaint. For the City's sake I hope your confidence is well-founded. Nevertheless, I continue to have strong concerns about that claim on any basis other than a strict definitional and plain language approach, which I think does have merit.

As we have discussed, my reservation about legislative intent is based upon discussions with Messrs. Koegen, Novak, Sloane, and Swinton, and documentary evidence from City files that you and I have each reviewed: (1) City Council Resolutions 96-144, 97-2 and 97-3 and the supporting materials and draft agreements that were filed with the City Clerk along with each of the proposed resolutions; (2) Roy Koegen's December 10 letter to Council members Barnes and Green, et al; (3) the issues memo by Roy Koegen dated January 8, 1997, which I believe Roy said he delivered to the City Council before the January 13, 1997, Council meeting; (4) the Coopers & Lybrand report; (5) the PDA minutes of the organizational meeting on Monday, February 3, 1997; and (6) PDA Resolution 97-1, of May 27, 1997. I think this material makes it very difficult to conclude that the Council was not aware of the flow of funds to which Council

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members Barnes and Green agreed in December of 1996, and reviewed on February 3, 1997, and agreed to again on May 27, 1997.

You have said that despite the documentary evidence, you believe that it is clearly possible, if not probable, that Council members Barnes and Green did not understand in January of 1997 that the flow of funds to which they had agreed in December of 1997 was inconsistent with the plain language approach to Section 9 that is asserted in Claim I of the City's Second Amended Complaint. Since you and I last discussed that issue, I have thought about it many times and have concluded that the possibility you suggested is simply not realistic even though I acknowledge—as you pointed out to me—that you know those two Council members much better than I do, and therefore are in a much better position to determine their acumen. Consequently, I do not believe the City can prevail on the claim that the Council did not intend to approve the flow of funds set out in both the ground lease and fixed facility lease—unless it is also established that although Council members Barnes and Green understood, they, along with Messrs. Moore, Kogen, Sloane, Fortin and Robideaux, withheld that vital information from the Council majority and the public.

In addition to the foregoing concerns about “legislative intent,” a court could conclude, from the entire record, that Resolution 96-144 delegated to the City representatives who met with John Moore in San Francisco the authority to agree to the flow of funds and that Resolutions 97-2 and 97-3 ratified that agreement. In reaching such a conclusion, a court might be influenced by the argument that in January of 1997, the Council knew (from earlier Koegen briefings) that without a flow of funds that was comparable to the flow of funds described in the Koegen letter of December 10, 1996, and the January 1997, Coopers & Lybrand Report, the bonds which were to be issued “on behalf of the City” could not be sold.

Lastly, as we have also discussed on several occasions, I continue to be troubled by the direct inconsistency between the City's Claim I approach and sections of the Official Statement that were specifically addressed by the Koegen and Sloane opinion letters. In addition to the collateral effect of the City's argument on potential bond-holder claims, if the City prevails on Claim I; the opposition will likely argue that Koegen's view of the meaning of Section 9 is far more consistent with the Official Statement, than is the view that is expressed in the City's Claim I, and that because no one who participated in the drafting and enactment of Ordinance C31823 has ever questioned the flow of funds incorporated in the Official Statement, the court should assume the accuracy of the latter, especially since the language of Section 9 does not mention the flow of funds. Fortunately, none of these arguments directly negate the City's plain language argument. They do, nevertheless, pose significant problems, which I assume you will be prepared to circumvent through other arguments and claims, if Claim I is not the knock-out you and John expect it to be.

Please call if there is any way I can be of assistance. Half-court buzzer shots and “Hail-Marys” in the declining moments of a football game can both be successful, but they aren't high percentage opening moves.

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Sincerely,

HENDRICKS & LEWIS

A handwritten signature in cursive script that reads "Yale".

O. Yale Lewis, Jr.