No. 24-0102

In the
SUPREME COURT OF TEXAS

JPMorgan Chase Bank, N.A.

Petitioner,

v.

City of Corsicana and Navarro County,

Respondents.

On Review from the Court of Appeals
for the Tenth District of Texas

PETITIONER'S BRIEF ON THE MERITS

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IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. 55.2(a), the following is a complete list of all parties to the trial court's judgment and the names and addresses of all counsel appearing in the trial or appellate courts:

1. Petitioner (Defendant/Counter-Plaintiff in the trial court; Appellant in the court of appeals):

   JPMorgan Chase Bank, N.A. ("Chase")

2. Respondents (Plaintiffs/Counter-Defendants in the trial court; Appellees in the court of appeals):

   City of Corsicana ("City")
   Navarro County ("County")

3. Other Parties (Defendants/Counter-Plaintiffs in the trial court):

   The Corsicana Industrial Foundation (the "Foundation")[*]

4. Gander Mountain Company ("Gander Mountain")

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[*] After perfecting its appeal, the Foundation assigned its rights in this appeal and the underlying lawsuit to Chase. (Op. at 177 [App. 1]) As a result, Chase is pursuing this appeal on its own behalf and as the assignee of the Foundation. (*Id.*)

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STATEMENT OF THE CASE

Nature of the Case: This is a declaratory judgment action concerning the constitutionality and validity of economic development agreements entered into by the City of Corsicana ("City") and Navarro County ("County") with the Corsicana Industrial Foundation, Inc. ("the Foundation"). (Supp.CR.18-21 [App. 3]; *see* 2.CR.325-27, 339-48 [App. 6]; 2.CR.350-67 [App. 9])

Trial Court: The Honorable James Lagomarsino
13th Judicial District Court of Navarro County, Texas

Trial Court Proceedings: In February 2016, the City and County filed a declaratory judgment action against the Foundation and Gander Mountain Company ("Gander Mountain"). (1.CR.3-9) Specifically, the City and County sought to invalidate their own 2004 economic development agreements granting sales tax incentives to the Foundation to facilitate the development of a retail center on a 132-acre business park in Corsicana and construct a Gander Mountain store. (*Id.*)

The Foundation and Gander Mountain, in turn, filed counterclaims against the City and County, as well as cross-claims against each other. (1.CR.42-54; 2.CR.216-34) JPMorgan Chase Bank, N.A. ("Chase"), the lender who refinanced the construction loan, intervened in the lawsuit as a third-party beneficiary of the agreements. (2.CR.235-49) Shortly thereafter, the City and County amended their petition to also assert their declaratory judgment claim against Chase. (2.CR.256-64)

The City and County moved for partial summary judgment, arguing that the very agreements they proposed, signed, and abided by for eleven years were unconstitutional. (2.CR.297-319)

Trial Court's Disposition: The trial court granted the City's and County's motion for partial summary judgment. (5.CR.993 [App. 4]) The court subsequently severed the causes of action asserted by the City and County against the Foundation, Gander Mountain, and Chase into a separate action (5.CR.1010-11; *see* 5.CR.994-97) and rendered final

declaratory judgment in favor of the City and County (Supp.CR.18-21 [App. 3]).

In particular, the court declared that (1) the 2015 closing of the Gander Mountain store "extinguished" the public purpose which authorized the City's and County's grant, and (2) the agreements "failed to place sufficient controls on the transaction" to ensure that the public purpose of the grant was carried out. (Supp.CR.19) Based on those declarations, the court further declared that the economic development agreements are "unconstitutional, void and illegal" and thereby excused the City and County from having to fulfill their contractual obligations under those agreements. (Supp.CR.19-20)

Parties in the Court of Appeals: Chase, individually and as assignee of the Foundation (Appellant) the City and County (Appellees)

Court of Appeals: Tenth Court of Appeals in Waco, Texas. Opinion authored by Justice Smith and joined by Justice Johnson with a dissent by Chief Justice Gray. *Corsicana Indus. Found., Inc. v. City of Corsicana*, 685 S.W.3d 171 (Tex. App.—Waco 2024, pet. filed) [App. 1].[**]

Court of Appeals' Disposition: In a split opinion, the court of appeals held the economic development agreements are "unconstitutional and therefore not binding on the parties." (Op. at 186) Accordingly, the court affirmed the trial court's summary judgment and final declaratory judgment in favor of the City and County. (*Id.*) Chief Justice Gray dissented. (*Id.* at 186-87 (Gray, C.J., dissenting)).

No motions for rehearing or for en banc reconsideration are pending or were filed in the court of appeals.

[**] The opinion will be cited in this brief as "Op." Pinpoint citations will be to the page numbers in the published opinion attached as tab 1 of the Appendix.

STATEMENT OF JURISDICTION

The Court has jurisdiction under section 22.001(a) of the Texas Government Code because this case presents questions of law important to the jurisprudence of the state. *See* TEX. GOV'T CODE § 22.001(a).

This appeal arises from a declaratory judgment concerning the constitutionality and validity of economic development agreements under article III, section 52-a of the Texas Constitution. Economic development agreements (like the ones here) serve a public purpose. And they are expressly authorized by section 52-a and chapters 380 and 381 of the Local Government Code.

The opinion of the court below threatens the continuing validity of all existing and future economic development agreements, as well as Texas's reputation as a business-friendly state. At the City's and County's urging, the courts below declared that the section 52-a agreements at issue are unconstitutional because they supposedly fail to satisfy a test this Court adopted to determine if a statute violates the "Gift Clause" in article III, section 52(a) of the Texas Constitution. And the courts reached that result by disregarding the actual public purpose of the grant here and engaging in revisionist history to alter the plain (and negotiated) terms of the economic development agreements.

The appeal raises significant questions of law regarding the constitutionality of economic development agreements. It also presents important issues about (1) the ability of governmental bodies to unilaterally rewrite their own agreements years after the fact to avoid and renege on their contractual payment obligations, and (2) the consequences of allowing governmental bodies to do so.

Because the court of appeals' decision unsettles the law and imperils economic development agreements across the state, further review is both necessary and warranted.

ISSUES PRESENTED

"Notwithstanding any other [constitutional] provision," article III, section 52-a of the Texas Constitution authorizes the legislature to provide for the creation of economic development programs "for the public purposes of development and diversification of the economy of the state." To implement section 52-a, sections 380.001(a) and 381.004(b) of the Texas Local Government Code empower cities and counties to encourage economic development through grants of public money.

In the face of these constitutional and statutory provisions, the declaratory judgment rendered and affirmed by the courts below that the economic development agreements here are "unconstitutional" gives rise to the following issues:

1. Did the courts below err in granting summary judgment and declaring the economic development agreements "unconstitutional"? Specifically:

    a. Are local governments authorized to grant public money to businesses for the public purpose of economic development under article III, section 52-a of the Texas Constitution and chapters 380 and 381 of the Local Government Code?

    b. Did the courts err in subjecting a section 52-a economic development grant to the prohibition against grants of public money in article III, section 52(a) of the Texas Constitution and the three-part test this Court adopted in *Texas Municipal League Intergovernmental Risk Pool v. Texas Workers' Compensation Commission*, 74 S.W.3d 377 (Tex. 2002) [hereinafter "*TML*"], for determining whether a statute accomplishes a public purpose consistent with section 52(a)?

c. Even if *TML* applies to a section 52-a grant, did the courts below undermine freedom-of-contract principles by allowing the City and County to unilaterally rewrite the parties' agreements years after the fact and redefine the grant's public purpose in order to justify the erroneous conclusion that the agreements are unconstitutional because (i) the public purpose of the grant was supposedly "extinguished" when Gander Mountain closed its store in 2015 and (ii) the agreements lack sufficient controls to ensure the public purpose is carried out?

INTRODUCTION

Texas touts itself as a business-friendly state.[1] Over the years, the Texas Legislature has engaged in targeted efforts to grow and diversify the Texas economy.[2] In 1987, the legislature passed—and Texans approved—a constitutional amendment in article III, section 52-a. Section 52-a authorizes grants of public money for economic development purposes "[n]otwithstanding any other provision of this constitution."

Economic development has thrived in Texas since the enactment of section 52-a. Over 4,000 economic development agreements are currently in effect.[3] And it is no surprise why. These agreements create a "win-win" scenario that benefits both the public at large and the business community. And businesses have been willing to invest in Texas and enter into these agreements based on the presumption

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[1] *See, e.g.*, Office of the Texas Governor, *Texas Wins 2023 State Of The Year* (Jan. 5, 2024), https://gov.texas.gov/news/post/texas-wins-2023-state-of-the-year (Texas recognized for its "business-friendly environment, including legislation and incentives, . . . and the breadth of companies selecting the state for corporate relocation and expansion projects").

[2] *See, e.g.*, Office of the Texas Governor, Texas Economic Development & Tourism, *Texas Business Incentives & Programs Overview* (rev. June 2024), https://gov.texas.gov/uploads/files/business/IncentivesOverview.pdf (outlining a range of grants, tax incentives, and financing that Texas and local communities may offer companies to promote economic development).

[3] *See* Tex. Comptroller of Public Accounts, *Local Development Agreement Search Results; Chapter 380-381 Agreements*, https://comptroller.texas.gov/economy/development/search-tools/sb1340/results.php?govt_type=&govt_name=&agmt_type=&entity_nm= (last visited Oct. 8, 2024).

that governmental entities, like any private entity, would be required to honor their contractual promises without the ability to unilaterally rewrite their economic development agreements years later.

Given this stable and predictable environment, this Court has "not previously decided a case involving section 52-a." *In re State*, No. 24-0325, ___ S.W.3d ___, 2024 WL 2983176, at *4 (Tex. June 14, 2024). But it recently remarked that "section 52-a removed doubt about the constitutionality of conventional economic-development grants." *Id.* The courts below reinjected that doubt by declaring that economic development agreements authorized by section 52-a and chapters 380 and 381 of the Texas Local Government Code are unconstitutional.

In so doing, the court of appeals became the first court in the history of Texas jurisprudence to invalidate a conventional section 52-a economic development agreement. And it did so at the urging of the very local governmental bodies that proposed the grant, negotiated and drafted the agreements, and reaped (and continue to reap) the benefits from those agreements.

While City and County officials may have second-guessed the deal they proposed and made a decade earlier in 2004, "promises made and memorialized in writings by a municipality can[not] be undone by nothing more than the whims of the political process." *City of League City v. Jimmy Changas, Inc.*, 670 S.W.3d 494,

514 (Tex. 2023) (Young, J., concurring). Yet, that is precisely what the City and County did here by nullifying their own agreements more than ten years after the fact.

The decision of the courts below to excuse the City and County from their contractual payment obligations has serious consequences for the future viability of economic development agreements. And "*all* local governments will have to pay more for a contract if *some* of them can renege." *Id.* at 514 n.11 (emphasis in original).

In *Jimmy Changas*, this Court recently rejected a city's attempt to invoke sovereign immunity as a means of avoiding its payment obligations under an economic development agreement. *Id.* at 506-07. If the opinion below is allowed to stand and local governments are permitted to void their agreements years later simply by adopting new resolutions, it will carve out an alternate avenue for governmental units to shirk their contractual obligations and render those obligations illusory. It will upend the stable and predictable environment which allowed section 52-a economic development agreements to flourish. It will deter businesses from entering into such agreements and lenders from funding those development projects. And, as the dissent below aptly observed, it will be the "death knell" of these types of economic development agreements. (Op. at 187 (Gray, C.J., dissenting)).

Review and reversal of the judgment below are necessary to settle the law, uphold the validity of section 52-a economic development agreements, and reassure businesses that, "in *Texas*, where promises really matter," no governmental unit "should be able to evade its obligations so capriciously." *Jimmy Changas*, 670 S.W.3d at 516 (Young, J., concurring) (emphasis in original).

STATEMENT OF FACTS

The court of appeals correctly states the nature of the case. But it omits critical facts that are material to the legal issues raised on appeal.

Chapters 380 and 381 of the Local Government Code authorize municipalities and counties to offer incentives and grant public funds to promote economic development. *See* TEX. LOCAL GOV'T CODE §§ 380.001, 381.004 [App. 12, 13]. In 2003, the Corsicana Chamber of Commerce contacted Gander Mountain—the operator of a national retail network of stores for hunting, fishing, camping, and marine products—about developing a new store in Corsicana. (5.CR.884-85; *see* 5.CR.878-79) The City and County proposed an incentive package—including a $12 million bank loan—to build the store in Corsicana with a sales tax commitment to retire the debt. (5.CR.879, 884-85)

A. The City and County enter into economic development agreements with the Foundation.

Pursuant to chapter 380, Corsicana's City Council passed a resolution in February 2004 authorizing the City to execute a Retail Center Development Agreement ("RCDA") with the Foundation (2.CR.325-27 [App. 6]; 5.CR.910 [App. 5])—a non-profit created to facilitate the City's growth and the owner of the property where the Gander Mountain store was to be constructed (1.CR.3; 4.CR.792).

The City's resolution recognized "the economic advantages for development of a retail center on [a] 132 acre business park." (5.CR.910) And it declared the RCDA's public purpose: "to facilitate the development of the Retail Center and assist in the implementation of the economic development objectives of the City." (*Id.*) Those objectives included the development of the retail center, the creation of jobs, and the generation of property and sales tax revenues from the retail center and other businesses. (2.CR.427-28)

In the RCDA, the City granted the Foundation 1.5% of the sales tax generated by Gander Mountain and Home Depot and 0.75% of the sales tax from the remaining stores in the business park. (2.CR.325 at § 1.1 [App. 6]) The City agreed its payment obligation "*shall be absolute and unconditional*" and that it "*shall make such payment*

without abatement, diminution or deduction regardless of any cause or circumstances whatsoever." (*Id.* § 1.3, emphasis added)

The Foundation, in turn, agreed to use the grant solely to repay the debt from the development project. (2.CR.326 at §§ 2.2-2.3) The parties further agreed the incentives "shall be limited to *the construction* of real property." (*Id.* § 2.2, emphasis added)

Critically, the City's obligation to make payments to the Foundation was nowhere conditioned on the Gander Mountain store remaining open. (*See* 2.CR.325-27) To be sure, an early draft stated the RCDA would terminate upon "cessation of operations of Gander Mountain" in the City:

> Section 3.3 Termination. This agreement shall terminate upon repayment of the debt associated with the incentive package or cessation of operations of Gander Mountain in the City Limits of Corsicana.

(2.CR.330 at § 3.3 [App. 7]) But the parties never signed that draft. (2.CR.328-30) Rather, after negotiations, the parties agreed in section 3.3 that the RCDA would terminate only "upon repayment of the debt":

> Section 3.3 Termination. This agreement shall terminate upon repayment of the debt associated with the incentive package.

(2.CR.327 at § 3.3 [App. 6])

The next month, the County adopted a similar resolution under chapter 381 of the Texas Local Government Code and executed a virtually identical RCDA with the Foundation. (2.CR.338 [App. 5]; 2.CR.339-48 [App. 6])

To supplement the RCDA and provide more specific details with respect to the development, the City and County also passed separate resolutions in May 2004 approving an Interlocal Agreement with the Foundation and Gander Mountain. (2.CR.350-67 [App. 9]; 5.CR.924-25 [App. 8]) The Interlocal Agreement acknowledges the Foundation's obligation to obtain a $10 million construction loan (and a permanent loan to refinance that construction loan) secured by the City's and County's sales tax pledge. (2.CR.351-52 [App. 9])

The Interlocal Agreement also provides that the construction lender and any lender providing permanent financing is a "direct third-party beneficiary" of the agreement. (2.CR.355-56 at § 13)[4] In addition, the agreement specifies the amount of sales tax payable by the City and County for the security of the Foundation's loan. (2.CR.352-53 at §§ 2-3) It further provides that:

- The sales tax grant was limited to "amounts actually received by the City and County" from the Comptroller and required to be "used for the sole and exclusive purpose of paying the principal and interest of the Loan." (2.CR.353 at §§ 4-5)

[4] In October 2005, Chase refinanced the construction loan and became the lender for the Foundation's $10 million permanent loan. (4.CR.652-722; 5.CR.880)

- "[T]he Foundation shall grant a security interest in and to the Sales Tax Fund as security for the Loan," and the parties agree that the sales taxes "shall solely be used by the Foundation to pay principal and interest on the Loan." (2.CR.353-54 at §§ 4, 9)

- The Foundation "agrees to provide to the City and County written reports documenting the use of the proceeds" from the loan and sales taxes. (2.CR.354 at § 9)

- Any generated sales taxes shall be deposited and applied to payment of the Loan "following the completion and opening of Gander Mountain." (2.CR.353 at § 7)

- The sales tax grant would continue until "the latter to occur of (a) the expiration or earlier termination of the Lease, or (b) the full and final payment of all principal and interest on the Loan (other than by reason of any refinancing or foreclosure thereof)." (2.CR.353, 356 at §§ 8, 14)

Without the sales tax assistance from the City and County, the Gander Mountain store would not have been built. (5.CR.880)

The Interlocal Agreement also repeatedly references the simultaneously executed 20-year lease between the Foundation, as landlord, and Gander Mountain, as tenant. (2.CR.350-56) Consistent with the RCDAs, the lease nowhere requires Gander Mountain to remain open during the entirety of the 20-year lease term. (*See* 2.CR.369-416) Rather, it unequivocally provides the opposite:

> 8.2 **Operation**. Tenant is not required to continuously operate the Premises or any portion thereof throughout or during any portion of the term of this Lease or any renewal thereof and no provision hereof may be deemed to impose any obligations or restrictions upon Tenant with respect to the operation of the Premises. Tenant may change its trade name at any time.

(2.CR.383 at ¶ 8.2)

B. Gander Mountain operates its Corsicana store for over eleven years.

After construction, the Gander Mountain store opened in August 2004 and operated for more than eleven years. (5.CR.880-81, 980) The City and County received permanent infrastructure, jobs, and economic benefits from the development. (5.CR.881)

During that period, the City and County remitted approximately $150,000 per quarter to the Foundation to pay the loan from the sales taxes generated by the business park. (2.CR.429) Because the non-profit Foundation receives no other income and has no other source of funding, it relied entirely on these quarterly tax payments from the City and County, as well as Gander Mountain's rent, to fulfill its obligation to repay Chase's loan. (4.CR.794-95)

C. The City and County stop making sales tax payments to the Foundation and attempt to retroactively rewrite their agreements.

In October 2015, Gander Mountain closed its Corsicana store. (4.CR.793) The business park, however, continued to operate. (4.CR.793, 833-835) And the City and County continued to receive sales taxes, property taxes, and other benefits from the remaining businesses, as well as property taxes from the former Gander Mountain store. (*Id.*; 5.CR.881-82)

Nevertheless, in January 2016, the City and County ceased making contractually required payments owed to the Foundation from the sales taxes still being generated by the business park. (*See* 2.CR.429, 437; 4.CR.793; 5.CR.881)[5] To effectuate their unilateral decision, the City and County adopted new resolutions twelve years after the fact in a transparent attempt to retroactively rewrite the terms of their 2004 RCDAs and Interlocal Agreement (collectively, "the Agreements"). (2.CR.418-20, 422-25 [App. 10]) Specifically, the City and County proclaimed that Gander Mountain's closure "extinguished any constitutionally permissible public purposes for which [they] can dedicate [their] funds." (2.CR.420, 424 [App. 10])

D. The City and County file a declaratory judgment action.

Immediately after adopting those resolutions, the City and County sued the Foundation and Gander Mountain in the 13th Judicial District Court of Navarro County, seeking a declaratory judgment to rubber-stamp their resolutions and invalidate their own Agreements. (1.CR.3-9) The Foundation and Gander Mountain, in turn, filed counterclaims against the City and County, seeking declaratory relief that (1) the express public purpose of the sales tax grant was for the construction of the Gander Mountain retail store, (2) the City and County are

[5] Without those payments, the Foundation ultimately defaulted on its loan to Chase. (4.CR.794-95; 5.CR.881, 981-84) As of February 2017, the loan balance was $6,648,380.26. (5.CR.981)

obligated under the Agreements to grant sales taxes and make payments to the Foundation until the loan and debt is fully paid and satisfied, and (3) the closure of the Gander Mountain store does not alter the City's and County's obligations. (1.CR.42-54, 129, 137-43; 2.CR.216, 228-33; 4.CR.743, 756-66) Gander Mountain and the Foundation also filed cross-claims against each other regarding the lease. (1.CR.42-48, 129-37; 2.CR.218-18; 4.CR.746-56)

Chase intervened as a "third-party beneficiary" of the Agreements. (2.CR.235-49; *see* 2.CR.355-56) The City and County subsequently amended their petition to also assert their declaratory judgment claim against Chase. (2.CR.256-64)

E. The trial court grants summary judgment in favor of the City and County.

In February 2017, the City and County moved for partial summary judgment, arguing that the sales tax grant in the RCDAs and Interlocal Agreement was unconstitutional and void under article III, sections 51, 52, and 52-a, and article XI, section 3 of the Texas Constitution. (2.CR.297-319)

The next month, Gander Mountain filed a voluntary Chapter 11 petition for bankruptcy in Minnesota. (3.CR.438; 5.CR.882) Shortly thereafter, the bankruptcy court modified the automatic bankruptcy stay to permit the City and County to proceed to final hearing on their pending motion for summary judgment (and to

allow the state district court to render a final judgment if warranted). (3.CR.440-41; 5.CR.882, 985-86)[6]

Chase, the Foundation, and Gander Mountain each filed extensive responses to the motion for partial summary judgment. (4.CR.626-742, 769-834; 5.CR.836-986)[7] In July 2017, the trial court granted the City's and County's motion. (5.CR.993 [App. 2]; *see also* 5.CR.992)

F. The trial court signs a final judgment and declares the economic development agreements unconstitutional.

To make the summary judgment final, the trial court severed the claims and counterclaims by and against the City and County into a new cause number. (5.CR.1010-11; *see* 5.CR.994-97) In addition, the City and County voluntarily

[6] After the bankruptcy court modified the automatic stay, the City and County amended their petition and motion for summary judgment to allege an additional basis for invalidating the Agreements (3.CR.445-53, 486-625)—specifically, that the Agreements also are unconstitutional under article XI, sections 5 and 7(a) of the Texas Constitution (3.CR.488; *see also* 3.CR.448-49, 489, 495-96, 503-04, 509). Chase and Gander Mountain objected to the amended filings on the ground that those filings violated the bankruptcy court's order partially lifting the automatic stay. (4.CR.633; 5.CR.838-39) To resolve the objections, all the parties signed a Rule 11 agreement whereby the City and County agreed to withdraw their Second Amended Original Petition and First Amended Motion for Partial Summary Judgment. (5.CR.987-88) Accordingly, the First Amended Motion for Partial Summary Judgment (and the new arguments raised therein) are immaterial to this appeal and should be disregarded. (*See* 3.CR.486-625)

[7] By Rule 11 agreement, the parties agreed that those responses to the City's and County's First Amended Motion for Partial Summary Judgment shall be deemed to apply to the original Motion for Partial Summary Judgment. (5.CR.987-88)

non-suited their claim for attorney's fees under the Declaratory Judgment Act. (Supp.CR.12-14)

In November 2017, the trial court signed a Final Judgment, declaring, in principal part, that:

- the 2015 closing of the Gander Mountain store "extinguished" the public purposes which authorized the 2004 grant of public money to repay the Foundation's loan to build the Gander Mountain store; and
- the Agreements "failed to place sufficient controls on the transaction" to ensure the public purposes for the original grant were carried out.

(Supp.CR.18-21 [App. 3]) Based on these reasons, the court further declared that the Agreements are "unconstitutional, void and illegal." (Supp.CR.19) The judgment also orders that the Foundation, Gander Mountain, and Chase take nothing on their counterclaims against the City and County. (Supp.CR.20)

G. The court of appeals affirms in a split opinion.

Chase, the Foundation, and Gander Mountain appealed. (Supp.CR.22-27) The appeal was stayed for over four years until 2022 as a result of Gander Mountain's bankruptcy. (Op. at 176-77)[8] During that bankruptcy, the Foundation

[8] Although Gander Mountain filed a Notice of Appeal (Supp.CR.24), it did not participate in the appeal below per the order of the bankruptcy court (Op. at 177).

assigned its rights in this lawsuit to Chase. (Op. at 177) Chase is thus pursuing this appeal on its own behalf and as the Foundation's assignee. (*Id.*)

After reinstating the appeal, the court of appeals affirmed the summary judgment and declaratory judgment in a split opinion. (*Id.* at 186) Specifically, the court of appeals first concluded that the three-part test this Court adopted in *Texas Municipal League Intergovernmental Risk Pool v. Texas Workers' Compensation Commission*, 74 S.W.3d 377 (Tex. 2002) [hereinafter "*TML*"] for determining whether a statute violates article III, section 52(a) of the Texas Constitution applies to section 52-a economic development agreements. (Op. at 178-80)

Then, based on an "implied finding" that the supposed purpose of the grant was the "continued operation" of the Gander Mountain store, the court of appeals held that the Agreements failed the *TML* test and are therefore "unconstitutional" and "not binding" because (1) "the [2015] closure of Gander Mountain extinguished the public purposes of the tax grants" and (2) the Agreements "failed to include provisions allowing [the City and County] to retain control over the funds to ensure that the public purposes are accomplished." (*Id.* at 180-86)

Chief Justice Gray dissented. (*Id.* at 186-87 (Gray, C.J., dissenting)). He first concluded that neither the law nor the procedural posture of the case allows a court to "judicially write[] back into the contract" a clause the parties "specifically

removed" during negotiations. (*Id.* at 186) He also disagreed with the majority's determination that "the constitutionally necessary control was not maintained over the use of the tax revenue." (*Id.*) In his view, he could not "imagine how the City and County could have established any more stringent control over the use of the funds." (*Id.*at 187; *see id.* at 187 n.1) Finally, from a policy perspective, Chief Justice Gray recognized that "[n]o creditor will make a loan in reliance on a dedication of sales tax to repay the loan if the taxing entities can have the contract determined to be unconstitutional after payments have been made for 10 years." (*Id.* at 187)

SUMMARY OF THE ARGUMENT

Article III, section 52-a of the Texas Constitution and chapters 380 and 381 of the Texas Local Government Code explicitly authorize the creation of economic development programs. In 2004, the City and County availed themselves of the opportunities afforded under section 52-a to grow their local economy by entering into economic development agreements with the Foundation. The City and County agreed the grant was for a public purpose when they executed those agreements. And "they had no complaints for the first decade." (*Id.* at 186)

But the City and County changed their minds eleven years later when they unilaterally redefined the public purpose of the grant, ceased complying with their contractual payment obligations, and sought to void their own Agreements. At the

City's and County's urging, the trial court granted summary judgment and declared the Agreements to be "unconstitutional." The court of appeals affirmed. Numerous grounds warrant further review and reversal.

To begin with, the court of appeals ignored the plain text of section 52-a. Passed in 1987 well after the enactment of section 52(a), section 52-a unambiguously permits the creation of economic development programs "[n]otwithstanding any other provision of" the Texas Constitution. It is undisputed that the economic development agreements here were clearly authorized by section 52-a and chapters 380 and 381 of the Local Government Code "[n]otwithstanding any other provision," including section 52(a). Accordingly, the Agreements are constitutional.

In concluding otherwise, the court of appeals ignored the "notwithstanding" language. Instead, the court conflated section 52-a with the Gift Clause in section 52(a) which *prohibits* the grant of public money to companies. By treating the two sections as essentially indistinguishable, the court became the first Texas appellate court to hold that the three-part section 52(a) test adopted in *TML* also applies to a section 52-a economic development grant. Neither the plain language of section 52-a nor Texas law supports the court of appeals' holding.

Even if *TML* somehow applies to section 52-a, the court of appeals further erred by misapplying *TML* to the grant here. The Agreements easily satisfied the three-part test this Court adopted in *TML* and recently clarified in *Borgelt v. Austin Firefighters Ass'n, IAFF Local 975*, 692 S.W.3d 288 (Tex. 2024). The expenditure brought a public benefit and was not gratuitous. The predominant objective of the Agreements was to accomplish a legitimate public purpose—*i.e.*, economic development. And the City and County retained control over the funds to ensure that public purpose was accomplished.

In holding otherwise, the court of appeals eviscerated Texas's strong public policy favoring freedom of contract. Specifically, the court disregarded the unambiguous and arm's-length contractual terms negotiated by the City and County, including their decision to (1) tie the public purpose of the grant to the *construction* of a retail center and (2) condition the termination of the RCDAs *only* on the full payment of the loan.

Instead, the court inexplicably upheld a so-called "implied finding" that the public purpose of the grant was the *continued operation* of the Gander Mountain store. But the parties specifically contemplated such a provision in negotiations and agreed to remove a termination clause in the RCDAs requiring continued operations. Further, the lease specifically stated that Gander Mountain was "not required to

continuously operate the Premises." The court below was not free to ignore these indisputable facts and imply a contractual clause that the parties considered and rejected.

Based on this impermissible rewriting of the Agreements, the court of appeals erroneously held that the closure of the Gander Mountain store a decade later "extinguished" the public purpose authorizing the grant. And it compounded that error when it (1) pretended that the public purpose of the Agreements was for the continuous operation of Gander Mountain and (2) then determined that the transaction lacked sufficient controls to ensure that this *different* public purpose—as reformulated by the City, County, and courts years later—would be accomplished. But when viewed under the *actual* public purpose of the Agreements as written—the development of a retail facility—the Agreements contain extensive controls ensuring that that purpose was achieved *before* the City and County were required to contribute any sales taxes dedicated to paying off the construction loan.

For these reasons, as further discussed below, reversal of the judgment is both necessary and warranted.

ARGUMENT

I. The courts below erred in declaring the economic development agreements unconstitutional.

In granting (and affirming) summary judgment in favor of the City and County, the courts below declared the Agreements "unconstitutional."[9] (Op. at 186 [App. 1]; 5.CR.993 [App. 4]; Supp.CR.18-21 [App. 3]) But tellingly, they never identify the constitutional provision that supposedly was violated. (*See id.*) Nor could they. No such provision exists.

A. The Texas Constitution and Local Government Code specifically authorize economic development agreements.

The City and County invoked numerous constitutional provisions in the trial court. (*See* 2.CR.259-60, 298, 303-05) But the resolution of this case is straightforward and governed by the 1987 passage of article III, section 52-a of the Texas Constitution. That section unambiguously provides:

> *Notwithstanding any other provision of this constitution*, the legislature may provide for the creation of programs and the making of loans and grants of public money . . . for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, . . . or the development or expansion of transportation or commerce in the state.

[9] A trial court's summary judgment is reviewed *de novo*. *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). When, as here, a plaintiff moves for summary judgment on its own cause of action, it must prove it is entitled to summary judgment by establishing each element of its claim as a matter of law. *MMP, Ltd. v. Jones*, 710 S.W.2d 59, 60 (Tex. 1986).

TEX. CONST. art. III, § 52-a [App. 11] (emphasis added). That is precisely what the Texas Legislature did by enacting TEX. LOCAL GOV'T CODE §§ 380.001(a) and 381.004(b) and authorizing local governments to promote economic development through grants of public money.

Specifically, section 380.001 authorizes "[t]he governing body of a municipality" to "establish and provide for the administration of one or more programs, including programs for making loans and grants of public money . . ., to promote state or local economic development and to stimulate business and commercial activity in the municipality." TEX. LOCAL GOV'T CODE § 380.001(a) [App. 12].[10]

Section 381.004 of the Local Government Code similarly authorizes counties to develop economic development programs: "To stimulate business and commercial activity in a county, the commissioners court of the county may develop and administer a program: (1) for state or local economic development; . . . [or] (3) to

[10] Section 380.001 was enacted "[p]ursuant to the authority granted by article III, section 52-a" and "broadly permits a city's governing body to make 'loans and grants of public money' for purposes that will promote economic development." Tex. Att'y Gen. Op. No. GA-0529 (2007). By enacting section 380.001, the legislature "intended to authorize municipalities to perform any of the functions that article III, section 52-a permitted the legislature to delegate" and to "offer a range of incentives designed to promote state or local economic development." Tex. Att'y Gen. Op. No. DM-185 (1992). Because section 380.001 "properly implements article III, section 52-a," it is "constitutional." *Id.*

stimulate, encourage, and develop business location and commercial activity in the county." TEX. LOCAL GOV'T CODE § 381.004(b) [App. 13].

The City and County availed themselves of the opportunities afforded by these constitutional and statutory provisions. In the RCDAs, Interlocal Agreement, and resolutions authorizing those Agreements, the City and County invoked chapters 380 and 381. (2.CR.325, 339 [App. 6]; 2.CR.350, 352 [App. 9]; 2.CR.338 [App. 5]; 5.CR.910 [App. 5]) And they determined it was "necessary" and "in the public interest" to "facilitate the development of the Retail Center" and "fulfill the public purpose of the promotion of economic development." (*Id.*)

Because the City and County properly pledged sales tax funds for economic development purposes under these constitutional and statutory provisions, the Agreements are constitutional. *See, e.g.*, *Reeves Cnty., Tex. v. Pecos River Livestock, Inc.*, No. 08-99-00007-CV, 2000 WL 1433870, at *2-3 (Tex. App.—El Paso Sept. 28, 2000, no pet.) (not designated for publication) (county's loan to goat dairy farm was authorized by sections 52-a and 380.001 and constitutional). The courts below erred in concluding otherwise.

B. Neither section 52(a) nor *TML* governs section 52-a grants.

Instead of focusing on section 52-a, the court of appeals paid mere lip service to that constitutional provision by conflating section 52-a with section 52(a) and the other "Gift Clauses" in the Texas Constitution that "prohibit[]" or strictly "limit[]" the grant of public money to individuals or companies. (*See* Op. at 178-79); *see also Borgelt v. Austin Firefighters Ass'n, IAFF Local 975*, 692 S.W.3d 288, 293, 296, 298-301 (Tex. 2024) (discussing several "Gift Clauses" of the Texas Constitution—including article III, sections 51 and 52(a)—that "*prohibit* governmental entities from making 'gifts' of public resources to private parties") (emphasis added).

The court then exacerbated that mistake when it concluded that the three-part test this Court adopted in *TML* to determine if a statute accomplishes a public purpose consistent with article III, section 52(a) also applies to an economic development grant under section 52-a. (Op. at 178-80) Specifically, under the three-part *TML* test, the legislature must (1) ensure that the statute's predominant purpose is to accomplish a public purpose, not to benefit private parties; (2) retain public control over the funds to ensure that the public purpose is accomplished and to protect the public's investment; and (3) ensure that the political subdivision receives a return benefit. *TML*, 74 S.W.3d at 384.

For at least two reasons, the court below got it wrong when it became the first appellate court in Texas to apply *TML* to a section 52-a economic development grant.

First, there are critical differences between sections 52(a) and 52-a. Section 52(a) provides that "the Legislature shall have *no power* to authorize any county [or] city . . . to grant public money" to any individual or corporation. TEX. CONST. art. III, § 52(a) (emphasis added).[11] But unlike section 52(a), which generally *prohibits* gratuitous payments of public moneys, section 52-a specifically *authorizes* the creation of programs that grant public money for economic development. *Compare* TEX. CONST. art. III, § 52(a) *with id.* § 52-a.

[11] The other "Gift Clauses" that the City and County briefly referenced in the trial court similarly *prohibit* gratuitous payments of public moneys. For example, article III, section 51 provides that "[t]he Legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporations whatsoever" except "in cases of public calamity." TEX. CONST. art. III, § 51. Likewise, article XI, section 3 states that "[n]o county, city, or other municipal corporation shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in anywise loan its credit." *Id.* art. XI, § 3. Not surprisingly, the City and County only mentioned these other Gift Clauses in passing in the court of appeals. (*See* Appellee's Br. at 26, 33, 73-74) And the court of appeals never substantively discusses these inapplicable constitutional provisions in its opinion. (*See* Op. at 174-86) In any event, for all the reasons discussed in this brief, none of these other Gift Clauses render the grant here unconstitutional.

The 1987 enactment of section 52-a thus "created an exception" to the general pre-existing constitutional prohibitions on granting public money in section 52(a) (and the other Gift Clauses) by "providing that programs fostering economic growth serve a public purpose." *Ex parte City of Irving*, 343 S.W.3d 850, 854-55 (Tex. App.—Dallas 2011, pet. granted by agr., judgm't vacated w.r.m.); *see* Tex. Att'y Gen. Op. No. JM-1227 (1990) ("section 52-a was intended by the legislature, and by the voters who adopted it, to create exceptions to the pre-existing constitutional prohibitions on the lending of public credit").[12]

The unambiguous terms of section 52-a eliminate any doubt that it was intended to trump—and be an exception to—section 52(a) and the other Gift Clauses. On its face, section 52-a authorizes grants of public money for economic development purposes "[n]otwithstanding any other provision of this constitution." TEX. CONST. art. III, § 52-a [App. 11].

When interpreting the Texas Constitution, this Court "rel[ies] heavily on its literal text and give[s] effect to its plain language." *Garofolo v. Ocwen Loan Servicing, L.L.C.*, 497 S.W.3d 474, 477 (Tex. 2016). The Court has thus recognized that a

[12] *See also* House Research Organization's Special Legislative Report, 1987 Constitutional Amendments and Referendum Propositions at 13-14 (Aug. 17, 1987) (observing that section 52-a "is necessary to override certain constitutional provisions," including article III, sections 51 and 52, and article XI, section 3 that "might be construed as prohibiting economic development investments").

"notwithstanding" clause—like the one in section 52-a—controls over other provisions. *See In re Lee*, 411 S.W.3d 445, 454 (Tex. 2013) ("The use of the word 'notwithstanding' [in section 153.0071(e) of the Texas Family Code] indicates that the Legislature intended section 153.0071 to be controlling."); *Molinet v. Kimbrell*, 356 S.W.3d 407, 413-14 (Tex. 2011) (holding that a "notwithstanding any other law" provision evidenced "clear legislative intent" to resolve any interpretation conflicts in favor of the "controlling" statute containing the provision).

Second, applying *TML*'s section 52(a) test to a section 52-a grant makes no sense. To guarantee compliance with section 52(a), *TML*'s first prong requires the legislature to "ensure that the statute's predominant purpose is to accomplish a public purpose." *TML*, 74 S.W.3d at 384.

Section 52-a and sections 380.001 and 381.004 of the Local Government Code, however, already resolve that question in the affirmative by establishing that economic development is a legitimate public purpose. *See* TEX. CONST. art. III, § 52-a (characterizing the "development and diversification of the economy of the state" and "the development or expansion of transportation or commerce in the state" as "public purposes"); *see also* Tex. Att'y Gen. Op. No. GA-0529 (2007) (recognizing that section 52-a "programs fostering economic growth or loans and grants of public funds to assist private businesses to foster economic growth serve a

public purpose"); Tex. Att'y Gen. Op. No. GA-0071 (2003) ("section 52-a establishes that economic development is a legitimate public purpose for public spending").

It is thus not surprising that, until the opinion below, no Texas appellate court had ever applied *TML* to a section 52-a economic development grant. In nonetheless holding that *TML* applies to section 52-a grants, the court below relied solely on two Attorney General opinions, including one opinion decided eleven years before *TML*. (*See* Op. at 180) But those conclusory opinions cite no authority for that proposition. *See* Tex. Att'y Gen. Op. Nos. KP-0261 (2019), JM-1255 (1990).

In any event, Attorney General opinions are "not controlling" and "not binding on this Court." *Hartzell v. S.O.*, 672 S.W.3d 304, 318 (Tex. 2023); *In re Smith*, 333 S.W.3d 582, 588 (Tex. 2011). Accordingly, this Court should disregard those opinions' conclusory (and unsupported) statements that the *TML* test applies to section 52-a grants. *See Greater Houston P'ship v. Paxton*, 468 S.W.3d 51, 65 n.13 (Tex. 2015) (declining to follow test outlined in another case based on its "questionable foundation," which consisted of five "conclusory" attorney general opinions).

Further review is necessary to decide this issue of first impression.

C. Even if *TML* applies, the grant here easily satisfied it.

Even assuming *TML* applies to a section 52-a grant, it makes no difference. Notwithstanding the efforts of the City and County to renege on, rewrite, and nullify their own Agreements years after the fact, the grant here easily satisfied *TML*.

In *TML*, this Court recognized that section 52(a)'s prohibition of granting public money meant that the legislature could not lawfully require cities to make "gratuitous payments to individuals, associations, or corporations." *TML*, 74 S.W.3d at 383. The Court further explained that the section 52(a) Gift Clause "does not prohibit payments" so long as the statute requiring such payments satisfies two prongs. *Id.* First, it must "serve[ ] a legitimate public purpose." *Id.* Second, it must "afford[ ] a clear public benefit received in return." *Id.*[13]

More recently in *Borgelt*, this Court clarified and "consolidate[d]" the various *TML* tests, requirements, and prongs into three principles:

> A challenged expenditure satisfies § 52(a)'s Gift Clause when (1) the expenditure is not gratuitous but instead brings a public benefit; (2) the predominant objective is to accomplish a legitimate public purpose, not to provide a benefit to a private party; and (3) the government retains control over the funds to ensure that the public purpose is in fact accomplished.

[13] The Court further split the "legitimate public purpose" prong into a three-part test that overlapped, in part, with the anti-gratuity requirement and the "clear public benefit" prong. *See id.* at 384.

Borgelt, 692 S.W.3d at 301 & nn.14-15. An expenditure that meets all three principles—public benefit, public purpose, and public control—does not violate the Gift Clause. *Id.* at 301.

In reviewing a challenged expenditure, a court should "presume" that legislative bodies intend their acts to be constitutional and to "advance a public rather than a private interest." *Id.* (quoting *TML*, 74 S.W.3d at 881). The "burden" is thus "on the party attacking [the expenditure] to show that it is unconstitutional." *Id.* (quoting *TML*, 74 S.W.3d at 881).

As further explained below, the City and County did not meet that burden. Nor can they. The grant here unequivocally satisfies all three principles recognized in *Borgelt*. Accordingly, the grant does not violate section 52(a) or any other Gift Clause—much less section 52-a. And the courts below were wrong when they declared the Agreements to be unconstitutional.[14]

[14] The notion that the section 52(a) Gift Clause and *TML* apply to municipal or county *contracts* is questionable. On its face, section 52(a) strips "the Legislature" of "power to authorize any county [or] city . . . to grant public money." TEX. CONST. art. III, § 52(a). And the *TML* test was adopted to determine if "*a statute*"—not a government contract—accomplishes a public purpose consistent with section 52(a). *See TML*, 74 S.W.3d at 383-84 (emphasis added). Nonetheless, in *Borgelt*, this Court "assume[d] without deciding that § 52(a) applies to municipal contracts" because all the parties there agreed it did. *Borgelt*, 692 S.W.3d at 299 & n.10; *see also id.* at 302 ("if the Gift Clause applies to contracts at all . . .").

1. The sales tax grant was not gratuitous and brought a public benefit.

As an initial matter, the Court never has to address whether the sales tax grant at issue is a "gratuitous" transfer or one that brings a "public benefit." *See id.* at 301. In their motion for summary judgment, the City and County never argued that the grant was gratuitous. (*See* 2.CR.297-317) Nor did they contest that the grant brought a public benefit (or "return benefit"). (*See id.*; Op. at 185)[15] Because a summary judgment must "stand or fall on the grounds expressly presented in the motion," *McConnell v. Southside Indep. Sch. Dist.*, 858 S.W.2d 337, 341 (Tex. 1993), the court of appeals never had to address this prong. (Op. at 185) Neither does this Court.

In any event, "[a] political subdivision's paying public money is not 'gratuitous' if the political subdivision receives return consideration." *Borgelt*, 692 S.W.3d at 301 (quoting *TML*, 74 S.W.3d at 383). Critically, there need be "only sufficient—not equal—return consideration to render a political subdivision's paying public funds constitutional." *Id.* (quoting *TML*, 74 S.W.3d at 384).

[15] In *Borgelt*, the Court recognized that an analysis of the anti-gratuity requirement "automatically satisfie[s]" the third *TML* test that required the political subdivision to "receive[] a return benefit." *Id.* at 300 n.14.

In this case, the summary judgment evidence establishes (or, at the very least, raises a fact issue) that the grant was not gratuitous and that the City and County received return consideration. A new retail facility was built; that facility attracted other businesses, and the business park was developed; and the City's and County's economic objectives were achieved and are still being fulfilled today. (4.CR.792-93, 833, 835; 5.CR.881-82, 980) The City and County received permanent infrastructure. (*Id.*) And the business park created jobs, established new businesses in the area, and generated (and continues to generate) ad valorem and sales tax revenue for the City and County. (*Id.; see also* Op. at 186-87 & n.1 (Gray, C.J., dissenting))

In short, the grant here brought many public benefits and was the antithesis of a "no-strings-attached" gratuitous payment to the Foundation.

2. The predominant objective of the Agreements was to accomplish a public purpose.

The grant here also unquestionably satisfies *TML* and *Borgelt* because the predominant objective of the Agreements was to accomplish a legitimate public purpose, not to provide a private benefit. *See Borgelt*, 692 S.W.3d at 301, 304.

a. Economic development is a legitimate public purpose.

As this Court recently observed, "*some* private benefit will almost inevitably arise from government payments to non-government entities or individuals." *Id.* at 304 (emphasis in original). But "the [section 52(a)] Gift Clause does not treat such an inevitability as a poison pill that dooms a much larger public objective." *Id.* A court should therefore "presume" that the "predominant purpose" of a government grant is "to accomplish a legitimate public purpose unless [the challenging parties] show that it clearly is not." *Id.* The City and County did not come close to satisfying this heavy burden below.

Section 52-a explicitly establishes that the "development and diversification of the economy of the state" and the "development and expansion" of "commerce in the state" are "public purposes." TEX. CONST. art. III, § 52-a [App. 11]. In accordance with that plain language and well-settled Texas law, the court of appeals correctly recognized that "[e]conomic development has been declared a public purpose" in section 52-a. (Op. at 180); *see Ex parte City of Irving*, 343 S.W.3d at 855 ("programs fostering economic growth serve a public purpose"); Tex. Att'y Gen. Op. No. GA-0529 (2007) (same). That should have been the end of the inquiry.

b. The purpose of the Agreements was to facilitate economic development.

As the City and County admitted in their contemporaneous official resolutions, the Agreements themselves, sworn summary judgment affidavits, and pleadings, they authorized the grants to promote "economic development" because they "realize[d] the economic advantages for development of a retail center on the 132 acre business park." (1.CR.4; 2.CR.257, 427-28, 435-36; 2.CR.325, 339 [App. 6]; 2.CR.338 [App. 5]; 2.CR.352 [App. 9]; 5.CR.910 [App. 5]; *see also* 5.CR.884-85)

Under Texas law, "unless a court can say that the purposes for which public funds are expended are clearly not public purposes, it would not be justified in holding invalid a legislative act or provision in a city charter providing funds for such purposes." *Davis v. City of Taylor*, 67 S.W.2d 1033, 1034 (Tex. 1934). Thus, "what is for the public good, and what are public purposes, and what does properly constitute a public burden, are questions which [a governmental body] must decide upon its own judgment, and in respect to which it is vested with a large discretion." *Id.*; *see Young v. City of Houston*, 756 S.W.2d 813, 814 (Tex. App.—Houston [1st Dist.] 1988, writ denied) ("Determining a public purpose is primarily a function of the legislature, whose decision should not be reversed, unless manifestly arbitrary and incorrect."). The courts below turned these principles on their head.

In this case, the City and County determined in 2004 it was "necessary" to enter into the Agreements to "implement certain components of the economic development program" and "assist in the implementation of the economic development objectives of the City and County." (1.CR.4; 2.CR.257; 2.CR.325, 339 [App. 6]; 2.CR.338 [App. 5]; 2.CR.427-28, 435-36; *see also* 5.CR.884-85) Those objectives included the development of the retail center, the creation of jobs, the establishment of new retail businesses in the area, the generation of ad valorem tax revenue on the real property, and the generation of sales tax revenues from the retail center and other businesses located therein. (*Id.*)

The Interlocal Agreement likewise confirms that "the City and the County have determined it is in the public interest to promote the economic development of the Gander Mountain Facility and to grant portions of the City Sales Tax and the County Sales Tax, respectively, to facilitate such economic development" and "fulfill the public purpose of the promotion of economic development." (2.CR.352 [App. 9])

Whether a particular expenditure of public funds serves a public purpose is an issue for the governmental body to resolve "in the first instance." Tex. Att'y Gen. Op. Nos. KP-0091 (2016), GA-0843 (2011), JC-0239 (2000), DM-317 (1995). Such

determination is "generally made at the time the contract is entered into." Tex. Att'y Gen. Op. No. KP-0099 (2016).

Here, the City and County correctly determined that the Agreements served a public purpose at the time they entered into those Agreements in 2004. This Court should defer to the City's and County's initial determination.

Because the grant of public money here was made pursuant to chapters 380 and 381 of the Local Government Code for a statutorily (and constitutionally) authorized economic development program, it serves a legitimate public purpose and satisfies *TML* and *Borgelt* (if necessary).

c. The courts below ignored freedom-of-contract principles by rewriting the Agreements and redefining the public purpose of the grant after the fact.

The City and County have never challenged or attempted to discredit their initial 2004 determination that the grant served a public purpose. Instead, based on their unilateral and self-serving resolutions twelve years later in 2016 (*see* 3.CR.418-20, 422-25 [App. 10]), they urged the courts below to retroactively redefine the purpose of the grant and to abolish negotiated contractual terms. The courts did so. And in so doing, the courts eviscerated Texas's "strong public policy favoring freedom of contract." *Shields Ltd. P'ship v. Bradberry*, 526 S.W.3d 471, 474 (Tex. 2017).

Notwithstanding the revisionist history of the City, County, and courts below, the grant here was specifically "limited to the construction of real property." (2.CR.326, 340 at § 2.2 [App. 6]) And the City and County plainly articulated the purpose of the grant in the 2004 Agreements: to "realize[] the economic advantages for development of a retail center on the 132 acre business park" and "facilitate the development of the Retail Center." (2.CR.325, 339 [App. 6]; *see* 2.CR.351-52 [App. 9])

The City and County reiterated that purpose in their contemporaneous resolutions authorizing the Agreements (2.CR.338 [App. 5]; 5.CR.910 [App. 5]; 5.CR.924-25 [App. 8]), trial court pleadings (1.CR.4; 2.CR.257), and summary judgment affidavits (2.CR.427-28, 435-36). And the court of appeals acknowledged that "[t]he purpose of the sales tax grant" was to "facilitate *development* of the retail center" and "repay the debt associated with *construction* of the Gander Mountain facility." (Op. at 182, emphasis added)

But in the next breath, the court disregarded that stated purpose and impermissibly rewrote the Agreements. *See In re Davenport*, 522 S.W.3d 452, 457 (Tex. 2017) ("[c]ourts may not rewrite the parties' contract" or "add to its language"). Specifically, the court upheld "the trial court's *implied finding* that the public purpose[]" of the grant was the "*continued operation* of the Gander Mountain

store." (Op. at 182, emphasis added) Nothing supports any such "implied finding," particularly by summary judgment. *See Linwood v. NCNB Tex.*, 885 S.W.2d 102, 103 (Tex. 1994) ("findings of fact" have "no place in a summary judgment proceeding").

Simply put, the Agreements nowhere require—much less tie the grant to—the "continued operation" of Gander Mountain. In fact, far from tying the grant to the "continued operation" of Gander Mountain, the parties mutually agreed during negotiations to *remove* a draft contractual clause under which the RCDA would terminate upon "cessation of operations of Gander Mountain" in Corsicana. (*Compare* 2.CR.330 at § 3.3 [App. 7] *with* 2.CR.327 at § 3.3 [App. 6]; *see also supra* at p. 23) Instead, the parties mutually agreed the RCDA would terminate only "upon repayment of the debt associated with the incentive package." (2.CR.327 at § 3.3 [App. 6])

The court of appeals makes a passing reference to the proposed "operations" clause removed from the draft RCDA. (*See* Op. at 184 n.5) But it completely ignores the effect of the parties agreeing to eliminate that clause and "blinks reality" by treating "the deletions as irrelevant." *Houston Expl. Co. v. Wellington Underwriting Agencies, Ltd.*, 352 S.W.3d 462, 469-72 (Tex. 2011) (to discern the parties' intent in

a contract, a court should consider "the facts and circumstances surrounding the contract's execution," including deletions of contractual language).

Moreover, the Lease—which the Interlocal Agreement references at least six times (*see* 2.CR.350-60 [App. 9])—confirmed that Gander Mountain was "*not required to continuously operate* the Premises throughout or during any portion" of the 20-year lease term. (2.CR.383 at ¶ 8.2, emphasis added; *see* 2.CR.376 at ¶ 2 [setting forth the lease term]) And under the Interlocal Agreement, the City's and County's obligation to reimburse the Foundation for developing the facility was triggered by "the completion and opening of Gander Mountain" (2.CR.353 at § 7 [App. 9])—not its continued operation.[16]

Other provisions in the Agreements also confirm that the grant was not tied to the "continued operation" of Gander Mountain. For example, in section 1.3 of the RCDAs, the City and County both agreed that their obligations to make payments "*shall be absolute and unconditional*." (2.CR.325, 340 at § 1.3 [App. 6], emphasis added) They additionally agreed that they "shall make such payment[s]

[16] Contrary to the court of appeals' non-sequitur assertion (and its efforts to indulge inferences in favor of the summary judgment *movants*), "[w]here payment is tied to opening the store," it does *not* "follow[] that payment is tied to its continued operation." (Op. at 182) Rather, requiring the City and County to commence payment "following the completion and opening of Gander Mountain" (2.CR.353) ensured that they would receive the benefit-of-their-bargain: a fully constructed and developed retail facility that would add to their tax base and attract surrounding development. It did not alter the purpose of the grant.

without abatement, diminution or deduction regardless of any cause or circumstances whatsoever." (*Id.*, emphasis added)

Further, the RCDAs state that the sales tax incentives "shall be limited to the *construction* of real property"—not to fund an operating store. (2.CR.326, 340 at § 2.2, emphasis added) And the Interlocal Agreement likewise provides that the sales taxes must be "used for the *sole* and *exclusive purpose* of paying the principal and interest of the Loan" to finance the construction. (2.CR.353 at § 4 [App. 9], emphasis added).

In reviewing an agreement to determine its constitutional compliance, a court must review the agreement *as written*. A court cannot ignore freedom-of-contract principles, "judicially writ[e] back into the contract" a clause the parties "specifically removed" during negotiations (Op. at 186 (Gray, C.J., dissenting)), and alter the public purpose of the grant after the fact. Yet, that is precisely what the courts below did at the City's and County's urging.

In the face of the contractual language that was actually included or purposely omitted, the record does not support the trial court's "implied finding" that the

public purpose of the grant was the "continued operation" of a Gander Mountain store. (Op. at 182)[17]

Because the multimillion-dollar construction debt to Chase has not yet been fully repaid (*see* 5.CR.981)—and full repayment of the debt is the only contractual basis for terminating the RCDAs (*see* 2.CR.327 at § 3.3 [App. 6])—the courts below had no basis to judicially re-write the Agreements and excuse the City and County from their "unconditional" contractual obligations. *See, e.g.*, *Frio Cnty. v. Sec. State Bank of Pharr*, 207 S.W.2d 231, 234 (Tex. App.—Waco 1947, no writ) ("[W]hen our government and its political subdivisions elect to make contracts under certain provisions of our statutes and such statutes are by our courts held to be valid, such contracts must be enforced according to their express terms and provisions."); *see also Am. Mfrs. Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154, 162 (Tex. 2003) (a court "may neither rewrite the parties' contract nor add to its language").

[17] In concluding that "the record supports the trial court's implied finding" regarding the public purpose of the grant, the court of appeals did not even apply the correct standard for reviewing a summary judgment. Even indulging the fiction there is some evidence to support the trial court's implied finding, that is not sufficient. As the summary judgment movants, the City and County had the burden to "conclusively" establish the public purpose of the grant as a matter of law. *See Rhone-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 222-23 (Tex. 1999). They failed to do so. And the court of appeals turned the summary judgment standards on their head by ignoring the contrary evidence favorable to the non-movants and by indulging inferences and resolving doubts in favor of the movants, instead of Chase. *See id.* at 223.

Otherwise, local governments could—as was done here—invalidate contracts on a whim and shield themselves from subsequent legal challenges by demanding deference from the courts. Permitting such disregard for contractual obligations and settled expectations, however, would lay waste to the contracts clause of the Texas Constitution, which provides that "[n]o bill of attainder, ex post facto law, *retroactive law*, or *any law impairing the obligation of contracts*, shall be made." TEX. CONST. art. I, § 16 (emphasis added); *see also* U.S. CONST. art. I, § 10 (prohibiting States from passing any "ex post facto Law, or Law impairing the Obligation of Contracts").

The City and County must yield to these long-enshrined constitutional protections. *See Robinson v. Crown Cork & Seal Co., Inc.*, 335 S.W.3d 126, 139 (Tex. 2010) ("Constitutional provisions limiting retroactive legislation must therefore be applied to achieve their intended objectives—protecting settled expectations and preventing abuse of legislative power.").

The Court should thus decline the City's and County's invitation to endorse a troublingly expansive view of governmental power that would permit cities or counties to impair vested contractual rights with impunity. *See Flewellen v. Proetzel*, 15 S.W. 1043, 1045 (Tex. 1891) ("The legislature could not repeal the law, or any of the provisions, so as to impair the contract."); *see also City of Galveston v. Trimble*, 241 S.W.2d 458, 460 (Tex. App.—Galveston 1951, writ ref'd n.r.e.) (invalidating a

subsequent city resolution that attempted to revoke the city's previously executed agreement and resolution because it would "impair the obligations of the City's existing contract"); *Fooshee & Hungerford v. City of Victoria*, 54 S.W.2d 220, 223 (Tex. Civ. App.—San Antonio 1932, writ dism'd) (a city does not have the "power to arbitrarily cancel and repudiate the contract" merely because it was "inadvisable," "shortsighted" or entered into without "good business sense").

Otherwise, the purpose of section 52-a will be undermined. And there will be a chilling effect on the willingness of private companies and lenders to enter into section 52-a economic development agreements. For these reasons as well, further review and reversal of the judgment below are necessary.

d. The closure of the Gander Mountain store did not extinguish the public purpose of the grant or render the Agreements void and unconstitutional.

In rendering judgment in the City's and County's favor, the trial court did not conclude (and the City and County did not argue) that the economic development program at issue never served a public purpose. (*See* 2.CR.297-319; Supp.CR.19) Instead, at the City's and County's insistence (*see* 2.CR.313), the trial court erroneously declared that "the [2015] closing of the Gander Mountain store *extinguished* the public purposes which authorized the City's and County's [2004] grants of public money to repay loans taken out by the Foundation to build the

Gander Mountain store." (Supp.CR.19 [App. 3], emphasis added; *see* 2.CR.298, 301, 311, 316-17; 5.CR.1016-23)[18] The court of appeals agreed, concluding that the public purpose prong of *TML* "is no longer being met." (Op. at 182-83)

But the conclusions of the courts below are based on the false premise that the public purpose of the grant was to ensure the continuous "operation" of Gander Mountain in Corsicana. (*Id.*) As discussed above, nothing supports any such "implied finding." (*See supra* Part I.C(2)(c))

If anything, the summary judgment record shows that the public purpose of the grant—the development of a retail facility—was achieved in 2004. A new retail facility was built. (5.CR.880-81, 980) That facility attracted other businesses to the business park, and the City and County received permanent infrastructure, jobs, and economic benefits therefrom. (5.CR.881) And even without an operating Gander Mountain store, that facility remains, and the City and County continue to collect

[18] Based on that declaration, the trial court further ordered and declared that (a) it would be "unconstitutional, and a void and an illegal act for the City and the County to continue to grant sales tax proceeds to repay the loan(s) once the Gander Mountain facility was no longer open"; and (b) the RCDAs and lnterlocal Agreement "are unconstitutional, void and illegal to the extent that they purport to require the City and County to grant sales tax proceeds to pay off the loan when the public purposes supporting the grants are no longer being served." (Supp.CR.19-20)

property taxes from that facility, as well as sales taxes, property taxes, and other benefits from the surrounding development. (4.CR.793, 833-35; 5.CR.881-82)[19]

Indeed, City and County officials admit that one of the "economic development objectives" of the grant was "the generation of sales tax revenues from the retail center *and other businesses*." (2.CR.427-28, 435-36, emphasis added) And the symbiotic relationship between the Gander Mountain Facility and the rest of the business park is further underscored by the composition of the grant—a portion of which came from the gross sales tax revenue generated by every other business in the 132-acre business park. (*See* 2.CR.325, 339, 352)

In short, the Agreements served a public purpose. And the Foundation—with the assistance of a multi-million dollar loan from Chase—indisputably fulfilled that purpose and satisfied the second *Borgelt* principle.

[19] The Court also can take judicial notice that the former Gander Mountain store, located at 3301 Corsicana Crossing Blvd. (*see* 4.CR.792), is now occupied by a new retail operator, Fun Town RV. *See* https://www.funtownrv.com/locations/corsicana. The City and County thus want to "have their cake and eat it too"—*i.e.*, they want to reap all the benefits from luring the Foundation to take out a $10 million construction loan to build a new retail facility without having to fulfill their contractual obligation to pay for the facility's construction.

3. The Agreements contain sufficient controls.

Based once again on the contrived notion that the purpose of the Agreements was for the "continued operation" of a Gander Mountain store, the court of appeals compounded its error when it held the Agreements do not include sufficient controls to ensure that supposed public purpose—as redefined by the court—is met. (Op. at 182-85; *see* Supp.CR.19 [App. 3]) But when viewed under the proper lens based on the grant's *actual* public purpose—instead of the *reformulated* purpose concocted below—the Agreements undoubtedly contain controls sufficient to ensure the actual stated purpose (*i.e.*, the development of a retail center) was achieved.

The court of appeals acknowledged that a governmental entity "may retain public control over the use of its resources by entering into an agreement or contract that imposes an obligation on the recipient to perform a function benefiting the public." (Op. at 184); *see* Tex. Att'y Gen. Op. No. KP-0091 (2016) ("a contractual agreement outlining requirements that the receiving entity must comply with in exchange for [public] funds may provide sufficient control over the funds" to "ensure that the public purpose is accomplished and to protect the public's investment"). That is precisely what the City and County did here.

The City and County did not make a "no-strings attached" payment to the Foundation or "hand[] over property for nothing." *See Borgelt*, 692 S.W.3d at 308,

310. Rather, the sales tax grant came with numerous strings and conditions. For example, to receive the sales tax grant, the RCDAs and Interlocal Agreement obligated the Foundation to:

- obtain a $10 million construction loan (2.CR.351-52 [App. 9]);
- use "all of the moneys" from the loan and grant "solely" for "the *construction* of real property" and to repay the construction debt, and the Agreements prohibited the Foundation from using the funds "for any other purpose" (2.CR.325-26, 340 at §§ 2.1-2.3 [App. 6], emphasis added; 2.CR.353-54 at §§ 4, 9 [App. 9]);
- provide the City and County with regular written reports documenting its use of the loan and grant, as well as any additional information requested by the City or County to "determine the status of the construction of, and estimated date of completion and opening of, the Retail Center" (2.CR.326, 340-41 at § 2.2 [App. 6]; 2.CR.354 at § 9 [App. 9]);[20] and
- "complet[e] and open[]" a Gander Mountain store *before* the City and County were obligated to fund the grant (2.CR.353 at § 7 [App. 9]).

As the court below thus recognized—but later ignored—"[i]f Gander Mountain had never opened, [the City and County] would not have been required to contribute to the sales tax fund." (Op. at 182) The Agreements thus allowed the City and County to retain complete control over the funds *until* the public purpose of the grant was accomplished.

[20] This control is independently sufficient to satisfy *TML*'s second prong. *See* Tex. Att'y Gen. Op. No. KP-0435 (2023) (an agreement "provid[ing] for an 'annual accounting' of the funds" may be used to "satisfy" *TML*'s control prong).

Further, the sales tax incentive is directly tied to and contingent on the development of the entire business park and the sales taxes from all the stores—*i.e.*, it is calculated as a percentage of sales taxes generated from all the stores located in the 132-acre business park. (*See* 2.CR.325, 339 at § 1 [App. 6]; 2.CR.352 at §§ 2-3 [App. 9]) If "no sales taxes [are] generated, there are no incentives paid." (Op. at 187 n.1 (Gray, C.J., dissenting)). And the grant is funded only after the City and County receive the sales taxes from the State. (*See* 2.CR.325, 339-40 at § 1 [App. 6]; 2.CR.352-53 at §§ 2-3, 7 [App. 9])

In short, the extensive controls here ensured the stated public purpose for the grant—the development of a retail facility—was achieved *before* the City and County contributed a single dime of the sales tax revenue they pledged for construction. The dissent thus got it right: "the City and County maintained absolute control over the use of the funds by making sure they were used only for a single purpose, repayment of the debt incurred to build the building that draws the businesses which generate and pay the sales tax." (Op. at 186-87 (Gray, C.J., dissenting)).

For these reasons, this case bears no resemblance to the government handout this Court recently reviewed in *In re State*, No. 24-0325, ___ S.W.3d ___, 2024 WL 2983176 (Tex. June 14, 2024). That case involved a proposed "Uplift Harris"

program under which Harris County intends to "provide no-strings-attached $500 monthly cash payments to 1,928 Harris County residents for 18 months." *Id.* at *1.

In considering whether that program violates the Texas Constitution's bar on "gratuitous payments to individuals" under the section 52(a) Gift Clause and *TML*, the Court expressed "serious doubt" that the program "can satisfy the 'public control' requirement of this Court's Gift Clause precedent" for at least two reasons. *Id.* at *1, 4.

First, the advertised "no strings attached" stipend appeared to have "no public control over the funds after they are disbursed." *Id.* at *4. Second, it likewise appeared there would be "no monitoring of the recipients' day-to-day purchases" to ascertain "how recipients spend the money and whether any legitimate public purpose was achieved thereby." *Id.* Under those circumstances, the Court remarked that the Uplift Harris program was "quite unlike a food-stamp program, a housing voucher, or a medical-care program, in which the public funds can only be directed to their intended purpose." *Id.* at *4.[21]

[21] The Court was also "skeptical" of Harris County's "alternative" argument that the Uplift Harris program qualifies as "economic development" authorized by section 52-a. *Id.*

In stark contrast to *In re State*, the conventional economic development program here specifically limits the use of the public funds to only their intended purpose—the development and construction of a retail center. And as previously discussed, the Agreements contain numerous public controls over the funds both before and after they are disbursed. Moreover, the Agreements allow the City and County to continuously monitor the Foundation's use of the funds.

The court of appeals also cannot justify its holding by highlighting other possible controls—suggested by a handbook—that are absent from the Agreements here. (*See* Op. at 184)[22] To begin with, the court's attempt to do so conflates suggested "best practices" with constitutional prerequisites. *See Morath v. The Tex. Taxpayer & Student Fairness Coal.*, 490 S.W.3d 826, 855 (Tex. 2016) ("We have never held that constitutional adequacy requires the State to employ what are, in the view of one expert or another, the 'best practices' recognized by a segment of the expert community."); *Bell v. Wolfish*, 441 U.S. 520, 543 n.27 (1979) (handbooks "do not establish the constitutional minima; rather, they establish goals recommended by the organization in question").

[22] Ironically, that never-before cited handbook suggests that agreements should "outline what steps the business will take that justify the provision of public funding," including "construction" of "physical facilities." TEXAS MUNICIPAL LEAGUE, ECONOMIC DEVELOPMENT HANDBOOK 148 (Amber McKeon-Mueller ed., 2022). That is precisely what the Agreements did here. (*See* 2.CR.325-27, 339-58 [App. 6]; 2.CR.350-67 [App. 9])

In any event, the possible controls suggested by the court of appeals (*e.g.*, "a recapture provision" or "an authorization for the governmental entity to terminate or modify the agreement") make no sense in this case. (*See* Op. at 184) In fact, those controls are wholly unnecessary here because the Agreements protected the City and County from having to contribute any sales taxes to the Foundation's account until the grant's public purpose—*i.e.*, the development of the retail center—was accomplished with "the completion and opening of Gander Mountain." (2.CR.353 at § 7 [App. 9]) And as previously discussed, that public purpose was achieved in 2004. (*See supra* at pp. 59-60) Thus, even if necessary, the controls worked.

In nonetheless suggesting that other controls like "continued operations" and "occupancy by a specific tenant" are necessary (Op. at 184), the court below engages in a meaningless sufficient-controls analysis that is untethered to the grant's actual purpose. And the court again undermines freedom-of-contract principles.

The court decries that the City's and County's obligation "remains even if Gander Mountain is not doing business in Corsicana" and the Agreements provide "no recourse" if "Gander Mountain vacates the store." (Op. at 185) But that is what the parties agreed. And they did so because the public purpose underlying the grant was to facilitate the *construction* and *development* of a retail facility—not to ensure the *continued operation* of one particular retail store.

Thus, while the court of appeals asserts the Agreements "lose sight of the public purposes" (Op. at 184), it is the court that lost sight of the express public purpose and engaged in revisionist history. The law should not allow a court to "judicially writ[e] back into the contract" a clause requiring continued operations that the parties "specifically removed" during negotiations. (*Id.* at 186 (Gray, C.J., dissenting). Review and reversal are needed to prevent local governments from rewriting and nullifying their own agreements years after the fact.

PRAYER

For these reasons, Chase respectfully prays that the Court grant its petition, reverse the trial court's and court of appeals' judgments, and remand the case to the trial court for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Relying on the word count function of the computer software used to prepare this document, the undersigned certifies that Petitioner's Brief on the Merits contains 11,097 words (excluding the sections excepted under TEX. R. APP. P. 9.4(i)(1)) and was typed in 14-point font with footnotes in 12-point font.

/s/ *Brett Kutnick*
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing brief was served via electronic service in accordance with TEX. R. APP. P. 9.5 upon the following counsel of record on this 30th day of October 2024:

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TAB 1

685 S.W.3d 171
Court of Appeals of Texas, Waco.

CORSICANA INDUSTRIAL FOUNDATION, INC., Gander Mountain Company and JP Morgan Chase Bank, N.A., Appellants
v.
CITY OF CORSICANA and Navarro County, Appellees

No. 10-17-00316-CV
|
Opinion delivered and filed January 11, 2024

Synopsis

Background: City and county brought declaratory action against developer of retail center and retail store that operated location in retail center, seeking to invalidate agreements, due to closing of store location at center, under which agreements city and county granted use of portions of sales taxes generated by store location to pay for development of facility in center to house store location. Developer and store brought counterclaims seeking declaratory relief regarding city and county's obligations. Lender for loan on facility for store location, who was named as third party beneficiary in agreements, intervened. The 13th District Court, Navarro County, granted summary judgment for city and county. Following store's Chapter 11 bankruptcy barring it from participating in appeal and developer's assignment of all of its rights in action and appeal to lender, lender appealed, both individually and as assignee of developer.

Holdings: The Court of Appeals, Smith, J., held that:

[1] public purpose, under state constitutional provisions limiting use of governmental resources for public purposes, which authorized grant of sales tax revenue was opening and continued operation of location for store in center;

[2] closure of store location extinguished public purpose of agreements, and thus, after closure, agreements' predominant purpose was no longer to accomplish a public purpose, as rendered agreements unconstitutional;

[3] city and county did not retain control over sales taxes, and thus, agreements were unconstitutional; and

[4] agreements were unconstitutional at time they were entered into, and thus, presumption of validity did not apply to resolutions by city and county authorizing them to enter into agreements.

Affirmed.

Gray, C.J., dissented with separate opinion.

Procedural Posture(s): On Appeal; Motion for Declaratory Judgment; Motion for Summary Judgment.

West Headnotes (23)

[1] Declaratory Judgment Scope and extent of review in general

In reviewing a declaratory judgment, the Court of Appeals refers to the procedure for resolution of the issue at trial to determine the applicable standard of review on appeal. Tex. Civ. Prac. & Rem. Code Ann. § 37.010.

[2] **Declaratory Judgment** Scope and extent of review in general

Declaratory judgments decided by summary judgment are reviewed under the same standards of review that govern summary judgments generally.

[3] **Summary Judgment** Shifting burden

Once the movant for traditional summary judgment establishes a right to summary judgment as a matter of law, the burden shifts to the nonmovant to present any evidence raising a genuine issue of material fact, thereby precluding summary judgment. Tex. R. Civ. P. 166a(c).

[4] **Appeal and Error** Summary Judgment

Review of a summary judgment requires that the evidence be viewed in the light most favorable to the party against whom the summary judgment was rendered, crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not. Tex. R. Civ. P. 166a(c).

[5] **Appeal and Error** Summary Judgment

In reviewing a trial court grant of a traditional motion for summary judgment the Court of Appeals indulges every reasonable inference in favor of the non-movant and resolves any doubts in his favor. Tex. R. Civ. P. 166a(c).

[6] **Municipal Corporations** Donations, gratuities, and charitable purposes

A political subdivision's paying public money is not gratuitous, within meaning of state constitutional provision prohibiting gratuitous payments to individuals, associations, or corporations, if the political subdivision receives return consideration. Tex. Const. art. 3, § 52(a).

[7] **Municipal Corporations** Donations, gratuities, and charitable purposes

Section of State Constitution prohibiting use of public money for private purposes is intended to prevent gratuitous grant of such funds to any individual, corporation, or purpose. Tex. Const. art. 3, § 52(a).

[8] **States** Public purpose or benefit in general

To determine if statute accomplishes public purpose consistent with section of State Constitution prohibiting use of public money for private purposes, legislature must: ensure that statute's predominant purpose is to accomplish public purpose, not to benefit private parties; retain public control over funds to ensure that public purpose is accomplished and to protect public's investment; and ensure that the political subdivision receives a return benefit. Tex. Const. art. 3, § 52(a).

1 Case that cites this headnote

[9] **Municipal Corporations** Powers and functions of local government in general

It is for the courts to determine, as a matter of law, what a public purpose is under the state constitution.

[10] **States** Public purpose or benefit in general

Where the legislature has declared a certain thing to be for a public use, such declaration of the legislature must be given weight by the courts in determining whether or not a public purpose exists under the state constitution.

[11] **Municipal Corporations** Powers and functions of local government in general

Generally, the objective of a "public purpose" under the state constitution is the promotion of the general prosperity and welfare of residents within a given political subdivision.

[12] **Municipal Corporations** Powers and functions of local government in general

If an object is beneficial to the inhabitants and directly connected with the local government it will be considered a public purpose under the state constitution.

[13] **Municipal Corporations** Donations, gratuities, and charitable purposes

Courts require some form of continuing public control to ensure that a governmental entity that passed an ordinance that provides for the grant of public money receives its consideration, that is, accomplishment of public purpose.

1 Case that cites this headnote

[14] **Courts** Previous Decisions as Controlling or as Precedents

Even though Attorney General opinions are not controlling, they can be persuasive.

[15] **Municipal Corporations** Donations, gratuities, and charitable purposes

The determination of the constitutionality of provisions implemented by a governmental entity for a public purpose calls for consideration of the same factors regardless of which constitutional provision limiting the use of governmental resources for public purposes may be implicated. Tex. Const. art. 3, §§ 52(a), 52-a.

[16] **Municipal Corporations** Donations, gratuities, and charitable purposes

To meet the first requirement of the three-part test to determine if a governmental entity's use of governmental resources accomplishes a public purpose consistent with state constitutional provisions limiting the use of governmental resources for public purposes, a governmental entity must ensure that the predominant purpose of the agreements is to accomplish a public purpose. Tex. Const. art. 3, §§ 52(a), 52-a.

[17] **Counties** Limitation on use of funds or credit

Municipal Corporations Donations, gratuities, and charitable purposes

Under state constitutional provisions limiting use of governmental resources for public purposes, public purpose which authorized grant of public money in form of sales tax revenue by city and county under agreements with developer of retail center and retail store that operated location in center was opening and continued operation of location for store in center; promised sales tax revenue was meant to pay for construction of facility for store location in center, agreements did not provide for grant of tax revenue to finance any other buildings or help any other businesses, and governmental entities' obligation to help finance facility hinged on opening of store location in center. Tex. Const. art. 3, §§ 52, 52-a.

More cases on this issue

[18] **Counties** Limitation on use of funds or credit

Municipal Corporations Donations, gratuities, and charitable purposes

Closure of retail store location at retail center extinguished public purpose of agreements between city, county, and retail center developer, under which agreements city and county granted use of portions of sales taxes generated by store location to pay for development of facility in center to house store location, and thus, after closure, agreements' predominant purpose was no longer to accomplish a public purpose, as rendered agreements unconstitutional under state constitutional provisions limiting use of governmental resources for public purposes; agreements' public purpose was opening and continued operation of store location in center, and closure of store location made achievement of that public purpose impossible. Tex. Const. art. 3, §§ 52(a), 52-a.

More cases on this issue

[19] **Counties** Limitation on use of funds or credit

Municipal Corporations Donations, gratuities, and charitable purposes

City and county did not retain control over sales taxes generated by retail store location in retail center to ensure that public purposes were met and protect public's investment, for agreements between city, county, and retail center developer that provided use of sales taxes to pay for development of facility in center to house store location, and thus, such agreements were unconstitutional under state constitutional provisions limiting use of governmental resources for public purposes, although agreements restricted use of tax funds and gave city and county right to review documents; absolute and unconditional obligation to pay off facility loan connoted absence of control, and agreements did not give city and county any element of oversight, ability to back out, or any control over center, facility, or loan or lease terms. Tex. Const. art. 3, §§ 52(a), 52-a.

More cases on this issue

[20] **Municipal Corporations** Donations, gratuities, and charitable purposes

The second prong of the three-part test to determine if a governmental entity's use of governmental resources accomplishes a public purpose consistent with state constitutional provisions limiting the use of governmental resources for public purposes requires that the governmental body retain public control over the funds to ensure that the public purpose is accomplished and to protect the public's investment. Tex. Const. art. 3, §§ 52(a), 52-a.

1 Case that cites this headnote

[21] **Municipal Corporations** Donations, gratuities, and charitable purposes

The right to mere document review in an agreement whereby a governmental entity purports to grant use of governmental resources to a private party does not provide authority to address irregularities, which authority would

be one example of the type of control required for such an agreement to be constitutional under the state constitutional provisions limiting the use of governmental resources for public purposes. Tex. Const. art. 3, §§ 52(a), 52-a.

[22] **Counties** Limitation on use of funds or credit

Municipal Corporations Donations, gratuities, and charitable purposes

Agreements between city, county, and developer of retail center that provided use of sales taxes generated by retail store location in retail center to pay for development of facility in center to house store location were unconstitutional at time they were entered into, under state constitutional provisions limiting use of governmental resources for public purposes, and thus, presumption of validity did not apply to resolutions by city and county authorizing them to enter into such economic development agreements, where agreements did not include adequate controls to protect taxpayers, and unconstitutional laws were void ab initio. Tex. Const. art. 3, §§ 52(a), 52-a; Tex. Gov't Code Ann. § 51.003(b)(1); Tex. Loc. Gov't Code Ann. § 51.003(a).

More cases on this issue

[23] **Statutes** Effect of Total Invalidity

Rule generally is that unconstitutional laws are void ab initio.

***174 From the 13th District Court, Navarro County, Texas, Trial Court No. D17-26224-CV, Honorable James E. Lagomarsino, Judge**

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Before Chief Justice Gray, Justice Johnson, and Justice Smith

OPINION

STEVE SMITH, Justice

In this declaratory judgment action, we must determine the constitutionality of certain Agreements between governmental entities, the City of Corsicana and Navarro County, Appellees, and private entities, Corsicana Industrial Foundation, Inc., and Gander Mountain Company, Appellants. Additionally, Appellant JP Morgan Chase Bank, N.A. is a third-party beneficiary of the Agreements. We refer to the Appellants collectively as "Chase." Chase complains of the partial summary judgment rendered in favor of Appellees that resulted in termination of the Agreements. We affirm.

Background

Corsicana Industrial Foundation, Inc., owner of 132 acres, sought to develop a retail center on its land. In 2004, to help facilitate that project, the Foundation entered into separate Retail Center Development Agreements (RCDAs) with the City of Corsicana and Navarro County. The City and County each passed a resolution, signed respectively by the mayor of the City and the Navarro County judge and county commissioners, to enter into the RCDA and incorporated the RCDA into the resolution. The City and County agreed to grant to the Foundation certain ***175** sales tax revenues generated by Gander Mountain, Home Depot, and the other businesses that would be located in the development. The Foundation agreed to use all proceeds solely for the purpose of repayment of debt associated with the construction of a Gander Mountain facility.

Three months after signing the RCDAs, the City, County, Foundation, and Gander Mountain entered into an "Interlocal Agreement." The Interlocal Agreement provided that the City and County determined it is in the public interest to promote the economic development of the Gander Mountain facility and to grant portions of the city and county sales tax to facilitate such economic development.

The Interlocal Agreement specified the amounts of sales taxes to be pledged to the Foundation as security for the loan it was to obtain to construct the Gander Mountain facility. The tax revenue was to be deposited into the Foundation's Sales Tax Fund and applied to the payment of the loan. The yet-to-be-determined lender, now Chase, was named as a third-party beneficiary of the Interlocal Agreement. The Foundation leased the Gander Mountain site to Gander Mountain by a lease dated May 6, 2004. Further, those two parties entered into a Development Agreement pursuant to which the Foundation was obligated to obtain a construction loan to finance construction of the Gander Mountain store. The $10,000,000 loan ultimately obtained by the Foundation in 2005 was secured in part by a pledge of certain portions of the sales taxes granted to the Foundation.

The Gander Mountain store opened for business in August 2004 and closed in 2015. In early 2016, the City and County determined that closing of the Gander Mountain store extinguished the constitutionally permissible public purposes for which they can dedicate public funds. They each passed a resolution to seek relief from the Foundation and Gander Mountain. Pursuant to those resolutions, they filed this declaratory action against Gander Mountain and the Foundation seeking declarations regarding the following five matters:

1. Whether the closing of the Gander Mountain store in Corsicana extinguished the public purposes which authorized the City's and County's grants of public money.

2. Whether the Interlocal Agreement and Retail Center Development Agreements, and the other transaction documents including the Lease and Development Agreement, fail to place sufficient controls on the transaction to ensure that the public purposes for which the original grant was made are carried out.

3. Whether the Retail Center Development Agreements and Interlocal Agreement are unconstitutional, void and/or illegal because they allow public funds to be spent without the necessary controls in place to ensure the public purposes are carried out.

4. Whether it would be unconstitutional and/or illegal (and a void act) for the City and County to continue to grant sales tax to pay off the loan when public purposes are no longer being served and the Gander Mountain facility is no longer open.

5. Whether the Interlocal Agreement and Retail Center Development Agreements are unconstitutional, void and/or illegal to the extent they purport to require the City and County to grant sales tax revenues to pay off the loans when the public purposes are no longer being served.

The Foundation and Gander Mountain filed counterclaims against the City and the County, seeking declaratory relief regarding ***176** the City's and County's obligations. Also, the Foundation and Gander Mountain filed cross-claims against each other regarding the lease. Chase filed a plea in intervention seeking, in pertinent part, declaratory relief regarding the construction of the provisions of the constitution involved in this dispute. The City and County amended their petition, seeking declaratory judgment against Chase.

In February 2017, the City and the County filed their motion for partial summary judgment asserting they are entitled to summary judgment regarding their requests for declaratory relief. The following month, Gander Mountain filed a Chapter 11 petition for bankruptcy. The bankruptcy court modified the automatic stay, allowing the City and County to proceed to final hearing on their pending motion for summary judgment. It further provided that, if the City and County prevail on the summary judgment motion, the trial court could take steps necessary to enter an appealable final judgment. [1] In July 2017, the trial court granted the motion for partial summary judgment, rendering a declaratory judgment in favor of the City and County. The following month, the trial court severed the City's and County's claims against the Foundation, Gander Mountain, and Chase, and the counterclaims against the City and County, from the remaining claims asserted by and between Gander Mountain, the Foundation, and Chase. [2] The City and County non-suited their claim for attorney's fees. The trial court signed a final judgment on November 7, 2017 rendering declaratory judgment in favor of the City and County and ordering that Gander Mountain, the Foundation, and Chase take nothing on their counterclaims against the City and the County.

1 Thereafter, the City and County filed their second amended petition and first amended motion for summary judgment, to which Chase and Gander Mountain objected as violative of the bankruptcy court's order partially lifting the stay. The parties entered into a Rule 11 agreement providing that the City and County would withdraw their second amended petition and first amended motion for partial summary judgment. Accordingly, the City's and County's first amended original petition and initial motion for partial summary judgment are the live pleadings.

2 The claims between Gander Mountain, the Foundation, and Chase are not part of this appeal.

Specifically, the trial court declared that the closing of the Gander Mountain store extinguished the public purposes which authorized the City's and County's grants of public money to repay loans taken out by the Foundation to build the Gander Mountain store; the Agreements [3] failed to place sufficient controls on the transaction to ensure that the public purposes for which the original grants of sales tax were made were carried out; the Agreements are unconstitutional because they allow public funds to be spent without the necessary controls in place to ensure that the public purposes which authorized the grants are carried out; it would be unconstitutional for the City and County to continue to grant sales tax proceeds to repay the loan once the Gander Mountain facility was no longer open and no public purpose is being served; and the Agreements are unconstitutional to the extent they purport to require the City and County to grant sales tax proceeds to pay off the loan when the public purposes supporting the grants are no longer being served.

3 Unless otherwise specified, the term "Agreements" refers to the RCDAs and Interlocal Agreement collectively.

Gander Mountain, the Foundation, and Chase filed notices of appeal. Shortly thereafter, they filed a notice of bankruptcy ***177** stay, and this court issued an opinion suspending the appeal pursuant to Texas Rule of Appellate Procedure 8.2. *See* TEX. R. APP. P. 8.2.; *Corsicana Indus. Found. v. City of Corsicana*, No. 10-17-00316-CV, 2017 Tex. App. Lexis 11581 (Tex. App.—Waco Dec. 13, 2017, no pet.) (mem. op.). The Foundation and Chase filed an unopposed motion to reinstate on November 3, 2022 based on the bankruptcy court's order allowing this appeal to proceed. The bankruptcy court also ordered that Gander Mountain shall not participate in this appeal. By order of November 8, 2022, this court reinstated this appeal. *See* TEX. R. APP. P. 8.3. Chase and the Foundation filed an unopposed motion to substitute parties explaining that, in connection with Gander Mountain's bankruptcy, the Foundation assigned all of its rights in this appeal and the underlying lawsuit to Chase. This court granted the motion. Accordingly, Chase now pursues this appeal both individually and as assignee of the Foundation.

Declaratory Judgment

In its sole issue, Chase contends the trial court erred in granting partial summary judgment and rendering a final declaratory judgment in favor of Appellees. In four sub-issues, Chase focuses on determination of the applicable constitutional provision, the effect of the closing of Gander Mountain, whether the Agreements contain sufficient controls to protect taxpayers, and the applicability of a statute requiring the Agreements to be presumed valid.

STANDARD OF REVIEW

[1] **[2]** In reviewing a declaratory judgment, we refer to the procedure for resolution of the issue at trial to determine the applicable standard of review on appeal. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.010; *English v. BGP Int'l, Inc.*, 174 S.W.3d 366, 370 (Tex. App.—Houston [14th Dist.] 2005, no pet.). Thus, declaratory judgments decided by summary judgment are reviewed under the same standards of review that govern summary judgments generally. *Cadle Co. v. Bray*, 264 S.W.3d 205, 210 (Tex. App.—Houston [1st Dist.] 2008, pet. denied).

[3] **[4]** **[5]** We review the trial court's decision to grant summary judgment de novo. *Tex. Mun. Power Agency v. Pub. Util. Comm'n*, 253 S.W.3d 184, 192 (Tex. 2007). The movant for traditional summary judgment has the burden of showing that there is no genuine issue of material fact and it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). Once the movant establishes a right to summary judgment as a matter of law, the burden shifts to the nonmovant to present any evidence raising a genuine issue of material fact, thereby precluding summary judgment. *See City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678-79 (Tex. 1979). Review of a summary judgment requires that the evidence be viewed in the light most favorable to the party against whom the summary judgment was rendered, crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not. *Fielding*, 289 S.W.3d at 848. We indulge every reasonable inference in favor of the non-movant and resolve any doubts in his favor. *City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005).

APPLICABLE LAW

[6] The Texas constitution provides that the Legislature has no power to authorize any county, city, town, or other political corporation or subdivision of the State to lend credit or grant public money or thing of value in aid of, or to any ***178** individual, association, or corporation whatsoever. TEX. CONST. art. III, § 52(a). The Texas Supreme Court has explained that provision means that the Legislature cannot require gratuitous payments to individuals, associations, or corporations. *Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 383 (Tex. 2002). A political subdivision's paying public money is not gratuitous if the political subdivision receives return consideration. *Id.*

Additionally, article III, Section 52-a of the constitution authorizes the legislature to provide for the creation of programs and the making of loans and grants of public money for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment, or the development or expansion of commerce in the state. TEX. CONST. art. III, § 52-a. The Texas Local Government Code authorizes the governing body of a municipality and the commissioners court of a county to establish and administer programs for making loans and grants of public money to promote state or local economic development. TEX. LOC. GOV. CODE ANN. §§ 380.001, 381.004.

Constitutionality of the Agreements

Chase contends that the resolution of this case is governed by article III, Section 52-a of the Texas Constitution which creates an exception to the constitutional prohibition on the lending of public credit or granting of public money by providing that programs fostering economic growth serve a public purpose. Furthermore, the Texas legislature enacted statutes to encourage economic development through grants of public money, including Local Government Code Sections 380.001 and 381.004. To facilitate the development of a new shopping center, Chase's argument continues, the City and County availed themselves of the economic development opportunities afforded by article III, Section 52-a and Sections 380.001 and 381.004. It concludes that "[b]ecause the City and County properly pledged sales tax funds to repay the Foundation's loans under these constitutional and statutory provisions, the [Agreements] granting those funds for economic development are constitutional."

[7] **[8]** Appellees respond by arguing there is a three-part test for determining the constitutionality of the agreements. They rely on a Texas Supreme Court case that considered whether the Texas Workers' Compensation Subsequent Injury Fund and the regulations implementing the fund violate Section 52(a) of the Texas Constitution. *See Tex. Mun. League*, 74 S.W.3d at

384-86. That section is a general prohibition of the use of public money for private purposes. *See Byrd v. City of Dallas*, 118 Tex. 28, 6 S.W.2d 738, 740-41 (1928). Section 52(a) is intended to prevent the gratuitous grant of such funds to any individual, corporation, or purpose. *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 740 (Tex. 1995). Clarifying prior law, *Texas Municipal League* identified a three-part test to determine if a statute accomplishes a public purpose consistent with Section 52(a). The Legislature must: (1) ensure that the statute's predominant purpose is to accomplish a public purpose, not to benefit private parties; (2) retain public control over the funds to ensure that the public purpose is accomplished and to protect the public's investment; and (3) ensure that the political subdivision receives a return benefit. *Tex. Mun. League*, 74 S.W.3d at 384.

In rebuttal, Chase argues that *Texas Municipal League* does not apply because it interpreted Section 52(a), which restricts the use of public money generally, not Section 52-a, which specifically allows use of public money for economic development. ***179** Chase asserts that Section 52-a is the only constitutional provision that applies here; but that if *Texas Municipal League* does apply, the three-prong test has been met.

Applicability of *Texas Municipal League*

The Texas Constitution contains several provisions limiting the use of governmental resources and powers for public purposes. *See* TEX. CONST. art. VIII, § 3 (taxes shall be levied and collected by general laws and for public purposes only); art. III, §§ 50, 51, 52(a) (prohibiting donation or loan or pledge of public moneys or credit to any person, association, or corporation); art. XI, § 3 (forbidding counties and cities from making donations or loans to private corporations); art. XVI, § 6(a), (b) (forbidding any appropriation for private or individual purposes unless authorized by the Texas Constitution and describing parameters of use of public money to aid handicapped persons). Other constitutional provisions provide for exemptions from taxation if public property is used for public purposes. *See id.* art. XI, § 9 (county or municipal property held for public purposes exempt from forced sale and taxation); art. VIII, § 2(a) (public property used for public purposes may be exempt from taxation).

[9] **[10]** **[11]** **[12]** It is for the courts to determine, as a matter of law, what a public purpose is. *Hous. Auth. v. Higginbotham*, 135 Tex. 158, 143 S.W.2d 79, 83 (1940); *see also Davis v. City of Taylor*, 123 Tex. 39, 67 S.W.2d 1033, 1034 (1934). However, where the legislature has declared a certain thing to be for a public use, such declaration of the legislature must be given weight by the courts. *Higginbotham*, 143 S.W.2d at 83. Generally, the objective of a "public purpose" is the promotion of the general prosperity and welfare of residents within a given political subdivision. *See Davis*, 67 S.W.2d at 1034. "[I]f an object is beneficial to the inhabitants and directly connected with the local government it will be considered a public purpose." *Id.* (quoting 6 EUGENE MCQUILLIN, MUNICIPAL CORPS. 292, § 2532 (2d ed. 1928)).

[13] But establishing that the action at issue was implemented for a public purpose does not end the inquiry as to constitutionality. Long before the *Texas Municipal League* decision, when determining the constitutionality of any provision authorizing use of public funds committed in furtherance of some public purpose, courts have considered whether the governmental entity properly supervised and controlled the enterprise. *See Gillham v. City of Dallas*, 207 S.W.2d 978, 983 (Tex. Civ. App.—Dallas 1948, writ ref'd n.r.e.) (held that cold storage facilities serve a public market purpose so long as the city supervises and controls the buildings and business conducted therein). Additionally, in determining the constitutionality of an ordinance that provides for the grant of public money, courts have historically considered whether the governmental entity receives a return benefit. *See Byrd*, 6 S.W.2d at 740-41 (considering whether city's pension plan was gratuitous and in violation of article III, Sections 51, 52; article VIII, Section 3; and article XVI, Section 6). Stated differently, courts require some form of continuing public control to ensure that the governmental entity receives its consideration, that is, accomplishment of the public purpose. *Key v. Comm'rs Court*, 727 S.W.2d 667, 669 (Tex. App.—Texarkana 1987, no pet.) (per curiam) (considering whether county violated article III, Section 52(a) when it transferred projects to a non-profit entity and failed to retain public control).

[14] **[15]** Article III, Section 52-a, the provision Chase relies on, is one of several constitutional provisions limiting the use of ***180** governmental resources for public purposes. Adopted in 1987, it specifically expanded the definition of public purposes to include economic development. *See* Tex. Att'y Gen. Op. No. JM-1255 at *13 (1990).[4] But there is nothing to suggest that Section 52-a was intended to relieve governmental entities from the obligation to prove the same factors required when

determining the constitutionality of government actions involving other constitutional provisions. That is, government entities relying on Section 52-a are still required to show that public resources and powers are used for the direct accomplishment of a public purpose, transactions using such resources and powers contain sufficient controls to ensure the public purpose will be carried out, and the governmental entity receives a return benefit. *Id.* at *15-16; *see also* Tex. Att'y Gen. Op. No. KP-0261 at *5-7 (2019) (applying the *Texas Municipal League* test in construing Local Government Code Section 381.004(b) regarding a commissioner's court's authority to develop and administer economic development programs). We conclude that the determination of the constitutionality of provisions implemented for a public purpose calls for consideration of the same factors regardless of which constitutional provision may be implicated. In its *Texas Municipal League* opinion, the Texas Supreme Court merely restated prior law. *See Tex. Mun. League*, 74 S.W.3d at 384. Accordingly, we reject Chase's argument that the so-called *Texas Municipal League* three-prong test does not apply here.

4 Even though Attorney General opinions are not controlling, they can be persuasive. *Holmes v. Morales*, 924 S.W.2d 920, 924 (Tex. 1996).

Application of *Texas Municipal League*

1) Accomplishment of a Public Purpose

[16] To meet the first requirement of the *Texas Municipal League* test, Appellees must ensure that the predominant purpose of the Agreements is to accomplish a public purpose. *See id.* Economic development has been declared a public purpose. TEX. CONST. art. III, § 52-a; *Higginbotham*, 143 S.W.2d at 83. Undoubtedly, Appellees intended a species of economic development. But the parties disagree as to the precise activity meant by that term. The trial court made no declaration identifying the public purposes that authorized the grant of sales tax proceeds. However, by its determination that the closing of the Gander Mountain store extinguished the public purposes, the trial court necessarily impliedly found as a matter of law that the operation of the Gander Mountain store in Corsicana was a public purpose. *See WesternGeco, L.L.C. v. Input/Output, Inc.*, 246 S.W.3d 776, 783-87 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (examining declarations requested in motion for summary judgment to determine implied declarations made by the trial court when it granted motion).

Chase asserts that the public purpose of the tax grant was the development of a new shopping center, and when the shopping center was developed Appellees' objectives were met. Additionally, it contends, since the tax revenue was to be used for the exclusive purpose of paying the loan that financed the construction of the Gander Mountain facility, the public purpose of the tax incentives was tied to the construction of the building, not the continuous operation of Gander Mountain.

Appellees contend that the grant of tax money was meant to incentivize Gander Mountain's presence in Corsicana which would, in turn, spawn more economic development. Because the facility closed, they argue, Gander Mountain and the ***181** Foundation ceased fulfilling the public purposes for which they received sales taxes. In other words, they contend, and as declared by the trial court, the closing of the Gander Mountain store extinguished the public purposes which authorized Appellees' grants of public money. Instead, they assert, the result is the ongoing grant of public dollars to a defunct business.

a) Evidence

In 2003, the Corsicana Chamber of Commerce sent a letter of intent to the Chief Executive Officer of Gander Mountain outlining a sixteen-million-dollar incentive package based on the opening of a Gander Mountain flagship store in Corsicana. The sixteen million was to go toward the building, fixtures, infrastructure, improvements, and land. In addition, the City of Corsicana would waive permit and hook-up fees and expedite the permitting process. Local banks had given preliminary approval of the incentive package pending finalization of certain aspects of the deal.

The RCDAs provided that the City and County determined it was necessary to enter into the Agreements with the Foundation "to implement certain components of the economic development program." The Foundation agreed to use all of the tax money

it received solely for the purpose of repayment of debt associated with the funding of incentives offered solely to Gander Mountain. Further, each RCDA provided that it shall terminate upon repayment of the debt associated with the Gander Mountain incentive package.

The Interlocal Agreement filled in some details and clarified. It explained that the Foundation entered into a Development Agreement with Gander Mountain to develop a retail facility on a portion of the 132-acre development site. Pursuant to that agreement, the Foundation was obligated to obtain a construction loan for $10 million to finance the construction of a Gander Mountain facility. The terms of that loan were to be mutually acceptable to both Gander Mountain and the Foundation. The loan was to be secured by a pledge of sales tax granted to the Foundation, a first lien security interest on the land and facility, and an assignment of the lease payments under the lease signed by Gander Mountain.

The Interlocal Agreement explained that the City and County determined "it is in the public interest to promote the economic development of the Gander Mountain facility" and grant a specified percentage of sales taxes generated by Gander Mountain and other businesses in the development site "to facilitate such economic development," meaning "the economic development of the Gander Mountain facility." The grants to the Foundation serve as security for the Foundation's construction loan obtained to build the Gander Mountain facility, and the sales tax fund is to be used for the sole and exclusive purpose of paying principal and interest on that loan. The Interlocal Agreement also stated that the City and County shall deposit the sales taxes into the Foundation's sales tax fund "following the completion and opening of Gander Mountain."

In support of their motion for partial summary judgment, Appellees presented affidavits of the city manager and the county judge stating that:

> The purpose of the grant of sales tax was to facilitate the development of the retail center and assist in the implementation of the economic development objectives of the City ... and ... County, including the development of the retail center, the creation of jobs, the establishment of a retail business within the City and County of a type not previously found in Corsicana, the generation of ad valorem tax revenues on the real property, ***182** inventory and equipment and the generation of sales tax revenues from the retail center and other businesses.
>
> ....
>
> The purpose of the grants of sales tax was to make payments on a construction loan, and then a permanent loan that replaced the construction loan.

The language in the affidavits echoed the 2004 agreements. The purpose of the sales tax grants was, generally, to facilitate development of the retail center, and the specific purpose was to repay the debt associated with construction of the Gander Mountain facility.

b) Analysis

[17] All of the promised tax revenue, some of which was generated by other stores in the shopping center, was meant to pay for construction of the Gander Mountain facility. The agreements at issue did not provide for the grant of tax revenue to finance any other buildings or help any other businesses. Had the agreements provided that the tax grants would be used to build the entire retail center, rather than just one store, that might indicate the parties intended that the public purpose of the agreements was to build the entire retail center. Tying the obligation to pay to the construction of one specific store in the retail center signals that the public purpose meant to be achieved by these agreements was to have a Gander Mountain store in Corsicana that was open for business.

Furthermore, Appellees' obligation to help finance the construction of the Gander Mountain facility by contributing a portion of the sales tax revenue hinged on the opening of that store. If Gander Mountain had never opened, Appellees would not have

been required to contribute to the sales tax fund at all. If, as Chase argues, the Foundation met its obligation and the public purpose was achieved when the building was constructed, then construction of the building should have triggered Appellees' requirement to pay. Where payment is tied to opening the store, it follows that payment is tied to its continued operation.

In reviewing a summary judgment, we must indulge every reasonable inference in favor of the non-movant. *See City of Keller*, 168 S.W.3d at 824. Based on the language in the Agreements, it is not reasonable to infer that the parties intended that the public purpose to be achieved was the development of the entire shopping center as Chase would have us do. The record supports the trial court's implied finding that the public purposes which authorized Appellees' grants of public money was the opening and continued operation of the Gander Mountain store.

c) Extinguishment of the Public Purpose

[18] Next, we consider Chase's argument that, contrary to the trial court's declarations, the closure of the Gander Mountain store did not extinguish the public purpose of the grants or render the Agreements void and unconstitutional. In support of this argument Chase contends that the public purpose of the tax grants was to develop a retail shopping center, it was developed, and Appellees received the benefit of their bargain. Chase also asserts that Appellees' unconditional payment obligations are not contingent on the Gander Mountain store remaining open. Relying on each RCDA's provision that it would terminate upon repayment of the debt associated with the Gander Mountain incentive package, Chase asserts that since the multimillion-dollar debt to Chase has not been fully repaid, the trial court has judicially re-written the Agreements.

As explained above, the record supports the trial court's implied determination that ***183** development of the shopping center as a whole was not the public purpose behind the tax grants. But rather, the public purposes of the sales tax grants were to secure the presence and operation of a Gander Mountain store in Corsicana. Thus, during the time period Gander Mountain was open, the public purposes of the Agreements were being achieved. Accordingly, when Gander Mountain closed it was no longer possible to accomplish the public purposes of ensuring the presence and operation of Gander Mountain in Corsicana. The unpaid debt owed on the building does not have any bearing on the determination of the constitutionality of the Agreements. Thus, describing the determination that those Agreements are unconstitutional as an act of judicially re-writing the Agreements is a mischaracterization. The record supports the trial court's determination that the closure of Gander Mountain extinguished the public purposes of the tax grants. Accordingly, the first prong of the *Texas Municipal League* test is no longer being met. *See Tex. Mun. League*, 74 S.W.3d at 384.

2) Public Control

[19] **[20]** The second prong of the *Texas Municipal League* test requires that the governmental body retain public control over the funds to ensure that the public purpose is accomplished and to protect the public's investment. *Id.* Chase contends that Appellees controlled the economic development project and ensured the public purpose was accomplished by requiring the Foundation to obligate itself contractually to perform a function beneficial to the public. Chase asserts that the Agreements contain numerous controls "with respect to both the spending of public funds and the repayment of Chase's loan" to ensure the public purpose was carried out by the sales tax grant. Those purported controls are as follows:

*The grant of sales tax is subject to the limitations set forth in the Agreements.

*None of the money will come from ad valorem taxes; funded solely from sales taxes.

*All of the money will be used solely to repay debt associated with Gander Mountain incentives.

*Said incentives are limited to the construction of real property.

*The Foundation will provide written reports tracking the funds.

*Appellees have the right to request information regarding construction.

*The Foundation must deposit grant proceeds into a separate account and use all interest earned by that account to pay the debt associated with the incentive.

*The Foundation is prohibited from using the funds for any other purpose.

*The Foundation is obligated to obtain a loan secured by sales tax revenue.

*Appellees must segregate the sales taxes pledged and deposit them into the separate account maintained by the Foundation.

*The grants are limited to sales taxes actually received from the Comptroller.

*The Foundation must provide to Appellees any information reasonably requested regarding construction.

Based on the foregoing provisions in the Agreements, Chase asserts the Agreements contain the following safeguards:

(a) Appellees retain control of the sales taxes until they are transferred to a Foundation account that exists only to repay the loan;

(b) The Foundation shall use 100% of the sales taxes to pay the principal and interest of the loan;

***184** (c) The loan can only be used to fund and finance the construction of the Gander Mountain store;

(d) The grant of sales taxes is contingent on sales taxes actually being generated from the stores in the retail center; and

(e) The sales tax grants are funded only after the sales taxes are actually received by Appellees from the State.

Appellees assert that "control," as used in this context, means that the government must retain sufficient rights to ensure that it can compel compliance, now and in the future, to ensure a public purpose is achieved. They contend that the transaction documents must contain actual benchmarks, rights, and remedies to ensure that the purpose is achieved, so that the transaction is not a mere unconditional grant of funds.

Control is defined as the power or authority to manage, direct, or oversee. *Control*, BLACK'S LAW DICTIONARY (11th ed. 2019). A public entity may retain public control over the use of its resources by entering into an agreement or contract that imposes an obligation on the recipient to perform a function benefiting the public. *See* Tex. Att'y Gen. Op. No. KP-0234 (2019) at *8-10. But the agreement should also contain some element of oversight by the governmental entity to ensure the public purpose is met. *Id.* Additionally, the agreement should provide rights or remedies in favor of the governmental entity if the public purpose is no longer being achieved. *See* Tex. Att'y Gen. Op. No. KP-0423 (2023) at *5.

Terms that would constitute governmental control could include requiring a minimum term of occupancy or continued operations, occupancy by a specific tenant or business, and the creation and maintenance of employment positions; a recapture provision stating that if the private entity does not meet required performance standards, the governmental entity will have a right to seek reimbursement of the incentives that were provided; and an authorization for the governmental entity to terminate or modify the agreement if the recipient fails to comply with any terms of the agreement. *See* TEXAS MUNICIPAL LEAGUE ECONOMIC DEVELOPMENT HANDBOOK 148 (Amber McKeon-Mueller ed., 2022).

As set out above, Chase points out some safeguards in the Agreements. Where the money comes from and where it goes is specified. Importantly, the Foundation's use of the tax grant funds is restricted to repayment of the loan on the Gander Mountain facility. However, the Agreements do not provide rights or remedies in favor of Appellees should the Foundation fail to comply with these requirements. In other words, there are directions for funneling the money to repay the construction loan that would fulfill the public purposes, opening and operating Gander Mountain, but nothing in the Agreements addresses

Appellees' recourse if the public purposes failed, that is, if Gander Mountain closed. The Agreements focus on the money trail. They lose sight of the public purposes.

In furtherance of the public purpose of bringing a Gander Mountain store to Corsicana, the Agreements reference the loan on a building, the intended occupant of which was Gander Mountain. The RCDAs specifically say that the obligation to make the payments "shall be absolute and unconditional," and Appellees "shall make such payment without abatement, diminution or deduction regardless of any cause or circumstances whatsoever" until the loan is paid off.[5] The Interlocal Agreement ***185** provides that it will remain in effect until the latter to occur of the expiration or earlier termination of Gander Mountain's twenty-year lease or the full and final payment of all principal and interest on the loan. The absolute and unconditional obligation to pay off the loan connotes the absence of control. Furthermore, the imperative to pay required by the Agreements dovetails with the lease term providing that Gander Mountain is not required to continuously operate the premises "throughout or during any portion of the term" of the lease to leave no doubt that Appellees' obligation remains even if Gander Mountain is not doing business in Corsicana.

5 A prior version of the Agreements provided that"[t]his agreement shall terminate upon repayment of the debt associated with the incentive package or cessation of operations of Gander Mountain." The record does not include evidence indicating why that last phrase was removed or identifying the party advocating for its removal.

The Agreements provide no recourse for Appellees if Gander Mountain vacates the store before the end of its lease or before the loan is paid in full. If the building is empty, or another business leases the building, that in no way advances the public purpose of bringing Gander Mountain to Corsicana. Yet, as illustrated by this case, there is no termination provision in the Agreements that Appellees can employ if they determine the public purposes are no longer being achieved. *See* Tex. Att'y Gen. Op. No. KP-0234, at *****9-10.

[21] We have been unable to discern any provisions in the Agreements that constitute an element of oversight by Appellees to ensure the public purposes are met, nor has Chase identified any. The right to mere document review does not provide authority to address irregularities. There is no provision allowing Appellees to back out for any reason, to change any terms, or seek reimbursement. The Agreements do not give Appellees any control over the shopping center, the Gander Mountain building, or the terms of either the loan or the lease.

We conclude that the Agreements do not include provisions sufficient to protect taxpayer money and ensure the public purposes are being met. Accordingly, the second prong of the *Texas Municipal League* test, which requires that the governmental entity retain control over the funds to ensure the public purposes are met and to protect the public's investment, has not been met here. *See Tex. Mun. League*, 74 S.W.3d at 384.

Appellees did not assert in their summary judgment that the third prong, requiring them to receive a return benefit, was not met. Thus, we need not address that prong.

Summation

Appellees were entitled to enter into agreements with the Foundation to further economic development in Corsicana. *See* TEX. CONST. art. III, § 52-a; TEX. LOC. GOV. CODE ANN. §§ 380.001, 381.004. However, because their Agreements failed to include provisions allowing Appellees to retain control over the funds to ensure that the public purposes are accomplished and to protect the public's investment, and because Gander Mountain's closing extinguished the public purposes for which the tax grants were created, the Agreements are not constitutional. *See Tex. Mun. League*, 74 S.W.3d at 384.

Presumption of Validity

[22] Chase contends that the 2004 resolutions authorizing Appellees to enter into the economic development agreements cannot be challenged due to application of Section 51.003(a) of the Texas Local Government Code. That statute provides that a

governmental act or proceeding of a ***186** municipality is conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with all applicable statutes and ordinances if a lawsuit to annul or invalidate the act or proceeding was not filed on or before the third anniversary of the effective date of the act or proceeding. *See* TEX. LOC. GOV. CODE ANN. § 51.003(a).

[23] Section 51.003(b)(1) provides that Section 51.003(a) does not apply to an act or proceeding that was void at the time it occurred. *Id.* § 51.003(b)(1). Here, because the parties' Agreements did not include adequate controls to protect taxpayers, the Agreements are unconstitutional. *See Tex. Mun. League*, 74 S.W.3d at 384. The rule generally is that unconstitutional laws are void ab initio. *See Ex parte E.H.*, 602 S.W.3d 486, 494 (Tex. 2020). Therefore, there is no applicable presumption of validity pursuant to Section 51.003(a). *See* TEX. LOC. GOV. CODE ANN. § 51.003(b)(1).

Conclusion

The Agreements are unconstitutional and therefore not binding on the parties. *See Tex. Mun. League*, 74 S.W.3d at 384. Accordingly, Appellees met their burden to show there is no genuine issue of material fact and they are entitled to judgment as a matter of law. *See Fielding*, 289 S.W.3d at 848. The trial court did not err in granting partial summary judgment and rendering a final declaratory judgment in favor of the City of Corsicana and Navarro County. We overrule Chase's sole issue.

We affirm the trial court's judgment.

(Chief Justice Gray dissenting.)

DISSENT

TOM GRAY, Chief Justice

This case involves an argument about the validity and interpretation of a written contract in which sales taxes from a business development were to be paid to the developer to be used for loan repayments. The dispute was resolved via a motion for summary judgment. There is at least a fact question of whether the government entities, the City of Corsicana and Navarro County, received what they contracted for with the Corsicana Indust. Found., et al. v. City of Corsicana Page 2 Corsicana Industrial Foundation, Inc., the developer, for the benefit of a third party, the lender, Chase Bank. All parties enjoyed the benefits of the contract for 10 years with Gander Mountain in operation as the business tenant anchoring the development and continue to do so with the other retail shops that the development drew in as it was designed to do and which was the purpose of the design.

Gander Mountain, the anchor tenant in the development, went bankrupt. It appears that the City and County no longer like the deal they made because they failed to have a provision in the contract for this contingency. It may now look like a bad deal, but they had no complaints for the first decade. The question, both factual and legal, is what is the impact of the bankruptcy and thus cessation of business of the anchor tenant ten years into the operation of the agreement. During negotiations, the parties had specifically removed the clause from the written contract that would have yielded the result that is now judicially written back into the contract. I do not believe the law or the procedural posture of the case allows that result.

The Court also determines that the constitutionally necessary control was not maintained over the use of the tax revenue. But the City and County maintained absolute control over the use of the funds by making sure they were used only for a single purpose, repayment of the debt incurred to build the building that draws the businesses which generate and pay the ***187** sales tax. I cannot imagine how the City and County could have established any more stringent control over the use of the funds. [1]

1 I note that unlike many economic development incentives that provide for ad valorum tax abatements, this agreement was different. The genius of the agreements here is that if there are no sales taxes generated, there are no incentives paid. The incentive and payment is, thus, self-regulating, easy to calculate, easy to confirm compliance, and easy to enforce if violated. Unlike the ad valorum abatement incentives that are tied to employment levels, payroll, or other metrics, the City and County continue to enjoy the substantial benefits for which they contracted, including the collection of ad valorum taxes on the entire infrastructure even though part of it is vacant and, thus, not generating any sales taxes (so it is also not generating an incentive payment). See the affidavits quoted on pages 17–18 of the Court's opinion.

The Court has declared the contract was unconstitutional from its inception. Based on this Court's holding, the City and County should have sued for this declaration immediately upon completion of the building or occupancy by Gander Mountain before the first cent of tax revenue was paid over to the Foundation. And based on the Court's holding, the City and County never owed anything; thus, the taxpayers will be expecting to recover the funds illegally turned over to the Foundation from those officials responsible for authorizing those illegal payments.

From a policy perspective, this holding will be the death knell of this type of economic development agreement. No creditor will make a loan in reliance on a dedication of sales tax to repay the loan if the taxing entities can have the contract determined to be unconstitutional after payments have been made for 10 years. There are many who criticize the government for trying to pick winners and losers in the business place by choosing to use tax incentives. They will like the result. But I do not think the law or the procedural posture of this case supports it.

Accordingly, I respectfully dissent to the Court's opinion and judgment.

All Citations

685 S.W.3d 171

TAB 2

COURT OF APPEALS
TENTH DISTRICT OF TEXAS

January 11, 2024

No. 10-17-00316-CV

CORSICANA INDUSTRIAL FOUNDATION, INC., GANDER MOUNTAIN COMPANY AND JP MORGAN CHASE BANK, N.A.

v.

CITY OF CORSICANA AND NAVARRO COUNTY

From the 13th District Court
Navarro County, Texas
Trial Court No. D17-26224-CV

JUDGMENT

This court has reviewed the briefs of the parties and the record in this proceeding as relevant to the issues raised and finds no reversible error is presented. Accordingly, the trial court's judgment signed on November 7, 2017 is affirmed.

It is further ordered that the City of Corsicana and Navarro County are awarded judgment against Corsicana Industrial Foundation, Inc. and JP Morgan Chase Bank, N.A., jointly and severally, for the City of Corsicana's and Navarro County's appellate costs that were paid, if any, by the City of Corsicana and Navarro County; and all unpaid appellate court costs, if any, are taxed against Corsicana Industrial Foundation, Inc. and JP Morgan Chase Bank, N.A., jointly and severally.

A copy of this judgment will be certified by the Clerk of this Court and delivered to the trial court clerk for enforcement.

PER CURIAM

Beverly Williams, Clerk

By: Kim Wernet, Deputy Clerk

Panel consists of Chief Justice Gray and Justices Johnson and Smith. Opinion delivered by Justice Smith. Chief Justice Gray dissenting.

TAB 3

FILED

2017 NOV -7 AM 11:59

JOSHUA B. TACKETT
DISTRICT CLERK
NAVARRO COUNTY, TX
DEPUTY

CAUSE NO. D17-26224-CV

CITY OF CORSICANA and NAVARRO COUNTY Plaintiffs, v. GANDER MOUNTAIN COMPANY and THE CORSICANA INDUSTRIAL FOUNDATION, INC. Defendants, v. JP MORGAN CHASE BANK, N.A. Intervenor.	§	IN THE DISTRICT COURT 13TH JUDICIAL DISTRICT NAVARRO COUNTY, TEXAS

FINAL JUDGMENT

On the 20th day of June, 2017, the Court heard the Motion for Partial Summary Judgment filed in this Cause by the City of Corsicana ("the City") and Navarro County ("the County"), and the Court, after examining the pleadings timely filed, the Motion for Partial Summary Judgment, the responses filed by Gander Mountain Company ("Gander Mountain"), The Corsicana Industrial Foundation, Inc. ("the Foundation") and JP Morgan Chase Bank, N.A., the summary judgment evidence submitted for consideration and after hearing the arguments of counsel, determined that the City and County are entitled to summary judgment. The Court entered an order granting the Motion for Partial Summary Judgment on July 19, 2017. The Court later entered an order on August 30, 2017, severing the claims which were the subject of the Motion for Partial Summary Judgment from the other claims made by and between the parties in this case and assigning the severed claims to cause no. D17-26224-CV, all as set forth in the Order of Severance. Based on the foregoing:

IT IS THEREFORE ORDERED, ADJUDGED AND DECLARED that the closing of the Gander Mountain store extinguished the public purposes which authorized the City's and County's grants of public money to repay loans taken out by the Foundation to build the Gander Mountain store.

IT IS FURTHER ORDERED, ADJUDGED AND DECLARED that the Retail Center Development Agreements and the Interlocal Agreement which are the subject of this action, and the other transaction documents including the Lease, failed to place sufficient controls on the transaction to ensure that the public purposes for which the original grants of sales tax were made were carried out.

IT IS FURTHER ORDERED, ADJUDGED AND DECLARED that the Retail Center Development Agreement and the Interlocal Agreement that grant City and County Sales Tax are unconstitutional, void and illegal because they allow public funds to be spent without the necessary controls in place to ensure that the public purposes which authorized the grants are carried out.

IT IS FURTHER ORDERED, ADJUDGED AND DECLARED that it would be unconstitutional, and a void and an illegal act for the City and the County to continue to grant sales tax proceeds to repay the loan(s) once the Gander Mountain facility was no longer open and no public purpose is being served.

IT IS FURTHER ORDERED, ADJUDGED AND DECLARED that the Retail Center Development Agreements and the Interlocal Agreement which are the subject of this litigation are unconstitutional, void and illegal to the extent that they purport to require the City and County to grant sales tax proceeds to pay off the loan when the public purposes supporting the

grants are no longer being served.

IT IS FURTHER ORDERED, ADJUDGED AND DECLARED that Gander Mountain Company, Inc., The Corsicana Industrial Foundation, Inc. and JP Morgan Chase Bank, N.A. take nothing on their claims against the City and County and that they obtain no declaratory relief with respect to their claims against the City and County; provided, however, this Final Judgment does not address, resolve, or affect: (a) JPMorgan Chase Bank, N.A.'s Plea in Intervention, as amended from time to time, insofar as it addresses issues or claims other than the constitutionality, voidance and illegality of the Retail Center Development Agreement and the Interlocal Agreement as applied to JPMorgan Chase Bank, N.A., The Corsicana Industrial Foundation, Inc., and Gander Mountain Company; (b) Gander Mountain Company's Cross-Claim against The Corsicana Industrial Foundation, Inc., as amended from time to time, addressing issues or claims other than the constitutionality, voidance and illegality of the Retail Center Development Agreement and the Interlocal Agreement as applied to JPMorgan Chase Bank, N.A., The Corsicana Industrial Foundation, Inc., and Gander Mountain Company; or (c) The Corsicana Industrial Foundation, Inc.'s Cross-Claim against Gander Mountain Company, as amended from time to time, addressing issues or claims other than the constitutionality, voidance and illegality of the Retail Center Development Agreement and the Interlocal Agreement as applied to JPMorgan Chase Bank, N.A., The Corsicana Industrial Foundation, Inc., and Gander Mountain Company.

This Final Judgment disposes of all claims and causes of action by and between the City of Corsicana and Navarro County, on the one hand, and Gander Mountain Company, Inc., The Corsicana Industrial Foundation, Inc. and JP Morgan Chase Bank, N.A., on the other.

This Judgment is final and appealable. All relief not expressly granted is denied.

11/7/17

Judge Presiding

TAB 4

CAUSE NO. D16-24705-CV

CITY OF CORSICANA and NAVARRO COUNTY Plaintiffs	§	IN THE DISTRICT COURT
V.	§	
GANDER MOUNTAIN COMPANY and THE CORSICANA INDUSTRIAL FOUNDATION, INC. Defendants	§	13TH JUDICIAL DISTRICT
V.	§	
JP MORGAN CHASE BANK, N.A. Intervenor.	§	NAVARRO COUNTY, TEXAS

2017 JUL 20 PM 2:11
JOSHUA B. TACKETT
DISTRICT CLERK
NAVARRO COUNTY, TX
BY _____ DEPUTY

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT

On this the 19th day of July, 2017, came on to be heard the Motion For Partial Summary Judgment of the City of Corsicana and Navarro County and the Court, having considered the Motion and supporting evidence, the Responses and supporting evidence, and the arguments of counsel, finds it should be in all things GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that this Motion for Partial Summary Judgment of the City of Corsicana and Navarro County is hereby GRANTED.

Signed this the 19th day of July, 2017.

Judge Presiding

TAB 5

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RESOLUTION

A RESOLUTION FROM NAVARRO COUNTY APPROVING A RETAIL CENTER DEVELOPMENT AGREEMENT BETWEEN NAVARRO COUNTY AND THE CORSICANA INDUSTRIAL FOUNDATION

WHEREAS, the County realizes the economic advantages for development of a retail center on the 132 acre business park site located at the intersection of IH 45 and US 287; and

WHEREAS, the Corsicana Industrial Foundation was created to facilitate growth of the County and economic development of the area; and

WHEREAS, the County finds it necessary and convenient to enter into a Retail Center Development Agreement, pursuant to Chapter 381.004 of the Texas Local Government Code, and Section 2303.505 of the Government Code with the Corsicana Industrial Foundation to implement certain components of the economic development program as described in Attachment "A"; and

WHEREAS, the parties hereto find it necessary and advisable to enter into this Agreement to evidence the duties and responsibilities of the respective parties with respect to a grant to be made by Navarro County to the Corsicana Industrial Foundation to facilitate the development of the Retail Center and assist in the implementation of the economic development objectives of Navarro County.

NOW, THEEFORE, BE IT RESOLVED by the Navarro County Commissioners Court of Navarro County, Texas, that Navarro County enter into a Retail Center Development Agreement with the Corsicana Industrial Foundation: said agreement attached hereto and made a part hereof.

PASSED AND APPROVED this 1st day of March, 2004

Alan Bristol
Navarro County Judge

Kit Herrington
Commissioner, Precinct #1

Olin Nickelberry
Commissioner, Precinct #2

William Baldwin
Commissioner, Precinct #3

John Paul Ross
Commissioner, Precinct #4

Attest:
Sherry Dowd, County Clerk

RESOLUTION NO. 2008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORSICANA, TEXAS, APPROVING A RETAIL CENTER DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CORSICANA AND THE CORSICANA INDUSTRIAL FOUNDATION.

WHEREAS, the City realizes the economic advantages for development of a retail center on the 132 acre business park site located at the intersection of IH 45 and US 287; and

WHEREAS, the Corsicana Industrial Foundation was created to facilitate growth of the City and economic development of the area; and

WHEREAS, the City finds it necessary and convenient to enter into a Retail Center Development Agreement, pursuant to Chapter 380 of the Texas Local Government Code, with the Corsicana Industrial Foundation to implement certain components of the economic development program as described in Attachment A; and

WHEREAS, the parties hereto find it necessary and advisable to enter into this Agreement to evidence the duties and responsibilities of the respective parties with respect to a grant to be made by the City to the Corsicana Industrial Foundation to facilitate the development of the Retail Center and assist in the implementation of the economic development objectives of the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Corsicana, Texas, that the City Manager is authorized to act on behalf of the City and execute and enter into a Retail Center Development Agreement with the Corsicana Industrial Foundation: said agreement attached hereto and made a part hereof.

PASSED and **APPROVED** this 3rd day of **February, 2004.**

Jule Waterman, Mayor

ATTEST:

Cathy McMullan, City Secretary

APPROVED AS TO FORM:

Paige Glicksman, City Attorney

AH-
Dennis.
mark

Exhibit 6

TAB 6

RETAIL CENTER DEVELOPMENT AGREEMENT

THIS RETAIL CENTER DEVELOPMENT AGREEMENT, dated as of February 3, 2004, executed by and between the City of Corsicana, Texas (the "City") and The Corsicana Industrial Foundation, Inc. (the"Foundation").

W I T N E S S E T H:

WHEREAS, the City realizes the economic advantages for development of a retail center on the 132 acres business park site located at the intersection of IH 45 and US 287; and

WHEREAS, the Foundation was created to facilitate growth of the City and economic development of the area; and

WHEREAS, the City finds that it is necessary and convenient to enter into this Agreement, pursuant to Chapter 380 Texas Local Government Code, with the Foundation to implement certain components of the economic development program as described in Attachment A; and

WHEREAS, the parties hereto find it necessary and advisable to enter into this Agreement to evidence the duties and responsibilities of the respective parties with respect to a grant to be made by the City to the Foundation to facilitate the development of the Retail Center and assist in the implementation of the economic development objectives of the City.

NOW THEREFORE, in consideration of the covenants and agreements herein made, and subject to the conditions herein set forth, the City and the Foundation contract and agree as follows:

ARTICLE I

GRANT

Section 1.1. Grant. The City hereby agrees to grant to the Foundation 1.5% of the sales tax generated by Gander Mountain and Home Depot and .75% of the sales tax generated from the remaining business located on the 132 acre tract described in attached Exhibit B. In entering into this Agreement, it is the intent of the City that the Grant be made available to the Foundation subject to the limitations set forth herein. The City hereby declares that none of the moneys comprising the Grant have or shall come from the ad valorem taxes of the City. The Grant shall be funded on the date of delivery of sales tax to the City by the State of Texas. The Grant shall be funded solely from the gross revenues derived by the City from the sales tax as define herein.

Section 1.2. Place of Payment. The City shall make the Grant directly to the Foundation at the address provided in Section 3.1.

Section 1.3. Obligations Unconditional. The obligations of the City to make payment required of the City under this Agreement shall be absolute and unconditional, and the City shall make such payment without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the City may have or assert against the Foundation or any other person.

ARTICLE II

OBLIGATIONS OF THE CITY AND THE FOUNDATION REGARDING USE OF THE GRANT

Section 2.1. Use of Moneys by Foundation. The Foundation agrees to use all of the moneys from the Grant solely for the purpose of repayment of debt associated with the funding of incentives offered

solely to Gander Mountain and in accordance with the terms and conditions set forth in the Ordinance and this Agreement.

Section 2.2. Funding of Improvements. The Foundation shall use 100 percent of the proceeds of the Grant to repay debt associated with incentives offered solely to Gander Mountain consistent with the terms of the financing documents executed and delivered by the Foundation in connection with the loan to fund said incentives. Said incentives shall be limited to the construction of real property. The Foundation agrees to provide to the City a written reports documenting use of the funds and acknowledgement of the lending institution receipt of the funds. In addition, the City may request from the Foundation any additional information to determine the status of the construction of, and estimated date of completion and opening of, the Retail Center. The Foundation shall provide such reports no less often than quarterly, and the first report shall be delivered to the City by no later than 90 days after the date the Grant is funded by the City.

Section 2.3. Funds and Accounts. The Foundation has established the Grant Fund (the "Fund"), and the Foundation shall deposit all of the Grant proceeds in the Fund, pending the expenditure of such proceeds. The Grant Fund shall be established as a separate account held by the Foundation. All interest earned by this account shall be used to pay the debt associated with the incentive offered solely to Gander Mountain. Funds from this account may not be used for any other purpose.

ARTICLE III

MISCELLANEOUS

Section 3.1. Notice. Any notice required by this Agreement shall be deemed to be properly served if hand-delivered, with evidence of acceptance of delivery by the receiving party, or by deposit in the U.S. mail, first class postage prepaid, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner described above.

If intended for the City, to:

Mail: Physical Delivery:
City Manager
City of Corsicana
200 North 12th Street
Corsicana, Texas 75110
903-654-4803

If intended for the Foundation, to:

Mail: Physical Delivery:
Chief Executive Officer
Corsicana Chamber of Commerce
120 North 12th Street
Corsicana, Texas 75110
903-874-4731

Section 3.2. Severability. If any clause, provision, or section of this Agreement should be held illegal or invalid by any court of competent jurisdiction, the invalidity of such clause, provision, or section shall not affect any of the remaining clauses, provisions, or sections hereof and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision, or section had not been contained herein. In case any agreement or obligation contained in this Agreement should be held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of

the City and the Foundation, as the case may be, to the full extent permitted by law.

Section 3.3 Termination. This agreement shall terminate upon repayment of the debt associated with the incentive package.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in multiple counterparts, each of which shall be considered an original for all purposes, as of the day and year first set out above.

CITY OF CORSICANA, TEXAS

By _____
City Manager

ATTEST:

_____ (SEAL)
City Secretary

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____

By _____
President, Corsicana Industrial Foundation

_____
Secretary, Corsicana Industrial Foundation (SEAL)

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RETAIL CENTER DEVELOPMENT AGREEMENT

THIS RETAIL CENTER DEVELOPMENT AGREEMENT, dated as of March 1, 2004, executed by and between Navarro County "the "County") and The Corsicana Industrial Foundation, Inc. (the "Foundation").

WITNESSETH:

WHEREAS, the County realizes the economic advantages for development of a retail center on the 132 acres business park site located at the intersection of IH 45 and US 287; and

WHEREAS, the Foundation was created to facilitate growth of the County and economic development of the area; and

WHEREAS, the County finds that it is necessary and convenient to enter into this Agreement, pursuant to Chapter 381.004 of the Texas Local Government Code, and Section 2303.505 of the Government Code with the Foundation to implement certain components of the economic development program; and

WHEREAS, the parties hereto find it necessary and advisable to enter into this Agreement to evidence the duties and responsibilities of the respective parties with respect to a grant to be made by the County to the Foundation to facilitate the development of the Retail Center and assist in the implementation of the economic development objectives of the County.

NOW THEREFORE, in consideration of the covenants and agreements herein made, and subject to the conditions herein set forth, the County and the Foundation contract and agree as follows:

ARTICLE I

GRANT

Section 1.1. Grant. The County hereby agrees to grant to the Foundation .5 % of the sales tax generated by Gander Mountain and Home Depot and .25% of the sales tax generated from the remaining business located on the 132 acre tract described in attached Exhibit "A". In entering into this Agreement, it is the intent of the County that the Grant be made available to the Foundation subject to the limitations set forth herein. The County hereby declares that none of the moneys comprising the Grant have or shall come from the ad valorem taxes of the County. The Grant shall be funded on the date of delivery of sales tax to the County from the

State of Texas. The Grant shall be funded solely from the gross revenues derived by the County from the sales tax as defined herein.

Section 1.2. Place of Payment. The County shall make the Grant directly to the Foundation at the address provided in Section 3.1.

Section 1.3. Obligations Unconditional. The obligations of the County to make payment required of the County under this Agreement shall be absolute and unconditional, and the County shall make such payment without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the County may have or assert against the Foundation or any other person.

ARTICLE II

OBLIGATIONS OF THE CITY AND THE FOUNDATION REGARDING USE OF THE GRANT

Section 2.1. Use of Moneys by Foundation. The Foundation agrees to use all of the moneys from the Grant solely for the purpose of repayment of debt associated with the funding of incentives offered solely to Gander Mountain and in accordance with the terms and conditions set forth in the Ordinance and this Agreement

Section 2.2. Funding of Improvements. The Foundation shall use 100 percent of the proceeds of the Grant to repay debt associated with incentives offered solely to Gander Mountain consistent with the terms of the financing documents executed and delivered by the Foundation in connection with the loan to fund said incentives. Said incentives shall be limited to the construction of real property. The Foundation agrees to provide to the County a written report documenting use of the funds and acknowledgement of the lending institution receipt of the funds. In addition, the County may request from the Foundation any additional information to determine the status of the construction of, and estimated date of completion and opening of, the Retail Center. The Foundation shall provide such reports no less often than quarterly, and the first report shall be delivered to the County no later than 90 days after the date the Grant is funded by the County.

Section 2.3. Funds and Accounts. The Foundation has established the Grant Fund (the "fund"), and the foundation shall deposit all of the Grant proceeds in the Fund, pending the expenditure of such proceeds. The Grant Fund shall be established as a separate account held by the Foundation. All interest earned by this account shall be used to pay the debt associated

with the incentive offered solely to Gander Mountain. Funds from this account may not be used for any other purpose.

ARTICLE III

MISCSELLANEOUS

Section 3.1. Notice. Any notice required by this Agreement shall be deemed to be properly served if hand-delivered, with evidence of acceptance of delivery by the receiving party, or by deposit in the U.S. mail, first class postage prepaid, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner described above.

If intended for the County, to:

Mail: Physical Delivery:
County Judge
Navarro County
300 West 3rd. Avenue
Corsicana, Texas 75110
903-654-3025

If intended for Foundation, to:

Mail: Physical Delivery:
Chief Executive Officer
Corsicana Chamber of Commerce
120 North 12th Street
Corsicana, Texas 75110
903-874-4731

Section 3.2. Severability. If any clause, provision, or section of this Agreement should be held illegal or invalid by any court of competent jurisdiction, the invalidity of such clause, provision, or section shall not affect any of the remaining clauses, provisions, or sections hereof and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision, or section had not been contained herein. In case any agreement or obligation contained in this Agreement should be held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the County and the Fo ndation, as the case may be, to the full extent permitted by law.

Section 3.3. Termination. This agreement shall terminate upon repayment of the debt associated with the incentive package.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in multiple counterparts, each of which shall be considered an original for all purposes, as of the day and year first set out above.

COUNTY OF NAVARRO, TEXAS

Alan Bristol
Navarro County Judge

Kit Herrington
Commissioner, Precinct #1

Olin Nickelberry
Commissioner, Precinct #2

William Baldwin
Commissioner, Precinct #3

John Paul Ross
Commissioner, Precinct #4

Attest:

Sherry Dowd
County Clerk

President, Corsicana Industrial Foundation

Attest:

Secretary, Corsicana Industrial Foundation

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EXHIBIT "B"

FIELD NOTES

CITY OF CORSICANA
132.315 AC.

JOHN HAMILTON SURVEY
A-381
WM. HAMILTON SURVEY
A-373
RANSOM HEATON SURVEY
A-340

NAVARRO COUNTY, TEXAS

All that certain lot, tract, or parcel of land situated in Navarro County, Texas on the John Hamilton Survey, A-381, Wm. Hamilton Survey, A-373 and Ransom Heaton Survey, A-340 and being all of the called 102.77 acre First tract and all of the 15.006 acre Second tract conveyed to Stephen D. Lesser and Martin Soshtain by Stephen D. Lesser trustee by deed dated October 21, 1980 and recorded in Volume 945, Page 872 of the Navarro County Deed Records and also all of a called 15.003 acre conveyed to the Hemmi Family trust by Robert A. Hemmi and wife Virginia G. Hemmi by deed dated July 2, 1993 and recorded in Volume 1268, Page 884 of the Navarro County Deed Records. Said lot, tract, or parcel of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8" iron rod found in the Southeast margin of Interstate 45 at the most Westerly Northwest corner of the Factory Stores of America Inc. 20.004 acre tract recorded in Volume 1268, Page 693 and at the North corner of the 102.77 acre First tract;

THENCE SOUTH 30 degrees 46 minutes 57 seconds East 620.74 feet to a 5/8" iron rod found at the South corner of the 20.004 acre tract and the West corner of the Russell Stover Addition as shown in Cabinet 7, Slide 2 of the Plat Records of Navarro County, Texas;

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THENCE SOUTH 29 degrees 24 minutes 59 seconds East 802.02 feet to a 5/8" iron rod found at a angle point in the Southwest line of the Russell Stover Addition;

THENCE SOUTH 29 degrees 52 minutes 51 seconds East 727.91 feet to a 5/8" iron rod found at the South corner of the Russell Stover Addition and an ell corner of the 102.77 acre First tract;

THENCE NORTH 60 degrees 47 minutes 03 seconds East 321.95 feet to a 2" pipe found at the West corner of the 15.006 acre Second tract and in the South line of the Russell Stover Addition and an ell corner of the 102.77 acre First tract;

THENCE NORTH 59 degrees 20 minutes 40 seconds East 1175.77 to a 1/2" iron rod set at the North corner of the 15.006 acre Second tract in the West margin of U. S. Highway 287; WITNESS: Found 5/8" iron rod South 59 degrees 20 minutes 40 seconds West 2.12 feet;

THENCE along the West margin of U. S. Highway 287 and a curve the left having a central angle of 5 degrees 36 minutes 50 seconds, a radius of 5779.58 feet, a distance of 566.30 feet and a long chord of South 36 degrees 33 minutes 36 seconds East 566.07 feet to a 1/2" iron rod set at the East corner of the 15.006 acre Second tract and the North corner of the W. M. Hayes and R. C. Curtis 15.08 acre tract recorded in Volume 973, Page 65; WITNESS: Found 1" pipe South 60 degrees 24 minutes 30 seconds West 9.69 feet;

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THENCE SOUTH 60 degrees 24 minutes 30 seconds West 1243.37 feet to a 1/2" pipe found at the West corner of the 15.08 acre tract;

THENCE SOUTH 30 degrees 12 minutes 03 seconds East, along fence, 508.06 feet to a 1/2" pipe found at the South corner of the 15.08 acre tract and the West corner of the 15.003 acre Hemmi Family Trust tract recorded in Volume 1268, Page 884;

THENCE NORTH 60 degrees 11 minutes 20 seconds East 1348.11 to a 1/2" iron rod set in the West margin of U. S. Highway 287 at the North corner of the 15.003 acre tract and the East corner of the 15.08 acre tract;

THENCE SOUTH 43 degrees 36 minutes 51 seconds East, along West margin of U. S. Highway 287, 405.62 feet to a 1/2" iron rod set at the most Northerly East corner of the 15.003 acre tract and the North corner of the H. R. Stroube 2.31 acre tract recorded in Volume 968, Page 75;

THENCE SOUTH 43 degrees 00 minutes 27 seconds West, along chain link fence, 397.07 feet to a 2" pipe found at the West corner of the 2.31 acre tract;

THENCE SOUTH 27 degrees 29 minutes 08 seconds East 928.28 feet to a 2" pipe found at the South corner of the Priest - Lochridge 3.34 acre tract recorded in Volume 979, Page 813 and the North line of the William Edens Cunningham Jr. tract recorded in Volume 1274, Page 669;

THENCE SOUTH 42 degrees 32 minutes 55 seconds West 178.5 feet to a steel T post found below Beaton Lake Dam;

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THENCE with a meandering line above the water line of Beaton Lake as follows: North 17 degrees 12 minutes 56 seconds West 177.74 feet, North 22 degrees 41 minutes 13 seconds West 101.47 feet, North 31 degrees 07 minutes 17 seconds West 124.56 feet, North 13 degrees 01 minutes 17 seconds West 284.91 feet, North 22 degrees 51 minutes 08 seconds West 87.60 feet, North 53 degrees 22 minutes 04 seconds West 88.51 feet, North 83 degrees 22 minutes 20 seconds West 139.97 feet, South 5 degrees 39 minutes 08 seconds West 106.01 feet, North 58 degrees 18 minutes 54 seconds West 126.48 feet, South 41 degrees 13 minutes 26 seconds West 182.36 feet, South 51 degrees 58 minutes 57 seconds West 239.21 feet, South 83 degrees 26 minutes 13 seconds West 134.82 feet, South 58 degrees 57 minutes 49 seconds West 201.19 feet, North 89 degrees 25 minutes 08 seconds West 163.41 feet, North 12 degrees 46 minutes 42 seconds West 140.43 feet, North 80 degrees 07 minutes 46 seconds West 100.80 feet, South 34 degrees 42 minutes 30 seconds West 139.01 feet, North 47 degrees 49 minutes 45 seconds West 90.97 feet, North 86 degrees 00 minutes 48 seconds West 86.51 feet, South 89 degrees 49 minutes 32 seconds West 141.40 feet, South 77 degrees 46 minutes 16 seconds West 120.87 feet, North 88 degrees 08 minutes 53 seconds West 179.18 feet, North 15 degrees 09 minutes 57 seconds West 100.58 feet, North 9 degrees 21 minutes 23 seconds West 254.27 feet, North 73 degrees 49 minutes 02 seconds West 30.86 feet, South 43 degrees 49 minutes 58 seconds West 78.76 feet, South 28 degrees 49 minutes 47 seconds East

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74.69 feet, South 60 degrees 16 minutes 56 seconds West 94.46 feet, South 29 degrees 27 minutes 47 seconds West 63.00 feet, North 85 degrees 18 minutes 40 seconds West 117.39 feet, North 85 degrees 28 minutes 44 seconds West 123.19 feet, North 42 degrees 03 minutes 05 seconds West 199.00 feet, North 74 degrees 10 minutes 05 seconds West 435.00 feet to a fence corner in the East line of Lot 16 of Beaton Lake Estates as shown in Cabinet 5, Slide 33 of the Plat Records of Navarro County, Texas;

THENCE NORTH 21 degrees 37 minutes 55 seconds East, along fence, 325.15 feet to a 3/8" iron rod found at the Northeast corner of lot 16;

THENCE NORTH 39 degrees 17 minutes 39 seconds West, mostly along a fence, 312.76 feet to a 1/2" iron rod set at the Northwest corner of Lot 16 and the Northeast corner of Lot 17;

THENCE NORTH 88 degrees 06 minutes 15 seconds West 588.40 feet to a 1/2" iron rod set at the Northwest corner of Lot 18 and the Northeast corner of Lot 19;

THENCE SOUTH 13 degrees 23 minutes 18 seconds West, along the East line of Lot 19 and the West line of Lot 18, 358.0 feet to a 1/2" iron rod set for corner;

THENCE NORTH 85 degrees 47 minutes 59 seconds West 599.56 feet to a T post found in the East margin of Interstate 45;

THENCE NORTH 8 degrees 04 minutes 17 seconds East 209.00 feet to a wooden right-of-way monument in the West margin of Interstate 45;

THENCE along the East margin of Interstate 45 as follows: North 12 degrees 31 minutes 29 seconds East 498.27 feet to a wooded right-of-way monument, North 24 degrees 41 minutes 36 seconds East 589.55 feet to a fence post at angle and North 35 degrees 34 minutes 34 seconds East 1264.0 feet to a wooden right-of-way monument;

THENCE continuing along East margin of Interstate 45, North 21 degrees 52 minutes 47 seconds East 115.35 feet to place of beginning and containing 132.315 acres of land.

SURVEYOR'S CERTIFICATE

I, Billy D. Murphree, Jr., Registered Professional Land Surveyor No. 3962, do hereby certify that I, at the instance of Connie Standridge of Corsicana, Texas, went upon the ground and surveyed the above described tract of land and prepared the above field notes describing the boundaries of same just as they were found and surveyed upon the ground.

WITNESS my hand and seal at Athens, Texas, on this the 6th day of April, A.D. 2000.

Billy D. Murphree, Jr., Registered
Professional Land Surveyor No. 3962

TAB 7

RETAIL CENTER DEVELOPMENT AGREEMENT

THIS RETAIL CENTER DEVELOPMENT AGREEMENT, dated as of February 3, 2004, executed by and between the City of Corsicana, Texas (the "City") and The Corsicana Industrial Foundation (the"Foundation").

W I T N E S S E T H:

WHEREAS, the City realizes the economic advantages for development of a retail center on the 132 acres business park site located at the intersection of IH 45 and US 287; and

WHEREAS, the Foundation was created to facilitate growth of the City and economic development of the area; and

WHEREAS, the City finds that it is necessary and convenient to enter into this Agreement, pursuant to Chapter 380 Texas Local Government Code, with the Foundation to implement certain components of the economic development program as described in Attachment A; and

WHEREAS, the parties hereto find it necessary and advisable to enter into this Agreement to evidence the duties and responsibilities of the respective parties with respect to a grant to be made by the City to the Foundation to facilitate the development of the Retail Center and assist in the implementation of the economic development objectives of the City.

NOW THEREFORE, in consideration of the covenants and agreements herein made, and subject to the conditions herein set forth, the City and the Foundation contract and agree as follows:

ARTICLE I

GRANT

Section 1.1. Grant. The City hereby agrees to grant to the 1.5% of the sales tax generated by Gander Mountain and Home Depot and .75% of the sales tax generated from the remaining business located on the 132 acre tract described in attached Exhibit B. In entering into this Agreement, it is the intent of the City that the Grant be made available to the Foundation subject to the limitations set forth herein. The City hereby declares that none of the moneys comprising the Grant have or shall come from the ad valorem taxes of the City. The Grant shall be funded on the date of delivery of sales tax to the City by the State of Texas. The Grant shall be funded solely from the gross revenues derived by the City from the sales tax as define herein.

Section 1.2. Place of Payment. The City shall make the Grant directly to the Foundation at the address provided in Section 3.1.

Section 1.3. Obligations Unconditional. The obligations of the City to make payment required of the City under this Agreement shall be absolute and unconditional, and the City shall make such payment without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the City may have or assert against the Foundation or any other person.

Changes made during WT session 2-4-04

ARTICLE II

OBLIGATIONS OF THE CITY AND THE FOUNDATION REGARDING USE OF THE GRANT

Section 2.1. Use of Moneys by Foundation. The Foundation agrees to use all of the moneys from the Grant solely for the purpose of repayment of debt associated with the funding of incentives offered

solely to Gander Mountain and in accordance with the terms and conditions set forth in the Ordinance and this Agreement.

Section 2.2. Funding of Improvements. The Foundation shall use 100 percent of the proceeds of the Grant to repay debt associated with incentives offered solely to Gander Mountain consistent with the terms of the financing documents executed and delivered by the Foundation in connection with the loan to fund said incentives. Said incentives shall be limited to the construction of real property. The Foundation agrees to provide to the City a written reports documenting use of the funds and acknowledgement of the lending institution receipt of the funds. In addition, the City may request from the Foundation any additional information to determine the status of the construction of, and estimated date of completion and opening of, the Retail Center. The Foundation shall provide such reports no less often than quarterly, and the first report shall be delivered to the City by no later than 90 days after the date the Grant is funded by the City.

Section 2.3. Funds and Accounts. The Foundation has established the Grant Fund (the "Fund"), and the Foundation shall deposit all of the Grant proceeds in the Fund, pending the expenditure of such proceeds. The Grant Fund shall be established as a separate account held by the Foundation. All interest earned by this account shall be used to pay the debt associated with the incentive offered solely to Gander Mountain. Funds from this account may not be used for any other purpose.

ARTICLE III

MISCELLANEOUS

Section 3.1. Notice. Any notice required by this Agreement shall be deemed to be properly served if hand-delivered, with evidence of acceptance of delivery by the receiving party, or by deposit in the U.S. mail, first class postage prepaid, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner described above.

If intended for the City, to:

Mail: Physical Delivery:
City Manager
City of Corsicana
200 North 12th Street
Corsicana, Texas 75110
903-654-4803

If intended for the Foundation, to:

Mail: Physical Delivery:
Chief Executive Officer
Corsicana Chamber of Commerce
120 North 12th Street
Corsicana, Texas 75110
903-874-4731

Section 3.2. Severability. If any clause, provision, or section of this Agreement should be held illegal or invalid by any court of competent jurisdiction, the invalidity of such clause, provision, or section shall not affect any of the remaining clauses, provisions, or sections hereof and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision, or section had not been contained herein. In case any agreement or obligation contained in this Agreement should be held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of

the City and the Foundation, as the case may be, to the full extent permitted by law.

Section 3.3 Termination. This agreement shall terminate upon repayment of the debt associated with the incentive package or cessation of operations of Gander Mountain in the City Limits of Corsicana.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in multiple counterparts, each of which shall be considered an original for all purposes, as of the day and year first set out above.

CITY OF CORSICANA, TEXAS

By_____
City Manager

ATTEST:

_____ (SEAL)
City Secretary

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____

By _____
President, Corsicana Industrial Foundation

_____
Secretary, Corsicana Industrial Foundation (SEAL)

TAB 8

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORSICANA, TEXAS, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF CORSICANA, NAVARRO COUNTY AND THE CORSICANA INDUSTRIAL FOUNDATION.

WHEREAS, on February 3, 2004, the City Council approved a Retail Center Development Agreement, pursuant to Chapter 380 of the Texas Local Government Code; and

WHEREAS, this Retail Center Development Agreement identified the duties and responsibilities of the respective parties with respect to a grant to be made by the City to the Corsicana Industrial Foundation to facilitate the development of the Retail Center and assist in the implementation of the economic development objectives of the City; and

WHEREAS, the City has now been requested to provide more specific details of the previously approved agreement; and

WHEREAS, the parties have developed an Interlocal Agreement to supplement the original agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Corsicana, Texas, that the Interlocal Agreement between the City of Corsicana, Navarro County and the Corsicana Industrial Foundation is hereby approved.

PASSED and **APPROVED** this 4th day of **May, 2004.**

Jule Waterman, Mayor

ATTEST:

Cathy McMullan, City Secretary

RESOLUTION

A RESOLUTION OF NAVARRO COUNTY COMMISSIONERS COURT, APPROVING AN INTERLOCAL AGREEMENT BETWEEN NAVARRO COUNTY AND THE CITY OF CORSICANA AND THE CORSICANA INDUSTRIAL FOUNDATION.

WHEREAS, on March 1, 2004, Navarro County approved a Retail Center Development Agreement, pursuant to Chapter 381 of the Texas Local Government Code; and

WHEREAS, this Retail Center Development Agreement identified the duties and responsibilities of the respective parties with respect to a grant to be made by Navarro County to the Corsicana Industrial Foundation to facilitate the development of the Retail Center and assist in the implementation of the econ mic development objectives of the City; and

WHEREAS, Navarro County has now been requested to provide more specific details of the previously approved agreement; and

WHEREAS, the parties have developed an Interlocal Agreement to supplement the original agreement.

NOW, THEREFORE, BE IT RESOLVED by the Commissioners Court of Navarro County, Texas, that the Interlocal Agreement between Navarro County, the City of Corsicana and the Corsicana Industrial Foundation is hereby approved.

PASSED AND APPROVED this 5th day of May, 2004

Alan Bristol
Navarro County Judge

Kit Herrington
Commissioner, Precinct #1

Olin Nickelberry
Commissioner, Precinct #2

William Baldwin
Commissioner, Precinct #3

John Paul Ross
Commissioner, Precinct #4

Attest: _____
Sherry Dowd, County Clerk

TAB 9

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT (the "Agreement"), dated as of May 6, 2004, is by and among the CITY OF CORSICANA, TEXAS, a Texas home rule city (the "City"); NAVARRO COUNTY, TEXAS, a political subdivision of the State of Texas (the "County"); the CORSICANA INDUSTRIAL FOUNDATION, INC., a Texas nonprofit corporation (the "Foundation"); and GANDER MOUNTAIN COMPANY, a Minnesota corporation ("Gander Mountain").

RECITALS

WHEREAS, in accordance with the provisions of Chapter 311, Tax Code, as amended (the "Tax Increment Financing Act"), and Ordinance No. 2289, the City created and established Reinvestment Zone Number One, City of Corsicana (the "TIF District") for a contiguous area within the City of 132.315 acres, as more fully described in Exhibit "A" attached hereto (the "Development Site");

WHEREAS, the Development Site was designated as the City of Corsicana Enterprise Zone No. EZ 246-033098-C on March 30, 1998 as amended and designated as EZ 317-061301-C on June 13, 2001 (the "Enterprise Zone") under the provisions of Chapter 2303, Government Code, as amended (the "Texas Enterprise Zone Act") by the Texas Department of Economic Development;

WHEREAS, Chapter 380, Local Government Code, as amended ("Chapter 380") authorizes cities to establish and provide for the administration of one or more programs, including programs for making grants of public money to promote state or local economic development and to stimulate business and commercial activity in the city;

WHEREAS, the City has established and provides for an economic development program under Chapter 380;

WHEREAS, the City, pursuant to Resolution No. 2008 entered into a Retail Center Development Agreement between the City and the Foundation granting sales tax revenue sharing for the Gander Mountain Facility as hereinafter defined (the "City RCDA");

WHEREAS, Chapter 381, Local Government Code, as amended ("Chapter 381") authorizes counties to develop and administer programs of grants of public money to stimulate business and commercial activity in the county;

WHEREAS, the County has established and provides for an economic development program under Chapter 381;

WHEREAS, the County, pursuant to a Resolution dated March 1, 2004, entered into a Retail Center Development Agreement between the County and the Foundation granting sales tax revenue sharing for the Gander Mountain Facility (the "County RCDA");

WHEREAS, the County levies a ½¢ sales and use tax pursuant to Chapter 322, Tax Code, as amended ("County Sales Tax" or replacement thereof, if permitted by law);

WHEREAS, the City levies a 1½¢ sales and use tax pursuant to Chapter 321, Tax Code, as amended ("City Sales Tax" or replacement thereof, if permitted by law);

WHEREAS, pursuant to the provisions of the Tax Code, local sales and use taxes, including the City Sales Tax and the County Sales Tax, are collected by retailers and remitted to the Comptroller of the State of Texas (together with such successor office or officer who shall perform the applicable duties thereof, the "Comptroller") which in return remits such sales and use taxes to the local taxing jurisdictions, currently on a monthly basis, but is required to do so not less frequently than semi-annually;

WHEREAS, pursuant to Chapter 380 and Section 2303.505(a) of the Texas Enterprise Zone Act, the City has the authority to grant or otherwise rebate a portion of the City Sales Tax to promote economic development in the City;

WHEREAS, pursuant to Chapter 381 and Section 2303.505(b) of the Texas Enterprise Zone Act, the County has the authority to grant or otherwise rebate a portion of the County Sales Tax to promote economic development in the County;

WHEREAS, the Foundation was created to facilitate growth and economic development within the City and the County;

WHEREAS, in connection with the development of the TIF District Number 1, the City has previously entered into that certain Development Agreement with Corsicana-Navarro County Developers, LLC, (the "TIF Developer") dated as of December 18, 2001 (the "TIF Development Agreement"). WHEREAS, the Foundation has entered into a Development Agreement, dated as of May 6, 2004, (the "Development Agreement") with Gander Mountain Company, a Minnesota corporation ("Gander Mountain") to develop a retail facility (as more fully described on Exhibit "C" to such Development Agreement) (the "Gander Mountain Facility") on a portion of the Development Site (as more fully described on Exhibit "A" to such Development Agreement) (the "Gander Mountain Site"), which land is being donated directly or indirectly to the Foundation by the TIF Developer;

WHEREAS, the Gander Mountain Site will be leased by the Foundation to Gander Mountain pursuant to a Lease dated as of May 6, 2004, between the Foundation, as landlord, and Gander Mountain, as tenant (the "Lease");

WHEREAS, there is currently under development on a portion of the Development Site a retail facility for Home Depot (as more fully described on Exhibit "F" to such Development Agreement) (the "Home Depot Site");

WHEREAS, pursuant to the Development Agreement, the Foundation is obligated to obtain (i) a construction loan in the original principal amount of $10,000,000 on such terms as are mutually acceptable to Gander Mountain and the Foundation (the "Construction Loan") from Union Bank & Trust Company (the "Bank") in the amount not to exceed $10,000,000 pursuant to a Loan Agreement between the Foundation and the Bank (the "Construction Loan

Agreement") to finance to the construction of the Gander Mountain Facility. Pursuant and subject to the terms of the Lease, the Foundation is also obligated to obtain a permanent loan (the "Permanent Loan") to refinance the Construction Loan on terms mutually acceptable to the Foundation and Gander Mountain. The Construction Loan and the Permanent Loan are sometimes collectively referred to herein as the "Loan", while any loan agreements from time to time evidencing the Loan (including, without limitation, the Construction Loan Agreement) are sometimes collectively referred to hereinafter the "Loan Agreement";

WHEREAS, pursuant to the Development Agreement, the Loan will be secured by a pledge of certain portions of the City Sales Tax and the County Sales Tax granted to the Foundation, a first lien security interest on the Gander Mountain Site and the Gander Mountain Facility, and an assignment of the lease payments under the Lease;

WHEREAS, the City and the County have determined it is in the public interest to promote the economic development of the Gander Mountain Facility and to grant portions of the City Sales Tax and the County Sales Tax, respectively, to facilitate such economic development;

WHEREAS, the City, the County, and the Foundation desire to enter into this Agreement to set forth the rights and obligations of the parties to fulfill the public purpose of the promotion of economic development and the above-stated obligations under the Development Agreement.

NOW, THEREFORE, the parties agree as follows:

Section 1. Findings and Determinations. It is hereby found and determined that all the matters set out in the recitals hereof are true and correct and are hereby incorporated in this Agreement by this reference. With respect to any conflict between (a) the terms of the City RCDA and/or the County RCDA, and (b) the terms of this Agreement, the terms of this Agreement in any event shall control.

Section 2. City Sales Tax. The City hereby grants to the Foundation for the security of the Foundation's Loan (i) the City Sales Tax (1½¢) generated from the Gander Mountain Site and the Home Depot Site, and (ii) 50% of the City Sales Tax (¾¢) generated from the Development Site, exclusive of the Gander Mountain Site and the Home Depot Site. The City agrees to segregate the City Sales Tax pledged to the repayment of the Loan from all other sales and use taxes remitted to the City by the Comptroller and to deposit such funds upon receipt thereof into a separate account to be owned and maintained by the Foundation (the " Sales Tax Fund") at a financial institution reasonably acceptable to the Bank or lender under permanent loan, as the case maybe. This fund shall not be defined as any other account or fund held or controlled by the City. The City agrees to use its good efforts to diligently pursue the reporting and remittance by the Comptroller of the City Sales Tax.

Section 3. County Sales Tax. The County hereby grants to the Foundation for the security of the Foundation's Loan (i) the County Sales Tax generated from sales at the Gander Mountain Site and the Home Depot Site; and (ii) 50% of the County Sales Tax (¼¢) generated from sales at the Development Site, exclusive of the Gander Mountain Site and the Home Depot Site. The County agrees to segregate the County Sales Tax generated from sales at the Gander Mountain Site, the Home Depot Site and the Development Site as set forth above from all other

sales and use taxes remitted to the County by the Comptroller and deposit such County Sales Tax upon receipt thereof into the Sales Tax Fund to be owned and maintained by the Foundation (the "Sales Tax Fund") at a financial institution reasonably acceptable to the Bank or lender under permanent loan, as the case maybe. This fund shall not be defined as any other account or fund held or controlled by the County. The County agrees to use its good efforts to diligently pursue the reporting and remittance by the Comptroller of the County Sales Tax.

Section 4. Sales Tax Fund. The Foundation agrees that all of the City Sales Tax and the County Sales Tax received by the Foundation shall be (a) deposited into the Sales Tax Fund, and (b) used for the sole and exclusive purpose of paying the principal and interest of the Loan. The City and the County agree and acknowledge that the Foundation shall grant a security interest in and to the Sales Tax Fund as security for the Loan. The holder of the Loan may draw upon the Sales Tax Fund to pay the installments of principal and interest due thereunder in accordance with the Loan Agreement. In addition, under certain circumstances, a balance in the Sales Tax Fund shall be applied as a prepayment of the Loan in accordance with the Loan Agreement.

Section 5. Receipt from Comptroller. The grant of the City Sales Tax and the County Sales Tax in Sections 2 and 3 hereof, respectively, shall be in the amounts actually received by the City and County, respectively, from the Comptroller.

Section 6. Additional Documents. The City and County agree to execute any additional documents reasonably requested by the Foundation or the Bank, or any successor thereto, or the Bank making the Permanent Loan to further evidence the security interest in the Sales Tax Fund for payment of the Loan.

Section 7. Time and Place of Payment. The City and County agree to make the grant of the City Sales Tax and the County Sales Tax, respectively, upon receipt of such funds from the Comptroller commencing upon the execution of this Agreement and continuing throughout the term hereof. The City and the County shall deposit the City Sales Tax and the County Sales Tax into the Sales Tax Fund within five (5) days after receipt from time to time of installments thereof from the Comptroller. It is the intention of the parties hereto that any City Sales Tax and County Sales Tax generated from the Development Site from and after the date of this Agreement shall be deposited into the Foundation's Sales Tax Fund and applied to the payment of the Loan, following the completion and opening of Gander Mountain.

Section 8. Obligations. Except as set forth in Section 5 hereof, the obligation of the City and the County, respectively, for the full term as set forth in Section 14 hereof, is to make the grants of the City Sales Tax and the County Sales Tax,in accordance with this Agreement and subject to existing law.

It is understood by all parties, to this Agreement, that the Holder of the Note is not entitled to demand payment of the Note out of any money raised by ad valorem taxes by the City or County and is entitled to payment of the Note from the County and City Sales Tax granted to the Foundation from the City and the County and from the lease revenues of the Foundation pledged to the payment of the Note.

Section 9. Use of Grant and Loan Proceeds; Reporting. The Foundation agrees that all the moneys from the Construction Loan shall be use to construct the Gander Mountain Facility pursuant to the Development Agreement and that the City Sales Tax and the County Sales Tax shall solely be used by the Foundation to pay principal and interest on the Loan. The Foundation agrees to provide to the City and the County written reports documenting the use of the proceeds of the Loan and the City Sales Tax and the County Sales Tax, respectively, and acknowledgement of the lending institution making the Loan of the receipt of any such funds. The Foundation further agrees to provide the City and the County with any additional information reasonably requested to determine the status of the construction, estimated date of completion and opening of the Gander Mountain Facility.

Section 10. Governing Law. This Agreement will be governed by, construed and enforced in accordance with the laws of the State of Texas.

Section 11. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and this Agreement shall be liberally construed so as to carry out the intent of the parties to it.

Section 12. Notices. Any notice, request or other communication required or permitted to be given under this Agreement shall be given in writing by delivering it against receipt for it, by depositing it with an overnight delivery service or by depositing it in a receptacle maintained by the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the respective parties at the addresses shown herein (and if so given, shall be deemed given when mailed). Notice sent by any other manner shall be effective upon actual receipt by the party to be notified. Actual notice, however and from whomever given or received, shall always be effective when received. Any party's address for notice may be changed at any time and from time to time, with written notice to the other parties. The giving of notice by one party which is not expressly required by this Agreement will not obligate that party to give any future notice.

If to the City:

City of Corsicana
200 North 12th Street
Corsicana, Texas 75110-5205
Attention: City Manager

If to the County:

Navarro County
300 West 12th Street Suite 102
Corsicana, Texas 75110-5205
Attention: County Judge

If to the Foundation:

Corsicana Industrial Foundation, Inc.
120 North 12th Street
Corsicana, Texas 75110-5205
Attention: Executive Director

with copy to:

Winstead Sechrest & Minick P.C.
2400 Bank One Center
910 Travis Street, Suite 2400
Houston, Texas 77002
Attention: Todd B. Brewer

If to Gander Mountain:

Gander Mountain Company
Attn: Real Estate Department
4567 American Boulevard West
Minneapolis, Minnesota 55437

with copy to:

Gander Mountain Company
4567 America Boulevard West
Bloomington, Minnesota 55437
Attention: Legal Department

Section 13. Parties in Interest. Gander Mountain may assign this Agreement in connection with any permitted assignment or transfer of its interest in the Lease subject to approval of the City, County and Foundation; such approval shall not be unreasonably withheld, conditioned or delayed; provided, however, Gander Mountain shall have the right to assign this Agreement without the consent of the City, the County or the Foundation to any parent, subsidiary, affiliate, or related entity of Gander Mountain, or to any entity which may, as a result of reorganization, merger, joint venture, consolidation or sale of all or part of the stock or assets of Gander Mountain succeed to the business of Gander Mountain. None of the City, the County or the Foundation may assign this Agreement without the prior written consent of all of the other parties. The terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be constructed to give any person or entity (other than the parties hereto and their permitted successors and assigns) any legal or equitable right, remedy or claim under or in respect of any terms or provisions contained in this Agreement or any standing or authority to enforce the terms and provisions of this Agreement. Notwithstanding the foregoing, the Bank, any financial institution or other person or entity providing permanent financing for the Loan, or

any successors thereto, shall also be a direct third-party beneficiary with respect to the provisions of this Agreement.

Section 14. Term. This Agreement shall remain in full force and effect until the latter to occur of (a) the expiration or earlier termination of the Lease, or (b) the full and final payment of all principal and interest on the Loan (other than by reason of any refinancing or foreclosure thereof).

Section 15. General. The masculine and neuter genders used in this Agreement each includes the masculine, feminine and neuter genders, and whenever the singular number is used, the same shall include the plural where appropriate, and vice versa. Wherever the term "including" or a similar term is used in this Agreement, it shall be read as if it were written "including by the way of example only and without in any way limiting the generality of the clause or concept referred to." The headings used in this Agreement are included for reference only and shall not be considered in interpreting, applying or enforcing this Agreement. The words "shall" and "will" as used in this Agreement have the same meaning. This Agreement shall not be modified or amended in any manner except by a writing signed by all the parties hereto. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof. All prior negotiations, representations or agreements not expressly incorporated into this Agreement are hereby superseded and cancelled. The parties acknowledge and represent that this Agreement has been jointly drafted by the parties, that no provision of this Agreement will be interpreted or construed against any party solely because the party or its legal counsel drafted such provision and that each of them has read, understood and approved the language and terms set forth herein. This Agreement may be executed in multiple counterparts, each of which shall constitute but one agreement. All signatures need not be on the counterpart.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

EXECUTED as of the date first set out above.

CITY OF CORSICANA, TEXAS

By: _____
Name: _____
Title: _____

NAVARRO COUNTY, TEXAS

By: _____

Name: ALAN BRISTOL

Title: Navarro County Judge

CORSICANA INDUSTRIAL FOUNDATION, INC.

By: Mickey Hillock
Name: Mickey Hillock
Title: President

GANDER MOUNTAIN COMPANY

By: _____

Name: Sharon K. Link

Title: Assistant Treasurer

EXHIBIT "A'

DEVELOPMENT SITE

EXHIBIT "A"

DEVELOPMENT SITE

CITY OF CORSICANA
132.315 AC.

JOHN HAMILTON SURVEY
A-381
WM. HAMILTON SURVEY
A-373
RANSOM HEATON SURVEY
A-340

NAVARRO COUNTY, TEXAS

All that certain lot, tract, or parcel of land situated in Navarro County, Texas on the John Hamilton Survey, A-381, Wm. Hamilton Survey, A-373 and Ransom Heaton Survey, A-340 and being all of the called 102.77 acre First tract and all of the 15.006 acre Second tract conveyed to Stephen D. Lesser and Martin Soshtain by Stephen D. Lesser trustee by deed dated October 21, 1980 and recorded in Volume 945, Page 872 of the Navarro County Deed Records and also all of a called 15.003 acre conveyed to the Hemmi Family Trust by Robert A. Hemmi and wife Virginia G. Hemmi by deed dated July 2, 1993 and recorded in Volume 1268, Page 884 of the Navarro County Deed Records. Said lot, tract, or parcel of land being more particularly described by metes and bounds as follows:

Beginning at a 5/8" iron rod found in the Southeast margin of Interstate 45 at the most Westerly Northwest corner of the Factory Stores of America Inc. 20.004 acre tract recorded in Volume 1268, Page 693 and at the North corner of the 102.77 acre First tract;

THENCE SOUTH 30 degrees 46 minutes 57 seconds East 620.74 feet to a 5/8" iron rod found at the South corner of the 20.004 acre tract and the West corner of the Russell Stover Addition as shown in Cabinet 7, Slide 2 of the Plat Records of Navarro County, Texas;

THENCE SOUTH 29 degrees 24 minutes 59 seconds East 802.02 feet to a 5/8" iron rod found at a angle point in the Southwest line of the Russell Stover Addition;

THENCE SOUTH 29 degrees 52 minutes 51 seconds East 727.91 feet to a 5/8" iron rod found at the South corner of the Russell Stover Addition and an ell corner of the 102.77 acre First tract;

THENCE NORTH 60 degrees 47 minutes 03 seconds East 321.95 feet to a 2" pipe found at the West corner of the 15.006 acre Second tract and in the South line of the Russell Stover Addition and an ell corner of the 102.77 acre First tract;

THENCE NORTH 59 degrees 20 minutes 40 seconds East 1175.77 to a 1/2" iron rod set at the North corner of the 15.006 acre Second tract in the West margin of U. S. Highway 287; WITNESS: Found 5/8" iron rod South 59 degrees 20 minutes 40 seconds West 2.12 feet;

THENCE along the West margin of U. S. Highway 287 and a curve the left having a central angle of 5 degrees 36 minutes 50 seconds, a radius of 5779.58 feet, a distance of 566.30 feet and a long chord of South 36 degrees 33 minutes 36 seconds East 566.07 feet to a 1/2" iron rod set at the East corner of the 15.006 acre Second tract and the North corner of the W. M. Hayes and R. C. Curtis 15.08 acre tract recorded in Volume 973, Page 65; WITNESS: Found 1" pipe South 60 degrees 24 minutes 30 seconds West 9.69 feet;

THENCE SOUTH 60 degrees 24 minutes 30 seconds West 1243.37 feet to a 1/2" pipe found at the West corner of the 15.08 acre tract;

THENCE SOUTH 30 degrees 12 minutes 03 seconds East, along fence, 508.06 feet to a 1/2" pipe found at the South corner of the 15.08 acre tract and the West corner of the 15.003 acre Hemmi Family Trust tract recorded in Volume 1268, Page 884;

THENCE NORTH 60 degrees 11 minutes 20 seconds East 1348.11 to a 1/2" iron rod set in the West margin of U. S. Highway 287 at the North corner of the 15.003 acre tract and the East corner of the 15.08 acre tract;

THENCE SOUTH 43 degrees 36 minutes 51 seconds East, along West margin of U. S. Highway 287, 405.62 feet to a 1/2" iron rod set at the most Northerly East corner of the 15.003 acre tract and the North corner of the H. R. Stroube 2.31 acre tract recorded in Volume 968, Page 75;

THENCE SOUTH 43 degrees 00 minutes 27 seconds West, along chain link fence, 397.07 feet to a 2" pipe found at the West corner of the 2.31 acre tract;

THENCE SOUTH 27 degrees 29 minutes 08 seconds East 928.28 feet to a 2" pipe found at the South corner of the Priest - Lochridge 3.34 acre tract recorded in Volume 979, Page 813 and the North line of the William Edens Cunningham Jr. tract recorded in Volume 1274, Page 669;

THENCE SOUTH 42 degrees 32 minutes 55 seconds West 178.5 feet to a steel T post found below Beaton Lake Dam;

THENCE with a meandering line above the water line of Beaton Lake as follows: North 17 degrees 12 minutes 56 seconds West 177.74 feet, North 22 degrees 41 minutes 13 seconds West 101.47 feet, North 31 degrees 07 minutes 17 seconds West 124.56 feet, North 13 degrees 01 minutes 17 seconds West 284.91 feet, North 22 degrees 51 minutes 08 seconds West 87.60 feet, North 53 degrees 22 minutes 04 seconds West 88.51 feet, North 83 degrees 22 minutes 20 seconds West 139.97 feet, South 5 degrees 39 minutes 08 seconds West 106.01 feet, North 58 degrees 18 minutes 54 seconds West 126.48 feet, South 41 degrees 13 minutes 26 seconds West 182.36 feet, South 51 degrees 58 minutes 57 seconds West 239.21 feet, South 83 degrees 26 minutes 13 seconds West 134.82 feet, South 58 degrees 57 minutes 49 seconds West 201.19 feet, North 89 degrees 25 minutes 08 seconds West 163.41 feet, North 12 degrees 46 minutes 42 seconds West 140.43 feet, North 80 degrees 07 minutes 46 seconds West 100.80 feet, South 34 degrees 42 minutes 30 seconds West 139.01 feet, North 47 degrees 49 minutes 45 seconds West 90.97 feet, North 86 degrees 00 minutes 48 seconds West 86.51 feet, South 89 degrees 49 minutes 32 seconds West 141.40 feet, South 77 degrees 46 minutes 16 seconds West 120.87 feet, North 88 degrees 08 minutes 53 seconds West 179.18 feet, North 15 degrees 09 minutes 57 seconds West 100.58 feet, North 9 degrees 21 minutes 23 seconds West 254.27 feet, North 73 degrees 49 minutes 02 seconds West 30.86 feet, South 43 degrees 49 minutes 58 seconds West 78.76 feet, South 28 degrees 49 minutes 47 seconds East

74.69 feet, South 60 degrees 16 minutes 56 seconds West 94.46 feet, South 29 degrees 27 minutes 47 seconds West 63.00 feet, North 85 degrees 18 minutes 40 seconds West 117.39 feet, North 85 degrees 28 minutes 44 seconds West 123.19 feet, North 42 degrees 03 minutes 05 seconds West 199.00 feet, North 74 degrees 10 minutes 05 seconds West 435.00 feet to a fence corner in the East line of Lot 16 of Beaton Lake Estates as shown in Cabinet 5, Slide 33 of the Plat Records of Navarro County, Texas;

THENCE NORTH 21 degrees 37 minutes 55 seconds East, along fence, 325.15 feet to a 3/8" iron rod found at the Northeast corner of lot 16;

THENCE NORTH 39 degrees 17 minutes 39 seconds West, mostly along a fence, 312.76 feet to a 1/2" iron rod set at the Northwest corner of Lot 16 and the Northeast corner of Lot 17;

THENCE NORTH 88 degrees 06 minutes 15 seconds West 588.40 feet to a 1/2" iron rod set at the Northwest corner of Lot 18 and the Northeast corner of Lot 19;

THENCE SOUTH 13 degrees 23 minutes 18 seconds West, along the East line of Lot 19 and the West line of Lot 18, 358.0 feet to a 1/2" iron rod set for corner;

THENCE NORTH 85 degrees 47 minutes 59 seconds West 599.56 feet to a T post found in the East margin of Interstate 45;

THENCE NORTH 8 degrees 04 minutes 17 seconds East 209.00 feet to a wooden right-of-way monument in the West margin of Interstate 45;

THENCE along the East margin of Interstate 45 as follows: North 12 degrees 31 minutes 29 seconds East 498.27 feet to a wooded right-of-way monument, North 24 degrees 41 minutes 36 seconds East 589.55 feet to a fence post at angle and North 35 degrees 34 minutes 34 seconds East 1264.0 feet to a wooden right-of-way monument;

THENCE continuing along East margin of Interstate 45, North 21 degrees 52 minutes 47 seconds East 115.35 feet to place of beginning and containing 132.315 acres of land.

SURVEYOR'S CERTIFICATE

I, Billy D. Murphree, Jr., Registered Professional Land Surveyor No. 3962, do hereby certify that I, at the instance of Connie Standridge of Corsicana, Texas, went upon the ground and surveyed the above described tract of land and prepared the above field notes describing the boundaries of same just as they were found and surveyed upon the ground.

WITNESS my hand and seal at Athens, Texas, on this the 6th day of April, A.D. 2000.

Billy D. Murphree, Jr., Registered
Professional Land Surveyor No. 3962

TAB 10

CITY OF CORSICANA
COUNTY OF NAVARRO
STATE OF TEXAS

Joint Special Meeting
February 2, 2016

The Corsicana City Council and the Navarro County Commissioner's Court met in a Joint Special Meeting on February 2, 2016, in the Corsicana Government Center Conference Room, 200 N. 12th Street, Corsicana, Texas. The following members were present: Chuck McClanahan, Mayor; Tom Wilson, Council Member Precinct One; Ruby Williams, Mayor Pro Tem and Council Member Precinct Two; John McClung, Council Member Precinct Three; and Don Denbow, Council Member Precinct Four.

In addition, Connie Standridge, City Manager; Virginia Richardson, City Secretary/Director of Finance; Attorney Terry Jacobson, Outside Counsel; Randy Bratton, Police Chief; County Judge H.M. Davenport; Commissioner Butch Warren; Commissioner Dick Martin; Commissioner Jason Grant; Commissioner James Olsen; Sherry Dowd, County Clerk; Brittney Simon, County Auditor; Lowell Thompson, District Attorney; and other interested citizens were also present.

Mayor McClanahan called the meeting to order at 3:01 p.m.

Sherry Dowd and Chief Bratton left at the beginning of the Executive Session and returned at the end of the Executive Session.

Executive Session

Mayor McClanahan recessed into Executive Session with the Navarro County Commissioners at 3:02 p.m. to receive attorney's advice on a legal matter pursuant to Section 551.071(2) of the Texas Government Code.

Council and County Commissioners paused for a break from 4:00 to 4:19 p.m.

Return to Open Session:

Mayor McClanahan called the meeting to Open Session at 4:21 p.m. No action was taken by the Council during the Executive Session.

Public Hearing:

Mayor McClanahan opened the public hearing to receive public input regarding the existence of the Public Purpose for the previously executed 380 Interlocal Agreement.

This item was presented by Attorney Terry Jacobson, Outside Counsel for the City of Corsicana.

Resolution:

Resolution 3852 (approved)

This item was presented by City Manager Connie Standridge.

The motion was made by Tom Wilson, and seconded by John McClung, that Resolution 3852, *making a decision regarding a Public Purpose, be passed as corrected.* The motion passed, 5-0. Against: none.

RESOLUTION NO. 3852

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORSICANA, TEXAS, MAKING THE DETERMINATION THAT THE UNDERLYING PUBLIC PURPOSE NO LONGER EXISTS FOR THE CITY TO GRANT CERTAIN SALES TAX INCENTIVES TO THE CORSICANA INDUSTRIAL FOUNDATION; AND AUTHORIZING THAT ACTION BE TAKEN TO SEEK A DECLARATION OF THE CITY'S RIGHTS, DUTIES AND OBLIGATIONS UNDER THE RETAIL CENTER DEVELOPMENT AGREEMENT DATED FEBRUARY 3, 2004, THE INTERLOCAL AGREEMENT DATED MAY 4, 2004, AND THE TEXAS CONSTITUTION.

WHEREAS, the City and Navarro County ("County") entered into a Retail Center Development Agreement, pursuant to Chapter 380 of the Texas Local Government Code, with the Corsicana Industrial Foundation ("CIF") on or about February 3, 2004, to develop a retail center on the 132 acre business park site located at the intersection of IH 45 and US 287 to implement certain components of an economic development program; and

WHEREAS, Chapter 380 of the Local Government Code authorizes cities to create programs for making grants of public money to promote State and local economic development, stimulate business and commercial activity in the City and to otherwise continually stimulate economic development within the City and County; and

WHEREAS, the Retail Center Development Agreement generally provided that the City and County would grant to CIF certain sales tax revenues generated by Gander Mountain Company, Home Depot and the remaining businesses located on the 132 acre tract; and

WHEREAS, the purpose of the grant of sales tax was to facilitate the development of the retail center and assist in the implementation of the economic development objectives of the City and County; and

WHEREAS, the economic development objectives included the development of the retail center, the creation of jobs, the establishment of a retail business within the City and County of a type not previously found in Corsicana, the generation of ad valorem tax revenues on the real property, inventory and equipment and the generation of sales tax revenues from the retail center and other businesses; and

WHEREAS, on or about May 4, 2004, the City, County, CIF and Gander Mountain entered into an Interlocal Agreement that supplemented the Retail Center Development Agreement; and

WHEREAS, the Interlocal Agreement was likewise based on Chapter 380 of the Local Government Code and contained grants of City and County sales tax expressly made "subject to existing law;" and

WHEREAS, the Gander Mountain facility was constructed and CIF and Gander Mountain entered into a twenty year lease in April of 2004 providing Gander Mountain with the right to purchase the premises for $1.00 when the loan is fully paid, or upon the expiration of the twenty year lease; and

WHEREAS, the objections of the City and County notwithstanding, Gander Mountain closed its Corsicana facility on October 22, 2015, and the facility now sits empty with no evidence of ever reopening, thus creating an economic burden on the City; and

WHEREAS, the Texas Constitution expressly restricts government entities, like the City and County, from spending public funds, or granting public aid for anything except for public purposes, Gander Mountain's closure of the Corsicana store more than eight years before the expiration of Gander Mountain's lease extinguished the legitimate public purposes from which the City derived a benefit in return for its contribution of public funds.

THEREFORE, THE CITY HAS DETERMINED, AND BY THIS RESOLUTION HEREBY RATIFIES AND CONFIRMS ITS DETERMINATION, that Gander Mountain's closure of the retail center facility extinguished any constitutionally permissible public purposes for which the City can dedicate its funds; and

HEREBY AUTHORIZES AND DIRECTS the City Manager of the City of Corsicana ("City Manager"), to secure appropriate judicial relief against CIF and Gander Mountain.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Corsicana, Texas, that the City Manager is authorized to act on behalf of the City in seeking any and all relief in both law and equity against the Corsicana Industrial Foundation, Inc. and Gander Mountain Company.

PASSED and **APPROVED** by majority vote of the City Council of the City of Corsicana, Texas, this 2nd day of **February, 2016.**

Adjournment

There being no further business, the Mayor declared the meeting adjourned at 4:38 p.m.

Attested This, the 8th day of February 2016

Virginia Richardson

Finance Director/City Secretary

Attested This, the 8th day of February 2016

Chuck McClanahan

Mayor

***** ***** ***** ***** ***** *****

NAVARRO COUNTY COMMISSIONER'S COURT

A Joint Special meeting of the Navarro County Commissioner's Court and City of Corsicana was held on Tuesday, the 2nd day of February, 2016 at 3:00 p.m., in the Conference room of the Government Center at 200 North 12th Street in Corsicana, Texas. Presiding Judge HM Davenport, Jr. Commissioners present Jason Grant, Dick Martin, David Warren, and James Olsen.

1. 3:02 P.M. Motion to convene by Judge Davenport sec by Comm. Olsen
   Carried unanimously

2. Motion to go into Executive Session pursuant to the Texas Government Code Section 551.071 (2) to confer regarding matters which are privileged pursuant to the Attorney Client Privilege by Comm. Olsen sec by Judge Davenport
   Carried unanimously

   Motion to come out of Executive Session by Comm. Olsen sec by Comm. Warren
   Carried unanimously

3. Motion of action taken on Executive Session pursuant to the Texas Government Code Section 551.071(2) to confer regarding matters which are privileged pursuant to the Attorney Client privilege and motion to approve Resolution as read by Comm. Grant sec by Comm. Martin ***TO WIT PG 2411-2413***
   Carried unanimously
   Judge Davenport moves that the Commissioner's Court find that there is no longer a public purpose which justifies the granting of public money to pay on the loan for the Gander Mountain building and authorize suit to be filed to seek a court declaration regarding that and related issues sec by Comm. Martin
   Carried unanimously

4. Motion to adjourn by Comm. Martin sec by Comm. Warren
   Carried unanimously

I Sherry Dowd, Navarro County Clerk, attest that the foregoing is a true and accurate accounting of the Commissioners Court's authorized proceeding for February 2nd, 2016.

Signed 2nd day of February 2016.

Sherry Dowd County Clerk

NAVARRO COUNTY COMMISSIONERS COURT

2411

RESOLUTION NO. 2016-01

A RESOLUTION OF COMMISSIONER'S COURT, OF NAVARRO COUNTY TEXAS, MAKING THE DETERMINATION THAT THE UNDERLYING PUBLIC PURPOSE NO LONGER EXISTS FOR THE COUNTY TO GRANT CERTAIN SALES TAX INCENTIVES TO THE CORSICANA INDUSTRIAL FOUNDATION; AND AUTHORIZING THAT ACTION BE TAKEN TO SEEK A DECLARATION OF THE COUNTY'S RIGHTS, DUTIES AND OBLIGATIONS UNDER THE RETAIL CENTER DEVELOPMENT AGREEMENT DATED FEBRUARY 3, 2004, THE INTERLOCAL AGREEMENT DATED MAY 4, 2004, AND THE TEXAS CONSTITUTION.

WHEREAS, the City and Navarro County ("County") entered into a Retail Center Development Agreement, pursuant to Chapter 381 of the Texas Local Government Code, with the Corsicana Industrial Foundation ("CIF") on or about February 3, 2004, to develop a retail center on the 132 acre business park site located at the intersection of IH 45 and US 287 to implement certain components of an economic development program; and

WHEREAS, Chapter 381 of the Local Government Code authorizes cities to create programs for making grants of public money to promote State and local economic development, stimulate business and commercial activity in the City and to otherwise continually stimulate economic development within the City and County; and

WHEREAS, the Retail Center Development Agreement generally provided that the City and County would grant to CIF certain sales tax revenues generated by Gander Mountain Company, Home Depot and the remaining businesses located on the 132 acre tract; and

WHEREAS, the purpose of the grant of sales tax was to facilitate the development of the retail center and assist in the implementation of the economic development objectives of the City and County; and

WHEREAS, the economic development objectives included the development of the retail center, the creation of jobs, the establishment of a retail business within the City and County of a type not previously found in Corsicana, the generation of ad valorem tax revenues on the real property, inventory and equipment and the generation of sales tax revenues from the retail center and other businesses; and

WHEREAS, on or about May 4, 2004, the City, County, CIF and Gander Mountain entered into an Interlocal Agreement that supplemented the Retail Center Development Agreement; and

WHEREAS, the Interlocal Agreement was likewise based on Chapter 381 of the Local Government Code and contained grants of City and County sales tax expressly made "subject to existing law;" and

WHEREAS, the Gander Mountain facility was constructed and CIF and Gander Mountain entered into a twenty year lease in April of 2004 providing Gander Mountain with the right to purchase the premises for $1.00 when the loan is fully paid, or upon the expiration of the twenty year lease; and

WHEREAS, the objections of the City and County notwithstanding, Gander Mountain closed its Corsicana facility on October 22, 2015, and the facility now sits empty with no evidence of ever reopening, thus creating an economic burden on the City; and County and,

WHEREAS, the Texas Constitution expressly restricts government entities, like the City and County, from spending public funds, or granting public aid for anything except for public purposes, Gander Mountain's closure of the Corsicana store more than eight years before the expiration of Gander Mountain's lease extinguished the legitimate public purposes from which the City derived a benefit in return for its contribution of public funds.

THEREFORE, THE COUNTY HAS DETERMINED, AND BY THIS RESOLUTION HEREBY RATIFIES AND CONFIRMS ITS DETERMINATION, that Gander Mountain's closure of the retail center facility extinguished any constitutionally permissible public purposes for which the County can dedicate its funds; and

HEREBY AUTHORIZES AND DIRECTS the County Judge of the County of Navarro, Texas ("County Judge"), to secure appropriate judicial relief against CIF and Gander Mountain.

NOW, THEREFORE, BE IT RESOLVED by the Commissioner's Court of Navarro County, Texas, that the County Judge is authorized to act on behalf of the County in seeking any and all relief in both law and equity against the Corsicana Industrial Foundation, Inc. and Gander Mountain Company.

PASSED and **APPROVED** by majority vote of the Commissioner's Court of Navarro County, Texas, this 2nd day of **February, 2016.**

H.M. Davenport
Navarro County Judge

Jason Grant
Commissioner, Pct. 1

Dick Martin
Commissioner, Pct. 2

David "Butch" Warren
Commissioner, Pct. 3

James Olsen
Commissioner, Pct. 4

ATTEST:

COMMISSIONERS COURT OF NAVARRO COUNTY

SHERRY DOWD
NAVARRO COUNTY, CLERK

TAB 11

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article III. Legislative Department
Requirements and Limitations

Vernon's Ann.Texas Const. Art. 3, § 52-a

§ 52-a. Assistance to encourage state economic development

Effective: November 23, 2005
Currentness

Sec. 52-a. Notwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money, other than money otherwise dedicated by this constitution to use for a different purpose, for the public purposes of development and diversification of the economy of the state, the elimination of unemployment or underemployment in the state, the stimulation of agricultural innovation, the fostering of the growth of enterprises based on agriculture, or the development or expansion of transportation or commerce in the state. Any bonds or other obligations of a county, municipality, or other political subdivision of the state that are issued for the purpose of making loans or grants in connection with a program authorized by the legislature under this section and that are payable from ad valorem taxes must be approved by a vote of the majority of the registered voters of the county, municipality, or political subdivision voting on the issue. A program created or a loan or grant made as provided by this section that is not secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the political subdivision does not constitute or create a debt for the purpose of any provision of this constitution. An enabling law enacted by the legislature in anticipation of the adoption of this amendment is not void because of its anticipatory character.

Credits
Adopted Nov. 3, 1987. Amended Nov. 8, 2005, eff. Nov. 23, 2005.

Vernon's Ann. Texas Const. Art. 3, § 52-a, TX CONST Art. 3, § 52-a
Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

End of Document

TAB 12

Vernon's Texas Statutes and Codes Annotated
Local Government Code (Refs & Annos)
Title 12. Planning and Development
Subtitle A. Municipal Planning and Development
Chapter 380. Miscellaneous Provisions Relating to Municipal Planning and Development (Refs & Annos)

V.T.C.A., Local Government Code § 380.001

§ 380.001. Economic Development Programs

Effective: May 17, 2005
Currentness

(a) The governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality. For purposes of this subsection, a municipality includes an area that:

(1) has been annexed by the municipality for limited purposes; or

(2) is in the extraterritorial jurisdiction of the municipality.

(b) The governing body may:

(1) administer a program by the use of municipal personnel;

(2) contract with the federal government, the state, a political subdivision of the state, a nonprofit organization, or any other entity for the administration of a program; and

(3) accept contributions, gifts, or other resources to develop and administer a program.

(c) Any city along the Texas-Mexico border with a population of more than 500,000 may establish not-for-profit corporations and cooperative associations for the purpose of creating and developing an intermodal transportation hub to stimulate economic development. Such intermodal hub may also function as an international intermodal transportation center and may be colocated with or near local, state, or federal facilities and facilities of Mexico in order to fulfill its purpose.

Credits
Added by Acts 1989, 71st Leg., ch. 555, § 1, eff. June 14, 1989. Amended by Acts 1999, 76th Leg., ch. 593, § 1, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 57, § 1, eff. May 17, 2005.

V. T. C. A., Local Government Code § 380.001, TX LOCAL GOVT § 380.001

Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

End of Document

TAB 13

Vernon's Texas Statutes and Codes Annotated
Local Government Code (Refs & Annos)
Title 12. Planning and Development
Subtitle B. County Planning and Development
Chapter 381. County Development and Growth (Refs & Annos)

V.T.C.A., Local Government Code § 381.004

§ 381.004. Community and Economic Development Programs

Effective: September 1, 2015
Currentness

(a) In this section:

(1) "Another entity" includes the federal government, the State of Texas, a municipality, school or other special district, finance corporation, institution of higher education, charitable or nonprofit organization, foundation, board, council, commission, or any other person.

(2) "Minority" includes blacks, Hispanics, Asian Americans, American Indians, and Alaska natives.

(3) "Minority business" means a business concern, more than 50 percent of which is owned and controlled in management and daily operations by members of one or more minorities.

(4) "Women-owned business" means a business concern, more than 50 percent of which is owned and controlled in management and daily operations by one or more women.

(b) To stimulate business and commercial activity in a county, the commissioners court of the county may develop and administer a program:

(1) for state or local economic development;

(2) for small or disadvantaged business development;

(3) to stimulate, encourage, and develop business location and commercial activity in the county;

(4) to promote or advertise the county and its vicinity or conduct a solicitation program to attract conventions, visitors, and businesses;

(5) to improve the extent to which women and minority businesses are awarded county contracts;

(6) to support comprehensive literacy programs for the benefit of county residents; or

(7) for the encouragement, promotion, improvement, and application of the arts.

(c) The commissioners court may:

(1) contract with another entity for the administration of the program;

(2) authorize the program to be administered on the basis of county commissioner precincts;

(3) use county employees or funds for the program; and

(4) accept contributions, gifts, or other resources to develop and administer the program.

(d) A program established under this section may be designed to reasonably increase participation by minority and women-owned businesses in public contract awards by the county by establishing a contract percentage goal for those businesses.

(e) The legislature may appropriate unclaimed money the comptroller receives under Chapter 74, Property Code, for a county to use in carrying out a program established under this section. To receive money for that purpose for any fiscal year, the county must request the money for that fiscal year. The amount a county may receive under this subsection for a fiscal year may not exceed an amount equal to the value of the capital credits the comptroller receives from an electric cooperative corporation on behalf of the corporation's members in the county requesting the money less an amount sufficient to pay anticipated expenses and claims. The comptroller shall transfer money in response to a request after deducting the amount the comptroller determines to be sufficient to pay anticipated expenses and claims.

(f) The commissioners court of a county may support a children's advocacy center that provides services to abused children.

(g) The commissioners court may develop and administer a program authorized by Subsection (b) for entering into a tax abatement agreement with an owner or lessee of a property interest subject to ad valorem taxation. The execution, duration, and other terms of the agreement are governed, to the extent practicable, by the provisions of Sections 312.204, 312.205, and 312.211, Tax Code, as if the commissioners court were a governing body of a municipality.

(h) The commissioners court may develop and administer a program authorized by Subsection (b) for making loans and grants of public money and providing personnel and services of the county.

Credits

Added by Acts 1989, 71st Leg., ch. 1060, § 3, eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 1037, § 3, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 254, § 1, eff. May 22, 2001; Acts 2001, 77th Leg., ch. 1154, § 1, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1275, § 2(109), eff. Sept. 1, 2003; Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), § 12.003, eff. Sept. 1, 2015.

V. T. C. A., Local Government Code § 381.004, TX LOCAL GOVT § 381.004
Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

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Filing Description: Petitioner's Brief on the Merits
Status as of 10/30/2024 11:49 AM CST

Case Contacts

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Associated Case Party: City of Corsicana

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