

RIO NUEVO MULTIPURPOSE FACILITIES BOARD MEETING

Tucson, Arizona
October 22, 2012
2:00 p.m.

REPORTED BY:

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1 CHAIRMAN McCUSKER: Okay. We're going call the
2 meeting to order. This is the October 22nd Rio Nuevo Board
3 meeting. We'll do the Pledge of Allegiance first. And
4 Mr. Irvin, since you're closest to that end, will you lead
5 the pledge?

6 (Pledge of Allegiance recited.)

7 CHAIRMAN McCUSKER: Michele, will you do the roll
8 call, please?

9 MS. BETTINI: Mark Irvin?

10 MR. IRVIN: Here.

11 MS. BETTINI: Jannie Cox?

12 MS. COX: Here.

13 MS. BETTINI: Jeff Hill?

14 MR. HILL: Here.

15 MS. BETTINI: Fletcher McCusker?

16 CHAIRMAN McCUSKER: Here.

17 MS. BETTINI: Alberto Moore?

18 SECRETARY MOORE: Present.

19 MS. BETTINI: Chris Sheafe?

20 MR. SHEAFE: Here.

21 MS. BETTINI: Cody Ritchie?

22 MR. RITCHIE: Here.

23 CHAIRMAN McCUSKER: And I think everybody got an
24 advanced copy of the transcript, right, Michele?

25 Everybody's seen that. So unless anybody has any

1 changes, or you were misquoted, since we're taking them word
2 for word, I'd entertain a motion to approve the transcript.

3 SECRETARY MOORE: So moved.

4 MS. COX: Second.

5 CHAIRMAN McCUSKER: Alberto moved it and Jannie
6 seconded.

7 All in favor, say aye.

8 (The Board voted and motion approved.)

9 CHAIRMAN McCUSKER: Thank you.

10 And as the schedule indicates, our plan is to go
11 straight into executive session, so I would need a motion to
12 convene that.

13 MR. IRVIN: So moved.

14 SECRETARY MOORE: Second.

15 CHAIRMAN McCUSKER: Seconded by Alberto.

16 All in favor of executive session, say aye.

17 (The Board voted and motion approved.)

18 CHAIRMAN McCUSKER: Thank you very much. And we
19 are due back here, Michele, at?

20 MS. BETTINI: 3:45.

21 CHAIRMAN McCUSKER:

22 (Executive session convenes 2:03 p.m.)

23

24 CHAIRMAN McCUSKER: We have a quorum. If someone
25 wants to move that we convene a public session?

1 SECRETARY MOORE: So moved.

2 MR. HILL: So moved.

3 CHAIRMAN McCUSKER: There was a lot of movement
4 there. We'll credit Alberto with the motion.

5 Somebody second that?

6 MR. SHEAFE: Second.

7 CHAIRMAN McCUSKER: Chris seconded.

8 All in favor, say aye?

9 (The Board voted and motion approved.)

10 CHAIRMAN McCUSKER: Good afternoon, everyone.

11 Thank you for bearing with us. As you can see from our
12 agenda, we have a very benchmark day planned for all of us.
13 And we will proceed with the agenda post-haste.

14 We are going to change the order just a little
15 bit. And then immediately following my remarks, we're going
16 to ask that Item No. 10 be moved up in front of Item No. 6.
17 Scott Ruby, our bond counsel, is down from Phoenix. And
18 we'd like to get him on the agenda and out as quickly as we
19 can.

20 It is our intent to be done in time for the
21 debate, which means we are going to try to be out here by a
22 little after 5:00, 5:30 at the latest.

23 Thank you, everyone, for attending today's
24 meetings. You'll see a number of very crucial items on our
25 agenda that have to do with not only the internal workings

1 of the District, but in our relationship with the City of
2 Tucson and -- what's been on all our minds in last several
3 months -- how we might both accomplish the goals of the
4 reconstituted Board, and at the same time, move economic
5 development forward, which obviously has to include an
6 agreement with the City of Tucson.

7 We will discuss in public today a proposal
8 that we will offer to the City on behalf of that. If you
9 track executive session agendas, you probably see that in
10 our meeting a month ago, the City of Tucson settlement was
11 on the agenda -- as recently as a week ago, in the City's
12 executive session agendas, a Rio Nuevo conversation for an
13 executive session.

14 Because these are legal matters, we are
15 obligated to discuss them confidentially and privately, to
16 the point where we get close enough that we can then discuss
17 it in public. And we will do that today, as we believe
18 we're close enough with our conversations with the City that
19 we intend to debate the most recent conversations toward the
20 end of the meeting.

21 It's been an interesting time for me. I
22 never planned on being infamous. But thanks to some leaked
23 emails, you know, I'm much more famous than I had planned to
24 be.

25 A quick note about how we operate here -- for

1 those people who enjoy the conspiracy theories -- that any
2 of us can operate unilaterally. And that is certainly not
3 the case. We are working very hard to be a consensus board.
4 I think I speak for all of us in that regard.

5 I don't believe, since I was elected chair,
6 that we've had anything that was less than a 7-0 vote. And
7 that's the manner in which I hope we can move forward at
8 some point. Majority obviously rules, but we're really
9 working very hard to make sure that all of us, old and new,
10 are in agreement on how we go forward.

11 Legal matters can be delegated to the
12 executive officers, which include myself, Jeff, and Alberto.
13 We meet regularly; we discuss, outside the public meetings,
14 items all the time. We don't do anything without talking to
15 our lawyers. So any conversation that I might have -- that
16 any of us have -- is always under the advice of counsel.

17 The particular issue that is raised regarding
18 conversations with the City is not a litigation matter; it's
19 a cash matter. And we will constantly be discussing cash
20 with the City of Tucson. If you do not know, the City of
21 Tucson will always manage our cash. We have an
22 intergovernmental agreement with them. The bond agreements
23 provide that all of the money from the State goes first to
24 the City. And they're responsible for not only our debt
25 service, but a number of other items. So we will constantly

1 be discussing -- and in some situations arguing -- about
2 what's ours, what's theirs, who to pay, who not the pay,
3 et cetera.

4 Historically, it has been held in a nonpublic
5 environment. The executive officers, a year ago, had the
6 same kind of conversation that I had a few weeks ago with
7 Kelly and Sylvia and Rick Grinnell and Jody Bain about cash.

8 So unless this Board instructs us otherwise,
9 the executive officers will continue to reconcile cash when
10 we can, when we have to, under the advice or counsel.
11 Unless they so instruct me otherwise, we will discuss that
12 in the public meeting on a regular scheduled meeting, but it
13 will not prevent us from having a conversation with the
14 City. So enough said about that. I would like to move on.

15 Scott, if you're ready.

16 Just as a refresher course, I think for the
17 public and media, in 2008 the District issued a series of
18 tax-exempt Bonds -- \$80 million series -- that has been the
19 question of a number of us recently in terms of, are there
20 unspent proceeds? If there are, how does that get managed?

21 I can tell you that we've had contradictory
22 advice from counsel in this particular situation.

23 Initially, we were operating under the understanding that
24 since the November 2011 deadline had passed, we had no
25 alternative as a Board except to pay whatever the proceeds

1 are left on those bonds down to debt service.

2 We have had new information from bond counsel
3 that indicates that we may be able to spend the remaining
4 proceeds on bond projects that were identified as part of
5 that original bond. That is the precise reason the
6 conversations with the City about cash stopped because until
7 we have a definitive answer from counsel, neither
8 jurisdiction knows how to proceed as it relates to cash.

9 So, Scott, if you can introduce yourself,
10 your role in all of this, and then enlighten all of us kind
11 of about this series of bonds.

12 MR. RUBY: Thank you, Mr. Chairman.

13 My name is Scott Ruby. I work for the law firm of
14 Gust Rosenfeld in Phoenix and Tucson. We are bond counsel
15 to this district as of a few months ago. And we are
16 generally bond counsel for a number of municipal and public
17 jurisdictions across the State of Arizona. We represent
18 virtually every school district and a majority of cities and
19 towns.

20 We do not work for the City of Tucson so we
21 obviously were freed from the conflicts of the case. But we
22 are pleased to represent the District in this matter and
23 just try to clarify a few questions that may have come up
24 relative to your bond offerings. The District has been an
25 issuer of bonds and also a participant in some other

1 financings that involve the City of Tucson and, obviously,
2 the District itself.

3 In particular, we have, on the most immediate
4 radar screen, the Series 2008 bond issue, which was the
5 \$80 million bond issue. By tax law there are a number of
6 requirements associated with those monies that are generated
7 through the sale of bonds. And we have approached some
8 deadlines and paid some expenses out of certain funds and
9 made sure all that was accommodated appropriately.

10 We have -- as, Mr. Chairman, you referenced -- we
11 have some monies in the construction fund that now need to
12 be dealt with in one legal way or another. In particular,
13 the documents anticipated that any excess construction funds
14 would be utilized to pay debt service at the end of a
15 certain period of time.

16 That time period has come, and we were operating
17 with the understanding that we would take those excess
18 proceeds, put them in the debt service fund. Albeit, that's
19 the directions of documents, like all documents in federal
20 tax law, there are exceptions and accommodations that can be
21 made in certain circumstances.

22 So we did take the opportunity to meet with some
23 City officials, including their current bond counsel,
24 Ballard Spahr, who happened to be the bond counsel for the
25 District when the bonds were issued in 2008. And we had a

1 chance to discuss kind of closing out of the acquisition
2 fund and construction fund and how that would best be
3 accommodated. We dealt with Mr. Hicks and Mike and had a
4 great conversation about what we were able do.

5 There were two primary factors on the table at the
6 time. Okay, how much is left in the acquisition
7 construction fund? And then, what can we do with that
8 excess?

9 We are currently in the process, primarily by the
10 City Tucson and Ballard Spahr, Mr. Hicks in particular, are
11 reviewing the invoices associated with the payments for
12 projects financed by the 2008 bonds. We don't have a final
13 figure on that or a final conclusion on that exact amount.
14 I believe we're somewhere between 6.9 and 4.2 million.

15 But there are -- again, the reason for the
16 difference is that there may have been some expenditures by
17 the City of Tucson on projects that have not yet been, you
18 know, processed through the trustee and that sort of thing.
19 So we're trying to have the records kind of catch up to
20 those particular expenditures.

21 Mr. Hicks, because he is the one that issued the
22 original bond counsel opinion, should be and is involved in
23 this process in order to make sure that the proceeds were
24 expended in accordance with the assumption behind his
25 opinion.

1 So as I say, that's a -- that's a process of final
2 accounting with respect to those monies to see what is in
3 excess fund. And we expect to have some resolution on that
4 within the next couple of weeks. Mr. Hicks, as well as most
5 of the bond lawyers in the state, are out of the state for
6 this week because they're attending a national bond lawyers
7 meeting in Chicago. So as soon as they return from that,
8 I'm sure that they'll return to their diligence on those
9 particular matters.

10 The second question was, okay, if we have excess
11 monies, what do we do with them? As I mentioned, the
12 process of what you do with funds is heavily regulated by
13 the Internal Revenue Code. The Internal Revenue Code is
14 concerned with three things: One, that those excess
15 proceeds are not invested in a yield higher than the bond
16 yield. That's called arbitrage. In this day and age, given
17 the rate of return on almost any investment, we are not in
18 breach of that. If we were even close, the IRS allows you
19 to yield restrict and make yield reduction payments, either
20 one, with respect to that money. Again, that's not a issue.

21 We do have, though, some other IRS rules where the
22 IRS is worried about: Did you issue too many bonds ahead of
23 the time? That's called a hedge fund. Also, did you just
24 flat-out overissue more than you actually needed in order
25 to, technically, gain an investment advantage. Clear here,

1 that investment advantage wasn't ever contemplated because
2 you couldn't invest higher than what the bond was, so
3 there's really not an arbitrage profit.

4 In talking about the issue with Mr. Hicks
5 originally, a number of months ago, prior to the Chairman's
6 involvement and I'm sure others' involvement, we were given
7 just-follow-the-documents kind of answer. Given, you know,
8 a little more thorough relationship, the parties did sit
9 down and we did explore maybe some opportunities to not have
10 to throw it into the debt service fund.

11 And so Mr. Hicks is also looking at that issue. I
12 believe their preliminary opinion is that that money can be
13 utilized to finish up or to pay for some additional projects
14 which were authorized by the 2008 bonds, so we'll be looking
15 at that. We're trying to finalize both those points at the
16 same time, i.e., how many dollars are left and what we can
17 do with those dollars. We anticipate Mr. Hicks will give us
18 some --

19 CHAIRMAN McCUSKER: Scott, these probably don't
20 mean anything to you, being from Phoenix, but they're all
21 quite familiar to us. Those approved projects included the
22 Mission St. Augustine Gardens; the Mission Landfill; Civic
23 Center, which is the Tucson Convention Center; the downtown
24 infrastructure projects, Depot Plaza Parking Garage, Depot
25 Plaza public improvements; U of A Science Center; Arizona

1 State Museum; Arizona History Museum; Tucson Children's
2 Museum design; Cushing Street Bridge; Clark Street
3 Underpass; Barrio Viejo; Barrio Sin Nombre; and a partial
4 repayment of the City loan.

5 So if I'm following you, if indeed counsel
6 suggests at the end of this, then I think we would want it
7 in writing, that whatever is left unspent, it would have to
8 go to one of these projects that was identified as the use
9 of proceeds in the bond.

10 MR. RUBY: That's correct, yes. And that's --

11 CHAIRMAN McCUSKER: And does it matter how and to
12 whom and how much? Or is there latitude, Scott, within
13 those projects? Or do we just don't know?

14 MR. RUBY: Mr. Chairman, we're going to get
15 specific instruction on that. I will say, you know, there
16 were some reasonable expectations at the time of issuance
17 that these particular projects would be funded in these
18 particular amounts. But again, those are reasonable
19 expectations at the time.

20 There is latitude under the Internal Revenue Code
21 that if one garage that was expected to cost 10 million,
22 only cost 8, that the 2 million could then be spent on maybe
23 another project that had a higher actual amount than it had
24 as the estimate. So you are able to move money from one
25 category to another as long as that is on the list, one of

1 those projects is on the list.

2 CHAIRMAN McCUSKER: And, Sean, Michelle, are these
3 bond documents on the website some place? Is this a
4 document that the public can access?

5 MS. BETTINI: They're on the City of Tucson's
6 website, but I can upload them on ours.

7 CHAIRMAN McCUSKER: Would you?

8 It's that big, right? I mean, you brought --

9 MS. BETTINI: It's 686 pages long.

10 CHAIRMAN McCUSKER: Maybe you could help us decide
11 what we want to make available to the public.

12 MR. RUBY: I certainly can. There are a number of
13 relevant documents for what we are talking about today. But
14 certainly it's only this thick, not 680 pages. Be more than
15 happy to.

16 So, Mr. Chairman, with that, and others, I can
17 tell you that the bonds enjoy their tax-exempt status, and
18 we would anticipate that to continue based on what we've
19 looked at. You know, there are accounting ledgers that show
20 monies being spent for the authorized projects so -- and I
21 believe Mr. Hicks is comfortable with his opinion.

22 CHAIRMAN McCUSKER: Any questions for Mr. Ruby?
23 Scott, again, thank you very much. Drive safe.

24 MR. RUBY: My pleasure. Thank you.

25 CHAIRMAN McCUSKER: Okay. We're going to track

1 back now to the annual audit. I saw Jim Lovelace come in
2 from BeachFleishman.

3 Jim.

4 Our agendas are pretty complete now if you follow
5 them in terms of why this is an agenda item. But as you all
6 know, we are required to have an annual independent audit
7 for the fiscal year that ends June 30th. BeachFleishman
8 enjoys that contract for three years.

9 I think this is your third.

10 MR. LOVELACE: That's correct.

11 CHAIRMAN McCUSKER: So they are engaged to
12 complete this third year of their audit engagement. We have
13 delayed them for a variety of reasons. The chief one being
14 that we're not ready to be audited, frankly.

15 You know, we are -- we terminated with the City of
16 Tucson in August of last year. The District had an outside,
17 outsourced accountant for a period of time that was
18 terminated at the beginning of the calendar year. We've
19 been operating under a QuickBooks kind of system since then.
20 And of course, the City of Tucson has their own books and
21 records. So we're in the process of consolidating and
22 compiling three separate and distinct books at which point,
23 then, we will turn them over to Beach to be audited.

24 In the process I initiated a question of Beach,
25 given that I'm quite familiar with audits and auditors,

1 around the presentation of the District's assets,
2 particularly the construction and progress assets where
3 basically we claim value to something that we do not own.

4 And correct me if I'm mistaken, but that has led
5 to qualified opinions over the last couple of years. There
6 are alternatives to how we present those assets which don't
7 deceive the reader of the audit nor do they change our legal
8 position regarding any of those audits, but it would allow
9 the auditor to issue a qualified opinion.

10 MR. LOVELACE: Unqualified.

11 CHAIRMAN McCUSKER: Unqualified opinion --
12 sorry --

13 Thank you.

14 -- and that's very important to jurisdictions that
15 issue bonds.

16 We do not want our third strike, which would be
17 our third qualified opinion in a row. So we're working very
18 diligently to address that issue. And we invited Jim to
19 talk to all of us today and bring up -- catch up the public
20 on these conversation.

21 So did I oversimplify that, or...

22 MR. LOVELACE: It's a good start.

23 CHAIRMAN McCUSKER: Thank you. Jim?

24 MR. LOVELACE: Mr. Chairman and members of the
25 Board, we appreciate the opportunity to speak today

1 regarding the matter at hand. With that in mind, when I
2 read the agenda and saw that you gave me 20 minutes, for
3 folks who've worked with me, prospectively or historically,
4 know that I'm not known for getting through any discussion
5 in 20 minutes, but I'll do my best. I think it can be done.

6 Specifically in the world of auditing and
7 financial statements, it's extremely important that folks
8 understand that the entire report -- the entire bound
9 statements belong to the District. The only page that
10 BeachFleishman or any independent CPA takes responsibility
11 for is the auditor's report. And here we are today talking
12 about the composition of that.

13 And, yes, historically we have issued a qualified
14 opinion. And, yes, there is discussion about options to
15 move beyond a qualified opinion to a clean opinion, or
16 what's referred to as an unqualified opinion. So again, in
17 the prior two years, we were unable to form an opinion
18 regarding amounts reported as capital assets and accumulated
19 appreciation.

20 I want to give some perspective on that particular
21 matter. Now, for folks who've been around me and heard me
22 say it, this is my 23rd year in the profession. It's the
23 only time I've ever issued a qualified opinion, so obviously
24 that should catch your attention, obviously that should be an
25 indication it's not a common occurrence in the business.

1 But, nonetheless, management and the reconstituted
2 Board's working to resolve this issue. Clearly, with
3 outside and inside counsel, there's discussion about, what
4 do we have title to, and what the language of that footnote
5 disclosure should be. But if in fact we do not issue a
6 qualified opinion, depending on our audit procedures, we
7 will be prepared to issue an unqualified opinion. The
8 common vernacular is a clean opinion.

9 But in this profession we believe it's appropriate
10 and under the circumstances to issue inside that auditor's
11 report -- the only page in this entire package, the entire
12 report that belongs to us, the auditor's report -- an
13 additional paragraph referred to as an emphasis of a matter.

14 Now, I know on your website you have a copy of our
15 prior audited statements. I don't know if you have a copy
16 of that document in front of you. If you'd like a copy, I
17 brought black and white copies for purposes of today's
18 discussion.

19 Again, if folks on the Board would like to see
20 that so it's a visual as we discuss this, would you mind
21 handing the Board of copy of that, please?

22 CHAIRMAN McCUSKER: And if you have some extras,
23 we usually make things available to the public.

24 MR. LOVELACE: This document is available on your
25 website.

1 CHAIRMAN McCUSKER: It's on the website.

2 MR. LOVELACE: It's no different than if you go on
3 your website, on the toolbar up above, drill down under
4 Financial statements, you look at my prior 2011 and 2010.
5 The document that the Board has in front of you is the exact
6 photocopy of that same auditor's report. Now, I put this in
7 front of you so, again, it provides a visual as we discuss
8 exactly what would be the case.

9 Now, let me add some amplification about an
10 emphasis of a matter. I know there's a lot of discussion
11 about what that means and where we're going with it. As we
12 speak, I had indicated only one time in 23 years have I ever
13 issued a qualified opinion.

14 If, in fact, we get to a clean opinion -- and we
15 would like to think that's doable -- and in that scenario we
16 issue our audited statements with an emphasis of a matter,
17 this will be the second time this year alone that I will be
18 issuing June 30th financials with an emphasis of a matter.
19 The point is, is it's not frequent, but it's not uncommon
20 either. Okay?

21 So having said that, basically, an emphasis of a
22 matter's paragraph may deemed necessary in the professional
23 judgment of our firm to highlight unusual or important
24 matters that are disclosed in the financials. Okay?

25 So with the document that you have in front of

1 you, the first paragraph's the introduction; the second
2 paragraph is the scope; the third paragraph is the qualified
3 paragraph: Because of the inaccuracy of the accounting
4 records et cetera, et cetera. There's the qualification as
5 opposed to a clean unqualified opinion.

6 And in the fourth paragraph, is the auditor's
7 report: In our opinion, except for the above paragraph,
8 et cetera, et cetera.

9 So now you see before you, that the third
10 paragraph would be excluded. And the resulting third
11 paragraph, in our opinion, would now be: In our opinion,
12 the financial statements referred to above, in conformity
13 with gap.

14 The emphasis of the matter would follow
15 immediately thereafter the opinion report. In our
16 profession, your standard three-paragraph auditor's
17 report -- the introduction, the scope, and the opinion --
18 and then in this case, the emphasis of a matter paragraph
19 would follow thereafter.

20 Some of the common reasons for such paragraphs --
21 and this is, again, based upon professional judgment --
22 pervasive related-party transactions; unusual or important
23 subsequent event; significant uncertainties other than going
24 concern or unusually restricted debt covenants, those are
25 certain examples of where folks in my profession choose to

1 do an emphasis of a matter.

2 Now, again, if, in fact, through our audit
3 procedures we can conclude that, one, we've identified what
4 the District has title to and that there's sufficient fact
5 and circumstance disclosure, then we would incorporate an
6 emphasis of a matter, and we also believe that exactly
7 what's taken off, that there be complete, transparent
8 disclosure of that in the footnotes following the statements
9 themselves. Okay?

10 Now, we do have some sample language for when
11 we're prepared to talk about it. But the point that I'm
12 trying to make is that qualified opinions are not common in
13 this business, but emphasis of matters, even though they're
14 not frequent -- as I've already indicated to you, I already
15 have another set of financials in my office on my desk as we
16 speak as an emphasis of a matter -- so again, it's based on
17 professional judgment. And we believe in this particular
18 instance, it not only alerts the readers of these
19 financials -- if, in fact, they have prior years' statements
20 in front of them as well -- it clearly tells the reader to
21 go to that footnote and be very specific in understanding
22 the impact of what's occurred in the current year to go from
23 an unqualified opinion -- or rather a qualified opinion to
24 an unqualified opinion.

25 CHAIRMAN McCUSKER: Jim, do you know how that

1 affects the rating agencies? We're rated by Moody's and
2 S&P. But you know, we know they don't like qualified
3 opinions, but is there any issue that they would have
4 regarding the emphasis of a matter section on how they might
5 view credit worthiness or credit rating?

6 MR. LOVELACE: No, sir; I would not anticipate
7 that. But clearly, as users of the financials -- and they
8 go to that auditor's report, those are the folks that we
9 want to make sure that they understand to go to those
10 disclosures. It's no different than any other loan covenant
11 violation, for example, that can have impact on the rating
12 and the resulting cost of money.

13 We understand and respect the fact that the
14 District would like to move forward and improve that rating
15 for future bond issuance and relating cost as well. But as
16 it relates to their impact, we believe that it should have a
17 positive effect. Clearly the ultimate goal of any audit is
18 a clean opinion.

19 CHAIRMAN McCUSKER: Hmm.

20 MR. LOVELACE: Seldom do I leave folks speechless.
21 But we're here for any comments or questions the Board would
22 have of us.

23 CHAIRMAN McCUSKER: There's -- you know, the
24 conspiracy theorists among us suggest that we're just, you
25 know, moving assets around to disguise this or that or the

1 other thing and make it harder for the reader. I think I
2 heard you say, but I'd like you to emphasize it, you know,
3 this doesn't necessarily change the financial condition of
4 the District; it doesn't change the claims we have to
5 particular assets; it's a presentation opportunity.

6 Is there a debit/credit side to all of this?

7 MR. LOVELACE: The bookkeeping's not that
8 complicated, Mr. Chairman. And while I'm happy to have any
9 discussion or dialogue about GASB34, which is the
10 accompanying standards that Mr. Hill should be familiar
11 with --

12 CHAIRMAN McCUSKER: Mr. Hill said let's not, so...

13 MR. LOVELACE: Yeah. No kidding.

14 But in reality, there's modified accrual and full
15 accrual. This has no impact on the modified accrual. It's
16 only in the full accrual. So you folks on the Board who
17 understand -- I'll call it -- private sector accounting, the
18 full accrual does incorporate the capitalization of fixed
19 assets. That's the set of books and records in the GASB34
20 reporting model that it would affect.

21 So again, if you go look at your statements, it
22 would not impact the modified. The modified is a
23 resources-available model which has been around since --
24 well, as long as I've been in the profession. It's when
25 governments were required to go to full accrual accounting

1 that you start capitalizing and reporting fixed assets on a
2 government set of financials. And therein lies whatever
3 impact based upon what the District has title to, any
4 resulting adjustment, that that footnote be fully disclosed
5 about the facts and circumstances.

6 CHAIRMAN McCUSKER: Sean, if I might put you on
7 the spot, is there anything that you understand that he's
8 discussing that would jeopardize our legal position with any
9 of our assets or claims to any of our assets.

10 MR. BREARCLIFFE: It just depends on the language
11 that's used to describe it. There's no question that
12 there's a dispute. There are pending lawsuits with regard
13 to the title of the property. You just want to be sure that
14 you're -- we're talking about the title of the property as
15 opposed to ownership because we have claims where we're
16 claiming ownership of the property that's just not titled in
17 our name.

18 So that's the only concern, is that as long as we
19 maintain our position that we own these things, which is
20 consistent with our litigation position, then we're fine.
21 We are, in fact, though, arguing over title.

22 CHAIRMAN McCUSKER: Any questions for Jim?

23 MR. SHEAFE: So the universe is understood, it's
24 just exactly where the asset sits.

25 MR. LOVELACE: On whose books.

1 MR. SHEAFE: It's that simple.

2 MR. LOVELACE: Yes, sir. The District's books or
3 the City's books.

4 MR. SHEAFE: Okay. So we're working to solve it.

5 CHAIRMAN McCUSKER: Yeah. That's exactly -- got
6 it?

7 Jim, thank you very much.

8 MR. LOVELACE: Thank you, sir.

9 CHAIRMAN McCUSKER: Bill, that's a good segue into
10 you. We heard from the auditor. I guess you're the
11 auditee.

12 MR. ALLEN: Okay. So what we've been doing for
13 the last month is attempting to get the books current for
14 Rio Nuevo through the fiscal year ending June 30, 2012, as
15 well as continuing to conduct business for the Board going
16 forward into the current fiscal year.

17 The challenge was not in terms of necessarily
18 massive amounts of transactions -- there's quite a few on
19 the City side particularly, not that many on our side -- but
20 the challenge was that there was so many different places
21 where information was coming from and formatted in different
22 ways.

23 The City had a set of records that were formatted
24 in a certain way; the CPA firm that was terminated had a set
25 of records that were formatted and tracked in a certain way;

1 and in our own QuickBooks setup, we had a set of accounts
2 that set up and tracked in a certain way, not always in
3 tandem to each other.

4 The part that we could track back to easily was
5 the June 30, 2011, set of financials because those were the
6 audited financials that were tied out and were linked to the
7 structure that was set up by the CPA firm that was
8 terminated in the first half of this fiscal year. So we
9 were able to tie back to those balances at that point in
10 time.

11 Afterwards, these things kind of went crazy. The
12 CPA firm that was terminated only did some of their entries,
13 none of the City's entries were recorded in the last year,
14 and other extenuating events started to happen where -- and
15 certain activities like payments of sales tax and other
16 types of normal business events seemed to get impaired.
17 Impaired is probably not a good word to use when we're
18 talking about audits because -- what I mean by impaired is
19 the function began to erode a little bit.

20 So we had -- I'm having to try to build back all
21 this information in tandem in one consistent set of
22 financial records, which we are now, I'm thankful to say,
23 very close to completing, with the help of RCM doing a lot
24 of the detail work of setting up in QuickBooks a set of very
25 detailed -- about as detailed as you can get in QuickBooks

1 because it's not an overly robust system, but you can get it
2 down to the various fund levels and be able to track it at
3 the fund level in a series of accounts that's consistent to
4 what was used in the previous year's audit, which we have
5 now done.

6 We are able to get financial statements to
7 June 30th that are largely complete. When I say largely, I
8 would say that there's about 60, 70 transactions that are
9 still pending to be analyzed and the recordations of
10 adjusting entries or resolutions of them related to either
11 activity on the City or activity on our own books still have
12 to be recorded. But I anticipate that to be within days,
13 maybe a week's time away.

14 And in doing that, we should have, through
15 June 30th, for the first time, a very competent set of
16 financial records to which I can turn over to our
17 colleagues -- I don't know if they left -- no, they're still
18 here behind me -- BeachFleishman, a trial balance, which is
19 what they need in order to start their due diligence in
20 preparing and completing their audit.

21 So I have with me not a very large stack of -- but
22 nonetheless -- questions that we're still analyzing related
23 to the financial statements that I need to get with the City
24 of Tucson. I'm anticipating able to go -- to go through
25 those questions very quickly with them to resolve the other

1 accounting issues that I need recorded on the books through
2 June 30th from our end and be able to move forward in
3 getting that audit started in the next week for June 30,
4 2012.

5 CHAIRMAN McCUSKER: Bill, there are a number of
6 other things that accompany an audit -- letters to the
7 lawyers, letters to the people who owe us money -- you know,
8 how are we doing with the other parts of the audit?

9 MR. ALLEN: I've fed those letters over to Beach,
10 and unfortunately it wasn't all in one sitting. They now
11 have all those letters. They have been -- they're in the
12 process of being distributed or have been distributed. A
13 group of them I just delivered last week. I don't
14 anticipate that they're going to be lengthy letters to get
15 responses on. In most cases I think, in talking to Lydia,
16 we felt that we could probably get responses reasonably
17 quickly. Of course, she can't guarantee it; neither can I.
18 But I do think we're going to be able to get them in a very
19 timely fashion.

20 CHAIRMAN McCUSKER: And then, how do we go forward
21 so this doesn't happen again?

22 MR. ALLEN: Well, I think the way we go forward is
23 we keep everything current; that the business of the
24 District is kept -- kept current; that the activities of the
25 District in regards to other activities -- like sales tax

1 payments, revenue, tracking, analysis -- with the City as to
2 what's going on on their side on a very consistent basis,
3 which frankly hadn't happen in a very long period of time.

4 If you're doing it monthly, you don't have issues
5 with trying to figure out how to find all the variances that
6 occur in 12, 18 months in about a month, a month and a
7 half's period of time, because you're doing them every
8 single month, which is my intent, is to make sure everything
9 is kept clean, kept current and that we report to the Board
10 with a clean set of financial statements every month.

11 CHAIRMAN McCUSKER: Questions for our CFO?

12 MR. HILL: I've read some of those emails about --
13 there was some questions on the chart of accounts. And I
14 was curious, are we not using the chart of accounts adopted
15 on September 19, 2011? And I don't know why there would be
16 some confusion on our chart of accounts that was adopted by
17 the executive committee and the Board at that time when I
18 became treasurer on September 1st. And so that kind of
19 shocked me -- yeah, you can have that -- that you don't
20 have -- that there's no chart of accounts used in the
21 QuickBooks system and nothing dovetails with the City.

22 As I understand in the reviewing that, of last
23 year, it was basically the City's, and we got rid of the
24 accounts that were not being used by Rio Nuevo so we would
25 have that consistency flowing from the City of Tucson to our

1 accounting records.

2 So you did not have that document?

3 MR. ALLEN: This is the first time that I've seen
4 this document, Jeff.

5 MR. HILL: Okay.

6 MS. VOS: But the chart of accounts, the first
7 thing that strikes me on this is that it has a numeric
8 system. When I was first hired and spoke to Michele, she
9 informed me that we set up the accounts based on name and
10 name only in QuickBooks. But my focus became more driven to
11 what R&A had done and more -- and more specifically as to
12 what the City of Tucson did, as well as R&A did, to try to
13 set up a competent set of fund accounting books with a
14 numeric structure.

15 CHAIRMAN McCUSKER: What chart of accounts are you
16 using now? What was the genesis of that?

17 MR. ALLEN: The genesis of the chart of accounts
18 in the current set of QuickBooks is a new set of chart of
19 accounts that linked back to -- as best as we could -- the
20 chart of accounts that were utilized by R&A and were
21 consistent to the structure and follows the sequencing that
22 is consistent to the fund accounting that's done by the City
23 of Tucson, so that we can follow, all the way down, the
24 chart of accounts consistently, the links to the various
25 funds and the various accounts going down the page.

1 The QuickBooks that were set up by Rio Nuevo were
2 really just a very functional, but nonetheless, not
3 detail-oriented, certainly down to the level that was
4 required or should have been set up inconsistent to what R&A
5 had been set -- had set.

6 And so what we're trying now to do is have a trend
7 of the last three years in which the chart of accounts can
8 consistently be tracked year after year. It's helpful to
9 our auditors to be able to see information in that fashion.
10 It's helpful to creation of financial statements to be able
11 to see information in that fashion.

12 CHAIRMAN McCUSKER: Do Mr. Hill a favor and
13 reconcile the current chart of accounts to the one that's
14 previously approved.

15 MR. ALLEN: All right.

16 CHAIRMAN McCUSKER: Just let us know what those
17 differences are.

18 MR. ALLEN: Okay.

19 MR. HILL: Mr. Chairman, that would be very good
20 because we thought we resolved that. R&A approved that
21 chart and we adopted it to go forward.

22 MR. ALLEN: Of course, that -- such a very little
23 amount of activity, really, is in the Rio Nuevo set of
24 books. All the Tucson transactions for the City of
25 Tucson's, none of them have been recorded.

1 MR. HILL: I understood that.

2 MR. ALLEN: So it's only just the monthly expenses
3 that wound up being recorded in the current existing Rio
4 Nuevo chart of accounts.

5 CHAIRMAN McCUSKER: Theoretically that chart of
6 accounts should align with the City's chart of accounts.
7 That's your entire point.

8 MR. HILL: Yes. That was my understanding and
9 what R&A had set up and approved.

10 MR. SHEAFE: Possibly, Jeff, when you got that
11 chart of accounts approved, you failed to mention that the
12 City ought to actually enter the numbers according to the
13 chart of accounts.

14 MR. HILL: No. The books were all ours by that
15 time. We were responsible for it through our name. We
16 thought they'd done it.

17 MR. SHEAFE: I mean, what I'm getting out of this
18 is the accounting went on the way it was, right?

19 MR. ALLEN: To a certain extent. There have been
20 some reclasses made in the activity that was done since we
21 took over the accounting for the monthly -- just the very
22 general, nominal, monthly transactions that Rio Nuevo had
23 started to record going back to when the funds were
24 transferred into our set of records in August -- roughly
25 August of 2011.

1 CHAIRMAN McCUSKER: I think it speaks to the
2 challenges we will have to maintain our independence from
3 the City. The City has all kinds of staff resources and
4 bookkeepers and accountants and processors. We terminated
5 them and basically didn't staff up to replace them. So we
6 hired outside consultants, who probably did no service to
7 us, and are now bringing that internally. And we've had to
8 staff up, Chris, in order to maintain some level of
9 confidence.

10 MR. SHEAFE: That leads me to a question. And
11 that is that -- I was sort of joking there a little
12 bit but -- because the cash flow will still be maintained
13 due to the bond requirement, are you, in your stack of
14 papers, feeling like you are getting a response to the
15 questions when you ask them? Do you feel confident that you
16 are able to go to a resource and say, here's my problem,
17 what's the story here, and you get an adequate answer that,
18 one by one, you can solve these problems?

19 And then secondly, looking forward, do you see the
20 process in place that's going to allow you to be able to
21 stay on top of the records monthly without going to any
22 extraordinary question?

23 And I guess adding to Jeff's question is, does
24 that include the fact that our accounts and the City
25 accounts line up well enough that it's easy to move that

1 information across?

2 MR. ALLEN: Okay. There were multiple questions
3 there, but I'll try to summarize.

4 The ability to work and get information from the
5 City of Tucson is a new concept to me. And I had to ask a
6 lot for a lot of detail that -- I didn't bring it up with
7 me but -- or actually I did. When I -- when I first got
8 here, I was handed a stack of paper like this. This
9 represented the year's worth of transactions by the City of
10 Tucson that were not on our books. They had not been
11 analyzed, they're not in journal voucher order -- which
12 probably means nothing to a nonaccountant -- but they were,
13 nonetheless, very difficult to dissect and understand with
14 clarity the amount of information that was provided to me
15 without requesting additional information.

16 In making requests of the City, they've been very
17 helpful in providing that kind of additional detail that
18 links back, essentially, to this entire stack of information
19 that's been provided, but in a form and content that was
20 more understandable. And it helped us to throw together the
21 financial statements that we had to rebuild for an entire
22 year so that they were in a form and structure that was
23 consistent and adequate for essentially a trial balance so
24 that our auditors could move forward and prepare their
25 review.

1 So there was a learning curve there, and I have
2 been able to get, I think, a process down of the City, where
3 I can get faster, more reliable information, by asking for
4 certain types of information, in a way that is more useful
5 than when I first started. But nonetheless, I think we're
6 well down the road of being able to maintain that monthly.

7 MR. HILL: Mr. Chairman, I guess --

8 Bill, you can have the rest of this package that I
9 had gotten in September that goes with that, which I believe
10 is from R&A. And it moves forward with the City amounts.
11 So if nothing else, you've got something to check. R&A may
12 not have been keen on disbursing that to you. And maybe
13 that's why you don't have that piece that apparently was
14 prepared by them when we wanted to shift over the accounting
15 and get the numbers from the City on our books as we were
16 supposed to -- what? -- by July 1st, 2010, I think, so that
17 we had that first audit, that's the qualified audit we're
18 talking about that ended June 30, 2011. And that's what
19 those documents purport to give us, the starting point for
20 the fiscal year that's currently under audit.

21 MR. ALLEN: Which I have this information,
22 Mr. Hill, from the CPA firm.

23 MR. HILL: Good.

24 MR. ALLEN: So I -- in this very detailed fashion.

25 MR. HILL: Good.

1 MS. VOS: Unfortunately, no information made it to
2 our books related to the starting balances nor any of the
3 subsequent activity starting with July 1st of 2001 forward.

4 MR. HILL: I understand that.

5 MR. ALLEN: All right.

6 MR. HILL: But I just want to make sure that that
7 piece is there so that now that you have that done, it's
8 inclusive of what was used to create the books for the last
9 prior year's audit.

10 MR. ALLEN: I think that some of the balances is
11 here, because I haven't reconciled to this document.

12 MR. HILL: Okay.

13 MR. ALLEN: I think some of the numbers have
14 changed because they have final audit adjustments made by
15 Beach. By the way, I think we're completely on the same
16 page.

17 MR. HILL: Very good. I appreciate it.

18 MR. ALLEN: Thank you.

19 CHAIRMAN McCUSKER: Any other questions for Bill?
20 You should note for the record, Mr. Ritchie
21 stepped out. We still have a quorum.

22 Anything else for Bill?

23 God bless you.

24 MR. ALLEN: Thank you.

25 CHAIRMAN McCUSKER: Susan, could you give us a

1 quick update, if you can, on the status of your audits.

2 MS. VOS: Good afternoon, Mr. Chairman, members of
3 the Board. Bill pretty much summarized what the status is
4 of the accounting services project that I've been working
5 on.

6 CHAIRMAN McCUSKER: Thank you for that too, by the
7 way. Stepping in, it's been very helpful.

8 MS. VOS: You're welcome.

9 Like he mentioned, we got the questions that he's
10 working on with the City, but we're also waiting for
11 information from him for year-end accruals that we need to
12 book. Right now we don't have any accruals -- accounts
13 payable, accounts receivable -- at year end. We're waiting
14 on information from him to record that. So really, our work
15 on that is at a standstill until we get more information.

16 On the Depot Project, again, I'm waiting on the
17 City. I talk today Sylvia earlier today. She's doing some
18 final research on one of the questions I had. It's turning
19 into a little more detailed research than what we had both
20 anticipated. And I'm also waiting on a response from John
21 Sundt. He was reviewing the response to the City. I have
22 not heard back from him yet.

23 And the West Side is progressing slowly. I got a
24 little sidetracked with the bookkeeping/accounting services
25 project. And again, we've got over 11,000 documents that

1 need to be reviewed on the project. I had an intern at the
2 City last week copying contracts, additional information I
3 had requested. So the City is providing information as I
4 request it. I just haven't had a chance to get through all
5 11,000 documents yet.

6 CHAIRMAN McCUSKER: Any questions for Susan?

7 MR. IRVIN: What's kind of the latest and the
8 greatest on the timeframe?

9 MS. VOS: Pardon?

10 CHAIRMAN McCUSKER: Timing?

11 MR. IRVIN: What's the latest and the greatest on
12 the timing?

13 MS. VOS: On the Depot, as soon as I can get
14 information back from the City and a response from
15 John Sundt, that should only be, you know, a few more days
16 to get that once I hear back from them. The West Side, I've
17 probably got another month or two to get through all that
18 information at a minimum.

19 CHAIRMAN McCUSKER: Thank you, Susan, keep it up.
20 Let me kind of adjust a couple of timing issues.

21 And, Scott, if you'll indulge us, I know you're
22 eager to present your proposal and we want to take advantage
23 of that.

24 I have a couple of business items on the agenda
25 that maybe we can tick off here pretty quickly. As part of

1 the audit, we did order an appraisal on the Tucson
2 Convention Center, the expected cost is \$5,000. I would
3 need the Board to ratify that. I did commit to that but
4 need your ratification.

5 MS. COX: So moved.

6 MR. SHEAFE: Let's move to ratify it.

7 CHAIRMAN McCUSKER: Jannie beat you, I think. Did
8 you want to second that, Chris?

9 MR. SHEAFE: Yes.

10 CHAIRMAN McCUSKER: Any questions, comments?

11 All in favor, say aye.

12 MR. HILL: Opposed? No.

13 CHAIRMAN McCUSKER: Opposed? No. Thank you very
14 much.

15 (The Board voted and motion approved.)

16 MR. HILL: Let the record show that --

17 CHAIRMAN McCUSKER: Let the record show --

18 MR. HILL: -- see the need for. And as I stated
19 at last meeting, I vote no.

20 CHAIRMAN McCUSKER: Sorry.

21 Board members have asked that we place on the
22 agenda the media relations contract that we currently enjoy.
23 I think the interest there is in exploring alternatives.
24 I'm open to a motion to that affect.

25 MR. SHEAFE: I would so move.

1 CHAIRMAN McCUSKER: Motion has been made by Chris
2 to explore our options regarding our media contract which
3 would include a new fee.

4 MS. COX: Second.

5 MR. SHEAFE: Mr. Chairman, does that include --
6 since we're going to do that, there's no reason to be paying
7 a monthly fee. Can we terminate that?

8 CHAIRMAN McCUSKER: We have to check the contract.
9 I'm not sure what the contract says. And they do maintain
10 our website, so we don't want to abruptly do that, probably
11 transition out of that. And I think they'd be welcome to
12 bid if we're exploring our options.

13 So I think Jannie seconded that.

14 Mark, do you have a question?

15 MR. IRVIN: No. No, I didn't.

16 CHAIRMAN McCUSKER: All in favor say aye?
17 Opposed?

18 (The Board voted and motion approved.)

19 CHAIRMAN McCUSKER: You broke our record.

20 MR. HILL: I pick and choose.

21 CHAIRMAN McCUSKER: Okay. Mark, if you're ready,
22 we can go to the City of Tucson.

23 Jannie has a hard stop at 10 after 5. She's in
24 charge of Meet Me at Maynards, which is one of our most
25 popular events downtown. We do not want to disturb her.

1 And, Michele, if you can find Cody, we need him
2 for sure in this part of the meeting.

3 CHAIRMAN McCUSKER: And if you'll kind of describe
4 what you're about to launch us on.

5 MR. COLLINS: Well, let me make one comment. If
6 we're having to be out of here in 30 minutes, what we're
7 getting ready to talk --

8 CHAIRMAN McCUSKER: We're going to lose Jannie in
9 30 minutes.

10 MR. COLLINS: Okay.

11 CHAIRMAN McCUSKER: And I just wanted her to have
12 the benefit of most of this.

13 MR. COLLINS: So if we're going to proceed forward
14 on that, and then I can give some background.

15 As many of you are aware, as the Board knows,
16 there's been ongoing negotiations between Mr. McCusker and
17 myself on the one hand, and the mayor and Mr. Rankin on the
18 other, there have been some exchanges back and forth. And
19 in executive session today, I was instructed to prepare a
20 potential proposal for the City. I went and did that and
21 I'm prepared to deal with that now if that's what you want
22 to do.

23 CHAIRMAN McCUSKER: Our options are to direct, as
24 we have, the executive officers with counsel to try and move
25 this forward. Or if you're comfortable that we're far

1 enough along and you want to discuss and debate it in
2 public, that's certainly your prerogative as well.

3 MR. SHEAFE: Would it be sufficient to hand it
4 out?

5 CHAIRMAN McCUSKER: Once we hand it out, the horse
6 is out of the barn.

7 MR. SHEAFE: Right. We're doing this on a
8 full-public-disclosure basis anyway, so rather than sit here
9 and discuss it, why not --

10 CHAIRMAN McCUSKER: Because as Mr. Hill advised
11 me, this is how the legislature works every day.

12 MR. COLLINS: Sir, do you have a -- is there a
13 motion?

14 CHAIRMAN McCUSKER: If there's no objection -- do
15 you think we need a -- we need to move that. Hearing no
16 objection, we'll entertain this settlement agreement.

17 MR. COLLINS: All right.

18 CHAIRMAN McCUSKER: And make some copies available
19 to the public.

20 MR. COLLINS: I'll review it with you.

21 CHAIRMAN McCUSKER: Thank you.

22 MR. COLLINS: Please understand that I did my
23 level best to deal with all the issues that I was instructed
24 on in executive session.

25 CHAIRMAN McCUSKER: While you're doing that, let

1 me provide a little background in terms of our intent. As
2 Mark suggested, he and I have been the principal negotiators
3 primarily with the mayor and Mr. Rankin. Our objective all
4 along was to try to reach an amicable solution to what have
5 been very contentious issues between the jurisdictions.

6 However, I think as a surprise to a lot of people,
7 I was not prepared to roll over on a lot of issues that
8 you'll see us discuss in public today.

9 Chief among those was the desire of this Board to
10 maintain and resolve, ultimately, the audit process. This
11 predates me. People expected -- a number of people expected
12 that with my appointment we would terminate the audit
13 process. To the contrary, we have tripled the audit budget.
14 And you'll see as this is passed out, Item No. 1 is, from
15 our perspective, a required conversation with any settlement
16 with the City that the audits continue with full cooperation
17 of the City and ultimately to a resolution between all
18 parties.

19 The other items that are on there represent the
20 various claims and lawsuits between the two districts,
21 including the current condition of the TCC and its ongoing
22 use and lease to the City; the Depot Garage, which we
23 believe we are due compensation for; the arena site, which
24 is the property where the Greyhound is temporarily located
25 which we have made a claim to title for; the properties on

1 the West Side, the 351 South Brickyard, the opportunity to
2 complete the Mission Gardens projects, and other contentious
3 items.

4 One of the other things that was clearly in the
5 back of my mind as Alberto, Jeff, and I, negotiated this, is
6 it's imperative we resolve the Notice to Proceed issue.

7 That has been the primary barrier that's kept us
8 from engaging in any downtown projects, and it requires the
9 City and the District to agree that we've issued a Notice to
10 Proceed on a hotel, and we've issued a Notice to Proceed on
11 the Tucson Convention Center.

12 I believe that this agreement accomplishes all of
13 our goals on the onset. Mark will walk us through this. We
14 can discuss this at the full board level. For those that
15 have advocated this be done in public, I must confess, you
16 could add my name to that list, along with Councilman
17 Kozachik, Jon Justice, and others. That's an interesting
18 conspiracy there.

19 But cite the statute for me, Mark, that prevents
20 us from doing that. These are confidential conversations.
21 On the top of every page, it says this is subject to ARS
22 something or other, and we're not allowed to discuss this in
23 public until the point at which you just saw occur, the
24 Board elects to do that.

25 MR. COLLINS: Talking about 38.43103.

1 CHAIRMAN McCUSKER: Whatever it is, write it down.

2 So, Mark, go ahead. And I think what we're
3 planning to do, unless the Board objects, is to review it by
4 sections to discuss it, debate it, offer suggestions, and
5 then to move it up or down as amended, like you would a
6 bill.

7 MR. COLLINS: All right. Members of the Board,
8 what you have in front of you is entitled Expression of
9 Intent. It is, in fact, just that. It contemplates
10 ultimate final documents, binding documents being prepared.
11 But it outlines essentially a letter of intent format of how
12 to resolve the various issues that are set forth in that
13 particular document.

14 It specifically contemplates further
15 documentation. If, in fact, you go forward with this, the
16 lawyers will be rather busy. But this is the -- this is the
17 beginning of that process or at least another step in that
18 process.

19 The first item that -- as Mr. McCusker just talked
20 about, is the completion of the audit. It sets forth -- as
21 many of you or all of you know -- a completion of the audits
22 and a resolution of -- if -- if it's determined that there's
23 money owing, there's a way to deal with that.

24 As a result of some of the discussions that we've
25 had today and by direction from the executive officers, this

1 particular paragraph includes a binding final nonappealable
2 alternative dispute resolution.

3 If, after these audits are done, the City of
4 Tucson and Rio Nuevo can't agree on what to do with the
5 results of these audits, they will participate in a final
6 binding nonappealing alternative dispute resolution.

7 The second section, of course, is the Tucson
8 Convention Center. There's nothing different there than
9 what we've talked about before.

10 You'll notice in Item 3, if -- assuming this
11 project is -- or this proposal is accepted by the City, the
12 Rio Nuevo will give up any of its claims that it has to the
13 fire central property.

14 CHAIRMAN McCUSKER: Let me just touch on a couple
15 of things within the TCC, which, of course, you all know is
16 our primary component. This also requires the City to
17 reaffirm the terms of their triple net lease going forward;
18 that's been one of the controversial issues between the two
19 jurisdictions. So in summary, we're offering to fix it up
20 and then obligating them to maintain it, both the TCC and
21 the TCC grounds.

22 Mark?

23 MR. COLLINS: Okay. I've already touched on 3 --
24 I'll go through the whole thing. If you have comments,
25 great, otherwise you can ask questions at any time.

1 Number 4 is the Depot Garage. This provides for
2 an income stream for the District similar to what has been
3 agreed to under a series of temporary agreements between the
4 City of Tucson and Rio Nuevo for quite some time now. It
5 specifically provides for a lump sum of payment to the
6 District in the event that the garage is sold. Otherwise,
7 it sets forth the general terms for a cash flow from the
8 City of Tucson to Rio Nuevo. As I say, again, it's very
9 much consistent with a temporary agreement that's been
10 ongoing for quite some time.

11 The arena site, this particular paragraph deals
12 with a transfer of title of the arena site to Rio Nuevo. As
13 it's currently set forth, title to the arena site would be
14 transferred to Rio Nuevo subject to mutually agreeable
15 terms, including a series of four you'll see there which are
16 pretty straightforward.

17 Since we talked in executive session, there's the
18 fourth provision that -- that we discussed in the executive
19 session about the Greyhound terminals on the arena site.

20 The next line -- or next topic is 351 South
21 Brickyard. That is -- that provision is consistent with
22 what we've -- you've instructed me.

23 Number 7, Mission Gardens, merely says that
24 Rio Nuevo will cooperate in the completion of the Mission
25 Gardens project. There's no specific commitment for money.

1 The Presidio is Item 8. It really maintains the
2 status quo with a condition that the continuation of the
3 lease from Rio Nuevo to the City of Tucson will be on
4 mutually agreeable terms.

5 The Duplex is pretty straightforward. I don't
6 think you need to hear from me on that.

7 Item 10, the Church and Council parking lot.
8 That -- the transfer of ownership of the parking lot on
9 Church and Council, will come to Rio Nuevo.

10 The Rialto Theater merely talks about what is
11 essentially the status quo on this.

12 Hotel development, Item 12 -- as Mr. McCusker
13 pointed out -- does, in fact, if accepted by the City, help
14 us solve our Notice to Proceed issue. Because in it, the
15 City would be acknowledging that the appropriate Notice to
16 Proceed had been issued.

17 The streetscape development, Paragraph 13, it
18 obligates Rio Nuevo to cooperate with the City of Tucson and
19 downtown developers to prove -- to improve the streetscape
20 within the downtown core portion of the multipurpose
21 facility site. There are no dollar amounts mentioned in
22 that.

23 14 is just a straightforward agreement to
24 cooperate with the -- with the development of projects in
25 the -- in the multiple purpose facility site.

1 And 15 is -- merely addresses how the two entities
2 can perhaps resolve their pending lawsuits.

3 Keep in mind that if you were to vote on this
4 today, it would not be binding on anybody until accepted
5 verbatim by the City. It's certainly not binding on the
6 City. It amounts to an offer from the District to the City.

7 I understand that there is an item on the City
8 Council's agenda tomorrow to consider a resolution with Rio
9 Nuevo, I suspect that if you vote to go forward with this,
10 that's the topic that they're gonna be discussing.

11 CHAIRMAN McCUSKER: I have lived with this night
12 and day for months, so it's your turn.

13 MR. SHEAFE: I would move that the revised draft
14 that's just been handed out be approved by us for submission
15 to the City as an offer of settlement.

16 MS. COX: Second.

17 CHAIRMAN McCUSKER: A motion and a second. Please
18 let's discuss this.

19 MR. COLLINS: Let me -- let me -- my esteemed
20 co-assistant over here talked to me about -- I want to make
21 sure it's not -- this isn't -- the way this thing is set up
22 is, it's not going to be binding on anybody until the final
23 documents are put together. Okay?

24 MR. SHEAFE: My motion continues.

25 CHAIRMAN McCUSKER: Did he call for the question?

1 Hearing no further conversation, we have a motion
2 and a second --

3 MS. COX: Wait a second. Wait. Oh, okay.

4 CHAIRMAN McCUSKER: You're good?

5 MS. COX: (Nods head.)

6 CHAIRMAN McCUSKER: All in favor, say -- let's do
7 a roll call vote.

8 Michele?

9 MS. BETTINI: Mark Irvin?

10 MR. IRVIN: Aye.

11 MS. BETTINI: Jannie Cox?

12 MS. COX: Aye.

13 MR. ALLEN: Jeff Hill?

14 MR. HILL: Just trying to explain my vote. I'm
15 going to vote aye at this point. Much like a committee
16 vote, one always retains the right for a third reading or
17 final reading to change their vote. So I want to make sure
18 that this document's got a long way to go. But I think it's
19 a good start and will vote aye at this time.

20 MS. BETTINI: Fletcher McCusker?

21 CHAIRMAN McCUSKER: Aye.

22 MS. BETTINI: Alberto Moore?

23 SECRETARY MOORE: I will follow Jeff Hill's
24 comments, and I will vote aye as well.

25 MS. BETTINI: Chris Sheafe?

1 MR. SHEAFE: Aye.

2 MS. BETTINI: Cody Ritchie?

3 MR. RITCHIE: I echo Jeff Hill and Alberto's
4 comments. Aye also.

5 CHAIRMAN McCUSKER: The motion passes 7, 0.

6 So, Mark, you can dispatch this to Mr. Rankin.

7 And I'll let the mayor know I'm available tomorrow
8 afternoon.

9 I think just some summary comments from us. This
10 has obviously been a hard fought battle for years on a
11 variety of parties. I would especially like to thank the
12 gentlemen to my left, Alberto Moore, who has been steadfast
13 in his resolve that this not be easy. And I think I've
14 learned a lot from your resolve in that process.

15 I can also not go without saying that Mayor
16 Rothschild has had a lot to do with this. There are forces
17 in this company that would probably prefer that Rio Nuevo
18 just faded away. And I think neither of us see any value in
19 that happening. It's not going to change the taxes that we
20 pay the merchants that are within the District. It's not
21 going reduce anybody's obligations. It just means that the
22 money that is currently directed to this body will stay in
23 Phoenix.

24 So we've worked very hard to find something that
25 we thought was fair, but at the same time, represented our

1 interests going forward. I think, in fairness, there are
2 some items in this that will be new to the City.

3 Mark, is that safe to say, there are some things
4 in here that were not in Mr. Rankin's draft?

5 MR. COLLINS: That's true.

6 CHAIRMAN McCUSKER: And I'm committed to work
7 through that with him so that we can mutually all agree to
8 go forward.

9 Thank you for all your hard work.

10 MR. RITCHIE: Mr. Chairman, I would just like to
11 echo what you said again. I think it's very important that
12 the public knows that the money within the TIF District, if
13 we were to -- if Rio Nuevo were to go away -- we can all
14 acknowledge that there were errors in the past, but going
15 forward, we need to keep that money down here in the Tucson
16 community instead of it being sent back up to our capital
17 and redistributed that way. I think it's important that we
18 all work together now. It's a new step forward. And I'm
19 excited to see this reconstituted Board and the improvements
20 and the progress that we made.

21 And I want to thank you personally because I know
22 that you've taken a lot of arrows on behalf of all of us.
23 And I can tell you from working with Fletcher for the last
24 four months and the rest of Board -- but especially you
25 Fletcher and Alberto -- I'm really impressed with you two

1 gentlemen. And I'm pleased to serve on this Board with you
2 guys.

3 CHAIRMAN McCUSKER: That and 6 bucks, Albert, we
4 can get us a beer.

5 Okay. In and amongst all of this audit, lawyer,
6 settlement, litigation, accounting conversation is perhaps
7 one of the most exciting developments ever to come to
8 downtown Tucson.

9 And, Scott, if you'll come forward now, we're very
10 excited to see your presentation and what we might do to
11 assist you. And it's just quite extraordinary the work that
12 you're doing.

13 MR. SHEAFE: Mr. Chairman, just to point out that
14 Mr. Stiteler and I are financial partners -- and other
15 situations, he's a close friend. And I want to make sure I
16 declare that publicly and withdraw from voting on anything
17 that comes before the committee. But as I understand it, my
18 role right now is just to observe.

19 CHAIRMAN McCUSKER: Well said. You and I both
20 have conflicts here. And if it does get to the point where
21 decisions need to be made and votes taken, we will both
22 recuse ourselves, which under our new definition means you
23 and I physically leave the room.

24 At this point, all we're doing is listening to a
25 presentation; understanding, if there is an ask, what that

1 is. It probably involves some legal investigation, as most
2 everything associated with Rio Nuevo does, because there
3 were some prior commitments made to this developer and this
4 development.

5 So at this point, I think, unless the attorney
6 advises otherwise, Chris and I are good to sit through the
7 presentation.

8 MR. COLLINS: Yeah. You can't be involved in any
9 discussion, action. You can't talk with the other Board
10 members and so forth and so on. So you can listen. I don't
11 see a problem with listening.

12 CHAIRMAN McCUSKER: Scott?

13 MR. STITELER: All right. Thank you, members of
14 the Board. My father-in-law always tells me sunshine is the
15 best antiseptic. So I'm glad we're talking about the
16 conflicts.

17 I recently read -- or watched a video of Steve
18 Jobs and his presentation to the Cupertino City Council.
19 And he left Apple, because he was so sick, about two weeks
20 after that presentation -- it's kind of embarrassing that
21 that's what I do with my free time, watch city council
22 YouTube videos -- but it's a great video. It gives me a lot
23 of inspiration to keep going. And what I also like about it
24 is we all know his products are simple but his presentation
25 was very simple. I'm going to do the best I can to keep

1 this simple. And when you have questions for me, if you
2 have questions for me, I'm happy to go into as much detail
3 as you would like. And I know 5:10 may be important, so I'm
4 paying attention.

5 So this started about -- really when I bought the
6 Corbett site which was 2000, and then it became more active
7 in 2006 with three more blocks around the Hotel Congress. I
8 remember vividly working with Ari Shapiro and Xoom Juice and
9 pretty much begging them to lease 700 square feet for Xoom
10 Juice in downtown Tucson, before all the good things that
11 are now happening, for a few hundred dollars a month.

12 And thankfully, he finally signed the lease and
13 was the first tenant in front of the old MLK Building and
14 has become a good friend. That continued with Kade and now
15 with what is becoming a long list of other very fine people
16 who I'm proud to work with downtown who care about downtown
17 like I do.

18 Today we're going to talk about where I'd like to
19 go. And namely, that is a hotel. The hotel would be
20 constructed on the Depot Plaza site to the north of
21 One North Fifth across from the courtyard for the Hotel
22 Congress. A 20,000 square foot coworking space. I don't
23 know how familiar you are with coworking, but there are now
24 28 of them in San Francisco. I've visited most of them, and
25 they've become a hub of entrepreneurial activity. That

1 would go in the Rialto building.

2 And then we've worked very hard to create what's
3 becoming a culinary destination downtown, in downtown
4 Tucson. I'm very much a believer, as I told the Arizona
5 Daily Star last week. I know when my wife and I, who are
6 lucky enough to live in the Bay Area, talk about where we
7 are going out to dinner, we often pick a neighborhood. And
8 then we'll walk the neighborhood and go to two or three
9 places. So that's happening in downtown Tucson. I think
10 it's going to continue, and I'm proud to play a part in
11 that.

12 We're going to create a lot of new taxes with
13 these developments. I think you're privy to the
14 presentation or the documents I gave to the City of Tucson.
15 But it's -- between hotel -- between hotel, the coworking
16 space, and the new restaurants where we have signed leases,
17 it's just shy of \$2 million a year, starting toward the end
18 of next year to -- or through the Rio Nuevo. That doesn't
19 include any indirect benefits or what the City of Tucson
20 would receive.

21 And it looks like we will create somewhere in the
22 neighborhood of 500 jobs between the hotel, the restaurants,
23 and coworking. By example, the HUB and Playground, Kade,
24 who started less than 24 months ago, is now up to 121
25 employees. So hotel, coworking space, culinary destination,

1 a lot of jobs, and a lot of new taxes.

2 There are three issues that are relevant to this
3 discussion as it relates to the Board, plus any questions
4 you may have.

5 And they are, No. 1, which I just listened to,
6 just urging you to continue all of the work and effort on
7 working out your differences with the City of Tucson. And
8 it sounds like you've made a lot of progress, and I
9 appreciate it. That makes it easier for the private sector
10 to work with the City and move things along.

11 Number 2, is to follow through on an obligation
12 from the prior Rio Nuevo Boards that is very much a part of
13 the development agreements, to pay for the streetscape, the
14 plaza scape, the infrastructure at Depot Plaza and around
15 the final building at Depot Plaza. The original commitment,
16 and as I understand it, approved by the City and the prior
17 Rio Nuevo Boards, was a million four or a million
18 four-fifty, about a half a million dollars was spent to
19 date. And that leaves about \$900,000, as I understand it,
20 to complete the area around the new building.

21 The hotel will be about a \$20 million project.
22 The coworking is about a \$6 million project. And the
23 restaurants are another 5 million. So I'm looking at
24 spending somewhere in the neighborhood of -- in excess of
25 \$30 million in that intersection in 2013 and early 2014.

1 Lastly, the Rialto Theater, which is very near and
2 dear to me.

3 In some of the neighborhoods my wife and I walk in
4 San Francisco, like the Mission neighborhood, there are
5 several theaters that were closed that tried for many years
6 to stay open. And once they're closed, they're very hard to
7 reopen. And then they become an eyesore to the community.
8 And you just watch as it spreads where the businesses around
9 them struggle.

10 Conversely, in San Francisco, on the midmarket
11 area -- which has been a tough area for the City for many,
12 many years, and is now going through a revitalization --
13 that's an outstanding theater. And the City has continued
14 to invest in that theater. And now you have companies like
15 Twitter and Zynga and recently Benchmark Capital, which is
16 one of the premiere venture capital firms in the world, that
17 their office is around that theater. That's all happened in
18 the last 12 months in an area that was difficult to attract
19 business, even in a vibrant city like San Francisco. So the
20 theater is so important.

21 And it's important to me also -- including what I
22 have already invested in the projects to date, plus what I
23 have just outlined -- to know that the theater is going to
24 be stable and thrive going forward, is obviously an
25 important variable in all of my decisions.

1 It's important for me not to ask for very much. I
2 personally think what the City has done and what the Rio
3 Nuevo have done is impressive. Of course, there are some
4 mistakes along the way, but the amount of public investment
5 in downtown Tucson over the last ten years is something that
6 did lead to me investing about six years ago when we started
7 with One North Fifth. It's a long list. Commissioner
8 McCusker talked about it earlier, and it helped. So thank
9 you.

10 So again, since 2000, when I purchased the Corbett
11 block, and then three additional blocks in 2006, I have been
12 unwavering in my commitment to this community, to downtown.
13 Although I live in the Bay Area, I have no business in the
14 Bay Area. A hundred percent of my business is here and
15 continues to be. And again, I very much appreciate what
16 you've done. And especially working with the City in the
17 past few months to try and iron out your differences, that
18 is quite important for this hotel and other projects to move
19 forward.

20 So I'm happy to answer any questions that you
21 might have.

22 CHAIRMAN McCUSKER: Questions for Scott?

23 I think everyone has had an advance copy of the
24 project. And the City Council, right, Scott -- refresh
25 us -- has approved your project and you're going to use the

1 GPLET as one of the incentives?

2 MR. STITELER: We are. What the City approved was
3 two economic studies. One for the Rialto developments where
4 the coworking space will be developed, and also several new
5 restaurants. And then another economic study for the hotel.

6 And as I understand it, there will be a series of
7 votes going forward -- not that different from what One
8 Broadway went through -- over the next six months as we
9 learn more about the projects and their impact on downtown.
10 But, yes, it will include a GPLET on both projects.

11 MR. RITCHIE: Scott, first of all, thank you for
12 spending your money in Tucson. We need more people like
13 you. So thank you very much.

14 MR. STITELER: Thank you.

15 MR. RITCHIE: Just out of curiosity, did you go to
16 school here, or what brought you to Tucson to do your
17 business here?

18 MR. STITELER: I grew up in Phoenix and left after
19 high school to the Bay Area. I went to Santa Clara for
20 undergraduate and graduate school. I started -- I worked
21 full-time through college, 40 hours a week, and started a
22 small urban infill home building company when I got out of
23 graduate school. And California was too difficult to do
24 business -- the insurance premiums and a whole list of other
25 things that made it difficult to do business.

1 So I made a decision -- I made a decision at that
2 point that I could either grow my company and become much
3 larger, which is not what I wanted to do, or invest in
4 another area that was pro-business -- and studied many
5 places and ended up in Tucson. I spent a half a day in
6 Phoenix and decided that's not where I wanted to spend the
7 next 30 years.

8 MS. COX: Good.

9 MR. SHEAFE: I know I'm not supposed to say
10 anything. This is just a general question. For the fun of
11 it, Scott, take two minutes and explain what coworking space
12 means.

13 MR. STITELER: Wow. Coworking is -- one of the
14 best examples is -- we work in San Francisco. It started in
15 a meatpacking district about two years ago. There are now
16 six of them in the country -- it's typically in wonderful,
17 old, vintage buildings like the Rialto; great locations that
18 are usually in the middle of a lot of activity, like an
19 entertainment area at Fifth and Congress; and it attracts
20 entrepreneurs and independent workers to a place that has
21 all of the services that they may need to grow a company.

22 So I firmly believe that companies will start in
23 the Rialto building and they will become larger and stay in
24 this community and will look back in 5, 10, 15 years, and
25 tell stories about what started it.

1 SECRETARY MOORE: Scott?

2 MR. STITELER: Yes?

3 SECRETARY MOORE: Alberto.

4 I understand that you're negotiating presently
5 with the City regarding the Depot Garage, is that correct,
6 for your parking needs, or is that...?

7 MR. STITELER: So there are two parking needs.
8 One is the parking spots that are tied to One North Fifth
9 apartments, where the City has obligated to deliver a
10 hundred parking spots -- and did about two years ago when
11 the garage was finished, maybe a year and a half ago.

12 Secondly, we have just started discussions to
13 lease spaces at market for the hotel. And those are in the
14 very early stages, but the hotel very much wants parking on
15 site. And that will be important.

16 SECRETARY MOORE: How many spaces are you
17 anticipating that you are going to need?

18 MR. STITELER: The hotel is between 95 and 100
19 spots. And I don't believe, based on your recent
20 discussions, that the Depot Garage can be burdened with that
21 many. So as of two weeks ago, we're talking about maybe 30
22 or 35 spaces in the Depot Garage so there's an opportunity
23 for clients of the hotel to come drop off their luggage,
24 et cetera. And then the balance of the spots for employees
25 or other clients of the hotel to park offsite. And the City

1 has a few options offsite. They've been quite good to work
2 with.

3 SECRETARY MOORE: What do you consider market
4 rates today?

5 MS. VOS: Depends on the lot. Depends on...

6 SECRETARY MOORE: But for that area?

7 MR. STITELER: I'm not an expert on parking.

8 CHAIRMAN McCUSKER: If you wandered into ParkWise
9 and wanted to rent one, it's about 80 bucks a month. And
10 they don't discount for volume.

11 SECRETARY MOORE: And then as it relates to the
12 Rialto Theater, what is -- do you have any particular plans
13 for that?

14 MR. STITELER: Well, I remember nine months ago,
15 when we were trying to help out and they called and needed
16 help with payroll, and I wired money to help them make
17 payroll because I didn't want to see them close. I'd like
18 to get away from that type of a phone call or obligation.

19 I remember Curtis, about a month and a half ago,
20 he spent 5- to \$8,000 because of the rain. There was water
21 sheeting down one of the walls, and they had live shows. So
22 those are the -- on a smaller scale, those types of things
23 are important to -- to address.

24 Hopefully, you can appreciate when I'm sitting
25 across from a bank or an equity partner and I tell all of

1 the -- the great things -- discuss all the great things
2 about downtown Tucson, we also talk about the Rialto
3 Theater. And if they Google it, they'll understand that it
4 struggles at times. So I -- as I said, it's very important
5 that that goes away. And it's not a few thousand dollars.
6 It's -- you know, I don't know the number.

7 Again, sunshine is a great antiseptic. But it
8 needs -- your asset that you own needs a lot of help.

9 SECRETARY MOORE: Are the people presently
10 managing it, are they taking care of it? Are they making
11 those improvements that are necessary?

12 MR. STITELER: Well, they don't have the financial
13 ability, so they do it sometimes with bubble gum and paste.
14 But Curtis, who I deal with on a regular basis, he's
15 terrific. Yes, he's been very good to deal with.

16 MR. SHEAFE: I think you signed, personally, on a
17 note that provided funds for the Rialto; is that correct?

18 MR. STITELER: That's correct.

19 There's a -- one of the most prominent
20 restaurateurs in the country -- unfortunately, I can't share
21 his name. I'm doing everything I can to try and work
22 something out. But it's someone in that very rare echelon.
23 And I had a conversation with that group three weeks ago.
24 And they told a story about how they like to come to Tucson
25 and hang out at the Rialto because it's a good place for

1 them that is authentic, interesting, it's not like other
2 places that have become more mainstream, and it is a primary
3 reason why they are interested in coming to downtown Tucson,
4 the Rialto.

5 SECRETARY MOORE: Do you have any advice to us
6 about -- about the Rialto, what to do with it?

7 (Ms. Cox left the proceedings.)

8 MR. STITELER: I'm happy to help figure out what
9 their needs are going forward. It's -- whether it's
10 upgraded bathrooms or a new roof or a better
11 air-conditioning system, you know, et cetera, et cetera,
12 things that are necessary for the building to last a long
13 time.

14 SECRETARY MOORE: Thank you.

15 MR. STITELER: You're welcome.

16 CHAIRMAN McCUSKER: Any other questions for Scott?

17 You've been heroic for us downtown. You know,
18 you're a real inspiration to a lot of us that are down
19 there. And good luck with all this. And we'll figure out a
20 way that we can get together and get back to you as quickly
21 as we can.

22 MR. STITELER: Okay. Thank you very much.

23 CHAIRMAN McCUSKER: Michele, do we have any
24 calls -- cards filled out from the audience?

25 MS. BETTINI: No.

1 CHAIRMAN McCUSKER: I think I've covered
2 everything on the agenda.

3 Any comments, unfinished business?

4 SECRETARY MOORE: Move to adjourn.

5 CHAIRMAN McCUSKER: Move to adjourn. Second?

6 MR. RITCHIE: Second.

7 CHAIRMAN McCUSKER: Motion has been made, a second
8 to adjourn. All in favor, say aye.

9 (The Board voted and motion approved.)

10 CHAIRMAN McCUSKER: Meeting adjourned. Thank you
11 very much, everyone.

12 (Meeting concluded at 5:13 p.m.)

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C E R T I F I C A T E

I, John Fahrenwald, certify that I took the shorthand notes in the foregoing matter; that the same was transcribed under my direction; that the preceding pages of typewritten matter are a true, accurate, and complete transcript of all the matters adduced to the best of my skill and ability.

John Fahrenwald