



COUNTY ADMINISTRATOR'S OFFICE

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C. H. HUCKELBERRY
County Administrator

April 8, 2004

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

Re: **Your Letter Dated March 29, 2004, and Attached Proposed Intergovernmental Agreement Related to the Pima County Bond Election**

Dear Mr. Keene:

A handwritten signature in cursive script, appearing to read "Jim", is written over the text "Dear Mr. Keene:".

The proposed intergovernmental agreement that you sent to me in draft form is problematic in a number of areas. I will itemize specific concerns in this letter, with notations tied to the draft intergovernmental agreement itself. I am somewhat concerned since I only received the intergovernmental agreement at the end of the month, and you placed it on the Council's agenda for action on April 5, 2004, without any input from the County. In fact, you have asked the Mayor and Council to carefully review the proposed intergovernmental agreement and, if acceptable, approve it so it can be presented to the Pima County Board of Supervisors for their approval. Such is a little unusual. In any event, I offer my comments on your draft intergovernmental agreement in this letter. It would have been preferable to discuss your comments and concerns before submitting them to Mayor and Council.

Binding Agreement Not Allowed by Law

First, as we have discussed previously, by law, there cannot be a binding agreement between elected governing bodies. Such binding agreements are impermissible based on Arizona law and the law of governmental appropriation. We can, however, establish intergovernmental agreements to carry out and execute programs and projects that are mutually beneficial to each other, and to establish a basic framework for our cooperative efforts at doing so. I would hope that the ultimate intergovernmental agreement between the County and City does just that.

1997 Transportation Bond Program

The situation that you described in your March 29, 2004 letter to avoid regarding the 1997 Pima County Highway User Revenue Bond Program is not a situation created by the County, as

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explained in my letter dated April 2, 2004. We have yet to receive any matching funds promised by the City to carry out City improvement projects some seven years after voter approval. It is time to put the controversy and acrimony surrounding the County 1997 Transportation Bond Program behind us. Your beliefs as to fault are obviously as strong as mine. Let's agree to disagree and move forward in the interests of the common good.

1997 County General Obligation Bond Program

On a positive note, the 1997 General Obligation Bond Program, we have been successful in completing 29 projects cooperatively, including 21 Neighborhood Reinvestment projects; three park projects; three public facilities and two flood control improvements. We are presently working together on five park projects and we have amended the Bond Implementation Plan Ordinance to accommodate scope changes requested by the City. Finally, we are now working together on 18 Neighborhood Reinvestment projects and one flood control project. An obvious clear record of cooperation.

The County's cooperative efforts are not restricted to just the City of Tucson. With partnerships with all of the other local jurisdictions, Pima College, and school districts, we have completed eight park projects; two libraries; a performing arts/adult education center; four flood control projects; and six transportation projects. With these partners, we are currently working on five park projects; one flood control project; and seven transportation projects.

Our commitment to working cooperatively with the City of Tucson and other entities, has resulted in the construction of 54 important 1997 County Bond Program projects and we continue to cooperate to bring another 37 projects to completion.

This is a solid record of cooperation and accomplishment that cannot be ignored.

Bond Implementation Ordinance and Publicity Pamphlet

In your March 29 letter you requested that I provide you with a copy of the latest draft Bond Implementation Ordinance. That document, totaling 145 pages, was delivered to your office on April 1, 2004. Included in this Bond Implementation Ordinance are all project fact sheets, not just those that involve City projects, and by now you should have received the sample ballot and publicity pamphlet for the special bond election of May 18, 2004 in the mail, along with 288,000 other voting households. If you require more copies, please let me know.

Specific Comments on the Draft Intergovernmental Agreement - (Please see annotated IGA)

Please note the numbers below are related directly to your annotated Intergovernmental Agreement attached to this letter.

1. **Recitals** - Recitals C, D, and E do not appear to be necessary for purposes of the intergovernmental agreement and contain language that is unnecessary, confusing and

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contradictory, and should be deleted. The only question that is raised is in Recital C, which is the identification of \$249.7 million of projects that are funded with the "addition of the non-City financial components." I would appreciate a listing of these components to determine if we have missed any outside funding sources or obligations of other parties that have not been contemplated in the current draft Bond Implementation Ordinance forwarded to you on April 1, 2004.

2. **Purpose** - Under Purpose, the last sentence states: "The County has established funding levels and estimates that they have represented to the public as being sufficient to accomplish the projects listed in section 2 below." Such is incorrect. The Bond Implementation Ordinance provides identification of probable total funding necessary to accomplish the projects. Further, the County did not establish the funding levels for most of the projects listed in the City/County cooperative projects. The County Bond Advisory Committee did, with one exception. A number of the project amounts were provided by the City, not the County. Therefore, the County did not establish those funding levels. For the 29 projects listed as "City/County Cooperative Projects," the City provided the project estimates for at least 12 of the projects, perhaps more. The public safety communications system, which was estimated at \$105 million and reduced by myself by \$20 million, but increased by the Board by \$7 million.
3. **Under Allocation of Bond Proceeds** - The phrase "shall be funded by the County" is confusing. The phrase should indicate that bond funding in the amount listed is provided for those purposes. Nothing should imply County funding beyond bond allocations.
4. **Under Allocation of Bond Proceeds** - We have not yet reviewed your project schedules as identified in your Exhibit A and therefore cannot comment on same; however, we are sensitive to advancing certain projects of interest to the City.
5. **Under Allocation of Bond Proceeds** - Requiring the County to allocate bond funding for the purposes and amounts listed in the City/County Cooperative Project List could be counterproductive. Experience tells us that, in estimating bond project costs, some projects will exceed conceptual cost estimates and some will be under. To require a minimum expenditure of bond funds, even though the original project scope has been completed, would seem to be wasteful of public taxpayer bond proceeds. Further, the Regional Public Safety Communications System, with a bond earmark of \$92 million, is also an area where I would expect significant additional outside revenue sources from both the federal government as well as the state. The total estimated cost of implementing this program is \$105 million. Historical experience with such programs that have attracted a significant federal interest would indicate that federal funding of perhaps 25 percent, and as much as 50 percent, of the overall cost may be possible. Again, specifying a minimum expenditure of local bond funds could potentially be wasteful in the long run. Why force the local taxpayer to spend money when they may not have to.
6. **Under Allocation of Bond Proceeds** - I notice that your City/County Cooperative Project List is missing a large number of projects that are within the City of Tucson. For example,

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urban drainage, neighborhood reinvestment and housing, park projects that will be constructed by the County that are within the City limits such as the Rillito Racetrack, George Mehl Family Memorial Park, and Dan Felix Memorial Park have been omitted, along with projects that have regional benefit and benefit City residents significantly, such as the Public Health Center, the Teresa Lee Health Clinic relocation which directly benefits Rio Nuevo and the downtown science center, and a number of other bond projects. Should they be included in this list?

7. **Under Allocation of Bond Proceeds** - The redistribution of funds, alteration of project schedules, scope, or delays, cannot occur without the approval of the Tucson Mayor and Council as specified in Section IV(b) of the Bond Implementation Ordinance that was forwarded to you on April 1, 2004.
8. **Davis-Monthan Air Force Base Land Acquisition** - The acquisition of property authorized by Pima County bonds is a contract obligation executable only by the Pima County Board of Supervisors. Therefore, the contracts for actual land acquisition will be executed by the Board of Supervisors as set forth in the Bond Implementation Ordinance. I have recommended an oversight committee called the Davis-Monthan Open Space Advisory Committee. It is the responsibility of this committee to develop a detailed plan for analyzing and prioritizing all eligible properties, and to recommend acquisition to the Board. On this committee will be the Base Commander, representatives of the Arizona Department of Commerce, the DM-50, the City of Tucson, the Tucson Metropolitan Chamber of Commerce, and myself. Hopefully this committee, which is oriented directly to Base preservation, satisfies the request in your draft intergovernmental agreement for joint approval of the land acquisition, which is not possible given the legal structure associated with the expenditure of Pima County bonds.
9. **Regional Public Safety Communications System** - Regarding the Regional Public Safety Communications System, the County will not agree that \$61,218,000 of the bond funding will be allocated to the City portion of the project. In my letter dated March 9, 2004, to you, I indicated that everyone should be responsible for attempting to attract additional revenues from state and federal sources to make up any shortfalls that may exist. In your transmittal memorandum to the Mayor and Council dated March 29, 2004, you have confused who recommended what funding for this item. I know that the City representative on the Bond Advisory Committee clearly understands the concerns that were expressed by the Bond Advisory Committee over funding any portion of this project. Had it not been for my recommendation to the Board, there quite frankly may not have been any funds recommended for a Regional Public Safety Communications System. The Bond Advisory Committee left that decision up to me since deliberations occurred so late and information provided to them on this matter was confusing to them. Further, in your transmittal, the reductions that you indicate were approved by the Board of Supervisors were not. The Regional Communications System funding was only reduced \$13 million by the Board, not \$20 million, which was a modest reduction given the high probability of funding for such systems that will become available from the federal or state governments. Just on March 20, 2004, the Sheriff and I met with the Director of Wireless

Communications for the Federal Homeland Security Department, and we believe that the federal government will look favorably upon the unified approach Pima County has taken with all of our member jurisdictions and adjacent counties in establishing a unified and interoperable Homeland Security Emergency Response Communications System. Therefore, the projected shortfall of \$13 million should not be difficult to overcome if we work together. Guaranteeing the City a base distribution effectively short-changes everyone else in the region, and creates a situation where the City simply says it has its share and everyone else can beg the federal and state governments for shortfalls that may arise - not productive policy in the new cooperative regionalism that has now emerged. Perhaps you will want a minimum guarantee of funding for regional transportation. Such will kill any Regional Transportation Authority. Regarding the governance board, I believe that has been addressed in the Bond Implementation Ordinance by the governance structure identified on Page 65 of the draft Ordinance.

10. **New Justice Court/Municipal Court Complex** - Regarding the new Justice Court/Municipal Court Complex, we certainly acknowledge that a number of new courtrooms are necessary for the City. The same exists for the County. However, we cannot agree to pay for any shortfall in the overall project. As I indicated to you in my letter of March 9, 2004, funding any shortfall in the Courts will require our joint cooperative efforts and ingenuity, not simply attempting to pass the costs on to one another. As I have also indicated previously, hiring outside consultants is probably a good idea, and I believe the Bond Implementation Ordinance addresses that area. The only concern I have is that Courts designed through the participants who are in the judicial process tend to be extravagant edifices. This is a lower court and should reflect functional efficiency rather than the traditional excesses that dominate higher court facilities. I believe that is what the County Bond Advisory Committee had in mind when they reduced the cost for both Pima County and the City on this project. We will not agree to financing any project shortfalls.

11. **Wilmot Branch Library Location** - Again, we will not agree to funding any shortfall for this project. A breakdown of project costs would seem to indicate that approximately \$2.85 million of the shortfall is in the purchase of books, contingency, unassigned costs, and force account work. All of these costs seem to be unnecessary and, in particular, the assignment of \$2.5 million of costs for books is an inappropriate bond expenditure since the useful life of library books is probably between three and five years, while the bond debt repayment period for issued bonds is up to fifteen years. It makes absolutely no sense to purchase books with a life less than the repayment period of bonds. In addition, it is also premature to assume that the Library District should pay for this assessment. Past practice has been that the City has paid the full cost of acquiring books for new libraries within the City of Tucson. The County has paid the full cost of books associated with libraries in the unincorporated area. The intergovernmental agreement would institute a completely new and different method of distributing these costs as opposed to what has occurred in the past. In fact, at the George Miller Library Branch, the City purchased the books, not the County.

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12. **Fort Lowell Acquisition** - The target property is the Adkins property. However, I do not know if anyone can assure that project funding will cover the entire cost of the Adkins property. Such would require a willing seller to dispose of the property below or at the bond funding provided. By working together in both allowable land uses and available funding, we should be able to acquire this property. Such should be reflected in the language of the intergovernmental agreement.
13. **Agua Caliente Wash** - Again, assigning project funding shortfalls to the Flood Control District is premature and continues a pattern now established to shift costs to the County whenever we appear as a funding partner. No one knows what the final cost outcome of acquiring these properties will be. The goal is to acquire as many properties as possible to minimize future flood losses. Specifying minimum expenditures and defining geographic locations does not reflect how flooding occurs in the real world. Floods have no respect for jurisdictional boundaries. The funding identified for the Agua Caliente Wash will be on the Agua Caliente Wash and identified and targeted for the confluence area and the Flood Control District will not provide funding shortfalls, if there are any, through this intergovernmental agreement. Obviously we could in the future, if necessary.
14. **Reallocation of Bond Proceeds** - This is covered in the Bond Implementation Ordinance under Section IV, Paragraph B, on Page 17. This part of the Ordinance clearly indicates that the County shall not unilaterally, under any circumstances, modify the scope, location, funding amount, or schedule without the express written request of the jurisdiction, that being the City of Tucson in this case. Therefore, this section is unnecessary.
15. **Governmental Processes** - There must be reciprocal language regarding design, construction and procurement processes with the County. Since these are County bonds and County funding is provided, the design, construction and procurement of services necessary to implement and construct the bond projects must follow County procedures and processes. However, we will certainly allow the City a review of these procedures. For those projects that are delegated to the City, we will need to be assured that the procedures and processes being followed conform with those of the County.
16. **Project Management** - Again, based on the previous and with the understanding that the City will receive County review and approval, project management responsibility for those projects listed in project management, Section 7, is permissible.
17. **Project Scheduling** - There should be no difficulty regarding working out appropriate schedules for project implementation. However, we just received your Exhibit A and will cross-check it with the bond implementation periods identified in the discussion of our proposed time schedule in the Bond Implementation Ordinance. Such will be necessary to ensure understanding of our constraints. Regarding quarterly reports to the City outlining the current project schedule, we will agree to provide all reports to the City as established by the Bond Implementation Ordinance, or any other ordinance of the County regarding bonding accountability and disclosure.

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18. **Funding Shortfalls** - Regarding funding shortfalls for bond projects, the County cannot and will not agree to this section. First, the County did not determine all of the funding levels for all bond-funded projects. As you will recall, the Bond Advisory Committee forwarded to the City a request to allocate \$29.8 million in bonds for parks. The Mayor and Council allocated these funds. Therefore, we did not assign these costs or bond funding levels to specific projects. The City did. Second, the same principles apply now as identified in my letter of March 9, 2004, to you, that simply says having less funds than might be optimally desired is not a new and unusual condition. Most citizen bond advisory committees tend to reduce the bond funding requests from governmental jurisdictions based on their own level of expert opinion that exists within the committee. It does not make it right. It is just a fact of life that we all must face and determine, if there are real shortfalls, how to make up the difference, either by re-scoping the project or finding other revenue sources. The County will not agree to provide project funding shortfalls for any project of the City. We may agree to share these costs as projects and benefits are more clearly defined, but to dictate that the County will pay all shortfalls is not productive.
19. I am a little unclear as to what "proportionately between City/County Cooperative Projects and County projects" means. The project schedule is what it is and should not favor the City or County. The schedule of projects is as shown in the Bond Implementation Ordinance, and this Ordinance recognizes that there are other participants and beneficiaries to County bonds other than simply the City and the County. Other communities of interest such as the Towns of Marana, Oro Valley and Sahuarita, and the communities of Green Valley, Catalina, Three Points, Avra Valley, Vail, Ajo and Lakeside Amado must be taken into consideration. We believe the Bond Implementation Ordinance has done so. If you have any concerns regarding specific projects within the City, please let me know.
20. We will not place bond funds of the County in a City escrow account. Bond funds are funds of the County, and the County is the only responsible entity to ensure that the funds are expended in accordance with state law governing bond expenditures, and, in particular, federal arbitrage rules and regulations.

Your draft intergovernmental agreement reflects policy dictates difficult for the County to accept. I look forward to continuing to work cooperatively with the City to try to achieve an intergovernmental agreement that meets your requirements, as well as accomplishes the spirit of joint management, cooperation and implementation of the public investments that serve all residents of Pima County, not simply those living in the City of Tucson. While I would like to be able to have the final say in this matter, I do not. In fact, the Board of Supervisors, at their public hearing of April 6, 2004, significantly raised the public process bar regarding public review and recommendation on all matters regarding County public bonding. At that same meeting, they institutionalized in County Code, the review and recommendation authority of the County Bond Advisory Committee. This Committee now has the prime responsibility for recommending policy matters relating to Bond Program execution.

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I would like to thank you for your continuing cooperation in this most important public endeavor. I certainly understand your concerns. However, I also believe that in this era of regional cooperation, we need to understand that we are not the only players involved in this matter.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/jj

Attachment

- 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
Martin Willett, Chief Deputy County Administrator
Enrique Serna, Deputy County Administrator
John Bernal, Deputy County Administrator - Public Works
Mike Hein, Deputy County Administrator for Community and Economic Development
Jim Barry, Executive Assistant to the County Administrator
Nicole Fyffe, Special Staff Assistant, County Administrator's Office

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
PIMA COUNTY AND THE CITY OF TUCSON
FOR
ALLOCATION OF PROCEEDS AND CONSTRUCTION OF PROJECTS RESULTING
FROM THE 2004 PIMA COUNTY BOND ELECTION**

This intergovernmental agreement (IGA) is entered into by and between Pima County, a political subdivision of the State of Arizona ("County") and the City of Tucson, Arizona ("City") pursuant to A.R.S. § 11-952.

Recitals

A. County and City may enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951, *et seq.*

B. In a special election to be held on May 18, 2004, County voters may authorize the sale of bonds and the use of bond proceeds for, *inter alia*, acquiring, constructing, improving, renovating and equipping, new and existing public facilities within the County and the City for public safety, recreational and transportation purposes.

C. The City initially identified \$643 million of projects appropriately funded through County bonds. The County ultimately approved \$184 million in City bond projects that, with the addition of the non-city financial components of these projects, total \$249.7 million. These projects shall be referred to hereinafter as the "City/County Cooperative Projects."

D. County wishes to assure the residents within the City, who make up the majority of the County population, that a representative portion of the projects to be constructed with the bond proceeds will directly benefit City residents, who are also County residents.

E. County and City desire to establish fair and equitable terms and conditions under which the City/County Cooperative Projects are to be designed, constructed, financed, managed, scheduled, and maintained within specific time periods as shown on the project schedule attached as Exhibit A, to ensure timely and cost effective project completion.

NOW, THEREFORE, the County and the City, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

Agreement

- 1. **Purpose** – The purpose of this IGA is to assure City residents, who are also County residents, that a representative proportion of the projects that will be constructed with the bond proceeds will directly benefit City residents. The City/County Cooperative Projects have been deemed by the County as appropriate for bond funding. The County has established funding levels and estimates that they have represented to the public as being sufficient to accomplish the projects listed in section 2 below, upon approval by the voters of the bonds

2

This Agreement sets forth the responsibilities of the parties for the allocation of bond proceeds among various projects, the design, construction, funding, management, scheduling, maintenance, and operation of the projects, and legal and administrative matters among the parties.

- 2. **Allocation of Bond Proceeds for City/County Cooperative Projects** – The County agrees that the City/County Cooperative Projects shall be funded by the County, the bonds issued, and the projects initiated pursuant to the project schedules in Exhibit A. The County shall allocate and will not expend for any other purpose no less than the following amounts from the bond proceeds for the following projects:

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Davis-Monthan Environs Open Space	\$ 10,000,000
Regional Public Safety Communications System	\$ 92,000,000
New Justice Court/Municipal Court Complex	\$ 76,000,000
Agua Caliente Creek	\$ 5,000,000
36 th Street Corridor	\$ 5,000,000
Habitat at 36 th -Kino	\$ 1,000,000
Fort Lowell Acquisition and San Pedro Chapel	\$ 3,000,000
Dunbar School	\$ 1,218,000
Eastside Sports Complex and Senior Center Site	\$ 6,000,000
Northside Community Park	\$ 5,500,000
Southeast Community Park	\$ 6,000,000
Houghton Greenway	\$ 1,400,000
Julian Wash Linear Park	\$ 3,700,000
Arroyo Chico Wash Improvements	\$ 1,000,000
Atturbury Wash Sanctuary Land Acquisition and Expansion	\$ 2,000,000
Pantano Linear Park, 22 nd St. south to Michael Perry Park	\$ 2,700,000
Rio Vista Natural Resource Park	\$ 1,500,000
Wilmot Branch Library Relocation	\$ 7,000,000
Santa Cruz River, Ajo to 29 th St.	\$ 14,000,000
Santa Cruz River, Grant to Ft. Lowell	\$ 2,700,000
Rillito River Linear Park	\$ 3,000,000

6 ——— Missing Projects

Any redistribution of funds, alteration of project schedules or delay in the issuance of bonds for any of the City/County Cooperative Projects shall require the approval of the Mayor and Council of the City of Tucson. (7)

3. **Project Specific Requirements** – The County agrees to the following regarding the City/County Cooperative Projects:

Davis-Monthan Environs Open Space – Property acquired using these bond funds shall be consistent with the Department of Defense/Arizona Department of Commerce Joint Land Use Study. The specific properties to be acquired with the \$10,000,000 in bond proceeds shall be jointly approved by the governing bodies of the City and County. (8)

(9)

Regional Public Safety Communications System – The purpose of this project is to create a multi-jurisdictional communication system. Therefore, the County agrees that \$61,218,000 of bond funding shall be allocated to the City’s portion of the project. A Governance Board, consisting of public safety providers in all partner jurisdictions, shall control all project and system assets, project management and funding. An independent consultant, jointly selected by City and County, with demonstrated experience implementing large-scale public safety communication systems shall manage the project subject to the supervision of the Governance Board.

New Justice Court/Municipal Court Complex – No less than 22 municipal courtrooms shall be constructed. A feasibility study shall be conducted to determine the scope of the project. An outside consultant, ideally with court construction experience, shall manage the project. The City’s sole financial obligation with respect to the facility shall be for operation and maintenance costs related to its proportionate use of the facility. As the City’s portion of this project was estimated at 45 million and reduced to 41 million by the Bond Committee, all financing shortfalls for this project will be borne by Pima County. (10)

Wilmot Branch Library Relocation – Any funding shortfall for this project (currently estimated at \$3,000,000) will be funded from a commensurate increase in the library district assessment. The City shall manage this project. (11)

Urban Drainage Projects – The City shall manage all urban drainage projects located within city limits.

Operation and Maintenance Costs – The City shall not be responsible for financial impact associated with operation and maintenance of the following projects: 36th Street corridor; Kino/36th Street habitat; Dunbar Elementary School; Santa Cruz River: Ajo to 29th & Grant to Ft. Lowell; and the Performing Arts Center.

Fort Lowell Acquisition – Project funding must cover the entire cost to acquire the Adkins property. (12)

Agua Caliente Wash – Project funding must cover the acquisition of property in the area of the confluence of the Agua Caliente Wash and the Tanque Verde Creek on the west side of Houghton Road. Any funding shortfalls shall come from the Pima County Flood Control District. (13)

4. Notwithstanding any provision of the County's Bonding Disclosure, Accountability and Implementation Code Chapter 3.06, the County agrees that it will neither reallocate approved bond proceeds nor expend approved bond proceeds in any manner different from those set forth specifically in this agreement unless the Mayor and Council of the City shall have formally approved the change in the manner of said expenditure. (14)
5. The design, construction, and procurement of City/County Cooperative Projects shall be approved by the City. (15)
6. Neighborhood Reinvestment projects shall be coordinated with the City Manager or designee and other appropriate City staff.
7. **Project Management** – The City shall have project management responsibility for the following City/County Cooperative Projects: all drainage projects within City limits, Atturbury Wash Sanctuary Land Acquisition and Expansion, Eastside Sport Complex and Senior Center Site, Houghton Greenway, Julian Wash Linear Park, Northside Community Park, Pantano River Park (22nd Street south to Michael Perry Park), Rio Vista Natural Resource Park, Southeast Community Park, Wilmot Branch Library Replacement or Relocation, and Arroyo Chico Wash Improvements. (16)
8. **Project Scheduling** – The County agrees to work with the City to determine project schedules that shall be acceptable to the City. The County agrees to provide a quarterly report to the City outlining the most current project schedule. (17)
9. **Funding Shortfalls for Bond Projects** – Because the County initially determined the funding levels for all bond-funded projects, the County shall be responsible to cover all project-funding shortfalls for all City/County Cooperative Projects. (18)
10. The County agrees that bonds will be sold and project bond funds will be prioritized, scheduled, and expended on an equal basis, so that bond proceeds are expended and construction is scheduled proportionately between City/County Cooperative Projects and County projects. (19)
11. Any bond expenditures within the City limits will require City concurrence.
12. Bond funds allocated to projects solely within the City shall be placed in a City escrow account. (20)

13. Term and Termination of IGA.

- i. *Effective date.* This IGA shall be effective on the date it is recorded with the Pima County recorder, following execution by both parties and shall remain in effect until the bond proceeds are expended.
- ii. *A.R.S. § 38-511.* This IGA is subject to cancellation pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
- iii. *Nonappropriation.* It is acknowledged that all obligations of the County and City hereunder to make payments to or to incur costs for any specified project shall be subject to annual appropriation by the respective governing bodies and to any limitation imposed by budget laws or other applicable state or local law or regulation, and are undertaken subject to and in accordance with such processes and constitutional limitations. This IGA maybe terminated for lack of funds if the Pima County Board of Supervisors or Tucson City Council does not appropriate sufficient monies for the purpose of maintaining this IGA. In the event of such termination, County and City shall have no further obligation to the other party other than for payment for services rendered prior to termination except as expressly provided in this IGA.
- iv. *Arbitrage.* County may unilaterally terminate this IGA whenever the County determines violations of federal arbitrage regulations are likely to occur and may reallocate the project funds.
- v. *Legal authority.* Neither party warrants to the other its legal authority to enter into this IGA. If a court, at the request of a third person, should declare that either party lacks authority to enter into this IGA, or any part of it, then the IGA, or parts of it affected by such order, shall be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.
- vi. *Ownership of property upon termination.* Any termination of this IGA shall not relieve any party from liabilities or costs already incurred under this IGA, nor affect any ownership of any project constructed pursuant to this IGA, nor relieve any party of obligations that implement conditions on the use of bond funds, as provided in Pima County Ordinance No. 1997-35, Section VIII (as amended), this IGA or applicable local, state or federal laws, regulations, ordinances, resolutions or case law.

14. **Books and Records** – Each party shall keep and maintain proper and complete books, records and accounts, which shall be open for inspection and audit by duly authorized representatives of any other party at all reasonable times.

15. **Construction of IGA.**

- a) *Entire agreement.* This instrument constitutes the entire IGA between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.
- b) *Amendment.* This IGA shall not be modified, amended, altered or changed except by written agreement signed by both parties.
- c) *Construction and interpretation.* All provisions of this IGA shall be construed to be consistent with the intention of the parties as expressed in the recitals hereof.
- d) *Captions and headings.* The headings used in this IGA are for convenience only and are not intended to affect the meaning of any provision of this IGA.

Severability. In the event that any provision of this IGA or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application which can be given effect without the invalid or void provision or application, and to this extent the provisions of the IGA are severable. In the event that any provision of this IGA is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

16. **Legal Jurisdiction** – Nothing in this IGA shall be construed as either limiting or extending the legal jurisdiction of County or City

17. **No Joint Venture** – It is not intended by this IGA to, and nothing contained in this IGA shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between County and any City employees, or between City and any County employees. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

18. **No Third Party Beneficiaries** – Nothing in the provisions of this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or affect the legal liability of either party to the IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

19. **Compliance with Laws** – The parties shall comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this IGA.

- a) *Anti-Discrimination*. The provisions of A.R.S. § 41-1463 and Executive Order Number 75-5, as amended by Executive Order 99-4, issued by the Governor of the State of Arizona are incorporated by this reference as a part of this IGA.
- b) *Americans with Disabilities Act*. This IGA is subject to all applicable provisions of the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
- c) *Compliance with County laws*. City agrees to comply with Pima County Code §3.06.080, "Implementation of County bond projects in other jurisdictions" and Pima County Ordinance No. 1997-35, Section VIII, "Implementation of County Bond Projects in other Jurisdictions" (as amended).

20. **Waiver** – Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained

21. **Notification** – All notices or demands upon any party to this IGA shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

City of Tucson:
City Manager
255 W. Alameda
Tucson, AZ 85701

Pima County:
County Administrator
130 W. Congress, 10th Fl.
Tucson, AZ 8570122.

22. **Remedies** – Either party may pursue any remedies provided by law for the breach of this IGA. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this IGA.

IN WITNESS WHEREOF, County has caused this intergovernmental agreement to be executed by the Chairman of its Board of Supervisors, upon resolution of the Board and attested to by the Clerk of the Board, and the City has caused this intergovernmental agreement to be executed by the Mayor upon resolution of the Mayor and Council and attested to by its Clerk.

ATTEST:

CITY OF TUCSON:

City Clerk

Robert E. Walkup, Mayor
City of Tucson

ATTEST:

PIMA COUNTY:

Clerk of the Board

Sharon Bronson, Chair
Board of Supervisors

APPROVAL

The foregoing intergovernmental agreement between Pima County and the City of Tucson has been reviewed by the undersigned, and is hereby approved as to content.

City Manager

County Administrator

INTERGOVERNMENTAL AGREEMENT DETERMINATION

The foregoing intergovernmental agreement between Pima County and the City of Tucson has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the intergovernmental agreement represented by the undersigned.

PIMA COUNTY

Deputy County Attorney

CITY OF TUCSON

Assistant City Attorney



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 2, 2004

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

Re: **Your March 24, 2004 Letter Regarding the 1997 County Transportation Bond Program**

Dear Mr. Keene *Jim*

Based on your request of March 24, 2004, I would like to direct your attention to the following County websites that have documentation and complete reports that relate to your request - www.dot.pima.gov/transportation.cfm and www.bondelection2004.pima.gov. All of the information you have requested is contained in these reports.

Future project implementation is dependent upon a number of factors specifically tied to revenues available. As you probably now know, the State Legislature, last year, balanced the state budget by reducing Highway User Revenue Fund allocations to counties in Arizona. This significantly impacted our bond program as recurring annual revenues were reduced substantially, and it is these revenues that were earmarked to support the Revenue Bond Program. Obviously, this adverse financial impact in revenues affects bonding capabilities.

Because the State Legislature is now contemplating the Governor's proposal to take HURF Revenues from both cities and counties to fully fund the State Department of Public Safety, I believe you are acutely aware of the threat that this action places on transportation-related revenues within the City.

In addition, outside revenues or contributions from other sources contemplated must also be forthcoming in order to continue program implementation. This is the factor that has stalled implementation of approved transportation bond projects within the City of Tucson. Presently the Valencia Road improvements have been designed and are ready for construction, but City matching funds have not been provided. Other projects will soon be in similar situations and, in particular, Alvernon in the vicinity of River Road. We understand that there are no City funds available from the City to match or facilitate County bond funds for River and Alvernon. Please confirm this as we will need to alter our design plans to end our project at Dodge, if necessary.

James Keene

Your March 24, 2004 Letter Regarding the 1997 County Transportation Bond Program

April 2, 2004

Page 2

In your letter, there is a reference to projects within the City that will now "never receive any bond funding." Our position on this matter remains the same as it has been for a number of years. Simply stated, these bonds will be reserved for the City of Tucson and made available when the City is able to provide the necessary matching funds to complete the projects as originally contemplated.

It must also be remembered that expenditure of County HURF Revenue Bonds within the City of Tucson was a commitment made by the Board based on a corresponding commitment by the City to provide matching funds. No other County has spent County HURF Bond Revenues inside cities or municipalities since these entities have an independent revenue source of Highway User Revenue Funds set up by statutory distribution formulas. In essence, County Highway User Revenue Funds are intended solely to be used in the unincorporated area to improve those streets for which the County has exclusive obligation to operate, maintain and control. This is a situation similar to where City HURF Revenues are intended only for streets within the City. The Board's concession to spend County HURF Revenue Bonds inside the City for City transportation purposes was a concession promoting regional mobility. That mobility can only be achieved by the City providing the matching funds as originally promised.

If, after reviewing our website, you need additional information, please do not hesitate to contact me.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/jj

- c: The Honorable Chair and Members, Pima County Board of Supervisors
John Bernal, Deputy County Administrator - Public Works
Kurt Weinrich, Transportation and Flood Control District Director
Jim Barry, Executive Assistant to the County Administrator