

RIO NUEVO MULTIPURPOSE FACILITIES BOARD MEETING

Tucson, Arizona  
April 22, 2015  
2:00 p.m.

REPORTED BY:

John Fahrenwald

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1 (Meeting commenced at 2:08 p.m.)

2 CHAIRMAN McCUSKER: I'm going to call the meeting  
3 to order. I have 2:08 p.m.

4 Mark, you want to lead the pledge?

5 {Pledge of allegiance was recited.}

6 CHAIRMAN McCUSKER: Michele, please call the roll.

7 MS. BETTINI: Jannie Cox?

8 MS. COX: Here.

9 MS. BETTINI: Mark Irvin?

10 SECRETARY IRVIN: Absolutely.

11 MS. BETTINI: Fletcher McCusker?

12 CHAIRMAN McCUSKER: Here.

13 MS. BETTINI: Chris Sheafe?

14 TREASURER SHEAFE: Here.

15 MS. BETTINI: Cody is on his way and Jeff --

16 CHAIRMAN McCUSKER: Mr. Hill, we understand, is  
17 excused, right? He's traveling.

18 MS. BETTINI: In Europe.

19 CHAIRMAN McCUSKER: And Chris is -- or Cody's on  
20 his way.

21 So you have the transcripts from the March 24th  
22 meeting. They've been distributed to all of us; they are  
23 verbatim. Any issue questions, comments, or concerns?

24 SECRETARY IRVIN: Motion to approve.

25 MS. COX: Second.

1 CHAIRMAN McCUSKER: All in favor, say aye.

2 (Ayes.)

3 (The Board voted and the motion

4 carried.)

5 CHAIRMAN McCUSKER: Minutes are approved.

6 We have an Executive Session scheduled. I would  
7 need a motion to recess.

8 SECRETARY IRVIN: So moved.

9 MS. COX: Second.

10 CHAIRMAN McCUSKER: All in favor, say aye.

11 (Ayes.)

12 (The Board voted and the motion

13 carried.)

14 CHAIRMAN McCUSKER: We expect this to be a short  
15 Executive Session, 30 minutes tops.

16 Don't hold me to it.

17 (The Board adjourned to Executive  
18 Session at 2:09 p.m.)

19 (Meeting reconvened at 2:39 p.m.)

20 CHAIRMAN McCUSKER: We need a motion to reconvene,  
21 Mark made a motion to reconvene.

22 SECRETARY IRVIN: So moved.

23 CHAIRMAN McCUSKER: All in favor, say aye.

24 (Ayes.)

25 MR. MOORE: Okay we're back on the agenda.

1           Maybe we can shut that since they're stripping the  
2 parking lot one square foot at a time.

3           MS. COX: I got it.

4           CHAIRMAN McCUSKER: I'm going to take just a few  
5 minutes.

6           I have some updates for the Board and the general  
7 public. We should move through this agenda pretty quickly.  
8 We're at a place where we can wrap up a lot of stuff that's  
9 been percolating around the last several meetings.

10           You all saw yesterday Mr. Sheafe's been intimately  
11 involved at the board of supervisors four to one vote to  
12 advance the County bond package to the November election.  
13 You should note -- and I think I'll ask someone to come talk  
14 to us -- there's roughly a hundred million dollars of stuff  
15 in there that's related directly to the Rio Nuevo District.  
16 So we'll have a great interest in that bond, and I'm certain  
17 that we will be asked somehow, some way, to participate in  
18 that process.

19           It includes the orientation center, the so-called  
20 regional orientation center on the original Rio Nuevo plot  
21 on the far West Side. I think that's an \$18 million  
22 proposal now on the County bond package. The City has  
23 agreed to deed that land over to County. The -- and the  
24 Western National Parks Association will operate and manage  
25 that venue.

1           So a lot of us hope that it will be kind of the  
2 seed tenant, if you will, for the West Side Projects.  
3 That's -- the old Tucson origins park idea just kind of  
4 falls apart. We're now looking to create viable users on  
5 that side of town.

6           MS. COX: Mr. Chairman, you said the western  
7 parks?

8           CHAIRMAN McCUSKER: National western parks  
9 association. They curate, Jannie, 44 of the national parks  
10 visitor centers. They currently manage 44 visitor centers  
11 around the country. And they are based, interestingly, in  
12 Tucson, Arizona.

13           So they are very interested in urban presence.  
14 The de Anza trail, which I learned is one of the four  
15 national trail systems, goes right past this property. So I  
16 think you'll see a lot of interest from the feds, from the  
17 Forest Service, from others about the development on the  
18 West Side.

19           What it does for us, I think, is increases the  
20 value and interest in our property to the south.

21           I have a preliminary draft. I'll circulate it  
22 when we get the final report. But you all know we've been  
23 doing some engineering work on those parcels. It is not a  
24 pretty picture, I'm telling you. We drilled 24 holes on the  
25 property near the base of A-Mountain. And virtually every

1 one of them is methane toxic, still producing active gas  
2 well above the environmentally set limits.

3 So basically, what we're going to be told here in  
4 short order is you cannot penetrate that cap. So our  
5 options are to do something on the surface of that property  
6 or to eradicate that landfill in its entirety.

7 We'll get a number for that, but I got a bad  
8 feeling that's an unaffordable idea. So it kind of brings  
9 us back to square one in terms of how can that property  
10 contribute to the overall West Side if you can't eradicate  
11 the landfill and you can't pave over and you can't asphalt  
12 over it. It has to remain underground and unpunctured. You  
13 know, so --

14 MS. COX: Nothing will grow.

15 CHAIRMAN McCUSKER: That's the other thing. We  
16 were talking -- we talked about reforesting. And nothing  
17 will grow as long as it's producing the kind of methane that  
18 it's currently producing.

19 We have completed -- and I know they're in the  
20 process of starting to work -- the agreement with the  
21 Mission Garden. So it took a lot longer than any of us  
22 expected. But they are, indeed, moving forward. The stroke  
23 of genius that we had to assign the old contracts are  
24 probably what allowed us to expedite that project.  
25 Otherwise, we'd still be in a formal procurement process.

1           But, Bill, I think maybe you can give us an  
2 updated call to the audience. Make sure you sign up to do  
3 that. I know you've got a couple of events that we will be  
4 interested in participating in.

5           Hopefully we should resolve Phase I of the TCC  
6 today.

7           We also have an action item to continue to  
8 maintain Swaim Associates. Mark and I and Elaine and others  
9 from the City, SMG, have had several meetings regarding the  
10 potential scope of the Phase II project from simple things  
11 like remodeled bathrooms and improved meeting rooms to  
12 projects as grandiose as the new junior ballroom, an  
13 expanded meeting room or even a high-tech conference center,  
14 something that would differentiate our convention center  
15 from others.

16           We should have that scoped, hopefully, by May --  
17 our May meeting. And we'll begin to understand the cost and  
18 opportunities associated with major renovation of the TCC Ex  
19 Hall.

20           Also in the bond package is the renovation of the  
21 Symphony Hall, the renovation of Leo Rich. And I think  
22 that's a \$24 million item in that bond package.

23           So that whole plaza can begin to take on, you  
24 know, the Lincoln Center kind of qualities as our go-to  
25 place downtown. Clearly we've contributed to that.

1           We did hear that our little arena remodel did win  
2 the State's public works project award. And we won the  
3 local one, we won the state of Arizona, and on our way to  
4 the national competition. So hats off to all of us.

5           And with that, Dan, how we doing with the money?

6           MR. MEYERS: I'm Dan Meyers, the chief financial  
7 officer for Rio Nuevo.

8           Okay. As of March 31st, our primary operating  
9 account at Alliance Bank had \$1.9 million in it. The ISC  
10 account at Alliance had approximately \$5 million in it. And  
11 our Bank of Tucson account, which we use primarily to  
12 collect rents and to make payroll-related expenses, 414,000.

13           The pool fund of the City of Tucson, at the end of  
14 March, had about \$76,000 in it. That has now been depleted.  
15 They cut us a check for a little over \$78,000 -- actually  
16 that was -- they cut it to Concord to pay some of the  
17 retention owed. And then we paid the balance of the  
18 retention in April. So that accounted is now zero.

19           CHAIRMAN McCUSKER: Do you remember what that  
20 started at?

21           MR. MEYERS: I have no idea.

22           CHAIRMAN McCUSKER: Michele, do you remember?

23           MS. BETTINI: 4.2, 4.4, something like that.

24           CHAIRMAN McCUSKER: Four million and change,  
25 that's about right.



1           Just so that you remember, this was lost money.  
2 This was unused bond funds that had to be not applied to a  
3 new use of proceeds project. You know, we have gone back to  
4 the bond issues. So that four and a half million bucks was  
5 the lion's share of what we spent on the TCC.

6           MR. MEYERS: Let's see. Everybody's current on  
7 their rents. Rialto actually still owes for April but, you  
8 know -- stipulated --

9           Our TIF revenue for January, which we received in  
10 early April, was only 404,000 I believe, you know, down  
11 significantly. I just got the detail from the Department of  
12 Revenue for who paid what for that particular month. I've  
13 got to put that in my spreadsheet. And next week Michele  
14 and I are going to start contacting merchants who have not  
15 currently been paying regularly.

16           And there's a couple on there that look like they  
17 may not be paying what they should. Some of those may be a  
18 challenge. One of the -- one of the entities is a big-box  
19 store. So it could be a matter of getting through to the  
20 right people to figure out who's preparing those reports and  
21 how they're doing that.

22           CHAIRMAN McCUSKER: And we cannot go public with  
23 that information.

24           MR. MEYERS: Correct.

25           CHAIRMAN McCUSKER: It's part of our IGA, right?

1 MR. MEYERS: Correct.

2 CHAIRMAN McCUSKER: We maintain the  
3 confidentiality of the taxpayer.

4 MR. MEYERS: Exactly.

5 Let's see. We've got five commitments on our list  
6 totaling \$14 million, approximately, 7.2 of which has been  
7 paid. So that leaves a balance of \$6.8 million in possible  
8 outgoing commitments. We got 7.4 million in the bank right  
9 now, so that's approximately 600,000 sitting around waiting  
10 to be used in some good fashion.

11 The City of Tucson owes us \$200,000 for money  
12 we've advanced for a GNP II project, and we should be  
13 getting that any day now.

14 MR. RITCHIE: Dan?

15 MR. MEYERS: Yes.

16 MR. RITCHIE: Question for you. That -- the  
17 big-box -- I know you can't reveal it -- but can you see how  
18 much they paid, like, in a similar timeframe from the year  
19 before?

20 MR. MEYERS: No. We don't have that information.

21 MR. RITCHIE: Oh, we don't have that.

22 MR. MEYERS: We just -- we got -- I think we've  
23 got, maybe, five months of information.

24 MR. RITCHIE: How about, have they gone the five  
25 months without paying it?

1           MR. MEYERS: They paid it. It just seemed like  
2 it's low to me.

3           MR. RITCHIE: Okay.

4           MR. MEYERS: We've certainly got some work to do  
5 in this area, Michele and I. And we're going to put a  
6 letter together and just get that out to these people. And  
7 it might be, you know, a little restaurant. In some cases,  
8 it may be minimal money. Or it could be some significant  
9 dollars as well. We really don't know right now. But, you  
10 know, we're going to be getting on that, like I said, next  
11 week, I think.

12           Let's see. As far as upcoming things going on in  
13 our office. I'll start preparing the budget for the next  
14 fiscal year. Fletcher, Michele, and I, we're -- it's the  
15 time to get out ratings redone by Fitch, so we're compiling  
16 information that presented here. We got a meeting, I think,  
17 second week of March -- of May, excuse me. And then my  
18 little project of chasing down TIF revenue.

19           Anybody have any questions?

20           CHAIRMAN McCUSKER: We will present the meeting --  
21 the budget in the June meeting.

22           MR. MEYERS: Okay. Thank you.

23           CHAIRMAN McCUSKER: Elaine?

24           MS. BECHERER: Good afternoon. Elaine Becherer  
25 Rio Nuevo TCC Arena project manager.

1           So today, on the agenda, the two items are to some  
2 housekeeping regarding previous items that I presented to  
3 the Board.

4           Item No. 7 is regarding the change order for the  
5 handrails and extra trash cans. And I've passed out a copy  
6 to the Board. And so let me just -- so the \$150,000 is for  
7 the handrails that would go on the upper level seats, the  
8 200 level seats, around the entire arena.

9           Previously, I had presented three different  
10 options to address the stair nosing. And that was some  
11 aluminum nosing, either painting on an adhesive, or an  
12 abrasive stripe or tape. And the aluminum nosing was just  
13 too expensive. And so it was my recommendation to proceed  
14 with the tape or the paint.

15           And after working with SMG, we have determined  
16 that the tape is their preferred solution. And we have a  
17 couple of mockups in place. And so the 150 would include  
18 handrails and stair nosing for all of the 200 level seats.

19           And then the difference -- the \$16,000 -- is for  
20 extra trash cans throughout the arena.

21           Again, I think that it is important to note that  
22 this would be the first change order that would increase the  
23 bottom line of the project.

24           So up until now, the project has not exceeded the  
25 original project budget.

1           And I believe that, last month, it was on the  
2 agenda, but there was a -- the wording wasn't in the agenda  
3 to take action on this change order.

4           CHAIRMAN McCUSKER: Can you go through the impact  
5 to the whole budget for us? Because this shows the contract  
6 amount of 7,084,000. But that's the contract specifically  
7 to the Concord front. So what would the overall cost be  
8 now, the total the project.

9           MS. BECHERER: It's still right at \$9 million  
10 dollars. And that includes the million that the City has  
11 contributed for the plumbing fixtures, as well as the  
12 kitchen.

13          CHAIRMAN McCUSKER: Okay. So our cost is right at  
14 8 million. And we had budgeted 7.8 million.

15          MS. BECHERER: Correct.

16          CHAIRMAN McCUSKER: Mark's nodding.

17          MS. BECHERER: I did not bring the entire overall  
18 tracking sheet that we reviewed last month. But I will be  
19 sure to do that next month. But, Mr. Chair, you are correct  
20 that the 7 million, the new contract sum, indicated that is  
21 only for Concord. So this 166,000 proposed is not in their  
22 contract currently.

23          CHAIRMAN McCUSKER: And then we're done with  
24 Phase I, right? We're closed. The project's sealed. And  
25 we'll finish up and back out.

1 MS. BECHERER: They -- they have started to order  
2 part and pieces and materials for the remaining contingency  
3 items that the Board approved last month. Those items were  
4 already in Concord's contract. So they're -- they would be  
5 doing those items in conjunction with the construction of  
6 these handrails and stair nosing. So all of that would be  
7 done at once so that we have shared general conditions and  
8 that the project doesn't get hit for two months.

9 CHAIRMAN McCUSKER: Jannie and I have personally  
10 experienced the handrail issue. So while we are not  
11 required to -- I understand the facility would be  
12 grandfathered in without the handrails.

13 MS. BECHERER: That is correct.

14 CHAIRMAN McCUSKER: I think it's treacherous  
15 without them. So I absolutely support --

16 MS. COX: I totally agree. It's treacherous  
17 without them.

18 CHAIRMAN McCUSKER: Yeah. So we would need a  
19 motion to approve the change order.

20 TREASURER SHEAFE: So moved.

21 MS. COX: Second.

22 CHAIRMAN McCUSKER: I have a motion and a second  
23 to approve a change order \$166,029. All in favor, say aye.

24 (Ayes.)

25 CHAIRMAN McCUSKER: Any opposed, nay.

1 (The Board voted and the motion  
2 carried.)

3 CHAIRMAN McCUSKER: Okay. Elaine, thank you very  
4 much. Do you have something else on --

5 MS. BECHERER: We do. Item No. 8. I think Mark  
6 and I might tag team this one.

7 CHAIRMAN McCUSKER: Okay. Go ahead.

8 MS. BECHERER: So Item No. 2 [sic] is an amendment  
9 to the IGA that we have with the City regarding GMP II. GMP  
10 II is with Concord. And it pertains specifically to the  
11 kitchen. So all of this was the added scope to the project,  
12 late in the project, but it came up due to Pima County  
13 Health Department and the City determining that they wanted  
14 to proceed with a \$350,000 renovation of the kitchen. So  
15 this --

16 CHAIRMAN McCUSKER: We basically allowed them to  
17 tag along on our contract.

18 MS. BECHERER: Correct. And all of GMP II is what  
19 Dan referenced earlier, is the reimbursement. So it flows  
20 through Rio Nuevo, but the City is reimbursing Rio Nuevo for  
21 the kitchen and anything pertaining to GMP II.

22 So this amendment would revise that IGA to include  
23 a change order that the City would also pay or reimburse  
24 Rio Nuevo for \$28,000, 231 -- \$28,231. And what it consists  
25 of is three mop sinks and the reskinning of two walk-in

1 coolers.

2           So in addition to some of the complacent reporting  
3 and housekeeping that was not occurring, once we dove into  
4 the renovation of the kitchen, it was determined that some  
5 of the concession stands and walk-in coolers had not  
6 previously been inspected by the Health Department.

7           And so then, after we had started construction,  
8 they came in and required three additional mop sinks, as  
9 well as reskinning of the existing coolers.

10           There were no funds to purchase new coolers. And  
11 so the most cost-effective solution was to reskin them. And  
12 that's for the \$28,000. And again, that would be funds --  
13 those would be funds that the City is paying. We're just  
14 using the IGA that we have in place.

15           CHAIRMAN McCUSKER: Do we have to do a change  
16 order too, or is that --

17           MS. BECHERER: Yes, and I have that paperwork.

18           CHAIRMAN McCUSKER: Is that agendized?

19           MR. COLLINS: It is.

20           CHAIRMAN McCUSKER: Properly?

21           MR. COLLINS: It is.

22           CHAIRMAN McCUSKER: We need to do -- we need to do  
23 two things, right? We need to approve the amendment to the  
24 IGA, and we need to authorize the change order.

25           MR. COLLINS: Correct.



1           CHAIRMAN McCUSKER: So the first item would be the  
2 Amendment No. 2 to the IGA with the City regarding the  
3 Rio Nuevo renovation.

4           SECRETARY IRVIN: Move to approve.

5           TREASURER SHEAFE: As written.

6           MS. COX: Second.

7           CHAIRMAN McCUSKER: All in favor, say aye.

8                           (Ayes.)

9           CHAIRMAN McCUSKER: Any opposed, nay.

10                           (The Board voted and the motion  
11                           carried.)

12           CHAIRMAN McCUSKER: All right. And the second  
13 item would be to approve a change order. Which we have a  
14 copy of? We don't.

15           TREASURER SHEAFE: And the change order is funded  
16 by the City?

17           MS. BECHERER: It is funded by the City.

18           CHAIRMAN McCUSKER: We have to authorized it since  
19 it's coming through us.

20                           All right. So if you want to make the motion.

21           TREASURER SHEAFE: Motion to approve the change  
22 order when it's presented, because we know the amount, which  
23 is 28,231. And that's authorized by the City as a payment  
24 for the history for accepting that change order.

25           MS. COX: Second.

1 CHAIRMAN McCUSKER: Mr. Collins, is that right?

2 MR. COLLINS: Yeah. The only thing I want  
3 Mr. Sheafe to make sure that this amending -- this change  
4 order is for GMP No. 2.

5 CHAIRMAN McCUSKER: That's correct.

6 MR. COLLINS: It will obligate you folks to pay.  
7 And as soon as Mayor and Council approve it, then it will  
8 obligate the City to reimburse.

9 CHAIRMAN McCUSKER: We're not going to pay it  
10 until that happens.

11 MS. BECHERER: Right. And it is planned to go for  
12 the second meeting in May in front of Mayor and Council.  
13 But the City Attorney's office has seen the amendment. And  
14 it's been coordinated with your staff as well.

15 CHAIRMAN McCUSKER: Okay. So we have a motion and  
16 second to approve. Tell me the amount again.

17 TREASURER SHEAFE: 28,231.

18 MS. BECHERER: And 87 cents.

19 CHAIRMAN McCUSKER: And 87 cents.

20 All in favor, say aye.

21 (Ayes.)

22 CHAIRMAN McCUSKER: Any opposed, nay.

23 (The Board voted and the motion  
24 carried.)

25 CHAIRMAN McCUSKER: Okay.

1 MS. BECHERER: Great. Thank you very much.

2 CHAIRMAN McCUSKER: Elaine, on behalf of all of  
3 us, but especially Mark and I, we're going to miss hanging  
4 out with you every week.

5 MS. BECHERER: Well, you're not getting rid of me  
6 that fast, so -- yes, I will miss working with you as well.  
7 And it's been an honor and a privilege. I do thank the  
8 Board again for the opportunity. So thanks.

9 SECRETARY IRVIN: Thanks for keeping us on track,  
10 on time, and on budget.

11 CHAIRMAN McCUSKER: Phase II. Mark, do we have  
12 something to look at?

13 We talked about it in my opening remarks. But we  
14 have retained Phil Swaim and Swaim and Associates to do the  
15 predesign and scoping work for what we're calling Phase II  
16 of the TCC. They will present their scope and estimates in  
17 May. We now have an estimate of that work.

18 Is that what we're doing?

19 MR. COLLINS: Yes.

20 Mr. Chairman, Member of the Board, the last  
21 meeting, you authorized the preparation of an amendment to  
22 Mr. Swaim's contract. The contract was original \$10,000 to  
23 do some preliminary work. And at the last Board meeting,  
24 your authorized the expenditure of \$83,270 and directed me  
25 to prepare an amendment to bring back to you to approve.

1           That amendment is what Michele has just handed to  
2 you. It is entirely consistent with the motion that was  
3 made last time. It's a rather straightforward amendment.  
4 It just adds \$83,000 to the Swaim contract.

5           TREASURER SHEAFE: That's an obligation that we  
6 take on to pay him, but he's taking on nearly half of it to  
7 pay others, correct?

8           CHAIRMAN McCUSKER: A lot of this is subbed out.

9           MR. COLLINS: Yeah. Oh, absolutely. Yes.

10          SECRETARY IRVIN: That's actually referred to  
11 right here, Chris, at the bottom.

12          MR. COLLINS: Yeah. It identifies that at the  
13 bottom of Page 1.

14          The contract will be between the Board and Swaim  
15 and Associates. And Swaim and Associates will have subs.  
16 That's where that's going.

17          CHAIRMAN McCUSKER: And again, the reason we don't  
18 need to compete for this, it's a professional service.

19          MR. COLLINS: It's professional --

20          CHAIRMAN McCUSKER: We have the authority to  
21 contract directly on this one.

22          MR. COLLINS: Correct. Your procurement code  
23 allows direct selection for professional services.  
24 "Architect" actually is one of the specific professional  
25 services mentioned in your procurement code.

1           TREASURER SHEAFE: Can we just move for approval  
2 then? This is an amendment to the professional services  
3 agreement between Rio Nuevo facilities district and Swaim  
4 and Associates. Move to approve --

5           MR. COLLINS: -- and execute.

6           TREASURER SHEAFE: -- the 83,000 change.

7           MR. COLLINS: And execute.

8           TREASURER SHEAFE: And execute.

9           MR. COLLINS: Yes.

10          MR. RITCHIE: Second.

11          CHAIRMAN McCUSKER: All in favor, say aye?

12                                 (Ayes.)

13          CHAIRMAN McCUSKER: Any opposed, nay.

14                                 (The Board voted and the motion  
15                                 carried.)

16          CHAIRMAN McCUSKER: Okay. Mr. Collins, you're  
17 going earn your money here in the next three items.

18          MR. COLLINS: Sadly, I've been earning my money  
19 for too long.

20          CHAIRMAN McCUSKER: So update us first on Item 10,  
21 the Arena site. How is Nor-Gen doing?

22          MR. COLLINS: Mr. Chairman, Members of the Board,  
23 as you are aware, earlier this year, the agreement was  
24 entered into between this -- the District and  
25 Nor-Generations.

1           That agreement allows Nor-Gen to do some due  
2 diligence. It is in the process of doing that. We are  
3 within that period. And by all appearances, we are moving  
4 forward at a very considerable rate. All indications are  
5 that this is going to close. The feasibility period for  
6 Nor-Gen expires next month on the 27th.

7           Since our last meeting, a couple of things have  
8 happened. There is discussions ongoing between attorneys  
9 for Nor-Generations, the City, and you folks trying to  
10 refine some of the terms of the settlement agreement and how  
11 that interfaces with the agreement for sale. And No. 2,  
12 Nor-Gen has identified certain title objections. We have  
13 agreed to attempt to resolve them. We are in the process of  
14 doing that.

15           So it's all ahead, go at this point in time.

16           CHAIRMAN McCUSKER: Any questions for Mark on the  
17 Arena lot status?

18           Okay. While you're up there, Item 11. We've been  
19 going back and forth with the Fox since Christmas on a new  
20 ground lease and loan modification agreement. This comes  
21 about because of our specific action to take out the  
22 National Trust for Historic Preservation. We now have the  
23 opportunity to have a direct relationship between Rio Nuevo  
24 and the Fox.

25           It has been somewhat contentious. For the record,

1 I stepped away from this the day after Tim Steller's  
2 editorial.

3 So, Mark, what's the current status of your  
4 negotiations with The Fox and their attorneys?

5 MR. COLLINS: Mr. Chairman, Members of the Board,  
6 we continue to go back and forth on the governing covenants  
7 provision of this agreement.

8 The -- we have -- we, the lawyers -- have reached  
9 agreement on many things. We're virtually down to two  
10 remaining items.

11 But by way of quick review, back in December, the  
12 Board authorized the changes that would be necessary to  
13 simplify the arrangement. This Board went forward and  
14 provided the money to buy out the Trust. The primary  
15 agreement has been agreed to, although you folks haven't yet  
16 ratified it.

17 The remaining part, as I said, is the remaining  
18 covenants. The covenants include several things that you  
19 folks are very familiar with as -- in your private life when  
20 you borrow money, the lender usually asks you to avoid doing  
21 certain things. So far, the agreement provides -- and I  
22 don't believe we have a disagreement on -- that The Fox will  
23 not form any other legal entities without approval of this  
24 Board. The Fox will not sell or transfer substantially all  
25 of its assets without the approval of this Board, at least

1 until it's \$2.9 million debt to you has been paid. The Fox  
2 will not incur any debts in excess of \$50,000 without your  
3 approval.

4 The Fox has agreed to allow this Board to appoint  
5 five members to its -- it's Board to assist The Fox in its  
6 efforts. The Fox has agreed to allow the District to review  
7 its financial records because the Fox owes you \$2.9 million.

8 So there are several things that are -- have been  
9 agreed to. There are a couple of things that have not yet  
10 been agreed to. I'll just highlight them.

11 One is the bylaws. This Board has asked that, at  
12 least while the money is owed to you folks, that there not  
13 be any amendments to the bylaws without your approval. The  
14 Fox has resisted that.

15 The other one is that we provided or requested the  
16 opportunity to get copies of various financial documents and  
17 information. The Fox has resisted that. But I believe  
18 we've reached an agreement. I don't have confirmation of  
19 that yet. But I believe we've reached an agreement that we  
20 would just review financial records rather than taking  
21 copies.

22 So we're down to two things, I think. And maybe  
23 only one, and it's the bylaws.

24 Does that answer your question, Mr. Chairman?

25 CHAIRMAN McCUSKER: Sir, yes, sir.



1           What's the Board's pleasure?

2           MS. COX: Well, Mr. Chairman, I move that we  
3 direct counsel to finalize this agreement with The Fox  
4 Theatre Foundation and authorize the executive officers to  
5 sign it.

6           MR. RITCHIE: Second.

7           CHAIRMAN McCUSKER: Leaving the open items open?  
8 Are we just...

9           MS. COX: No. We finished that one.

10          SECRETARY IRVIN: Along the lines of what's  
11 currently proposed by us?

12          MS. COX: Exactly.

13          MR. COLLINS: Mr. Chairman, if I -- if I  
14 understand correctly, you're directing me to finish it up  
15 with the terms as we've last proposed to The Fox.

16          MS. COX: Correct.

17          SECRETARY IRVIN: Just one thing real quickly,  
18 because I know it always becomes a discussion point. As I  
19 understand it in my discussions with The Fox, they have not  
20 amended their bylaws or anything since 2005. And I know  
21 they've had some concerns about us being heavy handed with  
22 that.

23                 What I've said to them is, if you have some  
24 changes that you would like to make, please bring those to  
25 us now so that we can globally satisfy all those issues at

1 once.

2 As I understand it, Counsel, they do not have  
3 anything currently on their plate that they are planning to  
4 change. So I think this is, candidly, kind of a moot issue  
5 from my perspective.

6 MR. COLLINS: Mr. Irvin, I have heard no  
7 indications of an immediate desire to change the bylaws.  
8 And I will reiterate what you have said to their counsel.

9 SECRETARY IRVIN: So we have a motion and a second  
10 already?

11 CHAIRMAN McCUSKER: Let me -- let me see if I can  
12 clarify exactly what we're doing.

13 The current draft of the agreement we have has all  
14 the items that you just mentioned that have been agreed upon  
15 by both parties. It also includes a requirement that they  
16 not amend their bylaws.

17 MR. COLLINS: Without approval.

18 CHAIRMAN McCUSKER: Without approval.

19 And it also includes a requirement that we have  
20 the authority to review their financial records.

21 MR. COLLINS: Yes.

22 CHAIRMAN McCUSKER: So that would be the draft  
23 that we're authorizing you to take back to them. So they  
24 would either have to agree with us or not.

25 MR. COLLINS: That's how I understand the motion,

1 Mr. Chairman.

2 CHAIRMAN McCUSKER: I don't think got a second.

3 SECRETARY IRVIN: I'll second it.

4 CHAIRMAN McCUSKER: All right. So I have a  
5 motion --

6 MS. COX: Cody seconded it.

7 SECRETARY IRVIN: Cody had seconded it?

8 MR. COLLINS: Yeah.

9 CHAIRMAN McCUSKER: So Jannie made the motion.  
10 Cody seconded it. All in favor, say aye.

11 (Ayes.)

12 CHAIRMAN McCUSKER: Any opposed, nay.

13 For the record, I abstain.

14 (The Board voted and the motion  
15 carried.)

16 CHAIRMAN McCUSKER: The Rialto Theatre.

17 Mr. Collins, we had a couple of minor tweaks to  
18 the closing documents on the Rialto. We should be able to  
19 wrap that up today so our goods friend can acquire their  
20 theater.

21 MR. COLLINS: Correct.

22 Mr. Chairman, Members of the Board, I believe it  
23 was two meetings ago that this Board authorized the  
24 preparation of an agreement for the sale of the Rialto  
25 Theatre to the Rialto Foundation. Purchase price is

1 \$1.3 million. It is essentially as-is, where it is. It's a  
2 quick close.

3 The good fortune is that the Rialto Foundation has  
4 an attorney that I've known for an awfully long time. And  
5 we worked our way through the agreement, and it's pretty  
6 simple and straightforward.

7 It will -- once authorized and executed, will  
8 allow the sale of the Rialto Theatre to the Rialto  
9 Foundation. It also transfers the rights that the District  
10 has in the temporary revocable easement for Herbert Avenue.  
11 It's perhaps the simplest purchase and sale agreement I've  
12 ever been involved in.

13 And the last motion was to prepare this and bring  
14 it back to you. We've discussed it in Executive Session.  
15 And it's on your plate to decide whether you want to make a  
16 motion to approve and execute the agreement or not. That's  
17 where you are.

18 MS. COX: So moved.

19 MR. RITCHIE: Second.

20 SECRETARY IRVIN: I definitely second that.

21 CHAIRMAN McCUSKER: You have to third it now.  
22 You're too slow.

23 SECRETARY IRVIN: So for whatever it's worth, I  
24 just want to commend Rialto Foundation. You know, five  
25 years ago, we started a really interesting process, and

1 everything was broken, as you guys know. And so I think  
2 it's pretty amazing that we've come full circle with that.

3 And you guys have positioned yourself so that you  
4 can move forward successfully. So I just commend you for  
5 all of your work and also for your ability to come to us and  
6 talk honestly and openly and allow us a chance to try to  
7 help the best we can. So we didn't -- as you know, we  
8 didn't want to kick that can down the road. We wanted to  
9 put you guys on the pathway to success. So congratulations.

10 CHAIRMAN McCUSKER: Okay. We have a motion and a  
11 second to approve the agreement as presented to us in the  
12 Executive Session.

13 MR. COLLINS: Correct. Mr. Chairman, before you  
14 take a vote, let me point out, principally for the audience,  
15 that this agreement is a tri-party agreement. It's with the  
16 Rialto Foundation, this District, and the City of Tucson.  
17 The reason for that is because the IGA, that is the genesis  
18 of all of this, has three parties to it: the Foundation's  
19 predecessor interest, the District, and the City.

20 And one of the requests from the City, which  
21 Mr. McGrath and I both thought was a good idea, was to  
22 terminate that IGA. And that's one of the provisions that's  
23 in this agreement.

24 Another provision that the City requested and that  
25 is in this agreement, is the Foundation's agreement to

1 continue to operate that facility as a performing arts venue  
2 for ten years. And that's in here. I don't anticipate a  
3 problem from the City. But that's the last remaining piece  
4 once this Board approves it.

5 CHAIRMAN McCUSKER: All right. Everybody  
6 understand what you're voting on?

7 All in favor, say aye.

8 (Ayes.)

9 CHAIRMAN McCUSKER: Any opposed, nay.

10 (The Board voted and the motion  
11 carried.)

12 CHAIRMAN McCUSKER: Congratulations.

13 Okay. Call to the audience. Michele?

14 I think Elaine's going to sneak back up on us.

15 Bill O'Malley.

16 ATTENDEE: Good afternoon. Thank you. Bill  
17 O'Malley with Friends of Tucson's Birthplace. I just wanted  
18 to give you an update on Mission Garden.

19 Thanks for the funding agreement. That was signed  
20 by the City also here about two weeks ago. So we're looking  
21 forward to getting the agreement in the mail here shortly.

22 We have received the assignment agreements for the  
23 architect and contractor. And we've started working with  
24 the architects to make the revisions necessary so we can  
25 move forward with the construction.

1           We would like to -- and a lot of the work that  
2 we're doing now in the completion of the garden is, you  
3 know, we've planted about half the garden so far. The  
4 remaining half are some of the remaining timeline gardens  
5 which represent some of the other cultures that have existed  
6 on that site for over 4,000 years.

7           We'll be working on the planning work. And we'd  
8 like to, if we can get on your agenda for your next meeting,  
9 make a brief presentation on the planning for the completion  
10 of the garden.

11           We have been exchanging information with  
12 Mr. Collins about the areas around the garden and how we can  
13 get some temporary use of those areas for access and parking  
14 and support in getting in those discussions and, for  
15 instance, find out who the project manager for Rio Nuevo  
16 will be.

17           Once that person's named, we'd like to meet with  
18 them -- oh, okay -- meet with them and go through some of  
19 the procedures and the things that we can do to approve. So  
20 we'll arrange some of those discussions.

21           Other events at the garden. This Friday is Arbor  
22 Day. And we're going to celebrate Arbor Day and the start  
23 of the completion of the garden by planting a very large  
24 mesquite tree. That will happen somewhere between 9 and 11  
25 on Friday morning. If you're available in the neighbor, it

1 would be a good time to stop by and see the garden and watch  
2 this tree being planted.

3 Other events this weekend, we're providing an  
4 information booth at the University's 10,000 years of Eating  
5 celebration.

6 That will be followed, next week, by 10,000 years  
7 of dieting.

8 And we're also working -- the School of  
9 Anthropology is having a hundred year anniversary, and they  
10 will be touring the garden this Saturday also.

11 May 16th is our San Ysidro Festival. We've got  
12 some fliers here for each of you. This is a celebration of  
13 the spring harvest. And we'll have music, food, Native  
14 American dancers, blessings of the different gardens. So  
15 it's a major event for us. Free of charge, although  
16 donations are accepted. So that would be a good time also,  
17 May 16th, to come out and see the gardens.

18 So thank you. And look forward to seeing you out  
19 at the gardens.

20 CHAIRMAN McCUSKER: Good luck, thanks.

21 Elaine -- so I promised Elaine I would update you  
22 in my update, but I didn't. So she gets to do it now, call  
23 to the audience.

24 MS. BECHERER: Thank you. So now I'm wearing the  
25 cap of the project administrator who will be managing the



1 downtown streetscape for the City and for Rio Nuevo.

2           And in order to -- what I believe that, you know,  
3 we, as working together, has established a working  
4 relationship, my goal would be to continue the level of  
5 transparency and communication with the Board.

6           And so if it's the pleasure of the Board, the City  
7 is asking to be a standing item to give you monthly updates  
8 on the downtown streetscape. So if that's possible, that  
9 would be greatly appreciated.

10           Two weeks ago, Mayor and Council approved the  
11 scope of work that you had approved, as well as the phasing.  
12 Since then, what has taken place is that I've been  
13 receiving -- requesting and receiving design proposals from  
14 our City on-call consultants. So similar to what we did  
15 with the Arena, we are using existing on-call contracts to  
16 solicit for design, as well as construction.

17           I'm preparing a project management budget and  
18 schedule for the project. So just to be clear, my time is  
19 not being billed to the project. And there will be two  
20 transportation staff members who will bill their time. But  
21 I will be establishing a weekly budget as to how much time  
22 they are -- they can bill the project. And that will --  
23 that will not be exceeded. And so we'll keep that to a  
24 minimum. So the majority of that \$750,000 will go to the  
25 streetscape where it's needed.

1           And then, the last update is that I have started  
2 to schedule meetings with all project stakeholders. And the  
3 City will be going to the Downtown Tucson Partnership  
4 monthly meetings to give them updates as well.

5           CHAIRMAN McCUSKER: No other calls to the  
6 audience. Somebody can move to adjourn.

7           SECRETARY IRVIN: So moved.

8           CHAIRMAN McCUSKER: Second, please?

9           TREASURER SHEAFE: Second.

10          CHAIRMAN McCUSKER: All in favor, say aye.

11                           (Ayes.)

12          CHAIRMAN McCUSKER: We stand adjourned.

13                           (The meeting concluded at 3:20 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.

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John Fahrenwald