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ATTORNEYS AT LAW

MEMORANDUM  
from  
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**TO:** Bryan City Council  
**DATE:** October 23, 2019  
**RE:** Tax Exempt Loan for Heart of Texas Goodwill Industries, Inc.

To the City Council:

The purpose of this memo is to request consent from the Bryan City Council to a tax exempt loan for the benefit of Heart of Texas Goodwill Industries, Inc. (“Goodwill”) to construct a new Goodwill building located in Bryan. That building will house a Goodwill store, job connection center, and a donation/processing area. The building will be approximately 25,000 square feet in size, and will be located at 2710 Boonville Road in Bryan. The estimated maximum project cost is \$5,000,000.

Because Goodwill is a 501(c)(3) charitable organization, they are eligible to finance this new project through a tax exempt loan which will save Goodwill substantial interest costs. Extraco Banks, N.A. has agreed to make the loan.

Goodwill cannot borrow the money directly but has to go through a nonprofit corporation created by a city called (in this case) a “cultural education facilities finance corporation” created pursuant to Chapter 337 of the *Texas Local Government Code*. We have located such a corporation that is willing to undertake the Goodwill transaction being the “Mart Cultural Facilities Corporation”. The Mart Corporation has the authority to finance projects located outside the city limits of Mart in accordance with applicable state law, provided we obtain consent from (i) the City of Bryan; (ii) Brazos County; and (iii) any local hospital district.<sup>1</sup>

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<sup>1</sup> We assume there is not a “Brazos County hospital district” or “City of Bryan hospital district”.

## The reasons for the Bryan approval

### State law consent

There are two reasons we need to gain consent or approval from the City of Bryan. First, as mentioned above, the Goodwill facility can be financed by the Mart Cultural Facilities Corporation. (Goodwill qualifies because it is a 501(c)(3) corporation which “improves the conditions of individuals or groups within a community”.) (See Section 337.002(1)(E) of the *Texas Local Government Code*.)

Under Section 337.012 of the *Texas Local Government Code* a cultural facilities corporation has the powers of a “health facilities development corporation” created under Chapter 221 of the *Texas Health and Safety Code*. Section 221.030(a)(1)(B) says the Mart Corporation can only exercise its powers in Bryan with the consent of each of (i) the City of Bryan, (ii) Brazos County<sup>2</sup>, and (iii) any local hospital district.

### Approval under federal tax law

Separate from state law requirements, for this type of transaction to be tax exempt, Section 147(f) of the Internal Revenue Code provides that we must have the transaction approved by both the City of Mart (what we call “issuer approval”) and also by the City of Bryan (what we call “host approval”). Under 147(f), there is a process that we will have to undertake in each of Bryan and Mart. First, we have to publish a notice in the local paper describing the project and establishing that there will be a public hearing about this transaction. The primary purpose of the notice is to let the public know what the project will be and to inform the public that they may attend such public hearing with the date, time and place of such hearing to be set forth in the notice. We have attached a draft of that public hearing notice.

The notice has to be published at least seven days before the public hearing.

Under applicable law the public hearing can be held by the Bryan City Council (if that is how you would like us to do this) but it can also be held by a designee of the Mart Corporation (for example, the Mart Corporation could designate an officer of Goodwill to come to Bryan and hold the public hearing).

After the public hearing the Bryan City Council will be asked to give its formal approval to the transaction. We have attached a form of proposed resolution for consideration by the Bryan City Council once the notice and public hearing have occurred.

### What is the impact of this transaction on the City of Bryan?

This will be a tax exempt loan from Extraco Banks through the Mart Corporation to Goodwill. The City of Bryan will have no liability for either the project or repayment of the loan. Additionally, the approval we are seeking is solely for the tax exempt loan and

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<sup>2</sup> We will be seeking a separate approval from Brazos County.

is not related to zoning, building permits, or any other form of approval that the City of Bryan may require related to the construction of the Goodwill project.

The Goodwill loan also will have no impact on Bryan's ability to issue tax exempt bonds. Because the bonds will be issued by a subsidiary corporation established by the City of Mart, the amount of the bond issue will count against a \$10,000,000 limit found in Section 265 of the Internal Revenue Code which does have an impact on Mart's ability to sell tax exempt bonds to a financial institution but that applies to Mart and not to the City of Bryan (which is not the issuer of the debt but is simply the "host jurisdiction" where the project is located).

### Summary

We would like to make sure that the City of Bryan is comfortable with this proposed transaction and the request for approval. We would work with city staff to determine the best way to publish the notice and hold the public hearing in Bryan and then also to see that after such hearing the City Council adopts the attached resolution.

We look forward to working with you on this important transaction for Goodwill.

### Attachments

Draft Notice of Public Hearing  
Draft of City Council Resolution