

JOINT MEETING OF THE BOARD OF DIRECTORS FOR THE
METROPOLITAN TRANSIT SYSTEM (MTS),
SAN DIEGO TRANSIT CORPORATION (SDTC), AND
SAN DIEGO TROLLEY, INC. (SDTI)

November 13, 2008

MTS
1255 Imperial Avenue, Suite 1000, San Diego

MINUTES

1. Roll Call

Chairman Mathis called the Board meeting to order at 9:02 a.m. A roll call sheet listing Board member attendance is attached.

2. Approval of Minutes

Mr. Clabby moved to approve the minutes of the October 30, 2008, MTS Board of Directors meeting. Mr. Emery seconded the motion, and the vote was 12 to 0 in favor.

3. Public Comments

Lois Rue: Ms. Rue stated that she is a senior citizen and appealed to the Board to restore a senior round-trip fare. She discussed the different ways that she uses MTS services and the difficulties of not being able to purchase a round-trip senior ticket. She stated that she would not mind an increase in price.

Clive Richard: Mr. Richard discussed the decommissioning of street cars, the advent of buses, and the sale of the transit company to the City of San Diego. He reported that the proposition that authorized the City to buy the transit company 50 years ago promised more frequent service and lower fares. He stated that he would like to eventually see those promises realized. He stated that he would also like to see information on what would happen if transit loses more state funding. He stated that MTS should be open with the public about that. Chairman Mathis stated that MTS will make sure that this information becomes available as soon as the state has made its decisions relating to funding for the year.

4. MTS: Appointment of Ad Hoc Nominating Committee for Recommending Appointments to MTS Committees for 2009

Action Taken

Mr. Rindone moved to nominate Chairman Mathis, Mr. Roberts, and Mr. Ewin to the Ad Hoc Nominating Committee to make recommendations to the Board with respect to the appointment of members of the Board to serve on MTS and non-MTS committees for 2009.

There were no additional nominations from the floor.

The vote was 11 to 0 in favor, with Chairman Mathis, Mr. Roberts, and Mr. Ewin abstaining from voting for themselves.

CONSENT ITEMS:

6. MTS: Increased Authorization for Legal Services – Liebman, Quigley, Sheppard & Soulema, APLC (LEG 491)

Recommend that the Board of Directors authorize the CEO to execute MTS Doc. No. G1087.3-07 (in substantially the same form as Attachment A of the agenda item) with Liebman, Quigley, Sheppard & Soulema, APLC for legal services and ratify prior amendments entered into under the CEO's authority.

7. MTS: KMD Bus Wash Renovation Project (CIP 11207)

Recommend that the Board of Directors authorize the CEO to execute MTS Doc. No. PWB106.0-09 (in substantially the same format as Attachment A of the agenda item) to Telliard Construction for the Kearny Mesa Division Bus Wash Renovation Project.

8. MTS: Rail Profile-Grinding Services – Contract Award (CIP 11206)

Recommend that the Board of Directors authorize the CEO to execute MTS Doc. No. PWL104.0-09 (in substantially the same form as Attachment A) with Advanced Rail Management Corporation for rail profile-grinding services for a five-year period.

9. MTS: Third-Party Administration Services for Workers' Compensation – Contract Award (OPS 960.2, 970.2)

Recommend that the Board of Directors authorize the CEO to execute MTS Doc. No. G1182.00-08 (in substantially the same format as Attachment A of the agenda item) with TRISTAR Risk Management for third-party administration services for workers' compensation for a five-year base period with two 1-year options.

10. MTS: Southland Transit, Inc. – Contract Option Year (OPS 920.6)

Recommend that the Board of Directors authorize the CEO to execute MTS Doc. No. B0449.1-06 (in substantially the same format as Attachment A of the agenda item) for: 1) one 12-month option period for central minibus fixed-route with Southland Transit, Inc.; and (2) one 12-month option period for Sorrento Valley Coaster Connection with Southland Transit Inc, contingent upon securing sustainable funding for this service.

Action on Recommended Consent Items

Mr. Emery moved to approve Consent Agenda Item Nos. 6, 7, 8, 9, and 10. Mr. Rindone seconded the motion, and the vote was 12 to 0 in favor.

CLOSED SESSION:

24. Closed Session Items (ADM 122)

The Board convened to Closed Session at 9:12 a.m.

- a. MTS: CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION SIGNIFICANT EXPOSURE TO LITIGATION Pursuant to California Government Code section 54956.9(b): (One Potential Case)

The Board reconvened to Open Session at 9:34 a.m.

Oral Report of Final Actions Taken in Closed Session

Ms. Tiffany Lorenzen, MTS General Counsel, reported the following:

- a. The Board received a report from General Counsel.

SPECIAL PRESENTATIONS:

Chairman Mathis pointed out that this would be the last meeting for six Board members. He recognized Chair Pro Tem Mr. Emery who has been on the Board since July 1985, Vice Chair Rindone who has been on the Board since July 1991, Mr. Clabby who has been on the Board since June 1996, Mr. Maienschein who has been on the Board since December 2000, Mr. Monroe who has been on the Board since April 2002, and Ms. Atkins who has been on the Board since 2002. Chairman Mathis stated that the Board is losing a lot of talent and that these members have given many years to transit.

Each of the Board members stated that they appreciated the honor of serving on the MTS Board and thanked their fellow Board members and staff.

NOTICED PUBLIC HEARINGS

25. There were no noticed public hearings.

DISCUSSION ITEMS:

30. **MTS: An Ordinance Amending Ordinance No. 4, an Ordinance Establishing an MTS Fare-Pricing Schedule and an Ordinance Amending Ordinance No. 13, an Ordinance Regarding Prohibited Conduct Onboard Transit Vehicles and Prohibited Actions on or About a Transit Facility, Trolley Station, or Bus Stop** (ADM 110.3)

No report was given on this item.

Action Taken

Mr. Young moved to waive the second reading of An Ordinance Amending Ordinance No. 4, an Ordinance Establishing an MTS Fare-Pricing Schedule and an Ordinance Amending Ordinance No. 13, an Ordinance Regarding Prohibited Conduct Onboard Transit Vehicles and Prohibited Actions on or About a Transit Facility, Trolley Station, or Bus Stop. Mr. Emery seconded the motion, and the vote was 13 to 0 in favor.

Mr. Young moved to adopt the ordinance entitled "An Ordinance Amending Ordinance No. 4, An Ordinance Establishing a Metropolitan Transit System Fare-Pricing Schedule (Attachment A of the agenda item) and the ordinance entitled "An Ordinance amending Ordinance No. 13, an Ordinance Regarding Prohibited Conduct Onboard Transit Vehicles and Prohibited Actions on or About a Transit Facility, Trolley Station, or Bus Stop (Attachment B of the agenda item); and (2) direct publication of an ordinance summary. This action is necessary to make the MTS ordinances consistent with the San Diego Association of Governments' Regional Comprehensive Fare Ordinance. Mr. McClellan seconded the motion, and the vote was 13 to 0 in favor.

31. MTS: SDTC Site Hardening & Security Project – Contract Award (CIP 11232)

This report on this item was waived.

Action Taken

Mr. Young moved to authorize the CEO to (1) waive the applicable provisions of Policy No. 52 "Procurement of Goods and Services;" and (2) utilize the County of San Diego's Job Order Contracting process to award a contract to Security Systems Techniques (in substantially the same form as Attachment A of the agenda item) for construction on the SDTC Site Hardening & Security Project. Mr. McClellan seconded the motion, and the vote was 13 to 0 in favor.

32. MTS: State Legislative Representation (LEG 470)

No report was given on this item.

Action Taken

Mr. Young moved to authorize the CEO to execute MTS Doc. No. G1204.0-09 (in substantially the same form as Attachment A of the agenda item) with California Strategies and Advocacy, LLC for state legislative representation for up to a five-year period. Mr. Emery seconded the motion, and the vote was 13 to 0 in favor.

33. MTS: 2009 Legislative Program (LEG 410)

Ms. Sharon Cooney, Director of Government Affairs and Community Relations, provided a review of 2008 legislative activities and a review of priorities for 2009 as well as an approach for advocacy efforts.

Ms. Cooney reviewed funding received by MTS through the Transit Security Grant Program and reported on the passage of the Rail Safety Act of 2008. She added that work remains to be done to clarify some ambiguity in the language of the Act. She also briefly discussed economic stimulus packages, efforts to get funding for transit services to military facilities, and other legislation related to energy security and climate change that did not get enacted. She advised the Board that former earmark funding for transit will probably be part of the next economic stimulus program.

Ms. Cooney also reported that MTS worked with the Federal Transit Administration (FTA) on charter regulations as they apply to MTS Chargers Service. She stated that MTS was allowed to operate its Chargers Express Service this year after many discussions with the FTA, but will face the same difficulties next year unless the regulations are amended to allow these types of services. Ms. Cooney advised the Board that an effort is also being made to get transit a higher priority for funding in the reauthorization of the Surface Transportation Act. She stated that funding will be sought specifically for the Mid Coast LRV project. She added that they will be seeking recognition that agencies such as MTS have as much need for infrastructure funding as some of the older agencies.

Ms. Cooney also reviewed a recent ruling issued by the IRS that states that entities cannot use transactions strictly to avoid paying taxes. She stated that some organizations that entered into sale/leaseback transactions are being required by the IRS to pay back their tax benefits. She reported that MTS has not been contacted by the IRS about its sale/leaseback transactions.

Ms. Cooney then reviewed the state budget for 2008 and the funding that MTS received through Proposition 1B. She reported that MTS has received its 1st quarter payment of State Transit Assistance (STA) funding but reported that no more will be received. She added that the State of California is considering eliminating STA fund altogether. She stated that the Governor is considering allocating \$800 million of Proposition 1B funding for capital projects instead.

Ms. Cooney advised the Board that the state legislature has passed regulations to inhibit the theft of copper wire. She reported that salvage yards are now required to report their copper wire purchases, there is a three-day delay before payment can be made to the seller, and the salvage yard must take a picture and thumbprint and get the address of the seller.

Ms. Cooney reviewed 2009 federal and legislative priorities as well as advocacy approaches that will be used. She stated that the Executive Committee discussed this matter and recommended that Board members assist with advocacy efforts. She stated that she will focus on this a great deal next year.

Public Comment

Margot Tanguay: Ms. Tanguay stated to Page C-1 of the agenda item references staff's plan to seek legislation that would allow agencies to pass an ordinance allowing national criminal background checks for taxicab operators. She stated that she was in favor of this effort. She added that access to the Automated Regional Justice Information System (ARJIS) will be needed.

Action Taken

Mr. Rindone moved to (1) receive a report on 2008 legislative and intergovernmental activities; (2) accept the proposed MTS 2009 Federal Legislative Program; (3) accept the proposed MTS 2009 State Legislative Program; and (4) authorize the CEO to direct MTS's Sacramento and Washington representatives to advocate the state and federal legislative programs. Mr. Ewin seconded the motion, and the vote was 13 to 0 in favor.

REPORT ITEMS:

49. MTS: Fiscal Year 2008 Comprehensive Annual Financial Report (ADM 110.12)
(Taken Out of Order)

Mr. Cliff Telfer, Chief Financial Officer, advised Board members that a revised Comprehensive Annual Financial Report (CAFR) along with a report detailing the changes that were made were distributed prior to the start of the meeting. He stated that the revised CAFR contains corrected supplemental schedules. Mr. Ewin, Chairman of the Audit Oversight Committee (AOC), stated that he also distributed a handout prior to the start of the meeting that provided four questions Board members should consider as they hear the report on this item. He then read the questions out loud.

Mr. Gary Caporicci, Senior Partner at Caporicci & Larson, stated that they had seen a significant improvement in the accounting and financial reporting for MTS over the last three years. He stated that these reports are now being prepared in an enterprise format with comparative information. He stated that they have also seen an improvement in internal controls and that interactions with the AOC have been good. He reported that Caporicci and Larson was reviewed as part of a triennial peer review at the end of 2007 was given the highest opinion.

Mr. Ken Pun, Partner at Caporicci & Larson, reviewed the background for their firm, their audit approach, scope of the work performed, management responsibilities, and auditor responsibilities. He then reported that they have issued an Unqualified Opinion to MTS. He stated that there were no disagreements with management, no material errors or irregularities were discovered, and no significant deficiencies or material weaknesses were determined. He then provided an overview of the financial statement sections. Mr. Caporicci pointed out that supplementary schedules are not required. He added that MTS has included them while most agencies elect not to. He stated they are usually separately bound for internal use only.

Mr. Caporicci reviewed the risk areas, which included a subsequent-event note (note 16) regarding the financial credit crisis. He also reported that the SDTI pension plan was 90.26 percent funded at 06-30-08, and the SDTC pension plan was 86.11 percent funded on that same date. He stated that \$3,910,000 in unfunded liabilities is now reflected in the balance sheet as Other Postemployment Benefits (primarily health insurance) and reviewed the liability levels for self insurance and claims litigation. He then reviewed the new General Accounting Standards Board pronouncements. Mr. Ewin thanked AOC members for their assistance this year, and, in particular, Ms. Atkins for her insights based on her experience with these types of matters.

Following are questions asked by Mr. Ewin and answers given by Mr. Caporicci:

Q: Was any audit work not performed due to any limitations placed on you by management – example, in the area scoped out by management or any restriction on fees that limited the scope of your work? A: No limit on scope whatsoever.

Q: Explain the process your firm goes through to ensure that all of your engagement personnel are independent and objective with respect to our audit. Do any of the nonaudit services performed for the organization or its related entities affect the work that you do or the manner in which the engagement teams or others are compensated? A: Part of the process in the external peer review process, which I mentioned earlier, is looking at our quality of service. He stated that the peer review also confirms their independence, with everyone in the firm, including the administration people, annually. He stated that this review was conducted and that Caporicci got a totally clean opinion.

Q: Was the audit performed in accordance with Generally Accepted Auditing Standards or Generally Accepted Government Audit Standards? If not, why? A: It was performed in accordance with both. A separate audit report, which we refer to as a single audit, to review Government Auditing Standards for the federal grants is still in process.

Q: Do the financial statements contain any deviations from Generally Accepted Accounting Principles (GAAP)? A: There are no deviations.

Q: Were there any new accounting principles adopted, were there any changes made or did you recommend any changes in the accounting policies used or their applications? A: New principles were adopted this year, particularly GASB 45 for Other Postemployment Benefits.

Q: Were there any significant accounting adjustments effecting the financial statements – prior year as well as current year? A: There were none.

Q: Are there any areas of the financial statements, including the notes, in which you believe we could be more explicit or transparent to provide more clarity to help a user better understand our

financial statements? A: I don't believe so. They work a great deal at editing and reviewing and we review and make recommendations as well to try to clarify and make it better.

Q: Have you expressed any concerns or comments to management with respect to how our presentation, including the notes or management discussion and analysis could be improved?

A: Yes, we discussed that. The working relationship we have with MTS is very good. We review the CAFR from cover to cover, unfortunately, more than one time. We do it a number of times.

Q: Based upon your audit procedures, do you have any concerns as to whether management may be attempting to commit management override? Have you noticed any biases as a result of your audit test with respect to accounting estimates made by management? A: Have not.

Q: Did you encounter any difficulties in dealing with management in performing the audit including any disagreements with management regarding any accruals, estimates, reserves, or accounting principles? Did you have the full cooperation of management and staff? A: 100 percent cooperation.

Q: Were there any accounting issues which you sought the advice of other audit firms or regulatory bodies? A: None

Q: Describe any difficulties you encountered while performing the audit. For example, delays by management in allowing you to begin the audit, lack of access to information, unreasonable time tables, unavailability of personnel. A: We had no delays as you described.

Q: Discuss your impressions of the performance of the organization's management in terms of completeness, accuracy, and faithfulness of the financial reporting process. A: I think it is completely faithful, and I think the AOC has even reemphasized and enhanced that.

Q: Describe any situation in which you believe management has attempted to circumvent the spirit of GAAP principles but has complied with it. A: No intention, no circumvention whatsoever.

Q: Would you characterize management's application of GAAP as conservative, aggressive, or somewhat in between. A: Conservative.

Q: Are there any new pronouncements or any areas of potential financial risk affecting future financial statements of which the AOC should be aware? A: There are none. The only risks, such as the financial crisis, have already been discussed.

Q: How would you compare the organization's financial reporting to that of comparable entities with which you are familiar? A: Excellent.

Q: Please explain the significance of the reportable conditions or material weaknesses referenced in your letter or report dealing with the organization's internal controls. A: Under SAS 112, we are required to put in writing all significant deficiencies and material weaknesses. We have determined none.

Q: Are there any questions we have not asked that should have been asked? If so, what are those questions? A: I think that the interaction in AOC meetings, which meets six times a year, is very good and everything is forthright. This year, the Finance Department gave you drafts early and tried to keep you informed about changes. I think it's just been excellent. There are no questions that I can think of that you should have asked but didn't.

Mr. Ewin thanked the outside auditors for helping the AOC understand its responsibilities.

In response to a question from Ms. Atkins, staff stated that its report would consist of reviewing corrections to the supplemental information to the CAFR. Ms. Atkins asked Mr. Telfer, Ms. Lorenzen, and Mr. Jablonski if they had any information that had not been publicly disclosed or disclosed to the Board, AOC, and Executive Committee related to the CAFR that should be disclosed at this time. All three individuals responded that they did not. Ms. Atkins complimented Mr. Ewin on the good job he's done of leading the AOC.

Mr. Jablonski stated that it is an extensive and sometimes difficult process to prepare the CAFR in the timeframe provided, and that an error was discovered in the supplemental budget comparison information. He added that the auditors have been briefed, and the issue has been discussed with the AOC Chair as well as the Chair of the Board. He added that the information was prepared and faxed to each Board member as well as placed before the Board members today explaining what the issue is. He stated that the discovery of this error was made after the last AOC meeting. He explained that these are not changes to the financial statements, which are subject to the audit, but are changes to the supplemental information, which is not required as part of the CAFR.

Mr. Telfer stated that MTS financial statements are prepared on an accrual basis while the budget is prepared on a modified cash basis. He stated that this is what caused the error to occur. Mr. Lynch provided a brief overview of the specific error, which resulted in a \$2.7 million change in the favorable budget variance. He reported that staff will be making a budget-related report to the Board that will provide more detail. In response to a question from Mr. Ewin, Mr. Telfer reported that "Draft" will be removed from the report once the Board receives it. Mr. Ewin thanked staff for doing a great job and stated that he appreciated their diligence.

Action Taken

Mr. Emery moved to receive the Fiscal Year 2008 Comprehensive Annual Financial Report. Mr. McLean seconded the motion, and the vote was 11 to 0 in favor.

48. MTS: Pension Investment Status (OPS 960.10)
(Taken Out of Order)

Mr. Bruno Grimaldi, RV Kuhn, provided the Board with an overview of the pension investment performance for SDTC's Employee Retirement Plan as of September 30, 2008. Mr. Bret van Roden, also of RV Kuhn, provided with Board with an historic perspective on the recent financial crisis in the stock market. Mr. Grimaldi provided the Board with a comparison of the decline in the various indexes for the respective types of investment managers in the pension portfolio as well as the asset allocation for these investments. He reported that the portfolio has 13 managers in 8 different asset classes. He then reviewed the performance of each of the investment managers compared to their respective index since inception, for one year, and for the 1st quarter. For year to date, the portfolio experienced a negative return of 13.02 compared to the aggregate index return, which experienced a negative return of 9.07 percent. For the first quarter, the returns were negative 9.61 and 5.30, respectively.

Mr. Monroe asked how these results will affect the pension plan. Mr. Telfer stated that the actuary is in the process of performing an actuarial review and will be presenting the results sometime after the beginning of the year.

