

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

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**Wednesday, May 5, 2010**

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**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, May 5, 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 2:05 pm.

<b>Appointee</b>		<b>Present</b>	<b>Absent/ Excused</b>
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. Review and possible action with regard to the Minutes of the April 28, 2010 meeting.**  
Approval of the April 28, 2010 has been delayed until the meeting of May 13, 2010.

**3. Interim Executive Director's report – Richard Miranda**

Interim Executive Director Richard Miranda indicated that at the Mayor and Council Meeting on May 4, he discussed the agenda of April 28 Rio Nuevo Board meeting. CFO/Finance Director presented a list of all District projects voted on by the Board to date, including projects that were canceled and/or somewhat suspended. There was also a dialog as to the confusion in terms of ownership of certain properties/assets, and from that, City staff were directed to provide for the Mayor and Council documentation on projects that the District felt were in the grey area in terms of ownership or asset attainment. City staff will be providing that information to the Council as soon as they can work through the large amount of records currently being stored in the TCC storeroom. Board Member Dan Cavanagh asked that Jeannine Mortimer and Bob

Gugino be included on the team to try to determine ownership of various assets so that all parties have the same information.]

The Mayor and Council want to work toward a joint meeting to discuss some of the common issues. That discussion led to the point that the performance audit process has begun, which should be completed in the fall.

**i. Report and possible action regarding District expenditure requests.**

Mr. Miranda indicated that at the last Board meeting there was a discussion regarding items that come to him for signatures in terms of expenditures. He forwarded two expenditure requests to the Board and had Deputy Finance Silvia Amparano explain the items and the process for approval. She indicated that for the next two weeks City staff will keep the payment process that is in place, but Finance Manager Stacie Bird is to scan all payment requests and send them to Chair Jeff DiGregorio. He will disburse to all Board Members.

Mr. Miranda indicated that an Agenda item to discuss the process for payment approval will be on a future agenda.

A motion was made by Mark Irvin, seconded by Alan Willenbrock to approve the two expenditure requests. Motion passed 8-3, with Board Members, Jodi Bain, Alberto Moore, and David Jones abstaining.

**Item 6 was moved out of order**

**6. Discussion and possible action with regard to the Downtown Façade Restoration Program – Jeff DiGregorio and Glenn Lyons.**

CFO Glenn Lyons indicated that his last day as CFO will be May 7<sup>th</sup>. He introduced his replacement Michael Keith. He then gave a description and background of the Downtown Façade Restoration program.

In 2008, the City of Tucson (COT) allocated \$530,000 to assist in the renovation of historic buildings in the Downtown Tucson. The Downtown Tucson Partnership (DTP) and the Business Development Finance Corporation (BDFC) were asked to assume project and financial management responsibilities respectively for the program. The Façade Program has proved to be a very successful revitalization program which has required only a small investment of public funds.

Mr. Lyons indicated that the Rio Nuevo District Board may wish to consider funding a second phase of the program as the District's work on the new convention hotel proceeds and TIF receipts increase.

The Façade Program works because a small investment in capital is used to lever additional property investment in a relatively short period of time. The Façade Program's benefits also are cumulative - each successful façade renovation contributes to an improved investment climate in Downtown thereby reducing the risk for investors that follow.

The Facade Program has generated \$3 million in investment in Downtown Tucson; roughly 6 times the amount spent by the City of Tucson on the program.

The Facade Program offers interest-free, forgivable loans to building owners (or their tenants) that are accepted into the program. In its initial phase, the Facade program contributed up to \$125,000 for buildings located on corner sites and up to \$90,000 for buildings located mid-block.

Building Owners accepted into the program are required to finance the project, and to manage the renovation work. At a minimum, building owners are obliged to match the Facade Program's investment on a 50-50 basis, and maintain the renovated facade for a minimum of 10 years. A 10-year facade easement is placed on each of the renovated building.

**4. Status report and possible action regarding liability insurance – Mark Irvin and Mitch Childers (D.M. Lovitt Insurance Agency).**

Board Member Mark Irvin indicated that on April 29, he requested and received best and final offers from DM Lovitt Insurance, Lovitt & Touche, Inc, and Albert Risk Management Consultants. As a result the lowest price offered was from DM Lovitt Insurance. Based on the revised pricing, Mr. Irvin determined that the offer from DM Lovitt Insurance was the most advantageous in accordance with § 28-20(2) of the Tucson Procurement Code. The same day, Mr. Irvin contacted all offerers and advised them of the District's intent to proceed with the award to DM Lovitt Insurance and provided an informational update to the District Board via electronic mail. Through negotiations, DM Lovitt reduced their initial fee for services related to the purchase of Director's and Owners Liability Insurance from \$2,500 to \$1,500.

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

Board Member David Jones indicated that he spoke with Mr. Zorzey from the Auditor General's Office regarding the payment. The Auditor General's Office has agreed to accept 5 incremental payments.

**7. Discussion and possible action with regard to the "I Believe / Flags and Volunteerism Campaign" – Mark Irvin.**

Board Member Mark Irvin indicated that about a month ago one afternoon after a RNMFDD meeting he drove down the Broadway Corridor and one thing that he noticed was that no one flies flags anymore, even those that have flag poles. That Friday he decided to send out an email to 25 addresses on his email list, asking them what it would look like if someone were to get off of the freeway, especially since we have three Holidays coming up, and they were to see many flags on their way through the downtown area. When he got back to his office on Monday, he had over 300 emails expressing positive energy and strong community support. One of the car dealerships is going to have a promotion during the month of June, that anyone who comes in to test drive a vehicle, will receive a free flag. Several other companies are planning to do the same type of thing. There are also several non-profits that will be using a lapel pin with the words "I Believe" on them that they will be giving out. It's not an effort to tell what people should believe about the downtown projects, but gives an opportunity for a positive community conversation and to manage and control the mood a little bit more.

He believes the Downtown Partnership would be someone we would like to partnership with. He is wondering because of the efforts of the façade program, if it would be possible to gather \$15,000 to \$20,000 and ask the City and the County to join in this effort to come up with a war chest and have the Tucson Downtown Partnership administer this for us, with the goal being to have decorations and flags available for anyone who would like to participate. He believes that a small amount such as \$10,000 to \$20,000 would go along way, especially since the new exhibit is coming to downtown. He suggested that someone from the Board sit down with the City and the County to help come up with funds for this project and start decorating downtown in the next couple of weeks.

Board Member Jeff DiGregorio indicated that participating in this would be one of the biggest things the Board can do with a small amount of funds, it will give visual impact and will do wonders for the Downtown project. Some of the businesses downtown had already started to fly flags where there has not been flags flown in many years.

Board Member Mark Irvin indicated that the Boys and Girls Clubs require a flag to be flown at all six clubs when they are open. He also indicated that the Red Cross on Broadway will join in by putting up a flag in show of support for the project. This Campaign can help the Downtown Project go from negative to positive.

Board Member Mark Irvin indicated that the District would contribute \$15,000 contingent upon the District receiving a match by the City of Tucson and Pima County, and to give the funds to the Tucson Downtown Partnership for the exclusive purpose to administer the program and get the flags displayed in the Downtown area.

Board Counsel Keri Silvyn indicated there may be a problem with donating to the program, as there are only certain things that the State Shared Revenues can be spent on until the Notice to Proceed has been issued on the Hotel.

Board Member David Jones indicated that he agreed with Ms. Silvyn, but wants to keep the momentum going and he would like to have one Board Member continue to look at what, at a later point, how the Rio Nuevo Board may in someway help within the framework of the legislation to work on this project. He believes there is enough interest to continue the dialog.

Chair Jeff DiGregorio indicated that he believes this decision needs to be put on hold, in the same way as the façade program, until such time the Board is legally able and has enough funds to participate at a later date.

A motion was made by Board Member Alberto Moore, seconded by Board Member Dan Cavanagh to support the program and idea, without funding it at this time, but endorse the program/concept. Motion passes 11.0

Board Member Alan Willenbrock indicated that these two programs are extraordinary important, but because of the small amount of funds in the bank, and the Board needs to figure out their rainy day fund, the Board needs to be fiscally prudent with what they spend their money on.

Chair Jeff DiGregorio indicated that he believes it is important to talk about these kinds of programs because in the future the situation may change, the Board may sell assets they own, and revenues may start coming in, and opportunities that they do not know about at this time.

Board Member Anne-Marie Russell wanted to thank Board Member Alan Willenbrock for keeping up with the financial issues that face the Board.

**8. Status report and possible action with regard to Convention Center construction and Hotel Pre-development projects – Greg Shelko.**

Greg Shelko indicated that the project is very far along on completing the pre-development or design development phase of the project. The construction documents are to be completed by May 10, which is on time and that work is continuing. He indicated there are two very important activities going on right now, that he is preparing for the Study Session of the RN Board. First is the completion of the Economic Development Report by CS&L. The draft is complete and the final report to be delivered by the end of the week. Second is the Capital Plan, which is also being finalized by the end of this week.

Mr. Shelko indicated that the East Entrance of the Convention Center is significantly completed. The project is on schedule and should be completed in the next 12 to 14 days and remains on Budget.

At the next meeting Mr. Shelko indicated that he will have a summary of the payments on the projects, with a breakdown on individual components of the projects.

**9. Status report regarding Convention Center/Hotel post-bid activities –David Jones and Greg Shelko.**

Board Member David Jones indicated that there is not much to add from what was presented at the last Board meeting, except that the Construction Management Team will be adding their final numbers, and submit them to the Development team Tuesday of next week. They are working diligently toward preparing numbers for the budget and to prepare the Guaranteed Maximum Price to this Board.

Greg Shelko added that the Project was selected out of 10 projects to receive a Safety award.

Chair Jeff DiGregorio proposed that at the meeting of May 19 the Board start with a tour of the East Entrance. Board Member Victor Soltero asked if there was a plan for a Grand Opening of the project to allow the public to see a project funded by the Board and funding with proceeds of the TIF. Steve Moffett from Garfield Traub indicated that this was a very good idea and that he would work with Turner Sundt to plan an Open House.

Greg Shelko indicated that since Arizona is a right to work state, the contract does not specify that contractors must use union workers. Steve Moffett indicated that the Operating Agreement allows for union workers to be used, but not in the Construction Agreement.

**Item No. 4 was discussed again for a motion.**

**4. Status report and possible action regarding liability insurance – Mark Irvin and Mitch Childers (D.M. Lovitt Insurance Agency).**

A motion to approve the memorandum of decision on the Insurance Broker that summarizes the Board's course of action was made by Board Member Mark Irvin, seconded by David Jones. Motion passed 11-0.

**Item 11 was moved out of order**

**11. Report from Legal Counsel – Keri Silvyn and Jeannine Mortimer.**

**i. Report on current contractual obligations, including but not limited to:**

- 1. Update on Depot property**
- 2. Contract with Newberry Advisory Services, LLC**
- 3. Master Development Agreement for Tucson Convention Center and Hotel**

**ii. Presentation on District obligations/responsibilities - Mary Beth Savel.**

Mary Beth Savel gave a PowerPoint Presentation entitled, "What is Rio Nuevo? Its Authority, Scope of Duties and Obligations". The presentation is attached to these minutes.

Chair Jeff DiGregorio asked if the PowerPoint Presentation could be presented to the Mayor and Council.

After the Presentation, Board Member David Jones indicated that the website obligation is something that the Legislation is very serious about. He believes that the board should create a subcommittee of two members of the Board to explore what the Board can do with the website, and once a month have a report so that they can document that they are making a good faith effort to make progress regarding the website, and that members of the Board have reached out to the public, and public broadcast systems, but they need to document within their minutes of what progress and what actions they are taking to support this concept. Board Member David Jones made a motion to create the two member subcommittee, motion died for lack of second, but Chair Jeff DiGregorio asked interested members to email him with their interest, and the subcommittee will be formed.

**10. Discussion and possible action with regard to a District Executive Director – Alberto Moore.**

Board Member Alberto Moore indicated that he and Board Member Mark Irvin discussed the funding of the Executive Director for the Board. He was asked to develop a draft job description, which he provided to the Board Members. Board Member Alberto Moore asked that this be discussed at the May 19 Executive Section. He asked that Board Members send suggestions regarding the job description to him.

Board Member David Jones asked Counsel the advantages/disadvantages of using a contractor with an individual or contracting with an entity, as apposed to hiring as an employee.

Counsel Keri Silvyn indicated she would research that question, and analyze whether this discussion can occur in an Executive Session or should occur in open session.

**Item No. 7 was discussed again for clarification.**

Board Member Mark Irvin asked for clarification regarding the Board not being able to use State Shared funds, and what the total amount funds that might be available to use for the "I Believe / Flags and Volunteerism Campaign". Chair Jeff DiGregorio asked if City staff could get that amount to him, and he would let the Board know. An item will be on the May 19<sup>th</sup> agenda to discuss this.

**Item No. 11 was continued.**

Counsel Jeannine Mortimer continued Item 11, i. She indicated that at the April 28, 2010 meeting, Board Member Scott Egan inquired about the equipment in the building at 52 W. Congress. She indicated that she will provide a list of the inventory to the Board. She indicated that the lease was not terminated in April, because it was so close to the end of the month and the inventory that is still in the building needs to be moved or disposed of. She indicated that the remaining inventory can be stored at the TCC.

Chair Jeff DiGregorio asked that the Board Members review the inventory and give suggestions on what should be kept and what should be liquidated, or does the Board take advantage of the City's public auction process or donate the inventory to non-profits.

Counsel Jeannine Mortimer indicated that she and Bob Gugino will be going over the assets of the District, and is in the process of scheduling a meeting with City Attorney Mike Rankin next week to continue the discussion of the Depot Garage. Board Member Jodi Bain asked that she and Board Member Mark Irvin be informed on when this meeting will be held.

Counsel Keri Silvyn indicated that she was asked to analyze the contract with Newberry Advisory Services, LLC. She indicated that the correct contract is the one that is effective September 15, 2009 and continues through final closeout of the Project, which is defined in the Master Development Agreement. The contract indicates that Greg Shelko is the independent contractor; he is to manage the hotel project on behalf of the District. He has sole and independent discretion and control of his work, and manner in which it is performed. The District has the right to determine the objectives and results of the service, but the day-to-day functioning are at his discretion. There is an Exhibit B to the contract which lists the tasks to be accomplished. The payment is \$100 per hour, paid the 15<sup>th</sup> of each month, commencing in October of 2009. There is a quarterly limit of \$45,500. She then discussed the termination clause for information only.

Counsel Keri Silvyn then spoke concerning the Master Development Agreement with Garfield Traub. She identified three issues she wanted to mention. First is the Notice to Proceed, and when, how, and what needs to happen when the Board gets to that point; termination provision within the contract; and payment to the developer.

She indicated that three things need to happen before the Notice to Proceed is given. First, the Capital Plan is approved by the District and the City; the Bond Closing has to occur, and permits are issued. Until all three have been accomplished, the Notice to

Proceed cannot be issued. She went into detail on the process to accomplish the three things.

She also went over the termination provisions and payment to the developer pursuant to the Master Development Agreement.

Board Member Mark Irvin indicated that he understood that when the current counsel was hired, and when the Board got to the Bond process, they would have a discussion on the process. He indicated that he would like to have Lewis and Roca speak to the Board regarding how they would handle the bonding process.

Board Member Jodi Bain indicated that she agreed with Board Member Mark Irvin, but for transparency purposes she believes the Board may want to have one or two other firms present what they can do for the Board. The Board may want to have Lewis and Roca send the Board some information on what is available to the Board.

Board Member Mark Irvin indicated he wants to have Counsel come back to the Board to outline their Bond counsel and let the Board take a look at it.

Counsel Keri Silvyn indicated this will be discussed on a future agenda.

**12. Executive Session**

*Upon a public majority vote of members constituting a quorum, the Board of Directors may hold an executive session in accordance with A.R.S. §38-431.03 (A), (3) and (7) for legal advice concerning the following matters:*

**i. Depot property**

**ii. Existing Contractual Obligations, including contract with Newberry Advisory Services, LLC and/or Master Development Agreement for Tucson Convention Center and Hotel.**

No executive session was held.

**13. Call to the Audience**

Mr. Paul F. Mackey addressed the Board regarding City Matching Funds Eligibility.

**14. Future Meeting Dates and Agenda Items**

- Work flow from Mr. Miranda
- Discussion of Website
- Executive Director job description
- Lewis and Roca discussion of bond counsel

**15. Adjournment**

Meeting was adjourned at 5:27 pm