

Approved by the Board of Directors of the
Rio Nuevo Multipurpose Facilities District
on _____

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

Thursday, January 6, 2011

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

A meeting of the Board of Directors of the Rio Nuevo Multipurpose Facilities District was held on Thursday, January 6, 2011 in the Tucson Convention Center, Greenlee Room, 260 South Church Avenue, Tucson, Arizona commencing at 2:00 pm.

Prior to Roll Call:

Chair Bain made an announcement and passed out a handout in connection with David Jones' resignation which is to be effective as of Monday, January 10, 2011.

1. Roll Call

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

	Appointee	Present	Absent/ Excused
Jodi A. Bain, Chair	Senate	x	
Dan Cavanagh, Member	Governor	x	
Jeff DiGregorio, Member	Tucson	x (arrived at 2:09)	
Carlotta Flores, Member	Governor	x	
Rick Grinnell, Member	Senate	x	
Mark Irvin, Vice Chair	House	x	
David N. Jones, Member	Governor	x (arrived at 2:28)	
Alberto Moore, Secretary	Governor	x	
Anne-Marie Russell, Member	Tucson		x
Victor Soltero, Member	South Tucson	x	

2. Calls to the Audience.

Michael Toney – Spoke about fiscal year 2008 when Rio Nuevo was operated through the City Manager's Office; he asserted they spent 19 million and claimed that was illegal. He then stated the payments in connection with the Series Bonds will be 9.3 million and "you are broke." Mr. Tony then left it to the Board to decide to do something.

3. Report from Counsel with potential direction/action from the District:

i: Status of foundation of the Presidio Building.

Robert Gugino reported that on December 23rd Mark Irvin arranged for an inspection of the South wall of the Presidio Building where there had been some concern about damage. Mark Irvin was able to get a licensed contractor (Daren Lowry with R & L Builders) to look at it at no expense to the District and he found that there were simply some loose bricks that amount to cosmetic issues but nothing structural. It is likely the same licensed contractor will fix it at no cost to the District.

ii: Status of Settlement IGA Term Sheet.

Robert Gugino reported that he is continuing to work with the City on obtaining clarification and further information. Accordingly, Mr. Gugino reported that rather than give a partial report, he anticipates being in a better position to give a full report at the next meeting on January 20, 2011. However, Mr. Gugino did bring one part of the Settlement Term Sheet to the Board's attention in connection with the Depot Garage. The temporary agreement entered into with the City on October 5, 2010 providing that the City would pay the District \$10,000 per month expired on December 31, 2010. As such, and since there is not a Final Settlement Agreement in effect yet, the City is requesting a 60 day extension of the temporary parking agreement with a monthly rental rate of \$4,833.33. This rate is in accordance with the Draft Settlement Term Sheet that the Board approved on December 15, 2010.

Alberto Moore moved to extend the parking arrangement with the City, but at the current rate of \$10,000 per month as opposed to the \$4,833.33. This motion was seconded by Rick Grinnell. The motion to extend at the current rate of \$10,000 per month failed a roll call vote (4 no votes – Carlotta Flores, Mark Irvin, Victor Soltero & Jeff DiGregorio, 3 yes votes – Alberto Moore, Bain and Rick Grinnell and 1 abstention – Dan Cavanagh).

Jeff DiGregorio then moved the Board to enter into an extension of the parking agreement at the City's requested rate of \$4,833.33 in accordance with the Term Sheet until the earlier of sixty (60) days (to be no later than February 28, 2011) from now or the date the Final Settlement Agreement is executed and in effect. Victor Soltero seconded the motion. A Roll Call vote was made and the motion passed (5 yes votes – Carlotta Flores, Mark Irvin, Victor Soltero, Jeff DiGregorio & Dan Cavanagh, 3 no votes – Alberto Moore, Bain & Rick Grinnell).

Chair Bain asked if there were any questions on the IGA Term Sheet. A question was directed to Robert Gugino regarding the status of certain contracts that the Board had voted not to pay a couple of week ago. Mr. Gugino reported that the status was the same; there have been no expenditures of District funds that haven't been approved by the Board.

Chair Bain then asked Mr. Gugino if he had an estimate on when studies would be ordered or surveys would be beginning so as to give the Board an idea of what is going on with

the various points from the term sheet. Mr. Gugino reported that the preparation for the surveys was being done now and that they should be ordered next week. He also reported that in his discussions with Michael Rankin they had discussed the possibility of opening escrows now so that they would be in place in the event properties are transferred.

Chair Bain then asked if the Board wanted to discuss the Arena parcels that Mark Irvin and Rick Grinnell are the designated District representatives on in connection with the Arena RFQ/RFP that the City is conducting. Mark Irvin reported that Rick Grinnell and he had met yesterday with various people on City staff, including Mike Letcher, to review the proposals. Due to the structuring of a couple of the proposals in combination with the need for additional time to review, City Council has decided not to address the issue in their February 19, 2011 meeting, but instead address it in the meeting thereafter. Accordingly, Mr. Irvin and Mr. Grinnell will meet with City staff again on Wednesday to continue discussions and analysis of the various offers. Mr. Irvin reminded the Board that the District doesn't actually have a vote regarding the RFQ/RFP; they simply have been asked to offer an opinion. Rick added that they had discussed the utilization of the asset in order to generate TIF revenues as quickly as possible as opposed to leaving it vacant. Chair Bain indicated that her understanding is that the City's goal is to accomplish the closings prior to the end of June, 2011 in order to generate income quickly. Rick Grinnell pointed out that in spite of this goal, the City has time.

iii. Update on Governance IGA.

Keri Silvyn reported that the editorial changes and cross-reference changes the Board had requested in their last meeting in connection with the IGA had been made and forwarded to the City of Tucson and the City of South Tucson. Ms. Silvyn reported that the City had already approved it and that the City of South Tucson has it scheduled for their Mayor and Council hearing on Monday, January 10, 2011. Ms. Silvyn understands that the City of South Tucson doesn't have any legal issues with the IGA; they are simply discussing it and potentially approving it at that hearing.

At approximately 2:20 p.m. David Jones arrived.

4. Executive Director update and discussion with possible action.

Chair Bain opened up a discussion about the possibility of allowing additional submissions of candidates' applications in connection with the search for an Executive Director.

Following discussions Dan Cavanagh made a motion to reopen the application process for an additional ten business days from the posting of the opening and in the mean time the Board is to continue the review process of those applicants which have met the existing guidelines. David Jones seconded. A Roll Call vote was called and the motion passed (8 yes; 1 no – Alberto Moore).

5. Discussion and Possible Action on Allocation of Funds to the TCC, Rick Grinnell.

Rick Grinnell opened a discussion about the need to improve the Tucson Convention Center. Mr. Grinnell discussed the importance of getting input from the gem show organizers as well as showing some alacrity in disbursing funds in order to get the renovations started in a timely manner. After further discussions, Robert Gugino reminded the Board that Section 13 of the Term Sheet that has been approved by Mayor and Council and was subsequently approved by the Board on December 15, 2010 contains a provision allocating at least three million dollars from 2008 bond proceeds for the Tucson Convention Center renovations. There was then a discussion about inviting a presentation from Tucson Convention Center staff on what items are most in need of renovation and how the three million could be best put to use.

6. Proposed Hotel Project:

i. East entrance punch list matter update. Mark Irvin and Alberto Moore.

Chair Bain asked Mark Irvin and Alberto Moore to give a report to the Board on the information they had gathered regarding the punch list items. Mark Irvin asked if prior to presenting any information in connection with the punch list items he might ask counsel a question regarding a concern about perceived conflicts of interest. Mr. Irvin reminded the Board and counsel that he had fully disclosed his prior connection to the Sundt Companies on the Conflict of Interest Disclosure Form each Member of the Board had to fill out prior to serving. The potential conflict of interest that Mr. Irvin was concerned about is that he had helped Sundt Companies find a building for their headquarters long before he had any connection to Rio Nuevo. He also has an ongoing listing for a portion of Sundt's new headquarters that are not located downtown. During the ensuing discussions, a number of Board Members opined that there was no conflict of interest whereas other Board Members opined that often perception is or becomes reality whether it is true or not. Accordingly Mr. Irvin posed a question to counsel about who determines when a conflict exists and when it doesn't. Mr. Irvin expressed that his main concerns were to keep everything out in the open so there would be no room for speculation and to get guidance from counsel on whether or not he should participate in any discussions involving Sundt Companies since, even though the relationship was long ago and he didn't feel there was an actual conflict of interest, he did not want to risk any appearance of, or the inadvertent commission of any impropriety.

Keri Silvyn explained that state statutes are what determine a conflict of interest; in general, public bodies ask their own attorneys for advice on whether a conflict exists; if necessary, the Attorney General can render an opinion upon request about whether or not a conflict of interest exists. Unfortunately, the time frame on getting those opinions is on average approximately six months. Ms. Silvyn further stated that the statutes on conflicts of interest were not intuitive and that there were only seven exceptions to the substantial interest rule which is defined as any interest other than remote and that Mr. Irvin's prior or current connection to Sundt Companies did not exactly fit into any one of the seven. Accordingly, Ms. Silvyn explained to Mr. Irvin that if he wanted to act conservatively he could disclose, as he's already done, and then refrain from any discussion or voting on any issue connected to the potential conflict. The Board could also choose to ask for an Attorney General opinion, however, if that is the option Mr. Irvin chooses, the issues would have to be tabled until an opinion was rendered.

After much discussion, Rick Grinnell respectfully requested Mr. Irvin recuse himself from any dealings with Sundt Companies, the hotel project or the punch list close-out. Mr. Irvin expressed concern about causing any delays and that even though he felt it may be an over-abundance of caution, he is opting to refrain from participating in any discussions or voting on any motions connected to any items or issues concerning Sundt Companies.

Call to Audience: Kevin Warner spoke briefly about selling the rodeo grounds and moving the ballpark to the hole in the ground.

The Board then called for and took a five minute break.

After returning from break, several Board Members and the Chair expressed their gratitude to Mr. David Jones for his service and all indicated that he and his witticisms will be missed.

Dan Cavanagh left at approximately 3:50 p.m.

Discussion then returned to:

Item 6(i): East entrance punch list matter update. Alberto Moore

Alberto Moore reported that the two main punch list items are the cracks and visible rebar on the floor of the east wing of the Tucson Convention Center and the location of the steel column. A discussion ensued whereupon Mr. Kurt Wadlington of Turner/Sundt was available to answer questions. Mr. Wadlington said that the rebar was not pulling up or coming through the concrete, but that the request to grind down the concrete to expose more aggregate had revealed the rebar in a small area; however, it is structurally sound, it's simply an aesthetic issue that they would like the opportunity to fix. Additionally, there were discussions regarding cracks in the concrete that the Board was concerned needed to be fixed. There were questions raised about the depth of the slab and whether it met the minimum 4" requirement. Mr. Wadlington stated that the slab is a 3" fluted metal deck with an additional 2.5" of concrete on top. Thus, even with the grinding, it more than meets the code requirement of 4". After the question and answer period, Mr. Wadlington reiterated that they would like the opportunity to repair the floor. In connection with the column, the possibility of extending the standard warranty to a fifteen year warranty was discussed.

ii. Garfield Traub, Turner and Sundt Presentation on East Entrance Payment Applications, GMP and Close-Out matters with discussion and possible direction by District, Mark Irvin.

Mr. Tony Traub, Steven Moffett and Kurt Wadlington presented a PowerPoint presentation in connection with Pay Application Numbers 11, 12, 15 & 16. Please see attached.

After the presentation Jeff DiGregorio put forth a two part motion:

- A. The City will be authorized by the District to fund the Pay Requests 11 & 12 and 15 & 16, directing the City to release \$310,212.47 representing payment of Pay Requests 11

and 12, while retaining \$50,000 for retention due to outstanding work at the East Entrance for punch list items to be completed; directing the City to release \$177,808.88 representing payment of Pay Requests 15 & 16, and

- B. and subject to a holdback of \$50,000 for the punch list items of the structural column and the concrete floor being remedied as acceptable to the District; ***subject to the City of Tucson's Finance Department's final accounting review and approval;*** and

Said monies to be paid only upon the following conditions:

- (i) the District obtaining from Garfield, Traub, Turner and Sundt (each separately and jointly) a fifteen year warranty on the column structure. The warranty would be from Garfield Traub, GTDA Arizona, Turner Sundt TS, Turner and Sundt all collectively, jointly and individually as those entities were project specific and thus may not be in existence in the future; and
- (ii) mutual execution of a full and final release between the parties from any and all liabilities arising out of contractual obligations that release the District from any current and/or additional Pay Applications and Change Orders while maintaining the obligations of Garfield Traub, GTDA Arizona, Turner Sundt TS, Turner and Sundt (each separately and jointly) in connection with the above-referenced 15 year warranty on the column structure.

Victor Soltero seconded the motion.

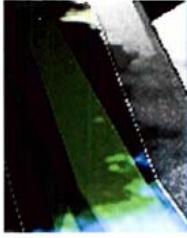
Motion passed with a roll call vote of 6 to 0 with 1 abstention – Bain abstained (Mark Irvin did not participate in the discussion or vote).

Direction to Counsel: draft release as quickly as possible.

7. Executive Session:

No Executive Session was called; quorum was lost; and no further announcements were made.

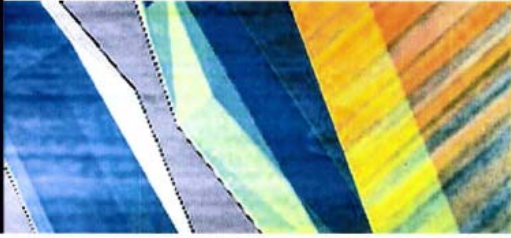
The meeting adjourned at approximately 6:26 pm.



Tucson Convention Center Headquarters Hotel and Expansion



January 6, 2011



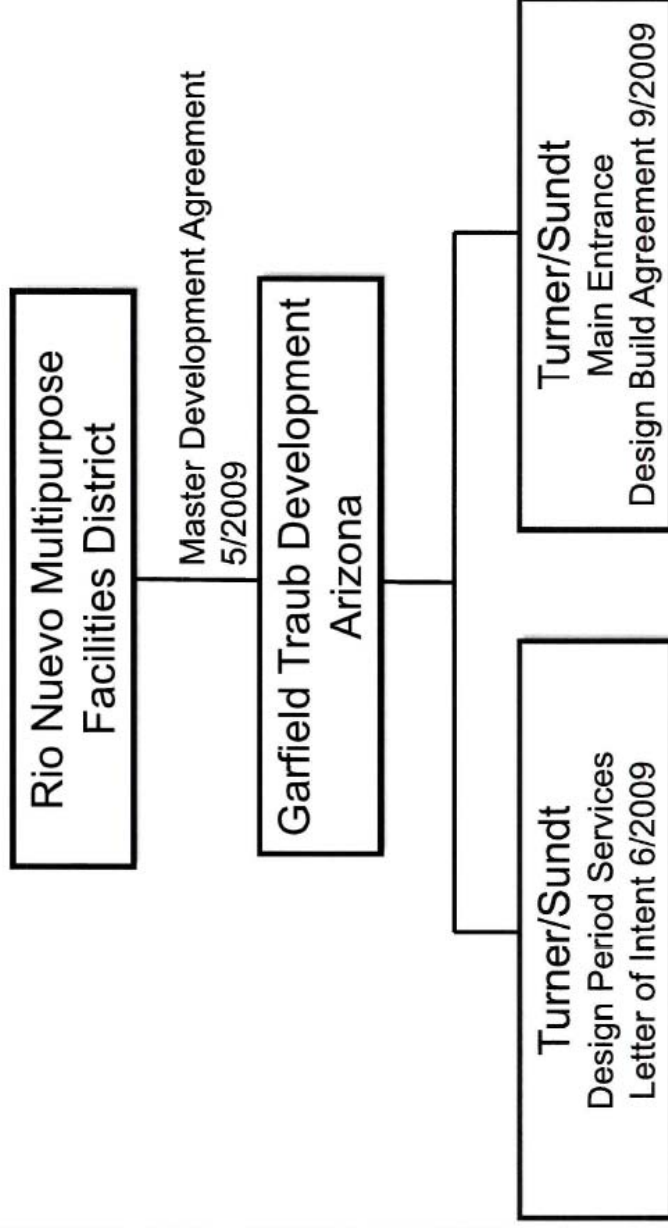
Pay Application and Change Order Review



Design Period and Main Entrance Services



Contractual Relationships



Outstanding Pay Applications

MAIN ENTRANCE DESIGN BUILD CONTRACT

Pay Request #11 - <i>misc. billings for construction work</i>	\$26,195.21
Pay Request #12 - <i>final payment including retention</i>	<u>\$284,017.26</u>
	\$310,212.47

DESIGN PERIOD CONTRACT

Pay Request #15 - <i>DLR and Krazan</i>	\$160,368.90
Pay Request #16 - <i>TestMarcx</i>	<u>\$17,439.98</u>
	\$177,808.88



History of the Main Entrance GMP



Guaranteed Maximum Price (GMP)

\$4,307,231.00

Net Change Orders

\$ 209,000.00

Guaranteed Maximum Price Contract

\$4,516,231.00

Payment History

Amounts Paid-To-Date

\$4,206,018.53

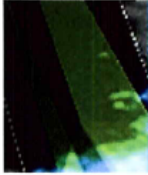
Unpaid Pay Request #11

\$ 26,195.21

Unpaid Pay Request #12

\$ 284,017.26

\$ 4,516,231.00



History Between GTDA & Turner/Sundt GMP



Main Entrance GMP Under Design Build Contract	\$4,307,231.00
<u>Change Orders to Turner/Sundt from GTDA</u>	
GTDA #1 – Sales Tax Deduction	(\$211,048.00)
GTDA #2 – Missing Caissons	\$202,994.00
GTDA #3 – DLR Design Fees paid prior to Design Build Contract Date	(\$309,000.00)
GTDA #4, 5, 6, 7, 8 – Uncompensated work	<u>\$22,226.82</u>
Final Contract amount	\$4,012,403.82

Pending Main Entrance Items

Pending Punch List Completion:

- Realign Southeast column \$2,503*
- Ground concrete floor repairs \$ 500*

* values of required work as quoted by subcontractors



Main Entrance Pay Applications Q&A



Design Period Contract Amounts Pending



DESIGN PERIOD CONTRACT

Pay Request #15	\$160,368.90
<i>DLR</i>	\$118,497.40
<i>Krazan (Owner obligation)</i>	\$ 41,871.50
 Pay Request #16	 \$17,439.98
<i>TestMarcx (Owner obligation)</i>	

Design Period Contract Summary

Predevelopment Period Budget	\$400,000.00
Design Period Budget - Exhibit D Revised	\$17,438,809.00
Owner Testing Contract - not in Exhibit D Budget	<u>\$81,780.00</u>
Total Predevelopment and Design Period Budget	\$17,920,589.00
Less: Main Entrance Budget	\$4,307,231.00
Less: Starwood DCSA Contract (Directly paid by City)	<u>\$40,000.00</u>
Net Adjusted Design Period Budget	\$13,573,358.00
Total All Design Period and Predevelopment Period Payments	<u>\$13,546,675.00</u> *
Net Contract Over/(Under) Budget	<u>(\$26,683.00)</u>

* Includes Pay Applications # 15 & # 16

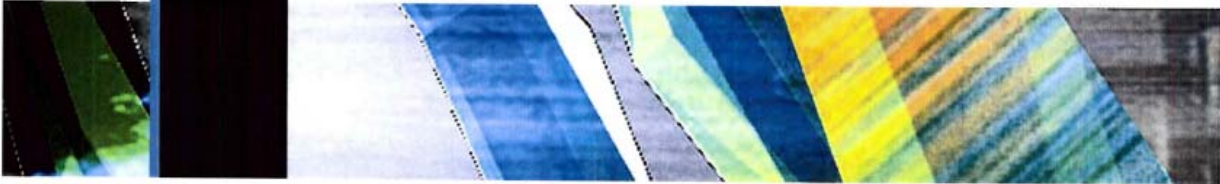


Master Development Agreement Language



5.1.11 Third Party Services. Developer shall assist Owner and/or Design Builder in selecting the professional services of surveyors, special consultants and testing laboratories. Developer shall require materials testing and third party inspections as called for in the specifications for the Project. Owner may hire its own consultants in connection with peer reviews of the Work, the cost of which shall be included as an allowance in the Project Budget.





Design Period Pay Applications Q&A





Uncompensated Work

Uncompensated Turner/Sundt Work

\$27,980

Uncompensated GTDA Expenses

\$22,220

Main Entrance additional design services (DLR)

\$185,997*

Hotel pre-construction delays (Turner/Sundt)
Original Scheduled GMP Decision – 1/27/2010
Actual GMP Decision - 10/26/2010

\$734,688*

*As included in hotel GMP



Garfield Traub Development

Stephen Moffett, President, Hospitality Division

13455 Noel Road, Suite 2150

Dallas, TX 75240

972-716-3843 phone

972-991-5150 fax

Design Period Contract Detail

	Predevelopment Period	Design Period Budget	Payments per Design Period		Total	Payments per Design Period	Pay Apps		
			<u>Contract *</u>	<u>Exhibit D</u>				<u>Pay App</u>	<u>Pay App 15&16</u>
A. Original Agreement Amounts									
GTD Fee	275,000.00	3,730,000.00	4,005,000.00	3,974,000.00	3,974,000.00	3,974,000.00	3,974,000.00		
GTD Construction Manager ***	0.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00		
DLR Fee	100,000.00	7,649,681.00	7,749,681.00	7,631,129.60	118,551.40	7,749,681.00	7,749,681.00		
Turner Sundt Fee	25,000.00	1,231,897.00	1,256,897.00	1,256,896.71	1,256,896.71	1,256,896.71	1,256,896.71		
Main Entrance GMP		4,307,231.00	4,307,231.00	3,997,018.60	3,997,018.60	3,997,018.60	3,997,018.60		
Additional Consultants		0.00	0.00	52,212.50	52,212.50	52,212.50	52,212.50		
Environmental, Geo-tech		180,000.00	180,000.00	219,454.52	219,454.52	219,454.52	219,454.52		
Survey, Plat, Pad Amendment		105,000.00	105,000.00	116,672.98	59,257.48	175,930.46	175,930.46		
Permits, PAD Amendment Fee		45,000.00	45,000.00	36,649.95	36,649.95	36,649.95	36,649.95		
Starwood Interim DCSA Fee		40,000.00	40,000.00	39,273.49	39,273.49	39,273.49	39,273.49		
Owners Contingency	0.00	100,000.00	100,000.00	31,850.00	0.00	31,850.00	31,850.00		
Total Exhibit D and Predevelopment Period	400,000.00	17,438,809.00	17,838,809.00	17,405,158.35	177,808.88	17,582,967.23	17,582,967.23		
Deduct - Starwood DCSA Fee (Direct payment from City, not on pay app)		-40,000.00	-40,000.00	-39,273.49		-39,273.49	-39,273.49		
Deduct - Main Entrance GMP (separate discussion)	0.00	-4,307,231.00	-4,307,231.00	-3,997,018.60	0.00	-3,997,018.60	-3,997,018.60		
Subtotal	400,000.00	13,091,578.00	13,491,578.00	13,368,866.26	177,808.88	13,546,675.14	13,546,675.14		
Add - Owners 3rd Party Testing Contract (Krazan)	0.00	81,780.00	81,780.00						
Total Predevelopment and Design Period Budget (net of Main Entrance)	400,000.00	13,173,358.00	13,573,358.00				13,546,675.14		

Exhibit D – Design/Development Period

Cash Flow Statement

TURNER/Sundt
Tucson Hotel
Preconstruction Cashflow Update
9/11/2009

	Total	June	July	August	September	October	November	December	January	February	March	April	May	Total
Garfield / Traub Construction Manager	3,730,000 50,000	339,091	339,091	339,091	339,091	339,091	339,091	339,091	339,091	339,091	339,091	339,091		3,730,000 50,000
DLR Architects (1)	7,649,681	550,777	550,777	627,274	673,172	673,172	673,172	684,221	684,221	684,221	684,221	781,967	382,486	7,649,681
Turner / Sundt	1,231,897	101,508	102,027	101,761	94,892	127,956	132,956	150,843	150,242	107,494	99,614	62,605		1,231,897
Main Entrance	4,307,231													
DLR Architects	309,000	77,250	92,700	139,050			957,000	937,000	931,000	872,000	131,231			309,000
Construction	3,998,231													3,998,231
Environmental, Geotechnical, Archeological (Tierra, Terracon) (2)	180,000		0	5,000	0	40,000	50,000	40,000	35,000	10,000				180,000
Survey/Plat, PAD Amendment (Rick)	105,000		5,000	18,000	21,000	25,000	25,000	11,000						105,000
Permits, PAD Amendment Fee (3)	45,000				17,000	26,000	1,000	1,000						45,000
Starwood Interim DCSA Fee (4)	40,000					5,000	7,500	7,500	5,000	5,000	5,000	5,000		40,000
Owners Contingency (5)	100,000									50,000	50,000			100,000
Total Mo		1,068,626	1,089,595	1,230,176	1,145,155	1,411,219	2,195,719	2,180,655	2,154,554	2,077,806	1,314,157	1,188,663	382,486	17,438,809
Earned In:		May	June	July	August	September	October	November	December	January	February	March	April	
Paid In:		June	July	August	September	October	November	December	January	February	March	April	May	
Cumulative		1,068,626	2,158,221	3,388,397	4,533,551	5,944,770	8,140,488	10,321,143	12,475,697	14,553,503	15,867,660	17,056,323	17,438,809	

Notes:

- (1) This includes the design fee for DLR Architects, as well as all sub-consultants under their direction such as Kay Lang (interior design), Glumac (MEP engineering), etc.
- (2) This includes contracts with Terracon for environmental and geotechnical work, and Tierra ROW for archeological work.
- (3) This includes permit fees paid to date for the project and the estimate for the PAD Amendment fee to be paid in September. There are approximately \$85,000 in additional permit fees and impact fees to be paid before the start of construction included in the Main Entrance budget above.
- (4) This was a result of the negotiation with Starwood to reduce their overall DCSA fee, and pay them a small portion of the fee during the design period. The Starwood DCSA fee in the original budget was \$420,000. It is now \$393,750 (\$750 per room) with \$35,000 of that amount (plus expenses) to be paid during the design phase.
- (5) This is the contingency for any environmental clean up on the main entrance, any additional archeological work necessary after phase 1 work, and other unexpected costs.