



MEMORANDUM

Date: April 18, 2013

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: Martin Willett 
Chief Deputy County Administrator

Re: **Filing of Claim Against the City of Tucson for Excess Costs Incurred in Replacing Water Main**

Attached for your information is the above referenced claim filed with the City of Tucson.

MW/dr

c: C.H. Huckelberry, County Administrator
Christopher Straub, Chief Civil Deputy County Attorney
Regina Nassen, Deputy County Attorney
Reid Spaulding, Director, Facilities Management Department



COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
130 W. CONGRESS, TUCSON, AZ 85701-1317
(520) 740-8661 FAX (520) 740-8171

C.H. HUCKELBERRY
County Administrator

April 18, 2013

Roger Randolph, City Clerk
City of Tucson Clerk's Office
255 W. Alameda
Tucson, Arizona 85701

Richard Miranda, City Manager
City of Tucson
P.O. Box 27210
Tucson, Arizona 85726-7210

Re: **County Claim Against the City of Tucson for Excess Costs Incurred in Replacing Water Main**

Dear Messrs. Randolph and Miranda:

This is a follow-up to Mr. Huckelberry's March 1 letter to you regarding unnecessary costs incurred by the County in replacing City water mains as part of the County's construction of the new courts complex.

As you know, the County was required to replace the existing 8" water mains running through Stone and Toole Avenues with a 12" line in order to meet fire suppression standards for the new court building and parking garage while the lines continue to serve non-participating properties as well. The City and County entered into an "Agreement for Construction of Water Facilities under Private Contract" (the "Construction Agreement"), a standard-form Tucson Water contract, in April of 2012. In this Construction Agreement the County agreed to replace the water mains in accordance with approved plans and Tucson Water's standard specifications. In fact, however, during the course of construction, and in violation of the parties' agreement, City representatives required the County to do work that is not mandated by the approved plans and/or is inconsistent with Tucson Water's standard specifications. This extra work was not necessitated by the County's project and resulted in an unfair benefit to the City; the City had no legal or

Messrs. Randolph and Miranda

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contractual basis for requiring the County to do the work. The County therefore demands that the City compensate the County for the cost of the additional work.

Replacement of Lateral Lines. Tucson Water's published design manual states that existing lateral lines must be replaced (rather than tied in), in connection with a water-main replacement, *only* under certain circumstances: when the pipes are made of an "unacceptable material," when an improvement district has definite plans to repave the road, or when the line does not have an angled meter stop because it was originally installed by a private water company. *Tucson Water Design Standards Manual*, Standard No. 8-08 (Water Pipeline Design Standards), p. 8-20. Replacement of lead lines is also mentioned in Tucson Water's standard details: "all lead fittings and lead services shall be removed and replaced with materials contained in the Approved Materials list." *Tucson Water Standard Specifications and Details Manual (2011)*, SD-105, Note 35.

City inspectors, however, required the County to replace *all* existing lateral lines, other than two that were abandoned—a total of 29 lines—with 1" copper pipe. Twenty of these lines were lead, and the County, in order to resolve this dispute, is willing to bear the cost of replacing those lines. But the remaining nine laterals were ¾" copper pipe that could have been tied into the new line rather than replaced. Based on remarks made by Tucson Water representatives to the County's contractor, Tucson Water apparently wanted the ¾" lines replaced because the 1" lines facilitate the use of an automated meter reading system. That is undoubtedly a convenience for the City but it is unrelated to the County's project. Replacement of the nine copper lateral lines cost the County \$101,455.

Pavement Patching. The approved project plans contain a note that indicates that temporary patching of trenches would be sufficient: "NO PERMANENT PAVEMENT PATCH REQUIRED ON THIS SHEET, REFER TO CIVIL DRAWINGS FOR PATCHING AND PAVING RESTORATION." Instead, however, City representatives required the County's contractor to apply *permanent* pavement patches, which cost the County an additional \$216,224.

City representatives, moreover, gave the County's contractor a diagram of the patch configuration to be used (a diagram that does not appear to be in the City's current standard specifications) and required the contractor to use a concrete base for the patches, even on Toole Avenue, which does not have an existing concrete base. As you noted in your letter dated February 11, 2013, the current standard specifications for permanent pavement patches are found in *Pima County/City of Tucson Specifications for Public Improvements* (2003 edition), SD-216. SD-216 makes it clear that the base used for the patch is to match the existing roadway base. Therefore, even if we assume, for purposes of discussion, that the installation of permanent patches was generally appropriate, the use

Messrs. Randolph and Miranda

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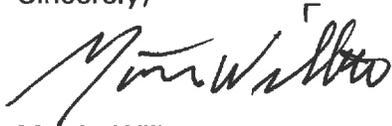
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of concrete on Toole Avenue clearly was not. This use of a concrete base, rather than a granular base, on Toole Avenue, cost the County an additional \$96,224. (A portion of this cost—\$9,589—is for the concrete used to patch the trenches for the nine copper lateral lines, and is therefore also included in the \$101,455 figure for the cost of replacing those lines.)

City representatives had no legal or contractual basis for requiring the County to replace the ¾" copper lateral lines, and apply permanent rather than temporary pavement patches. Their actions in doing so were grossly negligent or intentionally wrongful, and constituted a breach of the Construction Agreement between the City and the County. The requirement to perform this work also constitutes an unjust and unreasonable charge in violation of A.R.S. § 9-511.01(E). The extra work cost the County a total of \$308,090. The County is, however, willing to settle its claim against the City for \$188,090, which is the cost of replacing the copper laterals plus the cost of the concrete used on Toole Avenue. This means that the County will not be compensated for the permanent patching and will instead absorb this cost into the courts project.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin Willett". The signature is written in a cursive style with a small "r" above the "l" in "Willett".

Martin Willett
Chief Deputy County Administrator

MW/dr