

VII
A-4

**AGENDA ITEM
REQUEST/JUSTIFICATION FORM**
(To be completed by requesting Department)
Forward all requests to Sharon Bourke, LC2 Civic Center
**DEADLINE SUBMITTAL IS 3:00 P.M. WEDNESDAY
BEFORE THE TUESDAY MEETING**

Agenda item: Finance
(i.e. Consent/Recognition-Proclamation/Presentation/Public Hearing/Committee, etc.)
Date to be on agenda: July 10, 2018

Exact wording to be used for the agenda:
Resolution approving Juvenile Justice Center/Youth Center project non-binding MOU between Douglas County and Public Building Commission

Action requested: Approval

Amount requested: N/A Object Code: _____

Is item in current year's budget? Yes _____ No _____

Does this item commit funds in future years? Yes _____ No _____

If yes, explain: _____

If an agreement or contract, has the County Attorney reviewed and approved? Yes

Previous action taken on this item, if any: _____

Recommendations and rationale or action: _____

Will anyone speak on behalf of this item, if so who? _____

If this is a rush agenda item, please explain why: _____

Submitted by (Name & Dept.): Commissioner Mary Ann Borgeson Ext. 7025

Date submitted: June 29, 2018

List Attachments: Resolution and MOU

(Attach resolution and all pertinent documentation; i.e. contract, agreement, memorandums, etc.)

Certified resolutions can be obtained at the County Clerk's website:
<http://www.douglascountyclerk.org/county-board-records/search-for-resolutions>

Completed by receiving office
Received in Administrative Office: Date 7/2/18 Time _____

BOARD OF COUNTY COMMISSIONERS
DOUGLAS COUNTY, NEBRASKA

WHEREAS, Douglas County and the Omaha-Douglas Public Building Commission (ODPBC) desire to enter into the attached non-binding Memorandum of Understanding to cooperate in the planning and implementation of the Douglas County Justice Center Development Project (“DCJCD Project”); and,

WHEREAS, The DCJCD Project includes (1) construction of a Justice Center building to house the Douglas County Separate Juvenile Court, other juvenile justice related operations and programming, and the Douglas County Attorney and Public Defender offices, and (2) construction of a new Douglas County juvenile detention center.

NOW, THEREFORE, BE IT RESOLVED BY THIS BOARD OF COUNTY COMMISSIONERS, DOUGLAS COUNTY, NEBRASKA that the attached non-binding Memorandum of Understanding between Douglas County and the Omaha-Douglas Public Building Commission is hereby approved and adopted, and the Chair of this Board is authorized and directed to execute said MOU on behalf of Douglas County.

DATED this 10th day of July, 2018.

**MEMORANDUM OF UNDERSTANDING
BETWEEN**

**COUNTY OF DOUGLAS, NEBRASKA
AND
OMAHA-DOUGLAS PUBLIC BUILDING COMMISSION**

PURPOSE AND INTENT

This Memorandum of Understanding ("MOU"), while not a legally binding document, does indicate a voluntary agreement between the parties listed above who have undertaken the integrated planning, financing, design, construction, and development of facilities to be used by Douglas County for both the Douglas County Youth Center and the Justice Center Tower including the skywalk (collectively, the "Project"). The "Site" shall refer to the real property and premises necessary for the Project along with the related street, parking and infrastructure improvements and amenities, to include the skywalk connecting to the civic center premises.

PARTIES

- A. **County of Douglas, Nebraska ("Douglas County")** is a political subdivision of the State of Nebraska with the power and authority to make all contracts necessary and incident to the management of the interests of the county.
- B. **Omaha-Douglas Public Building Commission ("PBC")** is a political subdivision of the State of Nebraska. PBC has the power and authority to acquire real estate, design, acquire, construct, maintain, operate, improve, remodel, and reconstruct facilities for the use of the City of Omaha and Douglas County, enter into agreements for the operation, maintenance, repair, and use of such facilities, and make all other contracts, leases, and instruments necessary or convenient to the carrying out of the corporate purposes or powers of the PBC.

RECITALS

- A. Douglas County desires to relocate the Douglas County Youth Center ("DCYC") to the city block between 18th and 19th Streets and Howard and Harney Streets with a minimum planned capacity of forty-eight beds.
- B. Douglas County desires to relocate the Douglas County Juvenile Court, Douglas County Attorney's Office, Douglas County Public Defender's Office, Douglas County Juvenile Clerk, Douglas County Juvenile Probation, and the Douglas County Juvenile Assessment Center to the city block between 18th and 19th Streets and Howard and Harney Streets, in a building this MOU refers to as the Justice Center Tower and skywalk ("JCT"). The estimated cost of construction of the Project will be \$120 million.
- C. PBC has indicated a willingness to finance the Project through the utilization of revenue bonds, which would be secured by lease payments from Douglas County for the

occupation and use of the Project. The Project would be built on land owned by Douglas County pursuant to Neb. Rev. Stat. § 13-1304(11).

- D. In order to meet important business and financial expectations, the County and PBC have mutually determined that this undertaking is a consolidated and cooperative effort that requires comprehensive and all-inclusive integrated planning, developing, coordinating of funding, and implementing as a single project including administration and Site related services and Project close out, all as set forth in this Agreement ("Integrated Project Services").

Now, therefore, in consideration of the foregoing and the promises, mutual covenants and agreements of the Parties contained herein, the Parties hereby agree as follows:

I. TERMS AND CONDITIONS OF THE PROJECT

A. PROJECT SCHEDULE

The parties agree to fully cooperate using their best efforts and share information as to the financing, planning, development, coordinating of funding and implementation of the Project and Site related services to come to agreement on an acceptable time schedule.

B. PRE-CONSTRUCTION UNDERSTANDINGS

1. Douglas County shall timely acquire the necessary real estate, begin the process of consolidating and replatting the Site as may be required by the City of Omaha.
2. Douglas County and PBC shall, using their collective best efforts timely complete the necessary revenue bond documents for approval by the Douglas County Board of Commissioners, Omaha City Council, and PBC.
3. Douglas County and PBC shall timely have a final draft completed of an agreement between Douglas County, PBC, and any other required party for the Owner's Representative services for the Project, for approval by the Douglas County Board of Commissioners and PBC.
4. The County and PBC have mutually determined that the Project is a consolidated and cooperative effort that requires comprehensive and all-inclusive Integrated Project Services as a single project in order to meet important business and financial expectations. The County and PBC will retain sufficient oversight to ensure that all critical goals and objectives of the Project are met and that physical and financial assets are protected, primarily through the integrated project delivery and appropriate allocation of project costs along with planned and focused cost containment methods implemented by contract with the Owner's Representative. To this end, the PBC, under the authority of Neb. Rev. Stat. § 13-1304(11), will remain the Owner of the Project during construction

and will retain the Owner's Representative services of the Douglas County Unified Justice Center Development Corporation ("JCDC"), a non-profit 501(c)(3) corporation. JCDC is capable of accepting contributions from private donors, if feasible and economical under current tax laws, in particular for the Douglas County Youth Center.

C. CONSTRUCTION UNDERSTANDINGS

1. At all times during the construction of the Project and completing the Integrated Project Services, the parties to this MOU agree to the following:
 - a. Upon request, all parties may be granted access to the construction sites to observe and monitor progress, at the discretion of the PBC Administrator, so long as such access will not impede or delay construction.
 - b. All parties shall participate in construction progress meetings at least once a month until completion of the Project and the Integrated Project Services.
 - c. JCDC, in cooperation with PBC and Douglas County, as Owner's Representative under separate agreement with the PBC shall have the primary responsibility for completing the Integrated Project Services including maintaining the control budget and timelines for construction, coordinating between parties and coordinating uses and sources of funds for the Project, including private donations where available.
 - d. The Parties shall use their collective best efforts to cause the commencement of construction of the Project no later than November 1, 2018, provided that the parties have received all necessary approvals and funding.
 - e. The parties shall use their collective best efforts to ensure the completion of the Project and Integrated Project Services by January, 2022.
 - f. The parties agree that completion on time and on budget is of great importance to the Parties, the citizens and taxpayers of Douglas County, and, most importantly, the youth of Douglas County.

D. POST-CONSTRUCTION UNDERSTANDINGS

1. Following the completion of the JCT, Douglas County and PBC agree that the PBC shall manage and maintain the JCT pursuant to the agreement agreed upon between PBC and Douglas County.
2. Subject to the agreement, PBC shall be responsible for the payment of all expenses of managing and maintaining the JCT as a municipal government building, including repairs, general upkeep, and staffing for those purposes. The costs of maintaining and managing the JCT shall be included in the lease rates agreed upon by Douglas County and PBC via agreement.
3. Following the completion of the DCYC, Douglas County and PBC agree that that Douglas County shall manage and maintain the DCYC. Post Construction Douglas County shall be responsible for the payment of all expenses of managing and maintaining the DCYC as a municipal government building, including repairs, general upkeep, and staffing for those purposes.

II. MISCELLANEOUS PROVISIONS

- A. This agreement is not intended to confer any right upon any private person or entity.
- B. Nothing in this agreement shall be interpreted as limiting, superseding, or otherwise affecting the statutory or regulatory rights and duties of the parties.
- C. This agreement does not itself authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to any funds or enter into any contract or other obligations. A separate reimbursement agreement completed contemporaneously to this agreement does authorize necessary preconstruction expenditures.

III. IMPLEMENTATION

For the duration of this MOU, Douglas County and PBC agree to conduct monthly reviews of the implementation of this agreement. Within sixty days of the parties signing this MOU, each party shall designate one or more individuals to meet monthly with the Owner's Representative to discuss issues related to the interpretation and implementation of this MOU.

IV. TERMINATION

- A. This MOU shall continue in effect until either (1) financing, and Integrated Project Services and the Project are completed, or (2) this MOU is superseded by an alternative agreement between the same parties.

9.1. Although non-binding, this MOU represents a voluntary and tacit agreement upon

which the parties may rely. For that reason, termination of this MOU requires ninety days' written notice by any party to the other parties. All notices and other communications that are required or permitted to be given to a party under this Agreement shall be in writing and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission, to the address or facsimile number specified below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission. The addresses and facsimile numbers of the parties shall be:

The County: Douglas County Board of Commissioners
Attn: Patrick Bloomingdale
Chief Administrative Officer
1819 Farnam Street, Suite LC2
Omaha, NE 68183
Fax: 402-444-6559

With a copy to: Douglas County Attorney's Office, Civil Division
Attn: Theresia Urich
1819 Farnam Street
Omaha, NE 68183
Fax: 402-444-6817

PBC: Administrator
Attn: Paul Cohen
1819 Farnam Street, 1205
Omaha, Nebraska 68183
Fax: 402-444-5088

With a copy to: PBC Legal Counsel
Attn: Bernard in den Bosch
1819 Farnam Street, 1205
Omaha, Nebraska 68183
Fax: 402-444-5088

Provided, however, any Party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other Parties in the manner set forth in this Agreement.

V. AGREEMENT AND MODIFICATION

The provisions of this MOU are effective on the date of signature and the parties can only modify the MOU by mutual consent and ratification at a public meeting.

The undersigned hereby agree that this document represents the understanding between them

Date: _____ DOUGLAS COUNTY BOARD OF COMMISSIONERS

BY: _____
Chris Rodgers, Chairperson

Date: _____ OMAHA-DOUGLAS PUBLIC BUILDING COMMISSION

BY: _____
John E. Christensen, Chairperson