



MEMORANDUM

Date: April 19, 2016

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

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to read "CHH", is written over the printed name "C.H. Huckelberry".

Re: **Goldwater Institute Litigation Regarding World View**

The Board of Supervisors and/or your staff may be contacted by the media requesting comment on the Goldwater Institute litigation against Pima County regarding World View.

Attached is the statement I provided to the media. Please feel free to utilize this statement should you or your staff receive media requests for comment.

CHH/mjk

Attachment

c: Jan Leshar, Deputy County Administrator for Community and Health Services
Mark B. Evans, Public Communications Manager

April 15, 2016

**COUNTY ADMINISTRATOR STATEMENT REGARDING
GOLDWATER INSTITUTE LITIGATION REGARDING WORLD VIEW**

In drafting the economic development agreements with World View, the County followed all of the enacted Arizona laws related to economic development incentives. Specific statutes that are used by a number of jurisdictions, as well as the State, provide that incentives can be made for economic development purposes.

The Goldwater Institute appears to have two primary complaints; 1) that our World View lease is a gift, and 2) that we procured an architect and builder for the World View facilities without a competitive bidding process.

First, the gift issue. The County will finance, own, and build — on land owned by the County — the building where the World View operation will be located. World View will lease the building from the County. World View will pay rent, plus all building operating and maintenance costs. Rent is lower initially, but increases every 5 years over the term of the 20-year lease. In total, World View will pay \$4.2 million more than the County is spending on the building, even with borrowing costs and the value of the land included. So, no gift.

World View has the option to purchase the building and land early — that is, before the end of the 20-year lease term. If they exercise that option, they will pay the County any principal amount still owed on the bonds issued by the County to finance the facility (which would be used by the County to “redeem” or pay off those outstanding bonds), plus all of the principal and interest payments the County made on the bonds before the option was exercised (less the rent already paid), plus an amount that approximates the interest the County could have earned on the funds the County used to cover the debt service on the bonds in the early years when the rent payments were not sufficient to cover debt service. Hence, no gift.

If World View defaults, the County will retake possession and control of the building and land and lease it to another employer or use the building for other County purposes. World View obviously loses any rent that has been paid to the County and will be liable to the County for normal contract damages. Again, no gift.

Now, the issue of competitive bidding. Three states competed for the World View headquarters: Florida, New Mexico and Arizona. In the three-state competitive process, the County had to define in some detail the size and function of the World View building. The County was explicitly told by World View that they had a forecast for demand that required completion of their facility by November 2016 and that both Florida and New Mexico, as part of their incentive packages, had committed to meeting that delivery date.

World View principals worked directly with the highly qualified architectural firm of Swaim and Associates, Ltd., as well as the construction and cost-estimating firm of Barker Morrissey Contracting, to define in greater detail the size, function, programming and cost of a facility that would meet their needs. The companies did this work without compensation.

The Goldwater Institute claims the County relied inappropriately on the “emergency” procurement component of A.R.S. § 34-606. But that statute is not actually limited to “emergency” situations involving threats to public health and safety; it *also* allows a public entity to dispense with normal procurement procedures *“if a situation exists that makes compliance with this title impractical, unnecessary or contrary to the public interest.”* The Board of Supervisors made a finding that the need to deliver a manufacturing site by November 2016, in order to retain World View, created a situation that made compliance with Title 34 impractical and contrary to the public interest, as the economic development opportunity would otherwise have been lost for Pima County.

The Goldwater Institute uses the term “competitive bidding.” This implies a strictly monetary-based selection process. It should be noted, however, that Title 34 allows for qualifications-based procurement of professional architectural services and construction-manager-at-risk services. A.R.S. § 34-603 states that the contract shall be made on the *“basis of demonstrated competence and qualifications”* and that the agency procuring the services *“shall not request or consider fees, price, man hours or any other cost information.”* The statute goes on to state that *“[a]ll selection criteria...shall be factors that demonstrate competence and qualifications for the type of professional services or construction services included in the procurement.”*

Hence, in any competitive process the County would have initiated in lieu of the manner in which we procured these services, it is likely that both the architect, Swaim and Associates, and the contractor, Barker Morrissey, would have been selected given their prior uncompensated work helping to define the size, scope and extent of the facility required by World View.

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