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May 27, 2020

*Honorable Gary Cordell and
Budget and Finance Committee*

RE: Budget Shortage in regard to PBA

Dear Mayor and Budget and Finance Committee Members:

The Mayor requested that I address the issue of the requirement of the County to make up half of the shortfall or excess loss of the PBA (Conference Center) over and above the budget figure that was allotted and to whether or not the County must satisfy one-half of that amount, even though it's over budget.

The instrument that provides the only guidance in regard to this transaction in my opinion is the agreement between the City of Manchester and Coffee County, executed by James Wilhelm on behalf of the County on the 21st day of November 2000 and by Coy Noblitt on behalf of the City of Manchester on December 7, 2000 (copy attached). The key paragraph is Paragraph 5 which says, "It is contemplated by the parties that the Public Building Authority shall operate the Conference Center following acquisition. Net profits and losses attributable to the operation of the Conference Center, both in acquisition and operation thereafter, shall be borne equally by the parties hereto.

I'm not sure of the details of what makes up the actual overage of budget contemplated. The only thing I have been advised that might be included outside regular operational expenses would be the replacement of carpeting. Of course one could raise the question is the replacement of carpet an operational expense? Unfortunately the document doesn't have a definition section which could identify things that would be included as opposed to things that are excluded, but by the use of the general language of profits and losses it seems fairly all inclusive. If they were talking about doing an add-on or expansion, I think that is a separate ballgame and would be addressed differently, but with the perimeters of what I understand the situation, is the only identifiable item that is questionable in the excess as to it being an operational cost is the replacement of carpet. It just seems logical that that would be included in the general reference to both in the acquisition and operation thereafter. Replacing carpet is part of a general ongoing operational expense of any business at some point in time. One might challenge well do they really need it now? Maybe not, but of course the PBA Board is the entity that makes that decision.

As I relayed to the Mayor in our phone conversation, the only way I would feel safe in the challenging the expenditure would be if we had the support of Manchester and if both parties were taking a stand to say we're not responsible for this we might be in a different position, but with the City, as I understand, already having paid its portion and are expecting us to pay the other half, we have to be concerned with additional expense being incurred if the City then seeks to force the County to pay its corresponding half for in Paragraph 6 of the agreement, it provides specifically that the parties to this agreement acknowledge that the other party hereto is undertaking a financial obligation and is relying upon the other party's representations set forth in this agreement as a basis for its respective financial commitment. In the event that either party to this agreement should fail to perform all of its covenants and agreements as set forth herein, the defaulting party shall fully indemnify and hold harmless the non-defaulting party from any and all loss and expense, including reimbursement of reasonable attorney's fees occasioned by said default and shall continue to be financially obligated for contributions of financial funding as provided herein. Even if the City didn't sue us, but the PBA did sue us for the other half, there is a split of opinion on this, but I think it's a legitimate contention that the PBA is a third party beneficiary of the contract between the two (2) governmental entities and as such can sue based on the contract and rely upon it and then could conceivably receive attorney's fees on top of that. Even if we didn't pay them otherwise, it would be an operational expense of the entity of which we'd have to pay half of anyway. The bottom line is, without the support of the City on the matter, I think the County is in an awkward spot trying to challenge it by itself, particularly for any expenditure that's already occurred.

If anybody has any questions I'll do my best to answer them.

Yours truly,



Robert L. Huskey

*RLH/fdt
Attachment*

RESOLUTION 2000-42

**A RESOLUTION CONCERNING THE FUNDING, ACQUISITION AND OPERATION
OF A CONFERENCE CENTER TO BE ACQUIRED BY THE COFFEE COUNTY
PUBLIC BUILDING AUTHORITY, INC. AND CONCERNING THE PARTICIPATION
OF COFFEE COUNTY, TENNESSEE, AND THE CITY OF MANCHESTER,
TENNESSEE, REGARDING SAID PROJECT**

WHEREAS, the Coffee County Legislative Body deems it in the public's interest to participate in the acquisition, funding and operation of a conference center to be located in Coffee County, Tennessee, for the purpose of promoting industry and growth within said County; and

WHEREAS, Coffee County, Tennessee, and the City of Manchester, Tennessee, shall, subject to appropriate action by the legislative bodies of both the City of Manchester, Tennessee, and Coffee County, Tennessee, participate in said project as provided by the contract which is attached hereto and incorporated herein by reference; and

WHEREAS, this legislative body deems it appropriate by Resolution to formally act upon this proposal;

NOW, THEREFORE, BE IT RESOLVED:

1. The proposed acquisition, funding and operation of a conference center in conjunction with participation by the City of Manchester, Tennessee, as is set forth in the attached contract, which is incorporated herein by reference, is approved.
2. Implementation of this Resolution and the contract attached hereto and incorporated herein is contingent upon the City of Manchester, Tennessee, taking the appropriate action to approve and authorize the execution by its public officials of the referenced contract.
3. Subject to the City of Manchester approving the contract and acknowledging the commitments as provided in said contract, which is attached hereto, the County Executive of Coffee County, Tennessee, is authorized to enter into the referenced contract on behalf of Coffee County, Tennessee, and execute such other documents as is necessary to implement the provisions provided for in said contract.

Duly passed and approved this 21st day of November, 2000.

James R. Wilhelm
JAMES WILHELM
County Executive

ATTESTED:

Teresa McFadden
TERESA McFADDEN
County Clerk

SPONSORS:

Carl R Russell
CARL RUSSELL
Lee Duckett
LEE DUCKETT

STATE OF TENNESSEE, COFFEE COUNTY
I CERTIFY THAT THE ABOVE IS AN EXACT
COPY OF Resolution FILED IN MY
OFFICE 12-21-2000 RECORDED IN BOOK
126 ON PAGE
ATTEST Teresa McFadden COUNTY CLERK

AGREEMENT

This Agreement made and entered into by and between COFFEE COUNTY, TENNESSEE (hereinafter referred to as "County"), and the CITY OF MANCHESTER, TENNESSEE (hereinafter referred to as "City"), on the day and the date hereinafter set forth by the respective parties' signatures hereto.

WITNESS:

WHEREAS, County and City have determined that it is in the public interest that a conference center be built to further business industry and growth within Coffee County, Tennessee, and Manchester, Tennessee; and

WHEREAS, the parties are in agreement to fund on an equal basis the construction, equipping, and operation of said conference center; and

WHEREAS, the parties are in agreement that the Coffee County Public Building Authority, Inc. (hereinafter referred to as "Public Building Authority"), shall issue bonds backed by the full faith and credit of the parties hereto for the purpose of financing the acquisition of said conference center; and

WHEREAS, the parties hereto desire to set forth in written form their understandings concerning the benefits and obligations relating to said project;

NOW, THEREFORE, THIS AGREEMENT:

1. The parties hereto acknowledge that this Agreement shall be interpreted as a joint venture concerning the acquisition and subsequent operational funding of a conference center to be located adjacent to a Holiday Inn Express being constructed in Millennium Park in Coffee County, Tennessee.

2. This conference center shall be constructed by Hospitality Management and Development, LLC, in accordance with the architectural and engineering plans and specifications of Odle & Young Architects with offices located in Knoxville, Tennessee. Title to this project shall remain with Hospitality Management and Development, LLC, until this project is completed and equipped.

3. Upon completion of construction and equipping of the conference center and certificate of occupancy having been issued by the City of Manchester, Tennessee, legal title to the real property, improvements located thereon, and the personal property located within the conference center shall be transferred to and vest with the Public Building Authority.

4. Funding for acquisition of the conference center, including real and personal property attributable thereto by the Public Building Authority, shall be obtained by bonds issued by the Public Building Authority, which bonds shall be guaranteed or backed by the full faith and credit of the parties hereto. The total cost of the project is anticipated to be an amount not to exceed 3.5 million dollars (\$3,500,000.00). County and City shall by guaranty or loan agreement lend their full faith and credit for the payment of the bonds issued by the Public Building Authority for the amount of 1.75 million dollars (\$1,750,000.00) each.

5. It is contemplated by the parties that the Public Building Authority shall operate the conference center following acquisition. Net profits and losses attributable to the operation of the conference center, both in acquisition and operation thereafter, shall be born equally by the parties hereto.

6. Neither party to this Agreement shall assign or transfer their rights or duties to any third party without the express written consent of the other party. No transfer or assignment of any interest to this Agreement shall relieve the transferring party of the duties and obligations

under this Agreement. The parties to this Agreement acknowledge that the other party hereto is undertaking a financial obligation and is relying upon the other party's representations set forth in this Agreement as a basis for its respective financial commitment. In the event that either party to this Agreement should fail to perform all covenants and agreements set forth herein, the defaulting party shall fully indemnify and hold harmless the non-defaulting party from any and all loss and expenses, including reimbursement of reasonable attorney's fees occasioned by said default, and shall continue to be financially obligated for contribution of financial funding as provided herein. It is contemplated by the parties that this venture shall continue for an initial term of years necessary to liquidate and pay the bond indebtedness incurred by the Public Building Authority for the acquisition of the conference center and personal property used in conjunction therewith, and that it may be continued thereafter under such terms as the parties may agree on. Notwithstanding that legal title to this project may be held in the name of the Public Building Authority, the parties hereto shall insist that an option to acquire the real property, improvements located thereon, and personal property attributable to operation of the conference center shall be granted and maintained in favor of the parties to this Agreement.

7. The parties hereto agree that upon acquisition of the conference center by the Public Building Authority as contemplated and provided herein that said property shall without objection by either party hereto be annexed by City.

8. This Agreement shall be interpreted in accordance with the laws of the State of Tennessee.

9. This Agreement executed by the County Executive of Coffee County, Tennessee, in accordance with Resolution No. _____ and by the Mayor of Manchester, Tennessee, in

accordance with Ordinance No. _____, both duly passed by the respective governing bodies
of Coffee County, Tennessee, and Manchester, Tennessee.

Dated this 21st day of November, 2000.

COFFEE COUNTY, TENNESSEE

BY: James R. Wilhelm
JAMES WILHELM
County Executive

ATTEST:

Teresa McFadden
THERESA McFADDEN
County Clerk

CITY OF MANCHESTER, TENNESSEE

BY: Coya Noblitt
COYA NOBLITT
Mayor

7 Dec 00

ATTEST:

Susan Wilson
SUSAN WILSON
Finance Director