

**Minutes of Special Meeting
of the Board of Directors of
Rio Nuevo Multipurpose Facilities District**

Wednesday, April 28, 2010

**Tucson Convention Center, Maricopa Room
260 South Church Avenue
Tucson, Arizona**

A special meeting of the Board of Directors of the Rio Nuevo Multipurpose Facilities District was held on Wednesday, April 28, 2010 in the Tucson Convention Center, Maricopa Room, 260 South Church Avenue, Tucson, Arizona commencing at 2:00 pm.

1. Roll Call

The meeting was called to order at 2:06 pm.

Appointee		Present	Absent/ Excused
Jodi A. Bain, Member	Senate	x	
Dan Cavanagh, Member	Governor	x	
Jeff DiGregorio (Acting Chair)	Tucson		x
Scott Egan, Member	House	x	
Carlotta Flores, Member	Governor	x	
Mark Irvin, Member	House	x	
David N. Jones, Member	Governor	x	
Alberto Moore, Member	Governor	x	
Anne-Marie Russell, Member	Tucson	x	
Victor Soltero, Member	South Tucson	x	
Alan F. Willenbrock, Member	Governor	x	

2. Election of Acting Chair

A motion to appoint Board Member Mark Irvin as Acting Chair was made by Board Member David Jones, seconded by Board Member Victor Soltero, passed unanimously 10-0.

3. Review and possible action with regard to the Minutes of the April 15 and April 21, 2010 meetings.

A motion to approve the minutes of the special meeting on April 15, 2010 as amended was made by Board Member David Jones, seconded by Board Member Alberto Moore, and passed unanimously, 10-0.

A motion to approve the minutes of the special meeting on April 21, 2010 as amended was made by Board Member Jodi Bain, seconded by Board Member Scott Egan, and passed unanimously, 10-0.

4. Interim Executive Director's report – Richard Miranda

Interim Executive Director Richard Miranda indicated the Board received a copy of the Liability Insurance proposals, which include copies of the Fox and Rialto.

Interim Executive Director Richard Miranda indicated that any disbursement of funds that come for his signature will be agendized until the new IGA is approved by the Board.

Interim Executive Director Richard Miranda indicated that the Mayor and Council has asked for weekly RNMFD updates. He has been presenting the same information to the Mayor and Council that has been presented to this Board. The Mayor and Council has requested to have a future joint meeting to discuss the IGA and the Hotel, and where it is.

Interim Executive Director Richard Miranda recommends that the joint meeting between the Mayor and Council and the RNMFD Board be within the next 60 days because the decision points for the Hotel are critical.

5. Status report and possible action regarding procurement of insurance broker/agent - Richard Miranda, Mark Irvin, Jodi Bain.

Board Member Mark Irvin thanked Procurement Director Mark Neihart for consulting and procuring the insurance broker/agent, and weighing in with his thoughts of the proposals. To refresh the record Mr. Irvin indicated that the RNMFD Board currently does not have public official's liability insurance and this is hampering the Board from making decisions.

Board Member Mark Irvin indicated there were four various companies that responded. Of those that came back, two were very complete/clear and two were not. He spoke to those that were not clear. The following were the Price/Fee Structure for the four companies.

\$7,500 – Mahoney Group
\$2,000 – Albert Risk Management Consultants
\$2,500 – Lovett and Touche
\$2,500 – DM Lovett Insurance

Board Member Mark Irvin recommended that the low bidder be chosen, which is Albert Risk Management Consultants. He also mentioned that the low bidder was not a local company, but due to current financial situation, the low bidder should be chosen. If a decision is made at today's meeting, the timeframe to have insurance in place should be between 3 and 4 weeks.

Board Member Jodi Bain asked where the low bidder, Albert Risk Management Consultants, was located. Mr. Irvin indicated they were located in Needham, Mass.

Board Member David Jones indicated for purposes of disclosure that Lovett and Touche were members of the association he is a member of. He recommended that the Board use

a firm that is local and that Board Member Mark Irvin be appointed to negotiate with both DM Lovett and Lovette and Touche.

Counsel Keri Silvyn indicated that choosing the low bidder was the cleanest and fastest.

Board Member Alberto Moore indicated that the Board should use local talent if possible.

Board Member Jodi Bain indicated that if Albert Risk Management Consultants is selected, she will be in the area in the next two weeks, and if they would like to, she could meet with them.

Council Keri Silvyn indicated that the location of the firm was not specified as a factor for award in the RFQ.

Procurement Director Mark Neihart indicated that the Board has the ability to negotiate with the bidders. The Board is not limited to use the low-bidder, but rather the “most advantageous offer”.

Board Member Alan Willenbrock indicated that it would be most advantageous to have a local firm because time is of the essence.

A motion was made by Board Member Alberto Moore, seconded by David Jones that the Board instruct Board Member Mark Irvin to call the local firms to see if they are willing to come down on their Price/Fee Structure and also see if they can speed up their timetable, and give them until 3:00 tomorrow to get back with Mr. Irvin.

Board Member Dan Cavanagh indicated he was voting no because this is what he called “bid shopping”, he wants to go with the low bidder. He indicated that the Board asked for a price, they received a price, and therefore the Board should go with the low bid. It was indicated this matter is not subject any prohibition on “bid shopping”.

The motion passed by a vote of 7-3, with Scott Egan, Mark Irvin, and Dan Cavanagh voting no.

Board Member Mark Irvin indicated that he would have discussion with both firms, and have them email him with their best and final offer, and then he will email the board on who is selected. He will ask City staff to help with any of the questions and other things as it relates to the applications.

Board Member Jodi Bain asked if both of the firms do not come back with a lower bid, what will be done.

Board Member David Jones indicated that in case this does happen, Board Member Mark Irvin would make the final decision.

6. Discussion and possible action with regard to land designated for arena (Eastside of I-10 Frontage between Congress and Cushing) – Richard Miranda and Jeannie Mortimer.

Special Counsel Jeannine Mortimer provided a map to the Board and gave background on a 9 acre parcel that was designated for an arena, which the City of Tucson wishes to sell. This land was acquired by the City of Tucson for \$1 million in 1995. The RNMFDC contributed approximately \$885,000 for the Design and Development of the arena site. Ms. Mortimer has had conversations with the City Attorney Mike Rankin, and they are both in agreement that their desire is to attempt to discuss and obtain, as much as reasonably possible, a proceeds sharing agreement to benefit the District, if possible.

Special Counsel Mortimer indicated that the Board may want to consider having a Board Member attend the weekly Mayor and Council District Status Update and report back to the Board.

Board Member Scott Egan asked if the parcel was purchased using Highway User Revenue Funds. Ms. Mortimer indicated that she will determine whether or not HURF funds were used to purchase the parcel.

Board Member David Jones asked if there would be shared proceeds if the property were to be sold. Ms. Mortimer indicated that the City is just considering a list of properties for sale, but if there is a proceeds sharing agreement, it could be required that the property be sold in order to generate those proceeds.

Board Member David Jones asked if the Board has the right of refusal if the Board thinks the price does not cover the equity they have in the property, can the Board say no. Ms. Mortimer indicated that if that is the desire of the Board, she will have such a conversation with the City. Mr. Jones indicated that this is what the Board would want.

Board Member Jodi Bain asked that if the sale price is under what the Board wants, would the Board receive a Pro-Rata share? Ms. Mortimer indicated that this has not been discussed.

Mr. Miranda indicated that at the Mayor and Council did not give any direction to the City Attorney to proceed with any negotiation with the Rio Nuevo Board on this property. This is for informational purposes only.

Ms. Mortimer indicated that the District does not appear to hold a title or a lien on this property. The District just contributed approximately \$885,000 towards the potential design and development of the property, but the District does not appear to have an ownership interest in the property.

Mr. Miranda suggested that District Counsel look at the RN Board minutes for what decision was made in respect to the arena. He does not know if the project was just suspended or terminated. His recommendation to the Board is to make a decision as to how the Board wants to proceed with the project in terms of the agreement.

Mr. Jones asked if the minutes were available so that a history could be developed with information of past decisions such as mentioned above. Ms. Mortimer indicated that the RN Board minutes from 1999, when the District was first formed, to the present are on the City of Tucson's Rio Nuevo Website.

After discussion on the attendance of a Board Member to attend the Mayor and Council weekly RNMFDF Update, Mr. Miranda indicated that discussion with Mayor and Council has been restricted to only what has been presented to the RN Board. He indicated that if the Mayor and Council would like to have someone from the Board to address them, he will call the Board Chair and let them know to have a Board Member attend the meeting.

7. Status report regarding convention center/hotel post-bid activities –David Jones.

Board Member David Jones spoke to representatives from Turner Construction. They had 198 companies respond to the bids, this calculated to over 300 submissions, and of that 22% were from the Tucson area representing 46 companies. Turner Construction felt they had very good coverage from the Tucson area. They are putting the numbers together, talking to the subcontractors and suppliers, so they can come back to us with the Guaranteed Maximum Price.

Board Member Victor Soltero indicated that he was hoping there would be more than 22% of the firms being from the Tucson Area. He asked if this meant that the firms from outside the local area would be bringing in workers from outside the area.

Board Member David Jones indicated that this did not necessarily mean that. The contractors could hire locally if they want to. There were 46 companies from the Tucson area who acknowledged they wanted to bid on the projects. The Board needs to ask Turner Construction to break it down on what areas and what trades the bids are for. Mr. Jones also indicated that the Board needs to wait until the process is finished to see how it comes out.

Board Member Dan Cavanagh spoke with some of the local companies; they indicated to him they were hoping that once we get the GMP they do not get asked to come back with another low bid.

Board Member Mark Irvin asked CFO/Finance Director Kelly Gottschalk what was her understanding in regards to the tabled motion relating to the repayment of the City loan.

CFO/Finance Director Kelly Gottschalk indicated that she understood that unless the Board makes a motion to not make the loan repayment by the end of the fiscal year, the loan repayment will be transferred by June 30.

Board Member Mark Irvin asked the latest date the City would need the go ahead with the loan repayment. Ms. Gottschalk indicated that it would be better if the payment were to be received by June 30.

8. Report back to Board on findings related to the financial status of the District – Alan Willenbrock.

Mr. Willenbrock distributed a summary of financial status update to the Board that included: Projected unrestricted cash balance for end of fiscal year 2010, Legislative mandated expenses, Other operating expenses, Projected cash flow over next few years, Liquidity, Unreserved cash Balance Target, and Strategies to improve liquidity.

He acknowledged Kelly Gottschalk's work and cooperation from City staff.

Mr. Irvin asked for clarification on year end. Mr. Willenbrock confirmed that he was referring to Fiscal 2010 which ends June 30, 2010.

Mr. Willenbrock stated that Ms. Gottschalk provided the amount of \$362,000 as an estimated ending cash balance at fiscal year end 2010 and that he trusted the City Finance Department's efforts to be good. Mr. Willenbrock stated that the district currently has more cash now but there are a number of invoices outstanding so the amount of cash available to spend on other things will be less.

Legislative mandates - Mr. Willenbrock stated that they would use unrestricted cash to pay for mandated expenditures. Mr. Willenbrock estimated liability insurance of \$50,000, performance audit through the Auditor General's Office at \$322,000 (amount corrected from amount on the handout \$332,000), and an annual financial audit at approximately \$100,000. Mr. Willenbrock said the financial audit is pricey because it would be more expensive since it would be the first year that the Rio Nuevo would be audited as a separate unit. He calculated the estimated mandated cost to be \$472,000 with only \$362,000 available to pay for it.

Some other expenses that are not included are legal, accounting, administrative and that of executive director.

Ms. Gottschalk pointed out that the \$322,000 has already been subtracted from the projected ending cash balance. She also stated that the cost of a stand alone audit would vary depending on the scope of work the board decides on. The Rio Nuevo Financials have been audited as part of the City's annual audit by external auditors for such things as internal controls.

Board Member Alan Willenbrock recalculated the estimated ending fiscal year cash balance at \$794,000 unrestricted cash.

Board Member Scott Egan said he sent Alan Willenbrock the annual budgets that Rio Nuevo submitted to the Pima County Clerks Office for Fiscal Year 2008 and Fiscal Year 2009. For Fiscal Year 2008 budget reported an ending fund equity of positive \$37.2 million and at the end of Fiscal Year 2009 it was negative \$2 million and wondered if Alan had a chance to look at it. Alan Willenbrock responded that he receive the information but had not looked at it because he was focusing on forward projections not looking backwards for today's report.

Alan Willenbrock's goal is to determine if the District has the money to pay for the audit, what is their liquidity, and where they are now and what might happen in coming years.

Board Member Mark Irvin asked if the \$684,000 (362,000 unrestricted cash plus \$322,000 performance audit) included the City loan repayment and Ms. Gottschalk confirmed that it did include full repayment of the City loan.

Board Member Jodi Bain asked if that amount included the \$500,000 payment to the City and Ms. Gottschalk confirmed that the \$362,000 is the net cash residual amount left over including the payoff of the loan balance of \$1.7 million as well as the cost of the audit. Ms. Gottschalk stated that the City went through a detailed analysis to get to this number; the City made their best estimates and did not know some information at the time such as the actual costs of the legal fees and liability insurance which could reduce the net cash residual.

Board Member Mark Irvin asked if the \$100,000 for a financial audit is a realistic number and whether the \$322,000 performance audit would incorporate the mandated financial audit.

9. Status report and possible action with respect to the District Audit – David Jones.

Board Member Mark Irvin asked CFO/Finance Director Kelly Gottschalk for an estimated cost of an audit of RNMFDD if they use the same auditor that the City uses.

CFO/Finance Director Kelly Gottschalk indicated that depending on direction the Board feels comfortable with, it can be very inexpensive. It can be folded into the City's for maybe \$50,000 and go up from there. If you do not feel comfortable with the auditor the City uses you may want to go out and spend that money, if you feel they could do an adequate audit you could save that money.

Board Member Victor Soltero indicated that to that point, personally he felt all along that \$322,000 is money that the RN District does not really have to spend for an audit. He cannot go along with the motion to spend \$322,000. He thinks the District can get an audit for a lot less money. He feels the Board needs to get a good audit, but does not need to spend that kind of money.

Board Member David Jones indicated that when you look at the cost of the mandated audit and you look at the cash available, it looks like we cannot afford it, and we are in a cross-fire with what is mandated by the legislature. The performance audit has to be completed 120 days after the end of the Fiscal year for the State. Based on the last meeting with the Auditor General, they want all of the money upfront, and then they will pay this in increments. It is not that we do not want the audit, we believe it is reasonable and prudent, but we may not have the money. The other issue is we have the liability and responsibility when we accepted the position believing we had the resources to follow what the legislature wanted us to do.

Board Member David Jones asked Counsel Keri Silvyn to send an electronic copy of the Crowe Horwath document to the Board Members to see what the Board is getting out of

the Performance Audit. Within the next 7-10 days we need to let the Auditor General's Office know what our plans are and how we anticipate paying, in light of the circumstances. I would like to offer them half up front, and half when the audit is half complete, or we can apply for a line of credit, and they could draw down from that quarterly.

A motion was made by Board Member Alberto Moore, to have the RN Counsel write a letter to the Attorney General's Office, the President of the Senate, Speaker of the House, and the Governor, outlining the situation asking for the postponement of the audit for this year because of the lack of funds, or if they want to loan use the money or pay for it themselves, then we should be happy to do it. They are asking us to pay for something we can not afford. The District does not have any money; the State does not have any money, so why should we have to meet a mandate when we do not have funds. We should put the burden on them, they created the situation and they need to be responsive and help us.

Board Member Alan Willenbrock indicated that before someone made a second to the motion, he wanted to let the Board know that he spent an hour with the Attorney General's Office. He wanted to ask questions and get their thoughts regarding the 4 bids that were received. He asked them why the \$120,000 bid was not chosen, and asked them to help with the decision.

Board Member Scott Egan wanted to know if what he heard regarding the financial status was correct in that the District has a balance of \$361,000 after the \$1.7 loan payment and the \$322,000 audit was paid.

Board Member Alberto Moore said yes, but in his opinion there will be no cushion.

Board Member Scott Egan indicated that he agreed that the District needed a cushion, but he believed the performance audit is the most important issue before the Board, before we talk about plans for the Hotel.

Board Member Anne-Marie Russell asked why are the audits that have been done every year as part of the City's Audit, not helpful. CFO/Finance Director Kelly Gottschalk indicated that for the financial audit as far as she was concerned the audits meet the legislative requirements, only 2010 financial would need to be audited.

Board Member Anne-Marie Russell indicated that she completely concurs regarding the performance audit especially in gaining confidence of the public, but she is concerned that the external audit has already been done. Ms. Russell asked if the City could do the external audit.

CFO/Finance Director Kelly Gottschalk indicated that the external audit of RNMFDD is like any other audit in the City. They would look at the COP's, Bonds, and give a qualified audit opinion. She indicated that the current outside auditor has been Heinfeld Meech of the last 6 years, and if the Board wished to have copies of past audit they can be made available.

Board Member Scott Egan asked if these were performance audits or financial audits. Ms. Gottschalk indicated they were financial audits.

Board Member Alan Willenbrock continued to explain the differences between the 4 bids and why the Attorney General's Office chose Crowe Horvath. The differences were the amount of detail the firms were planning to perform.

Board Member David Jones read the evaluation sheet that was used that listed the criteria for the audit.

Board Counsel Keri Silvyn indicated that the State requires a very specific audit, above and beyond the annual financial audit that had been performed as part of the City's annual audit.

Board Member Dan Cavanagh indicated that the State has given direction to the Board and it needs to be performed.

Board Member Alberto Moore restated his previous motion and it was seconded by Board Member Victor Soltero.

Board Member Dan Cavanagh asked if he could give a substitute motion to accept the \$322,000 bid, it was seconded by Carlotta Flores.

Board Member Alan Willenbrock indicated that if we spend this the District will possibly have a negative cash flow by the end of next fiscal year (2011). Board Member Victor Soltero indicated that the District has the funds now, but the future does not look good, but will have funds later. Board Member Carlotta Flores indicated that the performance audit should be the Board's top priority. Board Member Scott Egan agreed. Board Member Victor Soltero indicated he was in favor of the audit, just not the cost.

Board Member Jodi Bain requested the motion be amended to request that Counsel Keri Silvyn speak to the Auditor General and attempt to establish and negotiate a payment plan. The motion on the floor was so amended.

A motion to accept the \$322,000 bid, as amended, to begin the audit process and make payment passed on a vote of 6 to 3, with Board Members Victor Soltero, Alberto Moore, and Alan Willenbrock voting no, and David Jones abstaining.

10. Discussion with regard to public relations services for the District – Mark Irvin.

Board Member Alberto Moore indicated that he would give an update on the firms that wanted to help Board to get the word out, regarding how many hours they wanted to spend, what their particular talents were, and other details.

Board Member Scott Egan asked if the firms had website experience. Mr. Moore indicated that he did not ask the 5 firms he spoke to.

Board Counsel Keri Silvyn indicated a sheet of paper which has been sent around the prior meeting and that it was a list of the firms that were used by the City, and that the Board may want to look at the list and possibly use the firms listed, since those firms have already been procured by the City to do public relations. She also stated to the Board that it may use other firms, as long as procurement is followed if public funds are used.

11. Report and possible action with regard to existing lease of 52 West Congress Street – Jeannine Mortimer.

Board Counsel Jeannine Mortimer gave a brief history of the District's lease at 52 West Congress Street. She indicated that the lease was for a 10 year period, and the current rent is \$11,700 per month.

A motion was made by Board Member Dan Cavanagh, seconded by Board Member Alberto Moore, to agree with the City's request to terminate the lease contingent upon the City's agreement to pay all resulting costs of the termination. The motion passed unanimously 11-0.

12. Report and possible action with regard to Depot Plaza Parking Garage - Jeannine Mortimer.

Counsel Jeannine Mortimer indicated that this item is for information only, there is no action required by the Board. She indicated that her partner Bob Gugino met with the City Attorney Mike Rankin. Mr. Gugino requested that we receive, for background, the leases, operating agreements relating to each property. The conversation regarding the Depot Garage was initiated to discuss moving forward with putting together an operating agreement and a revenue sharing agreement between the District and the City to better define the terms and to move forward. Further discussions as to the Depot will be coming up regarding a detailed agreement for this matter.

Board Member Scott Egan asked to what extent and authority was the District's role in the Depot Garage.

Counsel Jeannine Mortimer indicated that the Depot Garage is owned by the City, and the Board needs to create a mechanism to decide how the Depot Garage is operated and how to handle the revenues from it.

Counsel Keri Silvyn indicated that the titled ownership of the Depot Garage has never been held by the District. The City has owned the land since 1995, which is before the District was created.

13. Report from Legal Counsel – Keri Silvyn and Jeannine Mortimer.

i. Report on the Intergovernmental Agreement between the District and the City of Tucson.

Counsel Keri Silvyn indicated that the Conflict of Interest forms were due from the Board Members.

Counsel Keri Silvyn gave an update on the Intergovernmental Agreement. She indicated that she will continue to meet with the City Attorney to work on some outstanding issues; figure out staffing and they need to get the agreement in line with existing statutes, and potentially address some of the deal points that need to be negotiated, with the understanding that Mr. Gugino, Mr. Rankin or I will not be the ones to negotiate the deal, the District and the Mayor and Council are going to be the decision makers. We will be getting a draft from Mr. Rankin by the first couple of weeks of May.

Ms. Silvyn indicated that a draft will be received from Mr. Rankin, and distributed to the Board for their review. She indicated that the document should only be discussed in an open meeting or in an Executive Session, if permitted by the statutes. The document should not be distributed outside the Board Members.

ii. Open Meeting Law Training

John Hinderaker from Lewis and Roca gave a presentation regarding the Open Meeting Law.

14. Call to the Audience

No Response.

15. Executive Session

No Executive Session was held

16. Board direction regarding Executive Session items.

No direction was taken.

17. Future Meeting Dates and Agenda Items

- Next schedule meeting will be May 5, 2010 at 2:00 pm.
- Local Insurance report from the chosen firm
- Report on discussion with Attorney General's office regarding the audit payment
- Update on Greg Shelko's contract
- Update on the Hotel – Garfield Traub

18. Adjournment

On motion by Board Member David Jones, seconded by Board Member Alberto Moore, the meeting was adjourned at 5:10 pm. The motion passed 9-0, with Board Members Anne-Marie Russell and Victor Soltero leaving at 5:00 pm.