

## **PARKS AND RECREATION COMMITTEE MEETING**

### **APPROVED MINUTES**

August 23, 2010

DIRECTORS PRESENT: Judy Friedman

STAFF PRESENT: Bob Bolton, Cindy Gustafson AND Jim Dykstra

ATTENDING VIA TELECONFERENCING: Board President Dan Wilkins and Legal Counsel Mike Sexton

The August 23, 2010 meeting was called to order at 3:05 p.m.

#### **1. PLACER COUNTY PARKS MAINTENANCE AGREEMENT**

**Mr. Bolton brought to the Board at the last meeting a one year contract to continue the services for Placer County Parks to maintain all their facilities that the PUD currently maintains. The Board authorized approval pending Mike Sexton's review of the contract. Mr. Sexton has some concerns regarding the liability.**

**Mr. Sexton's main concern is the indemnification requirements relating to operating and maintaining the County's parks facilities. There is the risk of transfer attempt to pawn off the liability to another agency whenever you're entering into an agreement. This would be alright if the District was getting a benefit from it but in this case with Placer County almost all of the liability is being put on the PUD. Should the PUD customers pay for the added insurance and the risk of liability the PUD is undertaking? Shouldn't the County take on this risk or reimburse the PUD to take on this risk by paying for the extra insurance through JPIA. In this agreement with the County the consideration to the PUD is only \$67,500 but all of the liability is being transferred to the PUD.**

**Mr. Sexton's recommendation is that if the District enters into the agreement they avoid the risk transfer provisions and, to the extent that the PUD is taking on the risks, it ought to be only for willful misconduct or gross negligence.**

**Mr. Wilkins referred to Section 8 of the agreement, the Hold Harmless and Indemnification language. Mr. Wilkins doesn't read the language in this section as the PUD accepting all the liability. It reads as the PUD accepting liability for only their actions. Mr. Sexton agrees that the PUD is accepting liability for their actions but legal review of the agreement indicated several paragraphs where the risk transfer was not just for willful acts of the PUD but for ordinary negligence. This could be any act taken. California generally looks at dividing the liability allowing action to be taken on all parties that are responsible so the PUD along with the County could end up with a significant hit in the case of an injury.**

**Ms. Gustafson pointed out that the agreement states "This duty to hold harmless and indemnify shall not extend to or include a duty to correct readily observable dangerous conditions of public**

property not substantially caused by improper maintenance work.” Previously, several revisions were made to this contract. It originally didn’t have nearly this level of exception to the indemnification. The revisions have tried to get the liability directed more towards the things the PUD is responsible for.

Mr. Dykstra commented that the PUD has defended and settled claims on Commons Beach. So far the amounts haven’t been that material. This agreement gives the PUD the liability for doing the maintenance work that staff is charged to do in a decent manner. If it’s not done in a decent manner or someone were to be injured in the performance of these activities then the PUD would be responsible. It will be hard to get an agreement without that kind of clause in it. Ms. Gustafson added that staff has asked JPIA to review this agreement as the PUD’s insurance carrier. Should staff ask JPIA for any proposed changes to reduce concerns? Mr. Dykstra answered that when JPIA gives the additional insured they limit it to the scope of what the PUD is required to do and the liability of what is being undertaken. JPIA has directed the PUD to negotiate the best deal possible.

Mr. Wilkins is in favor of transferring and limiting as much liability to the District as possible. That being said, the only way to truly do that in the Parks and Recreation arena is to not provide Parks and Recreation services. Parks and Recreation is always going to be an expense and not a source of revenue. If the District owned these facilities they would hold all liability. Currently, the PUD is able to operate parks facilities on other people’s property and it is appropriate for the PUD to share in the liability that comes along with these park facilities. The PUD receives approximately \$1.5 million in property tax dollars that the District wouldn’t get if they didn’t provide Parks and Recreation services so there is some obligation to share in the liability. Mr. Wilkins is in favor of pushing as much liability towards the other agencies as they will accept. The PUD has been through this exercise in the recent past and this is as good as the District is going to get from the County. Mr. Wilkins is okay with this agreement but added that when the PUD meets with the County about the costs to operate and maintain these facilities discussion needs to include the cost of accepting this liability.

Ms. Friedman stated the issue before the Committee today is whether to go ahead with this one year extension. Pending answers to all the other questions which can be negotiated throughout this next year, Ms. Friedman recommends moving forward with this one year extension.

Mr. Sexton interjected that before the PUD moves ahead with this extension give staff the opportunity to decrease the risk obligations that are provided for in the agreement and have JPIA take a look at the provisions that are currently in place. Ms. Friedman does not have a problem with that but is concerned about the timing of getting this done. Mr. Bolton said this agreement will run from July 1, 2010 to June 30, 2011. Mr. Sexton clarified that even though the agreement is no longer in effect after June 30, 2011 there is still liability that could occur if a claim is made after the agreement is no longer in effect depending on the statute of limitations.

Ms. Gustafson suggested Mr. Dykstra talk with JPIA this week and that the Committee regroup next week when Mr. Sexton is in town and we have heard what JPIA has to say. Ms. Gustafson is concerned that Mr. Bolton is going to be put back in the middle of this negotiation and it's taking up a lot of staff time. If the PUD wants to pursue this further Ms. Gustafson suggested that Mr. Sexton get together with the County's attorney and work out the language.

Ms. Friedman noted in item 8. B. it reads the PUD will notify the County. Once the County is on notice doesn't that take the pressure off the PUD? Ms. Gustafson pointed out the County has done their part when they have been notified of issues like the rock climbing at Commons Beach and the trees at Heritage Plaza. Once notified the County has jumped in and said it is the County's job and responsibility. Mr. Dykstra added that any time the PUD gets into a maintenance agreement with someone there is always going to be some level of liability insurance the PUD is going to have to provide. The County is depending on the PUD to provide the maintenance that has been agreed to and because staff work is involved the County is always going to want something in the language that puts some of the liability on the PUD.

Mr. Wilkins agreed with Ms. Gustafson's suggestion of having JPIA review the agreement to make sure they are going to insure the PUD against any claims that may come as a result of this agreement. Mr. Dykstra stated JPIA currently does and the language has been similar in the past. Staff should confirm that JPIA is going to insure the PUD. If there are some recommendations from JPIA as it relates to further limiting the liability that needs to be addressed and presented to the County. But if this draws it out two weeks or longer and the PUD is looking at even more attorney time then too much time and money is being spent on this. Ms. Friedman agreed.

Ms. Gustafson would like to see the risk transfer similar in every situation. There is similar language in the contract with State Parks. This agreement gives the PUD one year and the time to negotiate for more money from the County in that year. Ms. Friedman is concerned with sending too strong of a message to the County and the County deciding down the road not to deal with the PUD anymore. It is a good idea to contact JPIA but the PUD should move forward for one more year.

Mr. Sexton's goal and the District's goal is to get as close to zero as possible in terms of liability. The reality is, this can only be achieved by basically giving up the Parks and Recreation business. Based on Mr. Sexton's experience with other agreements he's surprised with the headway the PUD has made with this agreement. The fact that the PUD can call the County up and put them on notice of a dangerous condition at any of these facilities is amazing, and the County has agreed to this. This current agreement is about as good as the District can hope for.

Mr. Bolton asked for clarification on the action here of the Committee. Pending the answer from JPIA that they will cover the existing contract as written then Mr. Bolton can proceed to send this contract to Placer County to take to the County's Board at their meeting in September. Ms. Friedman asked if the Board had approved this agreement subject to Mr. Sexton's review at the

**last Board meeting. Mr. Bolton replied that the Board did approve the agreement pending Mike Sexton's review of it. The Committee agrees with Mr. Bolton's direction.**

**2. PUBLIC FORUM**

**No one was present for this item.**

**3. ADJOURNMENT**

**The meeting adjourned at 4:38 p.m.**

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**Amy Norman, Administrative Assistant**

**Prepared by Amy Norman**