



SPECIAL BOARD MEETING MINUTES
Wednesday, August 19, 2009 – 9:00 a.m.
Tahoe City Public Utility District

FINAL MINUTES

ATTENDANCE: Ron Parson, Deb Dudley, Deanna Gescheider, Ron McIntyre, Debbie Casey, Dan Tester, Tom Murphy, Jennifer Merchant and Alex Mourelatos

STAFF IN ATTENDANCE: Steve Teshara, Kym Fabel, Andy Chapman, Sally Lyon, and Sarah Holster

OTHERS IN ATTENDANCE: Jan Colyer

1.0 CALL TO ORDER – ESTABLISH A QUORUM

1.1 The meeting was called to order at 9:12 a.m. by Vice Chairman Ron McIntyre and a quorum was established.

2.0 PUBLIC FORUM

2.1 Debbie Casey reported that the Gene Upshaw Memorial Golf Classic was a huge success. The tournament raised \$100,000 in funds for Pancreatic Cancer research.

3.0 AGENDA AMENDMENTS AND APPROVAL

3.1 **M/S/C (Parson/Murphy) (9/0) to approve agenda as presented.**

4.0 CONSENT CALENDAR

4.1 **M/S/C (Parson/Tester) (9/0) to approve the consent calendar as presented.**

5.0 DISCUSSION AND POSSIBLE ACTION TO APPROVE CHANGES TO THE PROPOSED FY-2009/10 PLACER COUNTY/NLTRA CONTRACT

5.1 Alex Mourelatos summarized recent discussions between the NLTRA Executive Committee and the Placer County CEO's Office related to contract negotiations. Jennifer Merchant reminded the Board that the final NLTRA/Placer County contract will be submitted to the Placer County Board of Supervisors for approval on September 8th. Discussions at the meeting included fund balance carryover. Alex reported that FY-2008/09 fund balance carryover (if any) will accrue to the Resort Association (infrastructure) up to the historic funding level. Ron McIntyre clarified that \$50,000 from our budget is earmarked for marketing from infrastructure. If we receive carryover up to \$50,000, that amount would go back to infrastructure to make it whole. There needs to be clarification on the use of funds if carryover exceeds \$50,000. Jennifer Merchant said the CEO's intent is that if less than \$50,000 in fund balance carryover is received, the \$50,000 would be considered a loan to marketing and would need to be paid back. However, if carryover exceeds \$50,000 the funding does not need to be paid back, but the entire amount would go into the infrastructure account and not be allocated across departments as in the past. The CEO's office feels that the infrastructure account is

under funded in the FY-2009/10 Budget in comparison to other departments which is why they feel that any carryover should accrue to infrastructure. Deb Dudley said on behalf of the Marketing Committee, if the \$50,000 is considered a loan to marketing, they do not want it. She said they do not want to burden Marketing with a payback in 2011. Ron McIntyre agreed and confirmed that the \$50,000 to marketing was not discussed as being a loan to marketing. He said if there was any confusion at the meeting, the CEO's office should have come back to the NLTRA for discussion before language was added to the contract. Jennifer clarified that if additional funds are needed for marketing over the \$50,000, it would then be considered a loan to be paid back. Alex noted that any carryover from FY-2009/10 would be discussed with the Board of Supervisors, CEO's office, and NLTRA Board in the spring.

- 5.2 Alex summarized this discussion by recapping that the TOT budget amounts will remain the same. The \$50,000 to marketing will be a transfer from infrastructure and not a loan; however, any upside will be used to make infrastructure whole. Any flexibility for additional marketing would likely be in the form of a loan.
- 5.3 Alex said it had been requested that compliance issues be moved to an appendix section of the contract and not within the main body. Alex said there is still an outstanding compliance issue related to conference marketing equity between Washoe and Placer County. He said as it stands, \$98,000 is being held until compliance is achieved. The CEO's office has suggested removing language for individual punitive damages to a more general provision to withhold "liquidated damages" in the event the NLTRA does not perform. The current contract suggests a 5% penalty. Deb feels there should not be punitive actions if progress is being made towards compliance. She said a statement to that effect should be added to the contract. Ron Parson said our contract is between the Board of Supervisors and Board of Directors. Regardless of how punitive actions are determined, that authority should not lie with the CEO's office, but the Board of Supervisors. If the CEO's office determines we are not in compliance they can bring that forward. He said that preserves the integrity of the process. Deb agreed and added that if we come to an impasse with the CEO's office, there should be a mediation process in place. In regards to the conference marketing equity issue, Deb said she asked the CEO for specific questions that need to be addressed to reach equity. Jennifer said she submitted a list of questions last May related to Incline's conference marketing operational expenses and did not receive a response. Independently, she calculated that the amount it would have taken for Incline to spend equal to Placer County for conference marketing was \$85,000. In addition, she added 1% penalty since the terms of contract were not met, for a total penalty of \$98,000. Sally Lyon confirmed that the monthly County check to the NLTRA was reduced by \$98,000. She confirmed it did not include documentation to explain the reduction in payment. Dan Tester said he was unaware that we were subject to a \$98,000 penalty. He feels we have been making progress on this issue and should not be punished because we are at an impasse. Jennifer noted that equity is determined by the County Executive Office. Alex suggested scheduling a separate meeting to address this issue. Steve Teshara noted the contract requires the County to provide a written notice of intent to withhold payment. He said a notice was not provided which constituted a violation of the contract.
- 5.4 In regards to Infrastructure withholding, Alex said all funds allocated to infrastructure in FY-2009/10 will be held in reserve for maintenance of essential county services in North Lake Tahoe in the event of further county budget cuts by the state. He said that a mid-year assessment will determine whether the funds will be needed. He confirmed that the infrastructure withholding does not include funds for infrastructure overhead and research and planning. Tom asked for clarification regarding the term "essential county services". Jennifer said the state may take gas sales tax which could impact transit services and snow removal. Steve noted the contract states that prior to committing such funds, the County and NLTRA will meet and confer. Ron Parson suggested adding the word

“agree” to that statement otherwise we allow ourselves to be dictated to by the CEO. Jennifer confirmed the funds, as approved by the eastern county voters (the 2%) were originally intended to be spent in eastern Placer County for general County services. Ron McIntyre disagreed and said the funds were for specific purposes as described in the Tourism Development Master Plan and alluded to in the voter information packets. Alex said the County now views these funds as emergency contingency for eastern Placer County services. Ron Parson said the County’s intent for these funds needs to be clear. He feels they need consensus from the community on how money is spent. Tom asked if the state would reimburse funds used. Alex said he would follow-up. Jennifer noted that there is not a pay back requirement in place for the gas tax. Alex said a payback provision will be part of discussions in November. Steve said discussions should also include the likelihood of potential litigation against the state if the state tries to take gas tax funds away from local government.

5.5 Alex reported that there is a commitment by the NLTRA and County to work to develop a capital improvement program for North Lake Tahoe. Ron McIntyre said we need to discuss allocation of monies and the prioritization of capital improvement projects for our area. He said projects should be logically within the purview of NLTRA and essentially visitor serving capital improvements. Alex said the NLTRA will work with the County to define the program. Deb added that we need to discuss with the Board of Supervisors our historic funding levels and, on a broader scale, develop a master plan for capital improvement projects. Alex suggested we agendaize these topics for future Board discussion.

5.6 Language added to the contract by the CEO’s office which says “Allocation of funds for all projects, programs and services implemented directly by the COUNTY shall be conducted via internal journal transfer following recommendation by the RESORT ASSOCIATION Board of Directors and approval by the BOARD OF SUPERVISORS and based on an annual agreement. Journal transfers as described above will be accompanied by electronic and written notice to the RESORT ASSOCIATION.” Steve said staff has concerns about this language. As confirmed by a conversation staff had with our independent auditor, funds which do not actually enter the control of the NLTRA and get reflected on our financial statements are not part of our audit process. Accordingly, staff is concerned funds transferred internally within the County cannot be considered part of our budget. Alex said there is a commitment from the County to define this transfer process for the contract. Deb Dudley said during negotiations, she was unaware of any implications of internal journal transfers. Sally confirmed that the proposed payment schedule (Attachment B) would not include those funds as payable to the NLTRA. Our auditor would not consider those funds as part of our budget, which would reduce NLTRA revenue and expenditures accordingly. Staff understands that the internal journal transfer process would include funding for the Placer/Lake Tahoe Film Office. Deb expressed concern that we would no longer have any oversight or input on how the Film Office uses funds to generate ROI. Sally said that as an alternative, our auditor has recommended that we set up a process for transferring funds electronically between the County and NLTRA. A timeframe would be established to ensure that these transfers are efficient and expeditious, based on the approved payment schedule and invoices, as appropriate. Alex reiterated his earlier statement that the NLTRA and Placer County are committed to working on a process. Jennifer expressed concern about the budget implications. Steve said the funds need to come to the NLTRA and then be transferred back to the County for transparency purposes and so the funds would remain part of the NLTRA’s budget. Jennifer fails to see the difference between that and funding that already does not go through the NLTRA such as County Services. Steve explained that county services is in the budget for calculation purposes and not funding we receive. Alex agreed and said funding we have control over is in our budget. Jennifer confirmed that the NLTRA would still control the funds. She said funding would be expended by Placer County for services approved by the NLTRA. Jennifer added that there is an

addendum to the contract that lists transit services funded by the NLTRA but provided by Placer County. She said there are still controls in place. The County only intends to improve the efficiency of payments. Ron McIntyre said the contract (Visitor Support and Transportation) needs to clearly delineate that expenditures are not intended to be allocated in the future beyond the contract year. He said we also need to address interest income. Steve pointed out that no interest will accrue to the NLTRA if Placer County is holding the funds.

- 5.7 Sally reported that, to date, we have not received the Infrastructure check for funds that were requested in June. Steve confirmed that he received an email from Jennifer indicating that the check has been approved for release. Jennifer said the check is usually sent within seven days of being released. \$98,000 was withheld from the final NLTRA monthly payment pending the resolution of the conference marketing equity issue. Jennifer said she would provide documentation as to how this amount was calculated. Other items discussed included the change in the marketing reserve requirement, down to 7.5% which is reflected in the contract. The punitive language for violations of the competitive bid requirement will not be included. There have been modifications to address insurance changes that were requested. In regards to modifying the contract to allow the Board to add contract negotiations under Closed Session, it was agreed that the language was not necessary since the Board can move to a noticed Closed Session to discuss contract negotiations with Placer County as appropriate.
- 5.8 Alex summarized the two main items that need follow-up. Those include the compliance issue and internal journal transfers. He suggested scheduling a meeting with Jennifer Merchant, Deb Dudley, Bill Hoffman and Andy Chapman to further discuss the conference equity issue. Deanna Gescheider said we also need clarity on the \$50,000 to marketing and any carryover over \$50,000. Tom asked for a definition of essential County Services and what services the internal journal transfers would include. He feels that going forward, any punitive actions should be reviewed and approved by the Board of Supervisors. Tom said the Board is comfortable with direction of the Executive Committee, but needs clarity. Alex said the requested action is for the Board to support the key new contract provisions and Board authority for the Board Chair to sign the final contract package.
- 5.9 Jennifer reported on changes to the matrix (Attachment A1). She said the language related to the marketing conference equity issue has been simplified. In addition, an item was added to require infrastructure contracts with agencies and organizations to whom we grant Infrastructure funds. Alex asked if the contract is required based on a minimum dollar amount. Jennifer confirmed that all grants would require a contract including marketing grants. Steve expressed concern about staff time preparing contracts. Ron Parson said contracts should be a way of doing business and does not need to be in the matrix. Ron McIntyre said this issue needs to be further reviewed. Steve agreed and said any contract violation is subject to a 5% penalty which is substantial. Alex agreed and said the percentage needs to be addressed. Ron Parson reiterated his earlier comment that punitive action should also be determined by the Board of Supervisors and not the CEO's office. Deb said the penalty should be equal to the item being disputed. Debbie Casey is concerned about reaching an agreement. Tom said he favors an arbitration process if an agreement cannot be reached. Debbie said the performance clause should read that the Board of Supervisors determine whether there is an issue and appropriate resolution, rather than a 5% penalty.
- 5.10 Jennifer said the deadline to submit a completed contract to County Counsel is Monday, August 24th by noon. September 3rd or 4th is the last day to get the signed contract down to Board of Supervisors for inclusion into their packet. Ron McIntyre expressed concern about the timeframe. The Executive Committee agreed to meet today following the

Board meeting to address changes. A separate meeting will be scheduled to review additional staff and County Counsel recommendations to the contract.

- 5.11 M/S/C (Parson/McIntyre) (8/0/1 Abstention-Merchant) to approve key provisions to the proposed FY-2009/10 Placer County/NLTRA Contract with clarification as stated above. The Board gave authority to the Board Chair to sign the contract based on a majority decision by the Executive Committee with the exception of a major deviation from Board direction.**

6.0 DIRECTORS' & STAFF COMMENTS

- 6.1 Jennifer Merchant anticipates TOT numbers to be available soon. Once available, she will send information to Alex and NLTRA staff.

7.0 MEETING REVIEW AND STAFF DIRECTION

- 7.1 There were no further comments.

8.0 ADJOURNMENT

- 8.1 The meeting adjourned at 11:18 a.m.

Submitted by,
Sarah Holster
Executive Assistant