



MEMORANDUM

Date: November 20, 2013

To: Chairman and Members
Pima County Bond Advisory Committee

From: C.H. Huckelberry
County Administrator 

Re: **City of Tucson Withdrawal from the Downtown Courts Complex Project**

Attached is my recent memorandum to the Board of Supervisors that provides a detailed analysis of the additional costs incurred by Pima County as a result of the City of Tucson walking away from its longstanding participation in what was envisioned as a joint downtown courts complex (Attachment 1).

Recent reports in the media about the approximately \$12.5 million in additional costs have featured comments from City officials that unfortunately do not match the historic record of the City's intent to occupy the building (Attachment 2).

The City of Tucson clearly was an active participant in the planning process before the matter ever went to voters in 2004. Shortly after the affirmative vote, City Manager James Keene urged immediate commencement of the project (Attachment 3), and three subsequent City Managers were engaged in those discussions.

City Court officials and City Facilities officials actively participated in an ongoing Joint Courts Complex Management Team, which included direction on the design and construction of the building. A City representative was at every joint planning meeting held; beginning in August 2004 and until the City's sudden decision last year to pull out of the process.

A letter from then Superior Court Presiding Judge Jan Kearney last November, expressing hope that the building would, in fact, house both jurisdictions, described the City's involvement as "continuous" and noted it "spanned the initial development of the full project plan, including detailed architectural planning and the painful but fruitful discussions necessitated by the budget constraints of recent years."

As outlined in Attachment 1, you will see there are elements in the Tower Shell that were specifically designed to accommodate the City of Tucson's needs, such as a higher-than-normal ceiling height in the lower level to accommodate high-volume courtrooms and specialized ductwork to improve acoustics in courtrooms, where outside noise may distract from testimony.

At various points, City officials have raised the argument of double-taxation for City residents. This is a specious argument. The operating agreement all along had been for the County to invest the \$76 million in voter-authorized bond funding. Then, in accordance with the "joint" nature of the project, the respective jurisdictions were to bear the costs over and above that amount in proportion to their use. The City was intended to occupy 54 percent of the facility. Each party would then cover their own operating costs, as is standard practice in shared facilities. It would be highly unusual for the County to be responsible for the entirety of the costs of a building that would house City functions.

CHH/mjk

Attachments

- c: The Honorable Chairman and Members, Pima County Board of Supervisors
Nicole Fyffe, Executive Assistant to the County Administrator
Diana Durazo, Special Staff Assistant to the County Administrator
John Bernal, Deputy County Administrator for Public Works
Reid Spaulding, Director, Facilities Management

ATTACHMENT 1



MEMORANDUM

Date: November 12, 2013

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

From: C.H. Huckelberry
County Administrator 

Re: **Downtown Courts Project Development and Cost**

At the November 5, 2013 Board of Supervisors meeting, the Board asked for detailed information of the costs incurred by the County as a result of the City of Tucson's withdrawal from the Downtown Courts project. As you know, we are repurposing the project as a public service center that houses not only our lower courts, but the Assessor, Treasurer, Recorder and Constables.

This last-minute repurposing has caused the County to incur substantial additional costs. The attached November 1, 2013 memorandum from our Facilities Management Director discusses the additional costs incurred by the County due to the City's participation in the project since approximately 2003, followed by their decision to formally withdraw from the project on November 13, 2012 – nearly nine years later.

As you can see, the total additional expense incurred by the County is approximately \$12.5 million. Had the County known the City would not participate when the project was first being designed, all of these costs could have been avoided. In any future cost-sharing projects with the City, a pre-project intergovernmental agreement will be required that defines the financial liability of the parties should one party withdraw from the project.

The Board also asked for an overall financing summary for the project. The attached memorandum from the Finance and Risk Management Director shows the sources of funds for completing this \$143 million project.

Please note that the Certificates of Participation are a future public sale that will complete the tenant improvements and the parking garage. Revenues to repay this debt will be secondary debt service for the General Obligation bonds and the General Fund for Certificates of Participation, which will be supplemented by parking garage revenues and a new courts facility fee.

CHH/mjk
Attachments

c: Ellen Wheeler, Deputy County Administrator
Reid Spaulding, Director, Facilities Management
Tom Burke, Director, Finance and Risk Management



Memorandum

DATE: November 1, 2013

TO: Chuck Huckelberry, County Administrator

FROM: Reid H. Spaulding, R.A. 
Facilities Management Director

SUBJECT: **Itemization of Costs Incurred by the County as a Result of the City of Tucson's Withdrawal from Participation in the Joint Courts Project**

Below please find a summation of the estimated total cost incurred as a direct result of the City's late withdrawal from the Consolidated Court project:

Initial Design and Engineering: Excluding countless hours of staff time of both City and County as well as several members of both judicial staffs, the capital project budget had incurred charges approximating \$11.3M in architectural design and engineering fees prior to the City's withdrawal. As 54% of the planned space was assignable to the City, their proportionate share of such cost would be \$6.1M.

Subsequent to the City's formal withdrawal on November 13, 2012, the capital project budget has incurred an additional architectural and engineering service fee of \$335,000 for re-design and re-engineering of County functions to backfill the vacated City space. Again, such additional consulting fees do not include countless hours expended by County staff and members of the Assessor, Recorder and Treasurer's offices to provide input and review of the new proposed plans.

Phasing, Permitting and Packaging: As a consequence of the City's late decision to abandon their interest in the project, the actual project delivery methodology has been adversely affected. Originally, construction activities would have flowed seamlessly from construction of the tower shell immediately into multi-floor tenant improvements. Such sequencing takes full beneficial use of the CMAR's project management team, subcontractor labor, equipment rentals and all other jobsite related General Conditions and overhead. Instead, the project is now forced to consider a piecemeal approach to tenant improvements based upon those floors delayed as a result of undergoing complete or partial redesign. The manpower resources of both the architectural team as well as the engineering consultants are under duress to quickly produce design and construction documents reflecting the new tenants in an expeditious manner so as to minimize any down time by the construction forces. This premium on producing construction documents as quickly as possible is undoubtedly reflected in the consultant's additional service fees.

Implementation and adoption of new Building Codes as well as new LEED certification criteria have both occurred subsequent to original building design. Essentially, the Tower Shell building will be permitted under the old adopted Code, while the majority of the delayed tenant improvements must now be permitted under the new Code. Likewise, LEED criteria for achieving the silver level certification as desired by the Board of Supervisor's Sustainability Action Plan has also changed.

Finally, despite the disjointedness of the resultant project delivery plan, the County remains dedicated to receiving the benefit of marketplace competition into all aspects of the work. As design and construction documents are completed for the various re-designed floors, each floor or area of improvement is subject to competitive pricing and the establishment of a Guaranteed Maximum Price (GMP). The necessary process of packaging each scope of work by both the consultants and Construction Manager-at-Risk (CMAR) is time consuming and costly as compared to what would have been a cohesive all-encompassing bid package.

Realistically, it is impossible to quantify monetarily the true cost of such a piecemeal approach. Unfortunately, such an approach is necessary to minimize to the fullest extent possible any prolonged or extended General Conditions passed along to the County by the CMAR.

Construction costs: Based entirely upon the originally approved design, there are a number of built conditions in the Tower Shell which are and were specific to the City of Tucson's planned occupancy. The ordering of materials and sequencing of construction activities prevented the following scopes of work to be deleted prior to the City's late decision to withdrawl:

Lower Level design – The subgrade level of the new building included four (4) courtrooms, three (3) of which were specific to City Courts. The High Volume Courtroom as its name implies was uniquely designed to accommodate a large number of participants. As such, the design called for a higher than normal ceiling to spatially address the issue of a highly-crowded Courtroom. Such excessive ceiling height is no longer required, but built.

Quantity of detention cells - The new facility will include (14) detention cells to hold inmates prior to arraignment or trial. This quantity is approximately 50% in excess of what is actually required to accommodate County Justice Court needs. The construction of all detention cells were well underway prior to the City's decision.

Security accommodations and provisions – Security officer accommodations including restrooms and locker rooms were sized to support a quantity of officers required to support thirty (30) Courtrooms. With the City's absence, the number of Courtrooms has been reduced to fourteen (14). Again, due to the lower level location and associated plumbing, such large provisions were already in place prior to the City decision.

Specialized ductwork and HVAC equipment – Based entirely upon proper, fundamental Courtroom design, a considerable amount of the new facility's high and medium pressure ductwork is double-walled and acoustically insulated. This is specifically required to ensure proper acoustics in the Courtrooms where one's ability to hear is paramount to the judicial process. As with other previously mentioned actual construction, the long lead time associated with such specialized ductwork resulted in the fabrication of such material well in advance of the City's decision. With a reduction in the number of Courtrooms from 30 to 14, the need for roughly 50% of such expensive ductwork is no longer required but fabricated and installed.

Public waterline infrastructure – It has been well documented that the City's existing public water infrastructure was inadequate to serve the fire protection needs of a new 7-story, downtown office tower. Consequently, the Developer (County) was forced to bear the entire burden of replacing the City's antiquated water lines in both Toole Ave. and Stone Ave. As an active participant in the development, it was anticipated that the City would share equally in the burden of such public improvement with the County agreeing to amortize their proportionate cost over the lease term. While the County retains their right to file formal legal action against the City for reimbursement, the required work has been completed and expenditure incurred.

Debt and interest: As the attached **Summary of Costs** indicates, the cumulative value of the under-utilized and remedial project costs incurred as a consequence of the City's withdrawal exceeds \$9,400,000. To expedite the project and consequently minimize overall construction costs, the County opted to utilize alternative funding in lieu of seeking additional voter approved bond funds to complete the project. The additional \$9.4M of debt incurred to account for the remedial portion of the City's decision results in an additional \$3M in interest based upon a 15 year indebtedness.

Please do not hesitate to contact me should you have any questions.

Attachment 1:

**Summary of Cost Incurred Resulting from City's Withdrawal
Joint Courts Complex**

<u>Item/Scope</u>	<u>Estimated Cost</u>
Base A/E fees incurred for non-utilized design	\$6,100,000
Re-design fees for vacated space	335,000
Excessive lower level clear height	800,000
Excessive quantity of detention cells	1,080,000
Excessive security staff provisions	450,000
Unnecessary ductwork and HVAC provisions	450,000
Non-sharing public waterline infrastructure	188,000
Incurred interest on debt associated with items listed above	3,117,000
Total Estimated Cost of Additional Expense	\$12,520,000



MEMORANDUM

DEPARTMENT OF FINANCE AND RISK MANAGEMENT

Date: November 8, 2013

To: C. H. Huckelberry
County Administrator

From: Tom Burke
Director

A handwritten signature in black ink, appearing to read "Tom Burke", written over the printed name and title.

Re: Funding for Public Service Building

At its meeting on November 5, 2013, the Board of Supervisors requested information about the funding for the new Public Service Building at 240 N. Stone Avenue. The current project is budgeted for \$143,500,000. The County is funding the project using three major funding sources: bonds proceeds from the 2004 Bond Authorization, funds transferred from the Tax Rate Stabilization Fund, and proceeds from an upcoming issue of Certificates of Participation.

The Public Service Building is being funded as follows:

2004 Bond Proceeds	\$ 66,480,063
Transfer from Tax Rate Stabilization Fund	22,470,283
Future Certificates of Participation	<u>54,549,654</u>
Total Project Funding	<u>\$143,500,000</u>

The original 2004 Bond Ordinance allocated \$76,000,000 to the new courts building and \$4,500,000 for the rehabilitation of the Old Courthouse and anticipated \$4 million from the City of Tucson from the disposition of its municipal court facilities. Of those amounts, the County has spent \$14,019,937 on court projects as follows:

- \$9,400,389 to build courtrooms on the 8th floor of the Superior Court building and relocate Adult Probation and Pre-Trial Services,
- \$3,973,955 to purchase the land for the new courthouse,
- \$640,884 to purchase the HUD building being used by the Justice Courts, and
- \$4,709 on the Old Courthouse.

The remaining \$66,480,063 of 2004 Bonds is allocated for the completion of the project.

c: Reid Spaulding, Facilities Management Director

ATTACHMENT 2

ARIZONA DAILY STAR

Collapse of courthouse deal will cost Pima County \$12.5 million extra



NOVEMBER 16, 2013 12:00 AM • BY DARREN DARONCO

A new downtown courthouse is going to cost the county an extra \$12.5 million.

County officials blame the added expense on the city for waiting nearly a decade before pulling out of the project.

They say the city's abandonment of the project resulted in the county's picking up the tab on about \$6 million of architect and engineering fees, as well as about \$2.7 million in excessive or unnecessary additions, plus around \$3 million in interest on those items.

They say if they had known the city's plans sooner, they could have adjusted and avoided the additional costs.

"They never hinted they were going to leave until the last minute," said County Administrator **Chuck Huckelberry**.

But city officials contend the county's revisionist history contains a few key omissions.

Among them, said Councilman **Steve Kozachik**, was that the city never once gave the county a green light to move ahead with the project.

"There were ongoing negotiations involving differences of opinion on millions of dollars worth of items," Kozachik said. "They, and anybody who was paying attention, knew that we were actively weighing keeping the existing courthouse in operation. ... They're reinventing history if they're trying to suggest that our taking up occupancy was a done deal."

For years, the city and the county have squabbled over the complex near North Stone and Toole avenues.

In 2004, voters approved a \$76 million bond issue to fund the entire project, But unanticipated expenses ballooned costs to about \$143 million.

Despite lacking a firm commitment from the city, the county moved forward with construction in early 2012. Later that year, the county asked the city to pay its share of the cost overrides and even offered to loan the city \$21 million.

But Mayor **Jonathan Rothschild** said the county's offer would have been a bad deal for Tucsonans.

"Tucson taxpayers are county taxpayers too. City taxpayers have paid for the county, and city taxpayers have paid into the county's general fund through property and other taxes," Rothschild wrote in an email.

"It would not make sense for city taxpayers to be charged twice for a building they already helped pay to build, but won't own, and then pay a lease on top of that."

Rothschild said it wasn't in the best interest of taxpayers for the city to pick up a tab for the extra expenses created under the current Pima County administration's watch.

Since the city didn't have money to pay for either a courthouse or a loan, it made one final offer to the county, to lease space in the building, but not pay for any extra costs.

The county rejected the offer in November 2012.

Although the city pulled out, the two sides never formalized a contract over the project, so the county doesn't have a legal remedy to recapture its losses.

But that's a mistake the county won't repeat, Huckelberry said.

From now on, all projects involving the two entities will require a detailed agreement outlining who owes what to whom if one party decides to renege, Huckelberry said.

Other county officials agree.

"We've all learned that deals are about contracts and not about handshakes or promises, especially when it comes to a government we've had some raw deals with in the past," said Supervisor **Ray Carroll**.

Carroll said the county will be more careful before jumping into future deals with the city.

"Fool me once, shame on you. Fool me twice, shame on me," Carroll said. "I'm not going to be anxious to do any more cohabitations with the city based on this project."

But Kozachik has little sympathy for the county.

He said the city wasn't going to bail out the county for its "poor decision" to go it alone and start construction on the courthouse.

He did agree though with the lesson the county learned from the endeavor.

"Don't put millions of dollars on the line when you know you don't have an agreed-upon contract," Kozachik said.

ATTACHMENT 3

August 9, 2004



CITY OF
TUCSON

OFFICE OF THE
CITY MANAGER

C. H. Huckelberry
County Administrator
Pima County Governmental Center
130 W. Congress
Tucson, AZ 85701-1317

**Subject: Pima County 2004 Bond Program Projects in City of Tucson
Your letter of June 14, 2004**

Dear Mr. Huckelberry:

Thank you for your letter of June 14, 2004, regarding several Pima County bond-funded projects of interest to the City that the County would like to see move forward at this time. We applaud your desire to accelerate these projects. I would offer the following comments (in the same order as your letter).

Regional Public Safety Communications System

You have our full support to commence this project immediately with the \$436,000 in funds indicated in your letter. It is our understanding that these funds will be used for a consultant analysis, and we anticipate that the City will be able to fully participate in that analysis.

Justice Court/Municipal Court

This is also an important project for both of our organizations, and we support immediate commencement. With respect to the allocation of \$1,363,000 as stated in your letter, it is our understanding that the funds are to be used for consultant feasibility analysis and/or design work. If that is a correct assumption, we again request that the City be afforded the opportunity to fully participate in that analysis. We support Judge Leonardo's selection to chair the project management team.

We believe consideration should be given to acquiring the needed property for this project in a timely fashion, as land values in the downtown area will only escalate as the Rio Nuevo Project moves forward. City staff stand ready to assist in that effort. I wonder if that might be a legitimate initial use of part of the funds you've allocated at this time?

Fort Lowell Acquisition and San Pedro Chapel

In order to consummate this purchase, we strongly recommend that the full \$3,000,000 allocation of acquisition funds be made by the County at this time and that County staff begin the acquisition process as soon as possible.

Eastside Sports Complex

Further planning work is required before purchase commitments can be made for this regional facility. Given that, we believe it would be best to program this acquisition for a later date.

Pima County Bond Program Projects in the City of Tucson
August 9, 2004
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Northside Community Park

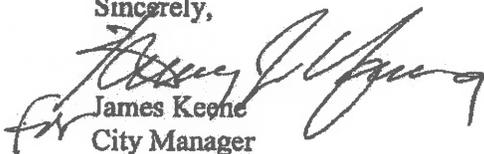
We believe that it would be good to commence the acquisition activities on this project, and an IGA will be drafted shortly and transmitted to your staff for consideration. We will also use that as a vehicle to secure Mayor and Council's concurrence and direction. With respect to the requirement in your letter that funds be expended by no later than December 31, 2004, it is unclear as to why only a few months are provided to complete acquisitions. Normally the process would consume more than that. An explanation of that would be appreciated; however, we will plan to do our best to meet that deadline.

Other Considerations/Issues

1. In order to maintain the \$10.6 million "City share" of the initial bond sale, we would suggest that you consider including \$1 million for the habitat acquisition at Kino and 36th (and that your staff handle that purchase).
2. An IGA should be drafted soon for the Fort Lowell Project (to clearly state the City's management and operation role and the County's acquisition role). I would suggest that Linda Mayro and Marty McCune work on that right away.
3. IGA's will be needed obviously for the Justice Court & Communications System projects (to clearly state feasibility, acquisition, design and construction responsibilities) as well. We will await your drafts for these.
4. It is our understanding that the initial bond sale was approximately \$41 million. We would appreciate an outline of the anticipated expenditures of those funds not outlined in your June 14th letter as a matter of information (so that we can keep our Mayor and Council aware of the program status).

Please call me at 791-4204 if you have any questions. I, too, look forward to a great start to this 2004 bond program.

Sincerely,


James Keene
City Manager

JK/ts

cc: Benny J. Young, Assistant City Manager
Liz Miller, Assistant City Manager
Marty McCune, Historical Preservation Officer
John Updike, Real Estate Administrator
Executive Leadership Team

CITY MANAGER JUN 16 '04 AM 09:44



Liz
Bennett

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

June 14, 2004

James Keene, Manager
City of Tucson
P.O. Box 27210
Tucson, Arizona 85726-7210

Re: **Start of the Pima County 2004 Bond Program Projects in City of Tucson**

Dear Mr. Keene:

On June 15, 2004, the Pima County Board of Supervisors will inaugurate the Pima County 2004 Bond Program with an initial sale of \$41 million in bonds approved by voters at the May 18, 2004 bond election. While the Bond Implementation Plan ordinance for the May 2004 election anticipated the first sale in January 2005, market conditions and programmatic considerations are such that it is in the County's best interests to sell some of this authorization in June.

Based upon the Bond Implementation Plan for the May 2004 election, we have included funding in the June 2004 bond sale for the following projects that impact the City of Tucson.

Regional Public Safety Communications System	\$436,000
Justice Court/Municipal Court	\$1,363,000
Fort Lowell Acquisition and San Pedro Chapel	\$300,000
Eastside Sports Complex	\$4,000,000
Northside Community Park	\$4,500,000
Total	\$10,599,000

We should immediately start writing individual intergovernmental agreements for each of these projects. As has been explained several times in the past, time is of the essence here, since once these bonds are sold, Pima County is solely subject to compliance with federal arbitrage rules. For all projects for which this bond sale involves land acquisition, Pima County intends to expend the bond proceeds by December 31, 2004, within six months of this sale. For bond proceeds allocated to construction and construction-related activities, Pima County intends

James Keene, Tucson City Manager
Start of the Pima County 2004 Bond Program Projects in City of Tucson
June 14, 2004
Page 2

to expend all funds within eighteen months of the sale, well in advance of the twenty-four month rule, but Pima County must also meet benchmarks for expenditure after six and twelve months as well. Therefore, both governments face a tight time frame, which will need to be established in the intergovernmental agreements.

Pima County will shortly provide you with a draft model intergovernmental agreement to be used for these projects. I hope that you will quickly assign this for legal counsel review and comment. You can submit all review, comments, and questions to my Executive Assistant, Jim Barry (740-8661). The draft model intergovernmental agreement will look very similar to agreements our governing bodies have approved for 1997 bond projects, though it will incorporate changes in County Code approved by the Board at their March 9, 2004 meeting.

With your cooperation, I look forward to a great start on the 2004 County Bond Program.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/jj

c: The Honorable Chair and Members, Pima County Board of Supervisors
The Honorable Mayor and Council, City of Tucson
Chair, Vice Chair, and Members, Pima County Bond Advisory Committee
Jim Barry, Executive Assistant to the County Administrator