

MEETING OF THE BOARD OF DIRECTORS FOR THE
SAN DIEGO METROPOLITAN TRANSIT SYSTEM (MTS)

1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

March 20, 2014

1. Roll Call

Chairman Mathis called the Board meeting to order at 9:09 a.m. A roll call sheet listing Board member attendance is attached.

2. a. Fiscal Year 2015 Capital Improvement Program

Mr. Roberts opened the Finance Workshop and introduced Mike Thompson, Budget Manager. Mr. Thompson discussed the development of the fiscal year 2015 (FY15) Capital Improvement Program (CIP). He reviewed the CIP project highlights with regard to bus, rail and future projects. He presented capital funding levels and capital project highlights proposed for FY15. He discussed the capital budget funding trend, provided a five year overview of the CIP for fiscal years 2015-2019 and FY15 CIP recommendations.

Ms. Cole asked for further information on the Bus Shelter contract. Mr. Thompson stated it was a 3 year project to update all shelters systemwide. Mr. Jablonski stated the implementation plan for 500 shelters will replace 100 per year and will continue to collect ad revenue thus making the program self-funding. Ms. Cole mentioned that there were a number of bus benches recently installed in her District and she wanted to thank staff. She also wanted to address unmet need for shelters. Mr. Jablonski said the primary objective is to replace existing shelters, but also there is some expansion capability, and we would do that based on demand as long as MTS can obtain the permits.

Action Taken

Mr. Ovrom moved to: (1) approve the fiscal year 2015 Capital Improvement Program (CIP) with the estimated federal and nonfederal funding levels. As the federal appropriation figures are finalized and/or other project funding sources become available, allow the Chief Executive Officer (CEO) to identify and adjust projects for the adjusted funding levels; (2) forward a recommendation to the San Diego Association of Governments (SANDAG) Board of Directors to approve the submittal of Federal Section 5307 and 5337 applications for the MTS fiscal year 2015 CIP; (3) approve the transfer of \$357,409 from previous CIP projects to the fiscal year 2015 CIP; and (4) forward a recommendation to the SANDAG Board of Directors to approve amendment number 14 of the 2012 Regional Transportation Improvement Program (RTIP) in accordance with the fiscal year 2015 CIP recommendations. Mr. McClellan seconded the motion, and the vote was 13 to 0 in favor with Ms. Lightner and Mr. Alvarez absent.

b. Fiscal Year 2014 Midyear Adjustment

Mr. Thompson provided a fiscal year 2014 (FY14) midyear revenue assumptions summary and revenue summary. He reviewed the FY14 midyear expenses assumption summary and expense summary. He discussed the FY14 midyear revenue less expense, FY14 midyear contingency reserves, FY14 non-recurring revenues and FY14 midyear service levels.

Action Taken

Mr. Minto moved to approve Resolution No. 14-3 amending the fiscal year 2014 operating budget for MTS, San Diego Transit Corporation (SDTC), San Diego Trolley, Inc. (SDTI), MTS Contract Services, Chula Vista Transit, and the Coronado Ferry including using excess revenues over expenses to increase contingency reserves. Mr. McClellan seconded the motion, and the vote was 14 to 0 in favor with Mr. Alvarez absent.

Mr. Jablonski commented that MTS is rated by Standard & Poors (S&P) for debt obligation and MTS's rating has been increased from A to AA-. Mr. Jablonski summarized the very favorable report MTS received from S&P.

3. Public Comments

None.

5 b. Approval of Minutes

Ms. Emerald moved to approve the Minutes of the February 20, 2014, MTS Board of Directors meeting with a correction to the roll call sheet revising Ms. Salas' attendance. Mr. Roberts seconded the motion, and the vote was 14 to 0 in favor with Mr. Alvarez absent.

CONSENT ITEMS

6. Investment Report - January 2014

Informational item only. No action taken.

7. Cubic Software Maintenance

Action would authorize the Chief Executive Officer (CEO) to execute Doc. No. G1695.0-14, with Cubic Transportation Systems, Inc., on a sole-source basis, for the provision of annual maintenance services for the proprietary Cubic Compass Card Back Office software.

8. Purchase and Installation of two Compressed Natural Gas (CNG) Dispensers - Contract Award

Action would authorize the CEO to execute MTS Doc. No. PWB151.0-14, with Go Natural Gas, Inc., for the purchase and installation of two new CNG dispensers at the City of Chula Vista Public Works Center.

9. Legal Services Agreement with Wheatley, Bingham & Baker, LLP - Contract Amendment

Action would authorize the CEO to execute Amendment No. 2 to MTS Doc. No. G1434.2-12 with Wheatley, Bingham & Baker, LLP for an increase in contract value, from the previous amendment amount of \$640,000, to a revised \$790,000 to cover unanticipated expenses for the remainder of FY 2014.

10. California Governor's Office of Emergency Services (CalOES) California Transit Security Grant Program (CTSGP) Funding, Fiscal Year 2013-2014

Action would approve Resolution No. 14-4, authorizing the use of, and application for, \$2,779,445 of California CTSGP for capital projects that provide increased protection against security and safety threats, and/or increases the capacity of transit operators to prepare for and provide disaster-response transportation systems.

11. Proposed Revisions to MTS Policy No. 41 - Signature Authority
Action would approve the proposed revisions to MTS Policy No. 41 - Signature Authority.
12. Property Insurance Renewal
Action would authorize the CEO to renew the property insurance coverage for the San Diego Metropolitan Transit System (MTS), San Diego Transit Corporation (SDTC), and San Diego Trolley, Inc. (SDTI) with the California State Association of Counties – Excess Insurance Authority (CSAC-EIA) Property Insurance Program, effective March 31, 2014, through March 31, 2015, with various coverage deductibles of \$25,000 (real estate and personal contents property), \$100,000 (bus fleet), \$250,000 (light rail fleet) and \$1,500,000 (roads, bridges and tunnels).
13. Verizon Wireless Data Service for Mobile Data Terminal/Automatic Vehicle Locator - Contract Award
Action would authorize the CEO to execute MTS Doc. No. G1698.0-14 with Verizon Wireless for the provision of monthly cellular service and data usage for a contract base period of five (5) years with five (5) one year options to be exercised exclusively at the CEO's discretion.
14. California Department of Transportation (Caltrans) Program of Projects for Federal Transit Administration (FTA) Section 5311 Funding, Federal Fiscal Year 2014
Action would approve Resolution No. 14-5 authorizing the use of and application for \$432,356 of FTA Section 5311 funds: \$287,000 for operating assistance and \$145,356 for capital improvements in non-urbanized areas.
15. Trapeze Software License and Maintenance Agreement (Paratransit and Mini-bus Services)
Action would authorize the CEO to: 1) ratify Amendment Nos. 3 and 5 to MTS Document No. B0563.0-11 with Trapeze Software Group, Inc. (Trapeze) which were previously approved under the CEO's approval authority for a total cost of \$83,491.00; and 2) execute Amendment No. 6 to MTS Doc. No. B0563.0-11 with Trapeze Software License and Maintenance Agreement to consolidate all services under a single multi-year maintenance agreement totaling \$1,471,135.25.
16. Collaboration with Zizhu National Hi-Tech Industrial Development Zone (Minhang District of Shanghai, China)
Action would approve MTS Doc. No. G1700.0-14 to execute an agreement with the Zizhu National Hi-tech Industrial Development Zone for an exchange of expertise and reimbursement of travel expenses.

Action on Recommended Consent Items

Ms. Cole moved to approve Consent Agenda Item Nos. 6-16. Mr. Cunningham seconded the motion, and the vote was 10 to 0 in favor with Board members Emerald, Gastil, Lightner, Roberts, and Salas absent.

NOTICED PUBLIC HEARINGS

25. None.

DISCUSSION ITEMS

30. Taxicab Contract Renewal (TAKEN OUT OF ORDER)

Sharon Cooney, Chief of Staff, discussed the formation of an Ad Hoc Taxicab Contract Negotiating Committee and the potential long term contract renewal between MTS and the City of San Diego and the particulars of the contract including relevant policies and the City processes. She stated that the decision today was to approve guidelines for negotiations of the contract renewal with the City of San Diego. She explained the guidelines that were being recommended by the Negotiating Committee and the Executive Committee. She discussed possible changes to Ordinance 11 that the Committee was willing to entertain either as changes to the contract or, in the interest of time, after the contract is renewed.

Ms. Emerald stated she would like to create a mechanism for the City to approve permit transfers so the City knows who is operating the taxis with regard to permits.

Ms. Cole asked about the creation of a new forum with regard to disputes and if this would be the City's responsibility and who at the City would set up its parameters. Ms. Cooney advised it would be up to the City to decide. She stated that a few cities we surveyed do have this type of mechanism. Currently a dispute goes through the judicial system, and the proposal is that the City of San Diego would be responsible for creation of any other type of forum.

Ms. Bragg stated in Imperial Beach there are only two taxicabs and the City of Imperial Beach could handle their administration on its own, and she would advocate that MTS get out of the taxicab business. She believes it is an issue that lies with the City of San Diego.

Mr. Cunningham sought clarification that the Board members are not voting on the contract, but rather voting on the tools the negotiation team be armed with to negotiate with the City of San Diego. Ms. Cooney advised this was correct.

Mr. Gloria asked whether the MTS Board had ever voted to decide to not engage in dispute resolutions and other items listed in principle number six. Ms. Cooney stated that the Board last weighed in on this issue over a year ago, but today's vote is whether or not to maintain this as a principle of negotiation.

Mr. Gastil commented that he is from the small city of Lemon Grove and it has no interest in taking on taxicab regulation by itself, but would like to take the issue on with other cities and MTS is a good vehicle for Lemon Grove. He asked for insight with regard to the advantages and disadvantages to deal with dispute resolutions through the City of San Diego as opposed to MTS. Ms. Cooney stated the reason cities do it is that they usually issue business licenses. In addition, she explained MTS has concerns this dispute resolution could lead MTS to allegations of interference with contracts, and that the primary mission of MTS, transit, would take a back seat to resolving disputes. Mr. Jablonski stated the other concern is it would require considerable more staff on MTS's end resulting in increased costs transferred to permit holders in annual fees and then transferred to lease holders and it is in conflict with the ongoing complaint that lease rates are too high. MTS wants to keep the permits as economical as possible as well as the leases. But if the City wishes to set up an adjudication process they are free to do that. Ms. Cooney stated that MTS is required to maintain full cost recovery but the City is not.

Mr. Roberts stated taxicabs were not always with MTS and due to time taken discussing taxi the City asked MTS to take over the administration several years ago, but not with the intention that MTS would take over negotiations and dispute resolution part of it. The principles are a start of

negotiations. Perhaps a severance clause is required to allow the City to take it back if it wants during the contract term. However MTS is more than willing to continue its current role.

Public Comments

Mikail Hussein – Mr. Hussein is founder of United Taxi Workers of San Diego. He stated he is against MTS continuing taxicab administration. The industry is 3 layers; leased drivers, permit holders and the consumer. There are many complaints against MTS. It makes no sense why MTS would want to renew the contract when they have been hands-off for many years.

Chris Morse – Legal Intern with United Taxi Workers of San Diego. He does not support contract renewal as it is not in the best interest of the taxi industry. He has worked with drivers from across the globe. When these drivers have issues they do not feel they are able to go to MTS. He has had to wait months to hear back from MTS and has public records requests neglected. He says there is an apparent need for regulatory reform and the City is not holding MTS accountable.

Abebe Antallo – He has driven a cab for 8 years and his car was stolen by a medallion holder. He was thrown out of the business because he was one of the organizers working with United Taxi Workers and this was out of retaliation. We fought to bring balance on Taxi Advisory Board and five drivers were on the board and three were taken off of the board. MTS has no moral or ethical standard to run taxi which belongs to the City taxpayers and he opposes the proposal for contract renewal.

Christina Griffin – Ms. Griffin stated she was with the National Association for Advancement of Colored People (NAACP), San Diego branch. She gave an example of garbage collectors who were killed due to unsafe conditions. She stated that taxi workers deserve decent wages, better working conditions and respect. Ms. Griffin stated these taxi drivers represent the community in many ways. She stated that she is in hopes the Board does not vote to approve contract renewal.

Mr. Marco Briones – Mr. Briones stated that he was speaking on behalf of Assemblywoman Lorena Gonzalez. He discussed workers' rights and stated the taxi workers should be supported and that they oppose a long term contract.

Pastor Wayne Riggs – Mr. Riggs stated that he had been working in the religious branch of law enforcement. He said to treat people the way one would like to be treated. The industry needs a great deal of help and there should be a moral dimension placed on the work MTS does with regard to taxi administration. It must be recognized that these drivers are a big part of the economy and they are working long hours for small wages. He stands with the drivers in urging for a short term contract so a long term contract can reflect the needs and just rights of the workers.

Sarah Saez – Ms. Saez stated she is Program Director with United Taxi Workers. She stated a member of MTS's Executive Committee meeting stated that it does not matter that taxi drivers are working 16 hours and her attendance at meetings was a waste of time. She stated that everyone deserves dignity and to be safe from harm. She supports a short term contract. She stated that there are only 53 permits in the smaller cities combined. There has been undue influence at MTS. Those who want to stay with MTS are saying so because they are receiving monetary benefit due to unfair practices.

Michael Roderick – Mr. Roderick was a student at San Diego City College. He stated the City should administer taxicabs and reform it and it would be for the City Council to make decisions

with regard to common sense reform. All of the schools in the region have unanimously supported the safe cab campaign and asks that taxi be put back with the City of San Diego.

Alan Calderon – Mr. Calderon said he was an employee rights director and stated MTS can decide whether or not it wants to pursue a long term contract. Thousands of people who pay hundreds of dollars a week do not have a mandated right to even receive receipts for their payments. He is against a contract renewal.

Mr. Ray Seyed Salehi – Mr. Selehi stated that he has been in the taxi business since 1977, even when the City of San Diego controlled taxi. He stated when taxi moved to MTS and created Ordinance 11 the industry radically changed. The workers who support the transition to the City have many children and not enough income to cover this number of dependents.

Michel Anderson – Mr. Anderson stated he provided a letter from SDTA President Tony Hueso encouraging the Board to move forward with contract renewal. He stated he is a lifetime member of NAACP. He stated there is a lot of money in the industry and he is here to support the community. Drivers are independent contractors and they set their own hours and lease the car 24 hours a day. He wants a regional transportation network. The former mayor began exploring the idea of taking back taxi and considered it infeasible. Taxi apps are hurting all of the drivers and the industry needs a home for 5 years to implement effective programs to counteract their negative force.

Margo Tanguay – Ms. Tanguay stated that she lives on 16th St. and provided her history with the taxi industry. She talked about the industry bringing in refugees from all over the world. All of these groups had labor problems, which is nothing new. The economy is in trouble as a whole and for stability a five year contract is needed.

Mr. Mathis opened Board discussion.

Ms. Emerald stated that she has great affection for this industry having worked in it herself. She has very serious concerns about the industry based on the division and growing competition outside the industry she sees. She believes all need to be united for the health of the industry.

Mr. Mathis interrupted to take a public speaker who was overlooked.

Tony Hueso – Mr. Hueso stated that he has been in the business for 32 years and politics impedes the taxi industry. It is not about a wage or hour issue, it is about an opportunity to drive a cab in the City of San Diego if there is an available cab. Government cannot guarantee anything other than the creation of a forum to get it right.

Ms. Emerald offered a motion to accept the recommendation of the Executive Committee with amendments: 1) to change principle 5 to say "It is in the best interest of the taxi industry, MTS and the city to approve a two year renewal with the option of 3 one-year extensions; 2) to change principle 7 to state MTS will make (rather than entertain) changes to Ordinance 11, and that the Ordinance 11 changes will be included in the amended contract; 3) to add principle number 8, "MTS will restrict the ability to transfer permits without the permission of the City of San Diego." She stated that these changes were shown to Mayor Faulconer and he is willing to entertain all of these principles as amended. Ms. Cole seconded the motion.

Mr. Roberts stated that a severance clause could allow the City to make a change within the 5 year term with a notice of 6 months and that the principles are meant to be negotiating points. He would not support a two year renewal with three one year options.

Mr. Cunningham stated that we should arm our negotiators with the ability to negotiate up to a 5 year term. If the City feels differently they can negotiate for something else. The language proposed by the motion ties the negotiators hands. We don't want a deal breaker if the City disagrees with MTS's proposed changes to Ordinance 11. Also, the City has used the Mediation Center effectively and this could be a mechanism for dispute resolution. He wanted to explain the thinking of the Negotiating Committee in putting together the recommended principles.

Mr. Gastil stated that he did not think a convincing argument was made why a 2 year term would be better than a 5 year term. The recommended principles would leave open the possibility that the City could do more if it chose. The guiding principles would allow a discussion to be had at the City.

Mr. Minto stated that the discussion was helpful and that he believes that the principles should be broad enough to allow the negotiation to proceed.

Ms. Salas asked if MTS should set a two year term if it was interested in turning taxicab administration back to the City.

Mr. Roberts clarified that the Committee did not want to stop administering taxicabs.

Mr. Ovrom agreed that the negotiating principles should be kept broad enough to allow the negotiations to proceed.

Ms. Cole stated that she heard today that the system is broken and that she wants to talk about how to fix the problem. She stated that taxicabs should be part of the transit system.

Mr. Gloria stated that he is in favor of the motion and that the City is not interested in taking over taxicab administration. He agreed that the industry faces challenges from competition from Uber and other services.

Mr. Cunningham suggested amendments to the motion and the maker of the motion

Action Taken

Mr. Emerald accepted amendments to the motion as follows: 1) Principle No. 5 would read as "It is in the best interest of the taxi industry, MTS and the City to approve up to a five year renewal"; 2) Principle No. 7 would read as "MTS will strongly advocate for changes to Ordinance 11 that have been publicly sought, specifically those related to maximum vehicle age or mileage and the requirement that permit holders issue and maintain records of receipts for lease payments and produce them upon request of MTS or the City of San Diego. These Ordinance 11 proposals could be included in the amended agreement or may also be subjects for discussion after contract renewal"; and 3) No. 8 will read as "MTS will address the ability to transfer permits without the permission of the City of San Diego." The vote was 14 to 0 in favor with Mr. Alvarez absent.

CLOSED SESSION

24. Closed Session Items

The Board convened to Closed Session at 11:28 a.m.

- a. CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL – Existing Litigation Pursuant to California Government Code Section 54956.9(A): Albert Miller v. SDTC (WCAB Case No. ADJ8593274)
- b. CLOSED SESSION - CONFERENCE WITH LABOR NEGOTIATORS Pursuant to California Government Code Section 54957.6
Agency-Designed Representative: Jeff Stumbo
Employee Organization: International Brotherhood of Electrical Workers – Local 465
Employee Organization: Transit Enforcement Officers Association
- c. CLOSED SESSION - CONFERENCE WITH REAL PROPERTY NEGOTIATORS Pursuant to California Government Code section 54956.8
Property: San Diego and Arizona Eastern (SD&AE) Railway Company Desert Line (Division to Plaster City)
Agency Negotiators: Karen Landers, General Counsel; Tim Allison, Manager of Real Estate Assets; and Paul Jablonski, Chief Executive Officer
Negotiating Parties: RD Griffin Partners LLC, David Rohal, Ernest Dahlman
Under Negotiation: Price and Terms of Payment.

The Board reconvened to Open Session at 12:06 p.m.

Oral Report of Final Actions Taken in Closed Session

Karen Landers, General Counsel, reported the following:

- a. The Board had a conference with legal counsel and gave instructions.
- b. The Board had a conference with labor negotiators and gave instructions.
- c. The Board had a conference with real property negotiators and gave instructions.

31. United States Fish and Wildlife Service (FWS) Bayside Birding and Walking Trail Project; Construction and Maintenance Agreement

Karen Landers, General Counsel presented a proposal for an FWS birding trail on MTS real property. She explained that opening the trail to the public would carry some risk for MTS as owner of the property. MTS does allow other agencies to use its property for the public good but the agencies usually indemnify MTS. She discussed three potential approaches. She explained the staff recommendation was to agree to allow the use of the property by FWS but to charge a fee to FWS to cover the cost of MTS purchasing separate insurance coverage. She provided three options and gave a staff recommendation.

Public Comments

Mr. Yuen – He stated that the federal government could not indemnify MTS or purchase an insurance policy for MTS. He stated that he offered alternative language. He explained the trail and the benefits of the trail to that member of the community in Imperial Beach.

Action Taken

Ms. Emerald moved to approve a Construction and Maintenance Agreement (CMA) for the FWS Bayside Birding and Walking Trail Project but charge an annual fee equivalent to cost for low-deductible insurance policy. Mr. Ovrom seconded the motion, and the vote was 11 to 1, with Mr. Minto opposed and Messrs. Alvarez, Cunningham and Ewin absent.

REPORT ITEMS

45. Update on Contract Services Fixed-Route Procurement

Mr. Jablonski provided a background and history with regard to fixed route bus contract services. He introduced Bill Spraul, Chief Operating Officer of Transit. Mr. Spraul gave a synopsis of the procurement and introduced Jeff Codling, Manager of South Bay operations. Mr. Codling provided a fixed-route bus service overview and request for proposals (RFP) highlights. He discussed the fixed-route RFP, the Independent Cost Estimate, and the RFP timeline. The report was for information only.

60. Chairman's Report

None.

61. Audit Oversight Committee Chairman's Report

None.

62. Chief Executive Officer's Report

Mr. Jablonski reported that he had traveled to Washington, D.C. with SANDAG for the APTA Legislative Conference and met with members of the Federal Transit Administration regarding the Mid-Coast Trolley Extension Project.

63. Board Member Communications

Mr. Gloria advised City staff was working with MTS staff on implementation of the Quiet Zone and there are still ongoing concerns with the regard to trolley bell noise and thanked MTS Staff for continuing to help mitigate the noise issues.

Mr. Jablonski stated that Wayne Terry, Chief Operating Officer of Rail was primarily responsible for the continued work and has put forth great effort in utilizing his knowledge in regard to the Quiet Zone initiative. Mr. Terry has been in constant communication with the residents and PUC and other organizations. Mr. Gloria responded he has heard positive comments with regard to MTS's efforts.

Ms. Emerald asked about the progress with regard to the Mid-Coast project. Mr. Jablonski responded.

64. Additional Public Comments on Items Not on the Agenda

Valerie Hightower – Ms. Hightower stated she lives on 47th and Imperial and it's hard when the buses run every half hour and there are no benches to sit on. She stated there were other areas downtown lacking benches. She advised there are many smokers at the bus stops downtown and wants to know who she should complain to. She requests that the buses have

windows that roll down properly due to ill people riding the bus. She requested more frequent buses for the riders, specifically students so they do not abandon their studies.

65. Next Meeting Date

The next regularly scheduled Board meeting is on April 17, 2014.

66. Adjournment

Chairman Mathis adjourned the meeting at 12:28 p.m.



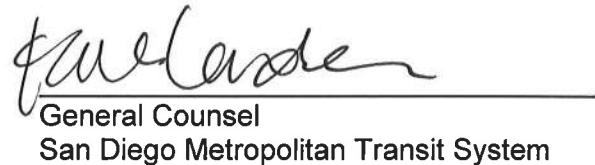
Chairperson
San Diego Metropolitan Transit System

Filed by:

Approved as to form:



Clerk of the Board (interim C.O.B.)
San Diego Metropolitan Transit System



General Counsel
San Diego Metropolitan Transit System

- Attachments:
- A. Roll Call Sheet
 - B. Proposed Amendments to Principles for Negotiation of the Taxicab Administration Contract on Behalf of the Metropolitan Transit System
 - C. Letter from Tony Hueso of the San Diego Transportation Association (SDTA)
 - D. Letter from Andrew Yuen, Project Leader at the United States Department of the Interior

METROPOLITAN TRANSIT SYSTEM
BOARD OF DIRECTORS
ROLL CALL

MEETING OF (DATE): March 20, 2014 CALL TO ORDER (TIME): 9:09 a.m.
 RECESS: N/A RECONVENE: N/A
 CLOSED SESSION: 11:28 a.m. RECONVENE: 12:06 p.m.
 PUBLIC HEARING: N/A RECONVENE: N/A
 ORDINANCES ADOPTED: 41 (revised) ADJOURN: 12:26 p.m.

BOARD MEMBER	(Alternate)	PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)
ALVAREZ	<input type="checkbox"/> (Gloria) <input type="checkbox"/>		
BRAGG	<input checked="" type="checkbox"/> (Bilbray) <input type="checkbox"/>	9:09 a.m.	12:26 p.m.
COLE	<input checked="" type="checkbox"/> (Gloria) <input type="checkbox"/>	9:09 a.m.	12:26 p.m.
CUNNINGHAM	<input checked="" type="checkbox"/> (Mullin) <input type="checkbox"/>	9:09 a.m.	12:06 p.m.
EMERALD	<input checked="" type="checkbox"/> (Gloria) <input type="checkbox"/>	9:09 a.m.	12:26 p.m.
EWIN	<input checked="" type="checkbox"/> (Arapostathis) <input type="checkbox"/>	9:09 a.m.	12:06 p.m.
GASTIL	<input checked="" type="checkbox"/> (Jones) <input type="checkbox"/>	9:09 a.m.	12:26 p.m.
LIGHTNER	<input type="checkbox"/> (Gloria) <input checked="" type="checkbox"/>	9:30 a.m.	12:26 p.m.
MATHIS	<input checked="" type="checkbox"/>	9:09 a.m.	12:26 p.m.
MCCLELLAN	<input checked="" type="checkbox"/> (Ambrose) <input type="checkbox"/>	9:09 a.m.	12:26 p.m.
MINTO	<input checked="" type="checkbox"/> (McNelis) <input type="checkbox"/>	9:09 a.m.	12:26 p.m.
OVROM	<input checked="" type="checkbox"/> (Denny) <input type="checkbox"/>	9:09 a.m.	12:26 p.m.
RIOS	<input checked="" type="checkbox"/> (Sotelo-Solis) <input type="checkbox"/>	9:09 a.m.	12:26 p.m.
ROBERTS	<input checked="" type="checkbox"/> (Cox) <input type="checkbox"/>	9:09 a.m.	12:26 p.m.
SALAS	<input checked="" type="checkbox"/> (Ramirez) <input type="checkbox"/>	9:09 a.m.	12:15 p.m.

SIGNED BY THE CLERK OF THE BOARD:

CONFIRMED BY THE GENERAL COUNSEL:

Principles for Negotiation of the Taxicab Administration Contract on Behalf of the Metropolitan Transit System

(With proposed amendments by San Diego City Councilmember Marti Emerald)

The Metropolitan Transit System (MTS) anticipates renewing the agreement with the City of San Diego (the City) for taxicab administration. The Committee recommended the following principles be followed when negotiating contract amendments – this version includes Councilmember Emerald's amendments to the committee's proposed Principles for Negotiation:

1. The City will continue to set fundamental policy and MTS will be the administrator.
2. State law requires that MTS recover its costs associated with taxicab administration. Changes to ordinances or regulations proposed by the City should indicate the expected source of funding for their implementation (eg. permit fees versus City subsidy) and include an analysis of cost.
3. In the event the city chooses to initiate a policy change, the MTS Board will have to vote to approve amendments to its ordinance 11 in order to implement that change.
4. The City's indemnification of MTS for actions it takes pursuant to policies and regulations approved by the city should continue with the renewal.
5. It is in the best interest of the taxi industry, MTS and the city to approve a ~~five-year~~ **two year** renewal **with the option of 3 one-year extensions**.
6. In the event that the City determines that it is in the public's best interest to create a new forum for resolution of disputes between lease drivers and permit holders, the City may choose to operate a dispute resolution center or create some other mechanism for processing these types of disputes. During the term of this agreement MTS is not interested in assuming this role.
7. MTS will ~~entertain some~~ **make** changes to Ordinance 11 that have been publicly sought, specifically those related to maximum vehicle age or mileage and the requirement that permit holders issue and maintain records of receipts for lease payments and produce them upon request of MTS **or the City of San Diego**. These Ordinance 11 proposals ~~could~~ **will** be included in the amended agreement or may also be subjects for discussion after contract renewal.
8. **MTS will restrict the ability to transfer permits without the permission of the City of San Diego.**

San Diego Transportation Association



March 20, 2014

Chairman Harry Mathis & Board Members
Metropolitan Transit System
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

Re: Taxi Contract Renewal

Dear Chairman Mathis & Board Members:

After multiple starts and stops, delays and continuances, the more than 600 MTS taxi permit holders in our membership encourage you to move forward on Agenda Item Number 30 today.

As you recall, last year the former mayor requested a one-year extension to allow the City to explore the possibility of transferring the administrative and regulatory responsibilities for taxicab and for-hire vehicles from MTS to the City of San Diego.

Now that the exploration has concluded and determined infeasible, it is imperative to resume discussions that will lead to the adoption of a five-year contract between MTS and the City of San Diego, as proposed by the MTS Contract Renewal Committee.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Hueso", is written over a faint, large, light-green "SDTA" watermark.

Tony Hueso, President
San Diego Transportation Association



United States Department of the Interior

FISH AND WILDLIFE SERVICE
San Diego National Wildlife Refuge Complex
Post Office Box 2358
Chula Vista, California 91912



March 20, 2014

Mr. Henry Mathis
Chairperson, Metropolitan Transit System Board
James R. Mills Building
1255 Imperial Avenue, San Diego

Re: San Diego Bay National Wildlife Refuge, Bayside Birding and Walking Trail
Construction and Maintenance Agreement

Dear Mr. Mathis:

The U. S. Fish and Wildlife Service manages the San Diego Bay National Wildlife Refuge (Refuge). This Refuge protects a rich diversity of endangered, threatened, migratory, and native species and their habitats in the midst of a highly urbanized coastal environment. The San Diego Bay National Wildlife Refuge also provides the public with the opportunity to observe birds and wildlife in their native habitats and to enjoy and connect with the natural environment. We have expanded the opportunities for the public to enjoy this Refuge by providing a pedestrian trail, benches, and interpretive signs and the County of San Diego designed and constructed the Sellers-Keever Outdoor Education Activity Center at 13th Street in the City of Imperial Beach. The Refuge serves as a haven for wildlife and the public to be appreciated by this and future generations.

We have been working with the California Coastal Conservancy, City of Imperial Beach, and others in the design and development of the Bayside Birding and Walking Trail, a public foot trail designed to improve pedestrian access opportunities for the safe enjoyment of wildlife viewing and outdoor educational and interpretational activities at the southern end of San Diego Bay. The proposed trail is offset to the north of the Bayshore Bikeway and extends from 7th Street to 10th Street. The proposed project includes an observation deck, and would complement the City of Imperial Beach's recently completed Bayshore Bikeway improvement project. This project enjoys a great deal of support from members of the public and elected officials.

The planned footprint of our trail intersects with a short section of a Right of Way (ROW) owned by the Metropolitan Transit System. This ROW falls within the footprint of the historic railroad line that ran along the Silver Strand to Coronado (the former "Coronado Belt Line"). This rail line is now abandoned and replaced in places by the Bay Shore Bikeway and Highway 75. None of these historical features associated with former Coronado Belt Line will be impacted by the construction of our walking trail.

We require a "Construction and Maintenance Agreement" with MTS to allow us to build and maintain our trail along the section where our planned trail overlays the MTS ROW (see figure 1). MTS staff have expressed concerns regarding the need for MTS to obtain legal protection from third party tort claims that could be made in relation to the use of our planned public trail that crosses an historical MTS ROW.

MTS staff members have been informed by FWS staff, and further MTS Counsel in discussion with an Assistant Field Solicitor on behalf of FWS staff that the United States is constrained by statute from indemnifying MTS (or anyone else), and is not able to agree to the indemnification provisions that might be commonly used in other agreements between MTS and non-federal entities. We have provided your staff and Counsel with an explanation of the statutory restrictions on, and provided alternate language which can be used in any agreement with the United States:

A federal agency cannot, unless specifically authorized by Congress, execute an indemnification or hold harmless agreement. The U.S. Fish and Wildlife Service does not have Congressional authorization to enter into indemnification or hold harmless agreements.

Absent Congressional authorization, indemnification and hold harmless agreements would involve the United States in a contract or obligation for the payment of money before the money is appropriated by Congress. Under the Anti-Deficiency Act, 31 U.S.C. 1341(a), agencies of the United States may not agree to obligate federal funds in advance of a Congressional appropriation. Numerous federal courts have construed indemnification and hold harmless agreements as a violation of the Anti-Deficiency Act because such agreements obligate funds prior to appropriation by Congress. *California Pacific Utilities Co. V. United States*, 194 Ct. Cl. 703 (1971); *Anna Marie Frank v. United States*, No. 85-2205, Ninth Circuit Court of Appeals (1986); *John Manville Corp., et al v. United States*, 12 Cl.Ct. 1 (1987).

To address this legal prohibition, the U.S. Department of the Interior Solicitor's Office has developed a substitute provision. This provision provides essentially the same protection a landowner would seek under a "hold harmless" agreement. It states that the Federal Tort Claims Act (28 U.S.C. § 2671) provides for recourse against the United States for negligent acts or omissions caused by federal employees. Additionally, the United States may promise to perform the work with all reasonable diligence and precaution. Failure to do so could be considered a breach of contract which could be disposed of under the Tucker Act. (28 U.S.C. § 1491).

The question of insurance often arises along with questions regarding indemnification. Absent specific statutory authority, an agency of the United States cannot purchase insurance (see 19 Comp. Gen. 798 and its progeny). The U.S. Fish and Wildlife Service does not have statutory authority to purchase insurance and are thus unable to provide certificates of insurance. In place of insurance, these agencies, as part of the federal government, are "self insured." If there is a claim against FWS for damage or injury, the claim would be considered under the Federal Tort Claims Act.

The substitute provision is as follows:

The U.S. Fish and Wildlife Service agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal Tort Claims Act against the United States for personal injuries or property damage resulting from the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his/her employment, arising out of this agreement. Further, the U.S. Fish and Wildlife Service agrees to perform all work under this agreement with reasonable diligence and precaution.

We are working under a grant deadline to compete the construction of the Bayshore Birding and Walking Trail, and must expend all funding (approximately a half million dollars) that we have obtained to complete this project. Those funds expire in September of this year, so it is important that this issue be resolved promptly so this important public recreational trail may be completed.

We request that the MTS Board of Directors approve the substitute language we provided to MTS staff and Counsel. We request that the Board of Directors direct MTS staff to move towards the timely completion of a final licensing agreement with the U.S. Fish and Wildlife Service so we may be able to successfully provide this important recreational and educational resource to the residents and visitors of South San Diego Bay.

Sincerely,



Andrew Yuen
Project Leader

cc: SOL, Oakland, CA

Bayside Birding and Walking Trail MTS ROW

San Diego Bay NWR

 Bayside Birding and Walking Trail

 Observation Platform

 Right of Way (SANGIS)

 Refuge (FWS R8 Realty)



Proposed Footbridge

Bayside Elementary School