

**DENVER UNION STATION PROJECT AUTHORITY**

**MEETING OF THE BOARD OF DIRECTORS**

*July 9, 2009*

**MINUTES**

**BOARD MEMBERS PRESENT**

**BOARD MEMBERS ABSENT**

Elbra Wedgeworth

Mario Carrera

Peggy Catlin

Tom Gougeon

Terry Howerter

Jennifer Schaufele

Mike West

Marla Lien

Jerry Glick

Don Hunt

Robin Kneich

Judy Montero

Claude Pumilia

**I. CALL TO ORDER**

The Meeting of the Board of Directors of DUSPA was called to order at 1:30 p.m. by Elbra Wedgeworth, DUSPA Board President.

**II. WELCOME AND INTRODUCTION OF GUESTS**

Elbra Wedgeworth welcomed the Board Members and Guests to the meeting.

**III. PUBLIC COMMENT**

There was no public comment.

**IV. ROLL CALL**

At the request of Elbra Wedgeworth, Dawn Bookhardt called roll. Please see above.

## **V. APPROVAL OF MEETING MINUTES**

Elbra Wedgeworth called for comments or amendments to the June 25, 2009 meeting minutes. Jerry Glick moved to approve the June 25, 2009 meeting minutes. Mario Carrera seconded the motion. The motion carried unanimously. [\[1\]](#)

## **VI. BOARD BUSINESS**

### **A. Plan of Finance/Schedule and Update**

Chad Fuller and Alex Brown handed out an outline and conducted a power point presentation regarding the Status of the Capital Funding Loan Application Process, Potential Alternatives and Financial Modeling (see attachments).

Alex Brown stated that his team has had conversations with the FRA and that the financial consultant for RRIF has been retained. He further stated that the financial consultants have reviewed four of the packages of information associated with the application and that the requests to DUSPA for additional information have included requests for copies of the drafts of the cooperation agreements and other intergovernmental agreements for the project.

Mr. Brown then referred to the power point slide regarding the RRIF update and stated that Amanda McKinney informed him that the 90 day clock for the application has not been started by RRIF yet. Mr. Brown suggested that not starting the clock is positive as long as DUSPA and RRIF are communicating and the interaction is proactive.

The remaining slides for the presentation were as follows:

- Sources & Uses of Funds
- Finance Plan Modeling
- Projected Annual Revenue
- Issues/Questions (TIFIA and RRIF)
- Issues/Questions (Capital Markets/RRIF)
- Capital Funding Sequence and Potential Outcomes
- Base Case – RRIF and TIFIA Loans
- Alternative 1 – RRIF and Open Market Bonds
- Alternative 2 – Open Market Bonds and TIFIA
- Alternative 3 – Open Market Bonds
- Comparison of Funding Levels
- Next Steps

Mr. Brown stated that the required financing associated with the current budget and funding sources is \$319 million. He stated that the sources and uses of funds model assists with determination of monthly draw amounts and allows forecasting of the schedule of draws against RRIF, TIFIA or any other source. He suggested that the model and schedule also allow for determination of interest accretion on loaned funds and the flow of funds then leads to

calculation of the 30 year amortization schedule.

Chad Fuller stated that the projected annual revenue graph challenge is not structural from a pure revenue perspective, but that there is not sufficient investment grade revenue. He stated that the \$12 million per year payment to DUSPA from RTD is deemed to be equivalent to RTD's credit rating and is a key for the model.

Mr. Fuller further described and defined the credit subsidy necessary for TIFIA. He stated that it is loan reserve security for the lender and that there is no remaining 2009 budget authority for TIFIA, therefore there is no remaining credit subsidy from the federal government for TIFIA. He suggested that the credit subsidy should be about ten percent for each loan.

Peggy Catlin stated that TIFIA's required credit subsidy ranges from seven to ten percent and that the LBJ Highway in Texas just entered an agreement to pay their credit subsidy up front, at eleven percent.

Chad Fuller responded that the Texas project is good precedent for DUSPA and that, while he knew TIFIA had the regulatory authority to receive the credit subsidy from the project, he was not aware that TIFIA had actually completed this type of loan.



Mr. Fuller suggested that the concept of DUSPA paying its own credit subsidy is to get DUSPA into a different application timeline than the TIGER grant process. He suggested that if DUSPA chooses to not pay its own credit subsidy, DUSPA must follow the TIGER grant process and there would be no chance of approval until the first quarter of 2010. He also stated that he anticipates RRIF approval in September or October of 2009, but that funds from RRIF cannot be released until the project is fully funded.

Mr. Fuller stated that one of the underlying questions with the model and alternatives is the senior debt. He stated that it is clear that a funding model with senior RRIF debt and junior TIFIA debt is acceptable. He suggested however that it is not clear whether capital market debt with RRIF debt is a workable model. He also suggested that the \$225 million loan amount from RRIF is not a certainty if DUSPA is required to go to the open market. Mr. Fuller also stated that the status of the lawsuit against the FTA could impact the model.

Marla Lien suggested that updates on the lawsuit would be a good agenda item.

Alex Brown stated that the Capital Funding Sequence and Potential Outcomes slide is a decision tree for DUSPA that shows the potential outcomes based upon the funding sources. He suggested that the worst case scenario is all open market debt because it is the most expensive debt. He stated that in the next few weeks DUSPA will need to decide on whether it will pursue the TIGER grant process because the time required to pursue TIGER could interfere with other applications.

Mr. Brown concluded the presentation by suggesting that any of the alternatives to obtaining both the RRIF and TIFIA loans will result in DUSPA needing to reduce the project budget.

Claude Pumilia suggested that DUSPA needs to prepare the applications for both TIFIA and TIGER.

Peggy Catlin suggested that most of the information for TIFIA, RRIF and TIGER should be allowable for all of the applications and the benefits are high compared to the cost.

Chad Fuller stated that he has not found or seen the TIGER grant form.

Diane Barrett suggested that the grant must be written and that there is no set form.

Peggy Catlin responded that CDOT has a grant form that it uses.

Dawn Bookhardt stated that she has Section E completed (in reference to the TIFIA application).

Peggy Catlin volunteered the assistance of Liz Kempe and Ben Stein on behalf of CDOT.

Claude Pumilia suggested that, given the alternatives presented today, he recommends that the finance subcommittee look at the thought process of a Plan B to pare down the project, to research loan security features and bring the information to the Board. Mr. Pumilia stated that the subcommittee participants should include the principals with the City and RTD and that Don Hunt has expressed an interest in participating.

Mario Carrera requested clarification on the 90 day clock with RRIF.

Alex Brown explained that it is the statutory timeline wherein RRIF must either approve or deny

a loan application. Mr. Brown stated that even though DUSPA has paid the fee for RRIF to review the application and retain its advisor, he did not know why RRIF has not started the clock. He stated, however, that he believes the interaction with RRIF during the review process is positive and that perhaps because TIFIA is sidelined with no credit subsidy, RRIF may be waiting on TIFIA to allow the process for DUSPA to go hand-in-hand with TIFIA.

Jerry Glick asked whether DUSPA should re-visit retaining an investment banker for the other alternatives.

Claude Pumilia responded that his opinion is that retaining an investment banker at this time is not necessary and that Alex Brown is an investment banker.

Dawn Bookhardt asked, regarding the Projected Revenue slide in the presentation, for reconciliation of TIFIA with the statement that not enough investment grade revenue is available for the project.

Chad Fuller responded that the statement could be worded better because the statement only applies to the open market models.

Alex Brown stated that the red portion of the revenue bars are based upon estimates and include some speculation.

Marla Lien stated that characterizing Alex Brown as an investment banker is difficult because DUSPA started this project with Goldman Sachs. She further stated that Goldman's ideas are gone and that she is not entirely comfortable without an investment banker.

Claude Pumilia responded that as the City and RTD, the finance people in these agencies spend considerable time with investment bankers who have lots of ideas and that he believes DUSPA has not lost anything by losing Goldman.

Peggy Catlin stated she still recommends DUSPA apply for the TIGER grant.

Claude Pumilia agreed with Ms. Catlin.

Dawn Bookhardt stated that the Next Steps slide includes the TIGER grant application.

Jerry Glick stated that a constituency committee for finance may not be appropriate with only the City, CDOT, RTD and Don Hunt.

Claude Pumilia responded that he thought the committee would also include staff such as Diane Barrett and Bill Mosher.

Jerry Glick stated that notice to all Board Members of the finance subcommittee meeting in case they want to come voluntarily.

Elbra Wedgeworth stated that, as a next step, DUSPA should make the finance subcommittee official and that any Board member can attend. She further stated that DUSPA must commit to filing a TIGER application within the next 30 days.

Peggy Catlin suggested that DUSPA set a target amount for the TIGER grant.

Elbra Wedgeworth stated that the dollar amount should be a recommendation of the subcommittee along with regular updates on the grant process.

Tom Gougeon stated that he believes USNC should participate in the finance committee.

Robin Kneich stated that she understands the Developer's Agreement is on hold and that she believes it should remain on hold if there is a risk the scope of the project will be reduced.

Bill Mosher stated that he agreed with Ms. Kneich except that all of the agreements are subject to financing.

Ms. Kneich stated that even if we are approved for RRIF, but we don't get TIFIA, DUSPA may not have full funding.

Bill Mosher stated that he does not know what a Plan B for the project scope would be, but it would be a different project and require re-negotiation of the Developer's Agreement.

B. Owner's Representative Agreement update

Jerry Glick stated that there would be discussion regarding the Owner's Representative Agreement in Executive Session.

C. USNC Agreement update.

Jerry Glick stated that there would be discussion regarding the USNC agreement in Executive Session.

D. Owner's Representative Report.



- i) Revised Limited Notice to Proceed.

Bill Mosher handed out a revised scope of work for Kiewit and stated that his intention is for it to be signed today. He further stated that the only site construction work in this scope is to move the water line. He stated that the top portion of the revised scope has already been paid.

Mr. Mosher stated that the costs in the revised scope have been revised except that the Architecture and Engineering is still moving at full speed, including the design work on the public spaces. He suggested that about \$250,000 will get us to the 30 percent design on the public spaces.

Mr. Mosher also stated that the scope items of property acquisition and leasing are still moving.

Mr. Mosher identified the \$100,000 line item for the partnering sessions and stated that one partnering session will be for the DUSPA Board and the other will be for the working team. He also stated that the money for demobilization is being held.

Jerry Glick inquired about the window replacement in the Historic Station as part of the lease build-out and stated that the historic building should not be touched without approval from the Parks Service.

Bill Mosher responded that the budget work is a continuation of the work that RTD had already started with approvals.

Jerry Glick stated that DUSPA does not want to interfere with potential future tax credits.

Ellen Ittleon agreed that the criteria are very strict for tax credits.

Tim Mackin stated that six windows on the north side of the station have already been replaced and that Kiewit will replace ten more.

Ellen Ittleson stated that it is very important to document the condition of the existing windows to justify the replacement, even if the replacement has already been approved by the Landmark Commission.

Bill Mosher thanked Ms. Ittleson and stated that additional inquiry is necessary.

Elbra Wedgeworth asked whether the Board had any questions regarding the revised scope of work for Kiewit.

Jennifer Schaufele stated that she represents 56 Board Members and that she will have a chance to update them next week, therefore she has been asked to abstain from voting on the revised scope.

Bill Mosher stated that the revised plan is not a revised scope of work, it is an adjustment of the limited notice to proceed.

Jerry Glick asked whether this vote is essentially the Board's approval of Plan 2B as presented at the last meeting.

Bill Mosher responded yes it is Plan 2B.

Tom Gougeon stated that Plan 2B and the adjustment stretches Kiewit to December but that if funding is obtained in September, the scenario could change.

Jerry Glick moved to approve the letter for Kiewit and to adopt Plan 2B, stating that the letter for Kiewit is valid unless or until the funding environment changes.

Tom Gougeon seconded the Motion. The motion carried unanimously and Jennifer Schaufele abstained from the vote.

ii) Critical Issues List.

Bill Mosher also handed out a Critical Issues list. He stated that the major encumbrance permit and Central Platte Valley agreements were urgent prior to revising Kiewit's LNTP, but are off of the front burner because we are not conducting the excavation for the bus box nor are we tearing up the CPV improvements.

Mr. Mosher stated that #18 – Finalize Public Information Plan is still very critical and that #25 – Bus Terminal Stack is urgent.

Mr. Mosher suggested that he does not need to describe the remaining items and will take questions on critical issues. He also handed out a full project budget and suggested that it be an agenda item from now on. He briefly summarized the large handout that shows all project funds and a statement of net surplus in assets for the entire project.

Mr. Mosher identified the accounts payable line item because of a new invoice submitted by Kiewit.

Marla Lien asked whether the process for approvals and payment has been worked out.

Bill Mosher responded that the process has been worked out except that DUSPA needs new forms for construction draws to accommodate all of the information that RTD needs.

Rick Clark stated that there will be a meeting tomorrow to finalize the draw application form.

Bill Mosher inquired as to whether he should submit to Elbra Wedgeworth for approval the payments that are to be made for legal fees.

Elbra Wedgeworth responded that she will approve payments as long as they are within the budget.

Bill Mosher stated that the larger project spreadsheet has not changed very much and that the

financing costs item has a variance because there is a to-be-determined amount for that item. He also stated that he intends to hand out this spreadsheet on a monthly basis and inquired as to whether he should wait for the meeting or distribute earlier.

Elbra Wedgeworth responded that her preference is for Mr. Mosher to give the documents to Dawn Bookhardt and allow her to distribute them prior to the Board meetings.

E. Public Outreach Subcommittee Report.

Mario Carrera handed out a draft RFQ for public outreach and suggested that it could be distributed as early as tomorrow. He stated the goal is to have responses back on August 4<sup>th</sup>, to begin negotiations on August 12<sup>th</sup>

and to announce a finalist by August 21<sup>st</sup>

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Mr. Carrera also stated that if anyone has recommendations for firms to please forward them to him.

Diane Barrett stated that the list of recommendations should go to Ellen Ittleson.

Peggy Catlin inquired as to whether there should be a DBE requirement in the RFQ and referred to the language at the bottom of page 2 of the RFQ.

Marla Lien stated that she did not know whether there is a DBE database for this type of consulting, therefore DUSPA can not just pick a percentage for DBE participation without knowing from the database what resources are available.

Robin Kneich stated that the bottom of page 2 reads more as a goal for outreach, not as a goal for who performs the work.

Jennifer Schaufele asked who administers the consultants and she also asked what the scope for website administration is.



Mario Carrera responded that Bill Mosher and DUSPA will administer the public outreach and that the website designer will tell us what is needed for the website.

Robin Kneich added that we have an RFQ, not an RFP, so that the consultants will tell us what we need and then we negotiate.

David Fine suggested that better definition of "project" on the bottom of page two is merited.

Marla Lien suggested that, since federal funds are being used, federal guidelines should be used.

Robin Kneich stated that she thought all professional services contracts are lumped together and that the goal does not apply to each contract.

Marla Lien responded that if the contracts are being tracked according to the guidelines, then DUSPA has complied, but if not, DUSPA must be careful or risk losing funds.

Jerry Nery stated that RTD's goals are only set for the Design-Build Contract and are at 16% for construction and 10% for design.

Robin Kneich inquired as to whether the goals apply to Alex Brown and Bill Mosher.

Marla Lien responded that the goals definitely do not apply to Alex Brown, but that they may apply to Trammell Crow.

Dawn Bookhardt asked to reconvene after we have figured this out.

Terry Howerter stated that Ken Harden is RTD's expert for DBE goals.

Diane Barrett suggested a special meeting to address the DBE requirements.

Jerry Nery stated that a cooperative group with RDT, CDOT and the City worked together to determine the goals for construction and design.

Robin Kneich suggested that additional clarity is needed and that random goals can not be set.

Elbra Wedgeworth suggested that the RFQ and DBE goals be placed on the agenda for the next meeting.

Dawn Bookhardt requested that she be notified in advance of any special meeting so that she can post the notice to the public. She added that all subcommittee meetings must also be noticed for the public.

Mario Carrera stated that, in his experience, consulting firms are not held accountable for DBE participation and that the subcommittee intends to monitor the participation.

## **VII. ACTION ITEMS**

The vote on the Revised LNTP for Kiewit was voted upon as described above.

## **VIII. EXECUTIVE SESSION**

Elbra Wedgeworth requested a motion for the Board to go into executive session as follows: The Board will enter into an executive session in order to discuss certain matters as permitted under the Colorado Open Meetings Law, C.R.S. §24-6-401 et seq. related to financial negotiations and financial management.

Jerry Glick moved to go into executive session. Mario Carrera seconded the motion. The vote was unanimous. The Board entered executive session at 3:01 p.m. The executive session ended at 4:19 p.m.

**IX. ACTION ITEMS RESULTING FROM EXECUTIVE SESSION**

None.

**X. CARRYOVER AND FUTURE AGENDA ITEMS**

Please look forward to an update/discussion of the RRIF, TIFIA and TIGER application process.

Mr. Mosher will have an update regarding:

- i) additional construction matters
- ii) critical issues and

iii) the project budget.

Marla Lien will update the Board on the litigation between CoRail and the FTA.

Mario Carrera will provide an update on the DBE goals and the RFQ for public outreach.

Dawn Bookhardt and Cole Finnegan will continue reporting on transaction movement as appropriate.

## **XI. ADJOURNMENT**

There being no further business, the meeting was adjourned at 4:20 p.m.

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[\[1\]](#) Ms. Kneich and Ms. Catlin arrived shortly after this vote.