

**Board of Directors Special Meeting**

**Tuesday April 20, 2021, 7:00 a.m.**

**Location: Idaho Falls Auditorium District Office/Zoom Videoconference**

<https://zoom.us/j/8694715148>

**467 Constitution Way, Idaho Falls, Idaho 83402**

**Attendees: Terri Gazdik, Bob Nitschke, Steve Vucovich, Mike Carpenter, Rob Spear, Mark Fuller, Kathy Wheadon, Chad Hammond, Rebecca Casper, Kevin Greene, Chris Nations, Laura Lewis, Stephanie Bonney, Mike Clements**

**Agenda**

1. **Action Item** - Call to Order 7:01 am
2. **Action Item** - Accept the Agenda. Spear suggested moving Agenda item V before agenda item IV. Carpenter moved to accept the agenda. Vucovich seconded. Motion passed.
3. **Discussion Item** –Public Comment (Any member of the public is welcome to take three minutes and share concerns or questions with the Board). There were no public comments.
4. **Action Item** – Review and adopt a resolution of the City of Idaho Falls Auditorium District, Idaho, approving and authorizing the execution of a primary lease, annual appropriation lease, annual appropriation trust indenture, certificate purchase contract, and other financial documents for the financing of the costs of improvements for the construction of an event center; authorizing the president, secretary, and treasurer to execute additional documents relating thereto. Spear provided a brief introduction and said this is another step in the process for the Board to prepare for executing the documents for financing the event center construction. Spear briefed the Board on the negotiations with the investor (Nuveen) regarding the financing and payment schedule. Spear said his cash flow analysis was based on the term sheet that was provided by Nuveen. Spear said the term sheet indicated IFAD would contribute $11M for construction and while IFAD is positioned to contribute that amount it will not have $11M at the time of closing. Because the GMP came in less than the $52M available for construction, it was agreed that IFAD would only need to contribute $10M upfront.

Spear stated the term sheet also indicated a semi-annual debt payment structure. During discussions with Nuveen, they proposed a 1/6 and 1/12 payment schedule where 1/6 of the interest and 1/12 of the principal payment would be deposited in the bond fund every month. This proved to be problematic because IFAD’s revenue stream varies from month to month with 52% of its revenue coming in June, July, August, and September. The two-month delay from deposits being collected by the State and being deposited into IFAD’s account also created challenges. Spear said it was decided that a semi-annual payment structure (May and November) is the best approach. During discussions with Nuveen, they requested that the District start depositing into the bond fund, prior to the first debt service payment due, enough TRT revenue to cover the first payment. Lewis developed a schedule that shows IFAD would start depositing TRT revenue into the bond fund starting July of 2022. This would allow enough TRT revenues to build up to make the first debt service payment in November of 2022. It was also communicated to Nuveen that it was important for the District to receive some of the TRT revenues for operations. Lewis based her calculations on once the TRT revenues are at least 50% of the next debt service payment, that IFAD would receive the balance. Spear said it is disappointing that Nuveen is using its leverage as the District gets closer to the closing process.

Lewis said the recent proposal was submitted to Nuveen and said that in her opinion it works for both the District and Nuveen. Gazdik asked why we are using both a lockbox and a Trustee and why are both holding funds. Lewis said the Trustee is controlling all the TRT revenues but once the TRT revenues are deposited into the bond fund, they are extremely difficult to get out. Gazdik asked what purpose the lockbox serves. Lewis said the lockbox just captures all the TRT revenues without having to move those to the bond fund. Lewis said releasing funds to IFAD would come out of the lockbox. Lewis said identifying the payment structure and the amount funds to be released back to IFAD is the last hurdle. She said that Raymond James hopes to sign the certificate of purchase by the end of the week. Once that is signed Raymond James is guaranteeing that the transaction will go forward, regardless of what happens with Nuveen. Lewis said closing is scheduled for May 18th because closing on April 30 would extend the terms to 30 years and 15 days and the State only allows for a 30-year term. Lewis said construction could start once the Certificate of Purchase is signed not when closing occurs and said this is normal for bond closings. Carpenter asked that if Raymond James signs the Certificate of Purchase this week when construction would start. Spear said that is scheduled for May 3, 2021.

Gazdik asked Bonney to discuss any changes to the resolution. Bonney said there have been no changes since last week to the primary documents. Bonney said there have been some issues with the exhibits of the documents. The only remaining issues are how the funds will be collected and released. Gazdik asked Fuller if he has reviewed the documents and the resolution. Fuller said Bonney has been active in addressing his concerns and making changes that he requested, and he said he approves the resolution if the Board determines to move forward.

Nitschke asked how he knows he has he latest version of the document. Fuller said the most current document should reference “not to exceed $50 million dollars”. Nitschke said typically there is a document control number. Spear said he maintains the documents in accordance with the Project Management Plan and has folder for documents, including one for the closing documents stored by date. Bonney said she maintains redlined versions for every document that has been changed and clean copies for each document that are stored by date change. Bonney said she knows when changes are made because she holds the primary document and makes all the changes. Fuller said he stores hard copies of all documents in a binder and encouraged Nitschke to come and review if he would like.

Gazdik then read the agenda item and asked for a motion. Carpenter moved to move as stated in the agenda. Vucovich seconded. Gazdik asked if there was any discussion. Nitschke then stated, “Madam Chairman, I want to be clear on the basis of my vote on this proposed resolution.”

I was trying to understand why I find myself in this situation. The closest thing I can think of is the parable of the frog in the pot on the water on the stove, you know, from the very first board meeting for me four years ago when there was an item to fund a portion of Events Center Drive.

I had no notice of that, of course I was a new board member, but at that time, in many times subsequent, the focus was on one aspect of the project. And the premise was that even if we approve the action, we are not approving the project as a whole. In the Event Center Drive case we were assured we would get the money back in the event that we didn't proceed with the project. And as such we never had this review of major aspects of the project, which I have repeatedly asked for, many times, to even the purpose of the project and this continues to this day where most recently we were asked to approve the preparation of financial documents, but again we're told that we are not approving them. We're not approving the project. We're just approving the preparation so like the frog with the end approaching, I think the present project falls short of what the community deserves. There are many red flags that with, as we've advertised this is a once in a generation opportunity, it is most important to get it right, not just get something done.

The quest of the board was to improve the quality of life by providing a resource for entertainment, education, and cultural opportunities for the citizenry for Idaho Falls and the surrounding areas, as well as visiting public, not just for a couple of years but for the next 40, or 50 years.

We just haven't faced up to the fact that getting a center done is not the same as getting a sustained and operable facility where people want to come in and support it for the duration of the project. The red flags and shortfalls to me are the site donated was probably the worst piece of property available. It is stuck in the far northwest corner of the development with no room to expand, required millions of dollars of taxpayers’ money to make it accessible and usable. Just a normal farm road to get access to the major roads. We had to negotiate three canals. It's even too small for required number of parking spots, much less accommodate the needs of the community in the next 50 years. And we talk so much about the growth in the population probably doubling in this project lifetime, but we did nothing with regards to the site, or the project design itself. For example, in the design we never had a formal set of design requirements. I never got an answer to what the quality assurance program was. Other red flags: we basically copied a now 20-year-old design, no significant changes to accommodate changes in customers desires and expectations. We were unable to change the existing design to accommodate future growth. And now we have the issue with the lead engineer leaving and recent changes to design seemingly for just cost reasons. Like last week, I guess it was lessening the welding requirements for the structural steel is very disturbing. I heard the said original requirement was self imposed. I'm not familiar with that term of art, if it was overdesigned it should have been identified during the design review process. With construction my concern about the project, is the maximum guaranteed price.

It's typically neither. We had that one example, during the site prep work, the pipe was laid at an improper depth, and we found out it was just cheaper for us to eat the cost rather than impact the schedule. Even at this late date, it was a week or so ago, that construction management had proposed two more loopholes; material instability and a COVID-19 clause were introduced. Again, I have no confidence that we're going to stay within the management maximum guaranteed price. And then I've harped on operations before. It is disturbing that it wasn't competitively bid. And I know the attorney said it wasn't required but I think that would have been a prudent decision: because they have only operated one comparable facility and it's operated at a loss for 9 of 10 years, one loss of $1 million; contract terms 15 years far too long then was recommended; and the pro forma was inadequately documented. Having an anchor tenant of amateur hockey team with teenage boys doesn't sound like a sound strategy to build a business from.

And then finally just on red flags is there's has been no oversight of the board and subsequent accountability and I just feel that is a systemic thing and has nothing to do with this particular board probably all these types of boards, but I think it's a red flag. We've had little to no public involvement or input. And more recently, the board meetings have turned into a forum for the team players to express their opinions lobbying their positions, not just providing answers to specific questions. Originally, they were not allowed to speak at all and now they seem to take over a lot of the decision-making process including the action item we're going to talk about next. And then when we're discussing reasons to proceed. When people say, well, we've worked really hard and we are tired of waiting, people want it so bad. And even using the personal pronoun as a warning sign. We need to base the decision, not on feelings but on objective reasoning, otherwise we compromise quality, and I'm still not convinced we have enough funds available in the short term for the next five years to overcome the possible expenses. I wanted to see the spreadsheets as of a percentage of 2019 actuals, not the Hunden projections. The executive director did provide the actuals to me, but I did not have time to redo the spreadsheets. I also did not see entries for either capital improvements or capital replacements.

And so based on the above, I've given a lot of thought, I am voting no on this agenda item because I don’t know when to raise those issues. Throughout this process, maybe I should have raised some of them, but I need to say this is the time that I am voting no on proceeding, and maybe other board members would like to chart a different path forward as well. Thank you.”

Gazdik then asked for a vote on the motion. Gazdik, Carpenter, and Vucovich voted in the affirmative and Nitschke opposed. Motion passed.

1. **Action Item –** To discuss CRSA contract and adopt a path forward for handling the construction administration duties for event center construction.Spear briefed the Board and said he received an email from Wheadon that referenced past issues and was not an actual proposal. Spear said Fuller also asked Wheadon and Ben Rogers for information and a response was finally received late on 4-19-21. Spear cited a recent example regarding steel columns that PW was able to provide a solution while CRSA wanted a structural engineer to evaluate for a fee. Spear said the focus needs to be on finding a solution to best serve the project moving forward. Spear explained the way he understands it is that the current proposal is 60% PW and 40% CRSA. Spear then asked if Wheadon had an actual conversation with Mike Harvey of Perkins Will to discuss the Construction Administration (CA) split and asked if PW agreed to the split? Wheadon said she wanted to first explain what Spear stated about the steel columns. Wheadon explained this started from the request to place a larger air handler on the roof which required a structural engineer to review. Wheadon said the CA proposal is currently 60/40% split but that PW is not willing to accept that split because Chris Nations is recommending PW not settle for anything less than 90/10. Wheadon said she has not talked over the phone with Mike Harvey because he avoids discussing the issues and she wants to document everything in writing through email.

Nitschke asked if Trenton Saxton’s leaving was the reason this has become an issue. Spear explained that was part of it because Saxton was the main contact to answer questions and coordinate with CRSA subcontractors. When Saxton left and Kevin DeKold took over, with the assistance of Danny Carmen, to prepare the bid specification documents, there were numerous breakdowns in communications with Bateman-Hall/Hogan. The result was that some of the value engineering (VE) items that were taken in the 2020 bid process failed to be included in the new bid specifications. Also, some bid specification documents were unclear and caused packages to not be bid or resulted in unusually high numbers (bids) because of the confusion. Spear also reminded the Board, that the Board asked CRSA to certify that all the changes to the bid specifications were actually made. The Board was told that CSRA’s attorney stated a certification could not be provided. Spear said as a result of all these issues, PW indicated that they wanted more control over CA portion of the project. Spear concluded that the questions about design requirements, the time lapse between original design to today, and the CRSA turnover has all contributed to the problem.

Carpenter asked Nations to comment. Nitschke said it was disturbing that Nations would represent the Board and dictate certain percentages. Nations then addressed the Board. Nations said there have been some slanderous remarks made through Wheadon’s emails over the last few weeks, but he is not going to defend those comments because they are not true. Nations summarized that the Board is dealing with a local architect that is not local anymore, individuals from CRSA, who had knowledge of the project, who have left the organization, and bid specification documents that were not updated accordingly. Nations said a few weeks ago Mike Harvey came to him and relayed concerns about PW being able to perform appropriately with only 10% of CA dedicated to the project. Nations said his role is to inform the Board of issues that could impact the project and because PW has been involved in the project for five years and has dedicated point of contacts, his recommendation is to have PW perform 90% of the CA. Nations said it is still important to have CRSA involved in the project.

Spear asked Wheadon again if she actually talked to Mike Harvey and if PW would participate in a 60/40 split. Wheadon said they have not had a conversation and stated that through an email Mike Harvey said a 60/40 split is not acceptable because Nations recommended a 90/10 split. Wheadon said she is happy to have another conversation with Mike Harvey.

Spear asked Nations to describe the pitfalls of a 60/40 split and whether PW would accept this split. Nations said a single point of contact is a key. Nations said he does not care about the financial split, he just thinks a single point of contact, especially with someone who is experienced, as the best solution.

Gazdik suggested that a conference call with Nations, PW, and CRSA, and IFAD be scheduled because the Board is unclear on what action to take. Nitschke asked if IFAD had a contract with PW. Wheadon explained that through CSRA the Board does. Nations stated the contract between PW and CSRA gives PW 10% of the CA. Nitschke said he is concerned whether Mike Harvey and PW could absorb the increase to 90%. Nations said that needs to be discussed.

Carpenter said his observation is that IFAD has a contract with an entity deemed as not meeting the requirements of the project and what happens within that structure is immaterial. The District has the responsibility to obtain the best service as possible. We have discussed how to accomplish this, and we are just getting bogged down and a decision needs to be made soon.

Spear said the best way to resolve this issue is to get all the parties to the table. Spear asked Nations to schedule a Zoom call with CRSA, PW, Bateman Hall, and IFAD. Nations said he will schedule. Gazdik said this will be moved to the next agenda and asked if Fuller needed to be on the call. Fuller said he is happy to participate.

**Calendar and Announcements**

1. Upcoming IFAD Meeting – **Next Meeting on April 27, 2021**
2. **Discussion Item** - Announcements and Minor Questions
3. **Discussion Item** - Agenda Items for April 27, 2021 meeting
   1. Forming a separate 501(c)(3) for IFAD
   2. Host Compliance database
   3. CRSA/PW Construction Administration split

**Meeting adjourned at 7:57 am**