

MEMORANDUM

DATE: December 21, 2006
TO: COUNCILMEMBER GUILLERMINA FUENTES
FROM: GLENN GIMBUT, CITY ATTORNEY
RE: COMPARISON OF DETENTION FACILITY BOND ISSUE WITH
PROPOSED BOND ISSUE FOR ACT AND PRICE CENTER BUILDING

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Earlier today you asked me a series of questions regarding the bond issue for the detention facility that is currently under construction compared to the proposed bond issue for Advanced Callcenter Technologies (“ACT”) and the Price Center building. You asked that I put my answers in writing. The purpose of this memo is to honor that request.

The City, through a municipal property corporation, the San Luis Facility Development Corporation, caused to be issued in 2005 a bond issue in the amount of approximately \$27,000,000.00 to develop a detention facility to operate as what is commonly referred to as a “private” detention facility. This bond issue was made without the backing of the municipal treasury. There was no pledge of City revenues to secure repayment of the bonds. The bond issue was not made with the backing of the City’s full faith and credit. While the City could have legally made such a pledge, it did not do so. If the project fails, and the bonds go into default, the only remedy that the bond holders would have is to foreclose the deed of trust that they hold which is secured only by the detention facility itself. The reason that there is a deed of trust is because funds from the bond issue bought the property and paid for the building, not the City.

The proposed bond issue for ACT and the Price Center building is quite different. At this time no bond issue has been made, and while extensive discussions have occurred, the matter is still in the planning stages. Therefore, matters may change. Currently the plans are to have the bond issue be an Industrial Development Authority (“IDA”) bond issue. The Price Center building is a building of approximately 85,000 square feet in size. It is proposed that ACT will sign a lease, drafted with security language common to support a revenue based bond issue, for \$1.25 per square foot, for a period equal to the term of the bond issue. If it is a fifteen year bond issue, the lease will be for fifteen years, if it is a twenty year bond issue, then the lease will be for twenty years. The size of the bond issue is estimated to be in the amount of approximately \$6,200,000.00. ACT has asked that a clause be provided in the lease that if ACT cannot meet its hiring goals, that it has a right to terminate the lease. Right now what is being negotiated is a provision setting the goal to be 250 employees with thirty percent being bilingual and seventy percent English speakers. Provision will be made that ACT must offer wages and benefits comparable to other call centers in Arizona. For this bond issue to be able to be marketable, there needs to be a pledge of City revenues to back up bond repayment in the

event ACT should terminate the lease. This is different from the bond issue for the detention facility. To protect the City, and to limit any possible financial exposure, the income flow from the lease will be sufficient, and will be used to set up a reserve fund of at least \$600,000.00. This reserve fund will be used to make bond payments in the event ACT should leave. This will give the IDA and the City at least a year and a half to find another tenant without the City having to pay for the bonds. As you personally know, rents in this City have not gone down. With the prospect of a Wal-Mart Superstore, and other related development, the value of commercial leases should go up. Therefore, there is a high likelihood that if ACT should leave, say in five years, that it would be likely to find another tenant at a rate of rent greater than what ACT was paying. The actual risk to the municipal treasury is quite low. As an attorney, I am comfortable that the actual risk to the City is minimal. However, in direct answer to the question that you posed, there is a difference between a very low risk, and no risk.

One must also remember with ACT/Price Center, there will remain another 45,000 square feet to rent to other occupants. It is believed that that space can rent for forty cents to fifty cents a square foot with the tenant being responsible for all improvements after ACT begins its occupancy. In that event, there will be substantial "profit" for the City. There are indirect benefits as well. For example that particular commercial area is a bit depressed. The presence of an active large employer should pick up that part of town and the other commercial businesses located there.

The building and land of the proposed project will be owned and controlled by the City. ACT promised to employ as much as 450 people by years end and the design will be for as many as 800 employees. ACT in its Tennessee facility employs over 1100 employees. GYEDC estimates that this facility will add between 12 million to 14 million dollars a year to the San Luis economy. The two projects, the detention facility and ACT, are both economic development projects. But they are both very different in both scope and impact. The detention facility is no risk. ACT/Price Center is low risk. The detention facility at its proposed height of operations will employ 150 employees. ACT proposes to hire as much as 800 employees. The detention facility may add as much as \$800,000.00 a year new revenue to the City treasury. ACT will not do that, but it should more than carry its own weight. The reasons both pro and con for both issues are quite different in nature. As I stated in open meeting, there is no doubt in my mind that the structure of the ACT/Price Center project is a "deal" that many cities and towns in Arizona would make, and clearly many around the nation would make.

I hope this answers your questions.

Cc: Honorable Mayor and Members of City Council
Lee Maness, City Manager