



COUNTY ADMINISTRATOR'S OFFICE

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C.H. HUCKELBERRY
County Administrator

November 18, 2011

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

Re: **November 16, 2011 Newsletter from Councilmember Kozachik**

Dear Mr. Miranda:

I am enclosing Pages 1 and 2 of Councilmember Kozachik's newsletter, and I have reviewed the issues and questions he raised in his communication to you. We have taken the opportunity to respond in detail to each of the points raised in his communication. Based on the newsletter and his questions, there is a significant amount of misinformation being circulated regarding this proposal. Please feel free to use the information provided to respond to the Councilmember.

Councilmember Kozachik's newsletter and his communication to you make it seem this is a new issue that was just sprung on the City. I am enclosing, for your transmittal to Councilmember Kozachik, memoranda, letters and information related to the Joint Justice/Municipal Courts Complex (JJMCC) development with and between various parties, including the City that date from 2003 (Attachment 1). This correspondence covers 982 pages and is contained on a compact disk for ease of access. Communications directly to the City date from prior to the bond question in 2004 with former City Managers James Keene and continued with Mike Hein, Mike Letcher and now yourself. Further, the City has been involved from the beginning of project design and development in the Joint Court Complex Management Team (JCCMT). Sitting on this committee are the Presiding Magistrate of the Tucson City Court, the City Court Administrator, and the City General Services Director. It is unfortunate Councilmember Kozachik believes the City has not been involved in the development of this project. The record clearly indicates otherwise.

Mr. Richard Miranda
 Re: **November 16, 2011 Newsletter from Councilmember Kozachik**
 November 18, 2011
 Page 2

Councilmember Kozachik continues to also not understand the continuous updating process used by the County in bond program management and implementation as well as the oversight of the separately appointed and independent Bond Advisory Committee. It is common practice to augment and disclose, through bond ordinance amendments, details of project implementation. The evolution of this project from its original conception in the 2004 bond program through the last bond amendment represents the reality of implementation and has been fully disclosed to the public in multiple public hearings before the Bond Advisory Committee as well as the Board of Supervisors and, as necessary, other participating jurisdictions.

To assist Councilmember Kozachik in understanding this process, I am enclosing electronic versions of the County Code regarding bonding implementation and management (Attachment 2) as well as the latest semiannual detailed project by project report provided to the Bond Advisory Committee (Attachment 3; 181 pages). This process has been the most comprehensive, transparent and citizen management driven of any in which I have participated in my decades of public service. To characterize the process or project as "very Rio Nuevo-esque" is disappointing as well as uninformed.

To answer Councilmember Kozachik's questions posed to you directly, please find our answers to each question below. Please feel free to pass along our responses as you deem appropriate to Councilmember Kozachik.

A. We have \$17 million remaining that is budgeted for actual construction. The original \$76 million is accounted for in Table 1 below.

Table 1.

Scope of Work	Amount Spent	Amount Budgeted/ Remaining
Professional Fees	\$12,244,526	\$3,500,000¹
Architectural and Engineering Fees		
Construction Manager at Risk Fees		
Geotechnical Reports		
LEED Commissioning (Design Phase)		
Potholing/Asbestos Reports and Utility Investigations		
Land Acquisition	4,784,734	0
Land Purchase		
Legal fees related to purchases, appraisals, attorney fees and Phase I Environmental Assessments		

Scope of Work	Amount Spent	Amount Budgeted/ Remaining
Archeology	16,808,812	0
Archeologist contract (SRI)		
Reburial expenses – All Faiths Cemetery		
Furnishing and Equipment		2,000,000
Courtrooms and Common areas only		
Eighth Floor Superior Court Remodel (Project is designed/bid/under construction)		12,000,000
Project Soft Costs	309,597	5,700,000
Permits		
Utilities		
Public Art		
Project Administration		
Project Contingency		
Construction	1,632,110	\$48,000,000 (Phase I rounded)
Demolition and Abatement of Site Structures		
Utility relocations – Alameda & abandoned easements		
Site Maintenance		

¹Represents a fee of approximately 20 percent based upon \$77 million of construction. Higher cost is due to extensive programming and reprogramming effort due to two tenants and resultant redesign at Design Development phase to re-scope the project based on new demographics and growth projections. Additional cost incurred to separate the documents into Phase I (Tower/Shell/Central Plant) and Phase II (Tenant Improvements). Essentially, two separate and distinct bid packages.

We would be pleased if the City would waive all permit, utility and other fees as well as the cost to upgrade Tucson Water facilities. We would also appreciate help from the City in recovering the \$2.1 million we paid the State of Arizona for land acquisition, since the property had to be acquired previously to extend State Route 210.

B. To answer the question related to "...what accounts for the reduction in scope and increase in costs associated with the project," it is necessary to examine a number of factors. First, the original size of the project was estimated based on best available information at the time related to both City and County court facility demand as well as project cost. Upon initiation of the JCCMT, new and additional forecasting occurred regarding court demands, which is what led to the "ballooning" of space up to a building size of approximately 470,000 square feet. In addition, the estimated cost of the facility used essentially forecasted 2003 pricing. As everyone knows, commodity pricing post-

2004 set records for annual increases rising from a composite index of the *Turner Building Cost Index* of 0.3 percent in 2003, 2004 – 5.4 percent, 2005 – 9.5 percent, 2006 – 10.6 percent, 2007 – 7.7 percent and 2008 – 6.3 percent, for a cumulative 39.8 percent increase between 2003 and 2009.

Equally not forecasted by anyone has been the prolonged extent of the great recession on construction pricing. The scope and size of the building was reduced based on a significant reduction in court filings, thereby reducing courtroom size demands, a benefit to overall project cost. Moderation of construction pricing has also been a benefit, but it has not offset the rapid inflationary increase post 2004. In summary, the cost will be what the cost is when the building is completed. To answer the question specifically:

What accounts for the reduction in scope? There is no reduction in scope. Rather, the project has been phased to better align with the reduced projected population growth rates and associated caseload. The reduction in square footage from the original program has been achieved primarily by:

1. Pima County's purchase of Bank of America in 2007 to accommodate public defenders.
2. Increased consolidation between City Courts and Pima County Justice Courts.
3. Judges' willingness to create a single, shared floor for all judges' chambers with unassigned courtrooms versus the traditional layout of assigned courtrooms with immediately adjacent judges' chambers.

What accounts for increased costs associated with the project? The land acquisition cost, hazardous abatement costs associated with structure demolition, and most notably the extreme archeological costs associated with the cemetery are well documented. In addition, to alleviate an untenable lack of courtroom space resulting in unacceptable delays to hear cases in Superior Court where there were more judicial officers than courtrooms, the Bond Advisory Committee allocated \$12 million to facilitate the remodeling of Floor 8 of the Superior Courts Building to accommodate five new courtrooms. These new courtrooms are under construction today. Finally, the anticipated additional costs to fund the JJMCC mentioned in the original bond language have not been realized, including the monetary contribution from the City of Tucson associated with the sale of its existing City Court property.

C. The City of Tucson is the deciding voice in whether the Guaranteed Maximum Price (GMP) is acceptable. If there is a belief the GMP is deficient, the City should indicate such. As I have indicated previously, it is solely up to the City as to whether to proceed with implementing the JJMCC at this time using the funding mechanism and process proposed.

Mr. Richard Miranda

Re: **November 16, 2011 Newsletter from Councilmember Kozachik**

November 18, 2011

Page 5

D. The JJMCC is under the direct project management control of the Facilities Management Department and its Director, Reid Spaulding. The project has been ongoing for nearly seven years. Funds have been spent on land acquisition, abandonment of streets, relocation of utilities, archaeological mitigation and project design and development. At this time, \$17 million in bonds have been reserved for the construction phase; all other bonds that are unexpended are reserved for ongoing or programmed expenses that are in the project budget. In addition, the JCCMT has been an active participant in project implementation, modification and design to meet the projected needs of the courts and has been providing information and oversight of the process as has the Bond Advisory Committee.

E. The final building square footage as reflected in the 100 percent Tower Shell permit documents is 288,363 square feet. The stand-alone Central Plant building is an additional 6,936 square feet, for a project total of 295,299 square feet. The initial bond estimate of 337,000 square feet was exactly that, an estimate based on user projected needs without the benefit of any actual design or planning. The JCCMT began meeting in 1997 for the purpose of authoring the bond request. Surely, it can be understood that between 1997 and 2011, it is highly probable the projected square footage could indeed change. Is it more important to hold tight to the bond language square footage or meet the functional needs of the courts? Courtroom technology alone has advanced considerably since 1997, which has had a direct impact on court facility space planning. As I discussed in my November 7, 2011 report to the Board of Supervisors, the programmed needs resulting from the initial design effort resulted in a cumulative square footage well beyond the initial 337,000 square foot estimate. Independent cost estimates provided during the Design Development phase of the project at a time of hyper-construction inflation (2006 and 2007) yielded a construction price well in excess of available funding.

Following the County's purchase of the Bank of America building, the project was re-programmed to reflect the relocation of County prosecutors and public defenders, and as mentioned previously, re-programmed based on reduced projections associated with a significant downturn in County population growth rates and judicial caseload. Contrary to Councilmember Kozachik's allegations, the design team was highly creative and successful in utilizing the floor plans, bay sizes, functional relationships, and the horizontal and vertical circulation paths from the initial design into the new, smaller, phased design. Additional design costs were incurred as a result of a complete new site plan, exterior elevations and Central Plant configuration. These changes affected virtually all team consultants engaged on the project. Utilizing the 100 percent GMP for the Tower Shell/Central Plant (\$48,252,587) and the 50 percent GMP estimate (\$28,357,247) for the tenant improvements, yields a total projected construction cost of \$76,609,834. Dividing this amount by the total square footage (295,299) yields a total construction cost per square foot of \$259.43. The efficiencies the County is recommending are being captured as a direct result of the "down" construction market, which is illustrated in Table 2 below by comparing similar court projects.

Table 2.

Project	Square Feet	Cost Per Square Foot	Year Completed
Michigan Supreme Court	305,000	\$239	2003
Pima/Tucson Joint Courts Complex	295,299	259	To be determined
Collier County Courthouse	137,984	266	To be determined
Calgary Law Courts	1,012,000	271	2007
Clay County Courthouse	93,000	273	2008
Long Beach County Courthouse	531,000	378	2013
Maricopa County Courthouse	683,233	383	2011

F. A draft of the report that was issued on November 7, 2011 was previously provided to City management and was discussed previously with City management. The report was formally issued after a detailed review by County staff of the accuracy of the information and to gain certainty regarding 95 percent as well as 100 percent plan pricing.

G. The \$77 million estimate provided by an outside consultant was based upon 50 percent Construction Documents for both the Tower Shell/Central Plant package as well as all of the tenant improvements. At that point in the project, the architect stopped working on the tenant improvement drawings and focused entirely on completing the 100 percent construction documents for the Tower Shell/Central Plant. It is this 100 percent set of documents that the Tower Shell/Central Plant GMP is based upon. We do not yet have a GMP for the tenant improvements as we do not intend to contract for the tenant improvements at this time. In order to arrive at a GMP, the Construction Manager at Risk (CMAR) must take the project to market, i.e., competitively bid the project to the local subcontracting community. A CMAR would only undertake this effort if they intended to subsequently enter into construction agreements with the bidding subcontractors. Again, funding does not exist at this time to build the tenant improvements, so the GMP would be baseless, as those subcontractor bids would expire well in advance of the CMAR actually entering into contracts.

H. The Bond Advisory Committee has been meeting for several purposes – one of which is their role of oversight in implementing bond authorizations, whether they are the 1997, 2004, or 2006 authorization. The Committee has also been meeting to formulate the content of a bond issue that may occur in the future – likely no sooner than November 2013. The allocation that has been made by the Bond Advisory Committee is for the purpose of completing the JJMCC project, \$50 million in a future authorization; which simply means it would be included as a project question in a future election. The Bond Advisory Committee would not, and generally does not, reallocate project funding. If the

Mr. Richard Miranda

Re: **November 16, 2011 Newsletter from Councilmember Kozachik**

November 18, 2011

Page 7

Committee did so, it would only be in small amounts after a very prescriptive disclosure process requiring multiple levels of approval.

I. The initial direct cost estimate of \$48 million was provided by the CMAR based on the 50 percent set of construction documents. Those knowledgeable of the construction industry would concur that with only 50 percent of the information included in the documents, there are many "holes" the CMAR must fill to arrive at a reasonably conservative estimate. Weekly meetings occurred between the CMAR, County and architectural design team as the remaining 50 percent of documentation was completed. It was during this lengthy period of "filling in the gaps" that the team was successful in reducing the number of "gaps" in the construction documents while at the same time receiving construction-based input. The 50 percent GMP estimate was more reflective of the CMAR's in-house estimating staff with selective input from the major trade subcontractors, i.e., curtain wall, earthwork, steel erection and other major subcontractors. In the 50 percent construction documents, there is not enough detail to include lesser subcontractor estimates. Hence, the 50 percent GMP estimate included some "square foot" type estimates to provide a placeholder for all scopes of work. As opposed to the 50 percent GMP, the 95 percent GMP was inclusive of the entire marketplace, since much more definitive information and detailing was available in the documents. Consequently, the CMAR was able to more actively engage the market. Finally, until the most recent 100 percent GMP, the County has correctly carried a design contingency amount to account for those elements that did not appear in either the 50 percent set or even the 95 percent set of construction documents. This design contingency has now been reduced to zero as a direct result of having 100 percent complete documents for the Tower Shell/Central Plant. The most recent GMP, based upon 100 percent construction documents for the Tower Shell/Central Plant, is \$48,252,587, which includes \$1,222,752 of CMAR contingency that must be approved by the County prior to its use. In addition, the County has budgeted an additional Owner's contingency outside of the CMAR Agreement.

J. The Tenant Improvement construction documents were last estimated by both the CMAR and an independent outside estimating firm based upon 50 percent construction documents. Based upon these documents, the CMAR's estimate was \$28,357,247, which included \$559,841 of design contingency and \$797,897 of CMAR contingency. The independent cost estimator's estimate, based on these same 50 percent documents, was \$28,198,998, including contingency. It is very reasonable, based upon 50 percent documents, to anticipate a variance of potentially \$1 million. Again, final development of the tenant improvement documents was suspended as the team focused on completion of the Tower Shell/Central Plant documents.

K. It has been known for several years that the amount of funding allocated to the project and the bond authorization of 2004 was insufficient to construct the building. There have been a number of ongoing discussions about how to implement overall project development, including splitting the project into two phases – first the building shell, site

Mr. Richard Miranda

Re: **November 16, 2011 Newsletter from Councilmember Kozachik**

November 18, 2011

Page 8

improvements and physical plant and then tenant improvements. The strategy to continue to try to implement the project by phases was believed to be the best strategy in 2009 or 2010 and could not be implemented until there were design documents sufficient to split the project and construct the first phase. This occurred in late 2010 or early 2011, which provided the appropriate timing for the bond amendment that specified project implementation in phased development. Again, the City was included in the April discussion. It should also be remembered that not only was the City represented through the City Manager and members on the JCCMT, it was also represented at every Bond Advisory Committee meeting; hence, City representatives were present and voted to support the bond amendment of April 2011.

L. Page 8 clearly states, "without bond funding," i.e., without the \$17 million remaining in the Bond Fund, which is earmarked for construction. Hence, the \$47 million GMP, less the \$17 million remaining, leaves \$30 million of unfunded obligation. This \$30 million, proportioned equitably based on the square footage occupied by both entities, equates to \$17.4 million of City obligation and \$12.6 million of County obligation. The variance between the \$47 million GMP versus a \$48 million GMP is a direct result of the continuing value engineering efforts by the design team, including the CMAR, County and architectural design team. Essentially, we continue to investigate material options and systems that cumulatively could adjust the final contract GMP to fall within the range of \$47 to \$48 million.

As we are proposing to construct the Tower Shell/Central Plant only and not including the tenant improvements at this time, the CMAR contingency has less opportunity to be utilized. Certainly, the archeological history of the site presents a legitimate concern that additional artifacts could be uncovered resulting in additional costs; however, we believe our greatest exposure to "unknowns" is associated with the necessary utility work required in both Toole and Stone Avenues.

The accuracy of existing utility documentation as provided by the City of Tucson during archeological removals beneath the public sidewalks proved highly inaccurate during the site clearing phase, which resulted in significant man hours of labor intensive and expensive hand-digging by the Contractor.

Finally, the CMAR contingency for the Tower Shell/Central Plant is \$1,222,752, not \$6.4 million. The balance of the contingency beyond the \$1.2 million is the Owner's Contingency to cover all aspects of the project, including possible additional consultant services; furniture, fixture and equipment unknowns; and minor modifications driven by either of the judicial tenants.

M. If the project proceeds with a two-phased approach with bridge financing covering the first phase, any principal and interest payments made prior to refunding the bridge financing through a voter authorized bond issue would not be recoverable. It is likely this

Mr. Richard Miranda
Re: **November 16, 2011 Newsletter from Councilmember Kozachik**
November 18, 2011
Page 9

would include one, perhaps two, principal and interest payments for the bridge loan. If bridge financing is required, it would not be necessary until mid 2012 due to the use of bond funds to finance the first \$17 million of actual construction cost with bridge financing the balance of construction, which would occur in mid 2012. If a bond election were not held until November 2013, it is certain at least one payment, perhaps two, would be required for principal and interest to service the bridge loan, and these payments would not be eligible for reimbursement as we now understand the ability to refinance the balance of bridge financing debt with voter authorized general obligation bonds.

Please feel free to pass this information along to the Mayor and Council.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/mjk

Enclosures

c without enclosures:

The Honorable Chairman and Members, Pima County Board of Supervisors
The Honorable Sarah Simons, Presiding Judge, Superior Court
The Honorable Keith Bee, Presiding Judge, Pima County Consolidated Justice Court
The Honorable Antonio Riojas, Presiding Magistrate, Tucson City Court
Chairman and Members, Bond Advisory Committee
Lisa Royal, Administrator, Pima County Consolidated Justice Court
Joan Harphant, Administrator, Tucson City Court
Reid Spaulding, Director, Pima County Facilities Management
Tony Larrivee, Administrator, City of Tucson Facilities Management