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May 7, 2009

Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, CA 95667

Re: Report to the Board on the South Tahoe Area Transit Authority

Honorable Chairman and Members of the Board of Supervisors:

On April 6, 2009, in the course of consideration of whether to appoint Russ Nygaard from the Department of Transportation as an alternate board member to the South Tahoe Area Transit Authority, you asked staff to return to the Board on May 12, 2009, with an explanation of the structure of South Tahoe Area Transit Authority (hereinafter "STATA"). The following is that report based upon the information that has been made available to us from the County records of the Board Clerk, Department of Transportation, and Auditor/Controller, as well as the State of Nevada Secretary of State¹.

The South Tahoe Area Transit Authority ("STATA") is a non-profit public benefit corporation organized and existing pursuant to the laws of the State of Nevada. The purpose of STATA is to implement, operate and manage a public/private cooperative transit system in the South Lake Tahoe Basin in accordance with the Participation Agreement to Implement a Coordinated Transit System at South Lake Tahoe.

I. Background on Participation Agreement

The County Board of Supervisors approved the Participation Agreement to Implement a Coordinated Transit System at South Lake Tahoe on April 21, 1998, and it was thereafter

¹ There was limited availability of the records for CTS Management Company or CTS-MCO, TCAT, Inc., and South Tahoe Area Transit Authority, a non-profit corporation. We were able to access some records through the State of Nevada Secretary of State and through the internet. Additionally, we placed a call to STATA counsel and verified certain information and conclusions reached in this report regarding the existence or non-existence of named entities herein. Pursuant to the STATA by-laws, an appointed member to the STATA Board may inspect and copy all corporate records upon five days prior written notice to STATA should the County Board of Supervisors desire further information or verification.

amended on February 25, 1999 (the "Participation Agreement"). The purpose of that agreement was to coordinate the delivery of transit services within the Lake Tahoe Basin. Participants included the public agencies consisting of the County, the City of South Lake Tahoe, Douglas County, and original private parties consisting of five (5) participating casinos and Heavenly Valley Ski Resort. The term of the agreement was for an initial five-year period with successive one-year terms until terminated.

The Participation Agreement, Section 3.0, provided that a not-for-profit corporation would be formed to transact business, with the corporate articles and by-laws to be approved by the Board of Directors consisting of member representatives to the Participation Agreement. In accordance with the terms of the Participation Agreement, the entity to be formed and named "CTS-MCO" was intended to function as a separate entity, separate and apart from the Participating Agreement.

Each party participating in the Participation Agreement was to appoint a member to the proposed new corporate board. (Section 3.1) It was envisioned that the participating parties would contribute capital and vehicles to the new corporation identified by name in the Agreement as the CTS Management Company or CTS-MCO. Public agencies would pass through to CTS-MCO their respective Transportation Development Act annual allocation. The Participation Agreement however acknowledged that the City of South Lake Tahoe, the County, and Douglas County had existing contracts with Area Transit Management, Inc. to operate the actual public transit services and that those contracts would continue through term amendments. In the event an amendment could not be successfully negotiated, the agreement contemplated the selection of a new operator through competitive bid selection. [Participation Agreement, Section 14.0]

On April 27, 2000, a Nevada non-profit public benefit corporation was formed to transact the coordinated transit system as called for in the Participation Agreement. However, that non-profit entity was named TCAT, Inc. ("Tahoe Coordinated Area Transit"), not CTS Management Company aka CTS-MCO as called for in the Participation Agreement. CTS Management Company is not a legal entity and was never formed as a separate legal entity. The Articles of TCAT, Inc. provided that each party to the Participation Agreement would designate a member to serve on the Board of TCAT, Inc. By-laws for the corporation were filed. Our office found one record from 2003 reflecting the County Board of Supervisors appointed Dave Solaro to the Board of TCAT, Inc., and a member of Department of Transportation as an alternate. We could find no other appointments to TCAT, Inc. before or after that appointment. The County Board of Supervisors subsequently appointed members to the non-existent Coordinated Transit System Management Company also known as CTS Management Company and CTS-MCO.

In May, 2008, Resolution No 08-03, passed ostensibly by the Coordinated Transit System Management Company, resolved that the coordinated transit system would thereafter be named South Tahoe Area Transit Authority (STATA), and directed an amendment to the corporate by-laws. That resolution acknowledged the conflict between the name designated in the Participation Agreement (i.e., Coordinated Transit System Management Company or CTS-MCO) and the name of the corporation established (i.e., TCAT, Inc. or Tahoe Coordinated Area

Transit, Inc.) and in that resolution stated that all documents, correspondence, and agreements referencing the names Coordinated Transit System Management Company, CTS-MCO, TCAT, or Tahoe Coordinated Area Transit, Inc “...shall assume the new identity name South Tahoe Area Transit Authority (STATA)”.²

In August, 2008, TCAT, Inc. filed an amendment with the State of Nevada Secretary of State changing the name of TCAT, Inc. to South Tahoe Area Transit Authority (STATA), and thereafter filed new by-laws.

Under the by-laws for STATA, the officers of the corporation are an executive director, president, vice-president, secretary and a treasurer. The current officers, with the exception of the office of treasurer which is vacant,³ are also members of the Board of STATA. The BlueGo⁴ Transit Coordinator for STATA is also employed as the Transit Planner/Administrator for TRPA. The STATA Transit Coordinator acts as executive staff to the STATA board. TRPA currently manages and monitors the books for STATA.

II. County Relationship to STATA

Prior to the fall of 2008, and as contemplated under the Participation Agreement, the City of South Lake Tahoe and the County of El Dorado continued to contract with the operator of the transit system, Area Transit Management, Inc., to operate its portion of the system. Each jurisdiction also separately claimed their respective allocation of Transportation Development Act (“TDA”) funds in order to fund each of their respective operations.

In the fall of 2008, Tahoe Regional Planning Agency, as the Regional Transportation Planning Agency, sought to have the City of South Lake Tahoe and the County of El Dorado consolidate transit services through STATA to further the ultimate goal of the Participation Agreement, terminate their respective Area Transit Management, Inc., contracts and allow STATA to claim their respective TDA allocations directly. While the County did terminate its contract with Area Transit Management and contract with STATA,⁵ it was subsequently determined that STATA could not claim TDA funds directly. STATA could not claim TDA allocations because it was

² Because of the confusion in the names of the operating management entity, there is some question as to whether the County Board of Supervisors has made proper appointments to the actual entity operating the coordinated transit system. Norma Santiago was appointed to CTS-MCO, not TCAT, Inc., on December 6, 2005. We recommend that this Board reappoint Supervisor Santiago to the STATA board to resolve any confusion on this issue.

³ A former County employee, currently with Tahoe Transit District had been elected by STATA to act as Treasurer; however that employee was not authorized by the County to act in that capacity and subsequently resigned from that office.

⁴ BlueGo is the marketing name for the transit system.

⁵ The County entered into an agreement with STATA to provide the transit services and to allow STATA to directly claim County’s TDA allocation. STATA subcontracted the delivery of transit services to MV Transportation, Inc. and County terminated its Area Transit Management contract in October, 2008.

not wholly owned or controlled by public agencies – rather STATA is wholly controlled by the private parties that comprise the majority of participants and it is therefore ineligible.

In order to resolve these issues, County staff proposed that the STATA contract be amended to have the County and City each claim their separate allocation, and then pass those funds through to STATA for the actual transit operations. This resolved the current fiscal year funding issues, and kept the transit system operational, however the amendment provided that the agreement with STATA would terminate at the end of the current fiscal year in favor of a long-term solution.

Once the immediate issues for fiscal year 2008/2009 were resolved, the parties to the Participation Agreement were to consider how best to provide the consolidated transit services for the fiscal year 2009/2010 and thereafter.

Several alternatives were identified early in the discussion, inclusive of legislation to allow STATA to claim TDA funds directly, amendment of the Participation Agreement and corresponding change to the control of STATA, or the revival of a previously formed but abandoned joint powers authority between the City of South Lake Tahoe and the County of El Dorado.⁶ Alternatively, STATA and the County may need to further amend their agreement for

⁶ The Tahoe Basin Transportation System Joint Powers Agreement was drafted in December 1979 to form the Tahoe Basin Transportation Authority (“TBTA”) between the City of South Lake Tahoe, the County of El Dorado, and the County of Douglas, Nevada but that joint powers authority, although formally created was apparently abandoned without operating and was subsequently removed from the California Secretary of State listing. In January, 2009, without authorization from the County Board of Supervisors, a filing was made by a local attorney to reinstate the TBTA as an active joint powers authority. It was then proposed by STATA that the executive staff of STATA act as executive staff to TBTA, and that STATA act as Treasurer and Auditor to the TBTA. County Counsel objected to the lack of separation of the joint powers authority from STATA to both counsel acting for TBTA and counsel for STATA, and further notified them that the provisions of the Government Code did not allow for STATA to be the Auditor or Treasurer of the TBTA. County Counsel subsequently drafted a revised amendment to the joint powers agreement, with the appropriate Government Code requirements and independence from STATA, which could be considered by this Board should you move forward with a joint powers authority as the long term solution.

the next fiscal year until a long term solution is identified. County Counsel has not been involved in recent efforts to identify and resolve these long term issues that will again arise commencing with the fiscal year 2009/2010, but was apprised by STATA counsel that discussions were now focused on retaining the current structure of separate contracts with each participating entity through STATA and having one contract by STATA with the operating contractor.⁷

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By:


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⁷ The current contractor operating the system is MV Transportation.