



MIKE O'CONNELL
JEFFERSON COUNTY ATTORNEY
531 COURT PLACE, SUITE 900
LOUISVILLE, KY 40202

(502) 574-6333
FAX (502) 574-5573

JULIE LOTT HARDESTY
FIRST ASSISTANT

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President David James
Louisville Metro Council
601 West Jefferson St, 2nd floor
Louisville, KY 40202

Ellen Heslen
Deputy Mayor
527 West Jefferson Street
Louisville, Kentucky 40207

RE: 3-18-19 Bond Vote on Capital Projects

Dear President James and Deputy Mayor:

At your requests, we have reviewed the memo directing the suspension of all FY-19 debt-related projects. While the Council and the Executive both may act as each has proposed to do, the consequences of tabling the bond ordinance on Thursday night and the suspensions of these contracts could be significant. With these funding uncertainties, Metro may need to consider terminating or suspending the contracts for these projects. However, on those projects for which Metro has existing contracts, termination or suspension of those contracts may potentially result in claims against Metro.

A contract executed pursuant to law for which funds have been appropriated cannot be ended without Metro potentially being subject to claims by the contractor for alleged breach of contract. Similarly, asking a contractor to stop work temporarily may put Metro at risk for additional claims of contract delay. For example, an aggrieved party may claim the costs of demobilizing and remobilizing its workforce, or any increased costs in materials which occur during the delay, should be borne by Metro.

We do not know the status or completion of the FY-19 contracts, but understand the scope of all these contracts to be in the millions. As such, the damages that flow from these breaches may be significant.

Sincerely,

MICHAEL O'CONNELL
Jefferson County Attorney

/s/ Matt Golden

Matthew Golden

CC: Sarah Martin
Paul Rutherford