

## MINUTES

### MEETING OF THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM

#### EXECUTIVE COMMITTEE

April 13, 2023

[Clerk's note: Except where noted, public, staff and board member comments are paraphrased. The full comment can be heard by reviewing the recording at the [MTS website](#).]

#### 1. Roll Call

Vice Chair Whitburn called the Executive Committee meeting to order at 9:02 a.m. A roll call sheet listing Executive Committee member attendance is attached.

#### AGENDA ITEM TAKE OUT OF ORDER

#### 8. Other Staff Communications and Business

Vice Chair Whitburn stated that closed session item number 6 is a last-minute agenda item addition. Karen Landers, MTS General Counsel, added that under Government Code section 54954.2(b)(2), if an item is added to the agenda less than 72 hours before the meeting, the Board can add the item to the agenda under a two-thirds vote, if the item requires immediate action. She asked that the Board consider adding the closed session item to the agenda due to anticipated litigation with claimant Veda Short for a bus incident on March 19, 2023.

##### Action Taken

Board Member Hall moved to approve adding the closed session item to the agenda to discuss anticipated litigation with claimant Veda Short for a bus incident on March 19, 2023. Board Member Elo-Rivera seconded the motion, and the vote was 5 to 0 in favor with Board Member Vargas absent.

#### 2. Public Comment

There were no Public Comments.

#### 3. Approval of Minutes

Board Member Elo-Rivera moved to approve the minutes of the March 9, 2023, MTS Executive Committee meeting. Board Member Moreno seconded the motion, and the vote was 5 to 0 in favor with Board Member Vargas absent.

#### DISCUSSION ITEMS

#### 4. Chairperson and Board Leadership Nomination (Karen Landers)

Sharon Cooney, Chief Executive Officer, explained that the former Chair's term expires on December 31, 2023. The item today is for the Executive Committee to discuss its process to nominate and propose a new Chair to the Board to finish the current term. Policy 22 states that: "in the event of a vacancy in a Chair position, the Executive Committee shall create an Ad Hoc Committee that shall recommend a candidate or candidates to the Board for consideration." She noted that this process was similar to the leadership and committee nominations that are conducted at the January meeting. She listed the various options the committee could do, including having the Executive Committee serve as the nominating body or creating a separate Ad Hoc Committee. She also noted that there was not a formal process to nominate a Chair at MTS. The nominations would be taken to the Board and be decided on by a two-thirds vote.

### **Committee Comment**

Vice Chair Whitburn moved to form an Ad Hoc Nominating Committee for nominating candidates as Chair. He included the following to serve as members of the Committee: Board Member Elo-Rivera, Board Member Moreno, Board Member Hall, Board Member Bush, Board Member Gloria, Board Member Chavez and Vice Chair Whitburn. Board Member Hall seconded the motion.

Board Member Bush made a substitute motion to have the Executive Committee be the nominating body rather than the Ad Hoc Nominating Committee. Board Member Bush claimed that having the Executive Committee be the nominating body would be the fastest way to make such nominations. Board Member Elo-Rivera suggested that the Executive Committee make nominations to the Ad Hoc Nominating Committee and that the Ad Hoc Nominating Committee also forward additional nominations to the full Board. Board Member Bush withdrew his substitute motion. Board Member Moreno cautioned that the motion belonged to the body.

### **Action Taken – Creation of Ad Hoc Nominating Committee**

Board Member Bush amended his substitute motion to have the Executive Committee make nominations to the Ad Hoc Nominating Committee and that the Ad Hoc Nominating Committee also forward additional nominations to the full Board. The Ad Hoc Nominating Committee would include Board Member Elo-Rivera, Board Member Moreno, Board Member Hall, Board Member Bush, Board Member Gloria, Board Member Chavez and Vice Chair Whitburn. Board Member Hall seconded the motion. The vote was 5 to 0 in favor with Board Member Vargas absent.

### **Committee Comment**

Board Member Moreno made a motion to forward a motion to the Board to nominate Board Member Dillard as a candidate for Chair. Board Member Bush seconded motion. Board Member Moreno hoped to establish new and stable leadership on the Board. She believed she was an accomplished business professional who has the time and skills necessary to succeed in the role and was confident in her ability to be a successful Chairperson. Board Member Hall seconded the motion.

Board Member Hall stated that he wished to nominate additional members. Board Member Bush asked that each nominee be listed as a separate motion. Board Member Hall was under the impression that all names would be voted on in one motion and removed his support for Board Member Moreno's motion. Board Member Bush seconded the motion to nominate Board Member Dillard as a candidate for Chair.

Board Member Moreno clarified that she was opened to voting on additional members in subsequent motions. Vice Chair Whitburn clarified that the Ad Hoc Nominating Committee would meet between today and prior to the April 20, 2023 Board meeting. He noted that this is an opportunity for the Executive Committee to provide recommendations both to the Ad Hoc Nominating Committee and to the Board. Ms. Cooney added that the previous motion would forward a recommendation to the Board and would appear as the Executive Committee's nomination to the Board. Board Member Moreno clarified that it was her intent to nominate Board Member Dillard to the Board. Board Member Hall clarified that Board Member Dillard is a choice nominee but not the only nominee. Board Member Moreno suggested that Board Member Hall amend the original motion if he was unsatisfied with the phrasing. Chair Whitburn clarified that Board Member Hall would like the Executive Committee to recommend names to the Ad Hoc Nominating Committee with the intent that all of those names be considered by the

Ad Hoc Nominating Committee to forward to the Board. Board Member Hall proposed an amended motion to Moreno's original motion and requested to take all nominations to the Ad Hoc Nominating Committee. It was then clarified that Board Member Moreno's motion intended to take nominations to both the Board and the Ad Hoc Nominating Committee. Based on this clarification, Vice Chair Whitburn withdrew the amended motion. Board Member Hall proposed another amended motion to Moreno's original motion and requested to add two more Board Members: Vice Chair Whitburn and Board Member Goble, to the list of candidates to be considered as Chair. Board Member Moreno declined the amended motion. Subsequently, the Executive Committee voted on Board Member Moreno's original motion as well as subsequent motions, listed below.

**Action Taken – Nomination of Board Member Dillard as a Candidate for Chair**

Board Member Moreno made a motion to forward a motion to the Board and Ad Hoc Nominating Committee to nominate Board Member Dillard as a candidate for Chair. Board Member Bush seconded the Motion. The vote was 3-1 in favor with Board Member Hall voting no, Vice Chair Whitburn abstaining, and Board Member Vargas absent.

**Action Taken – Nomination of Vice Chair Whitburn as a Candidate for Chair**

Board Member Hall made a motion to forward a motion to the Ad Hoc Nominating Committee and the Board to nominate Vice Chair Whitburn as a candidate for Chair. Board Member Elo-Rivera seconded the motion, and the vote was 3 to 1 in favor with Board Member Moreno voting no, Vice Chair Whitburn abstaining, and Board Member Vargas absent.

**Action Taken – Nomination of Board Member Goble as a Candidate for Chair**

Board Member Hall made a motion to forward a motion to the Ad Hoc Nominating Committee and the Board to nominate Board Member Goble as a candidate for Chair. Board Member Moreno seconded the motion, and the vote was 4 to 0 in favor with Vice Chair Whitburn abstaining and Board Member Vargas absent.

**Committee Comments**

There were no further nominations. Board Member Bush asked for clarification on next steps. Vice Chair Whitburn clarified that the members of the Ad Hoc Nominating Committee will meet virtually between today and the April 20, 2023 Board meeting to consider the nominations made by the Executive Committee, along with any additional nominations made by the Ad Hoc Nominating Committee. All nominations will then be forwarded to the Board of Directors on April 20, 2023 for consideration. Board Member Bush asked what the public noticing timeline would be for the Ad Hoc Nominating Committee. Ms. Landers clarified that there would be no public noticing requirement for the Ad Hoc Nominating Committee, as it is not a Brown Act meeting. Board Member Moreno removed her name from the Ad Hoc Nominating Committee, resulting in an updated slate of the Ad Hoc Nominating Committee including: Vice Chair Whitburn, Board Member Elo-Rivera, Board Member Hall, Board Member Bush, Board Member Gloria, and Board Member Chavez.

OTHER ITEMS (TAKEN OUT OF ORDER)

**7. Review of Draft April 20, 2023 Board Agenda**

Recommended Consent Items

**4. Approval of Minutes**

Action would approve the March 16, 2023 Board of Director meeting minutes and the April 6, 2023 Special Board of Director meeting minutes.

**5. Fiscal Year (FY) 2022-2023 Low Carbon Transit Operations Program (LCTOP) Funding**

Action would: 1) Agree to comply with all conditions and requirements set forth in the Certification and Assurances Document, and applicable statutes, regulations, and guidelines for all LCTOP funded transit projects; and 2) Authorize the Chief Executive Officer (CEO), or designated representative, to execute all required documents of the LCTOP and any amendments thereto with the California Department of Transportation; and 3) Authorize the allocation of \$8,100,849 in Fiscal Year (FY) 2022-2023 LCTOP funding for the procurement of Battery Electric Buses (BEBs), which will reduce greenhouse gas emissions and improve mobility with a priority on serving Disadvantaged Communities (DAC); and 4) Certify that at least 50% of the total LCTOP funds received will be spent on projects or services that will benefit DACs identified in Section 39711 of the Health and Safety Code.

**6. San Diego Transit Enforcement (SDTE) Patio Upgrade – Work Order Agreement**

Action would authorize the Chief Executive Officer (CEO) to execute Work Order MTSJOC324-27 under Job Order Contract (JOC) to MTS Doc. No. PWG324.0-21 (in substantially the same format as Attachment A) with ABC General Contracting, Inc. (ABCGC), in the amount of \$149,913.51, for rehabilitating the patio area that is in use by SDTE officers adjacent to Building C.

**7. Design Services for South Bay Maintenance Facility (SBMF) Electric Bus Charging Project – Work Order Agreement**

Action would authorize the Chief Executive Officer (CEO) to execute Work Order No. WOA353-AE-18 (in substantially the same format as Attachment A) under MTS Doc No. PWL353.0-22 with Dokken Engineering (Dokken) in the amount of \$16192.32, for the design of charging platforms, separate add alternate bid package, and additional design support during construction (DSDC) services.

**8. Special Trackwork Replacement – Work Order Agreement**

Action would authorize the Chief Executive Officer (CEO) to execute Work Order WOA352-AE-12 under MTS Doc. No. PWL352.0-22 (in substantially the same format as Attachment A) with HDR Inc. (HDR), in the amount of \$413,230.03 for design services for special trackwork replacement at the Yard A track and Newton crossover.

**9. Right-of-Entry Engineering Services – Work Order Agreement**

Action would authorize the Chief Executive Officer (CEO) to execute Work Order WOA355-AE-10 under MTS Doc. No. PWL355.0-22 (in substantially the same format as Attachment A) with Psomas in the amount of \$475,914.28 to perform right-

of-entry (ROE) engineering review services for a period of one (1) year to support the MTS Land Management Department.

**10. Declaration of Surplus Property and Authorization of Transfer**

Action would declare the property located at the eastern corner of Camino de la Plaza and Interstate 5 in San Ysidro, San Diego, California (Assessor's Parcel Number 667-020-76-00) (Property) as "exempt surplus land" for purposes of Government code sections 54221, et seq, and approve the transfer of land to the United States Federal Government (USA).

**Comments**

Ms. Cooney noted that staff has attempted to remove any non-critical items from the Board agenda. She noted that the Board meeting will begin at 8:00am to provide enough time to cover all items. Previously, the Board had asked for staff to present on the San Ysidro Improvement Project Update and Trolley Extension to Tijuana at the April Board meeting. She asked if the Board would like to keep these items on the agenda or move them to the May Board agenda. Board Member Moreno asked that the items be moved to the May Board agenda. Ms. Landers noted there would be an additional discussion item related to the expansion of the 12<sup>th</sup> and Imperial Transit Center and Transit Oriented Development partnership with the San Diego Foundation. Ms. Cooney added that this was an opportunity offered by the San Diego Foundation to market the property for a well-developed joint transit-oriented development. Ms. Cooney explained that the Foundation is seeking to enter an agreement with MTS and would like to take this action to the Board in April. Board Member Moreno discouraged the item be taken to the April Board due to time constraints and asked if the item could be delayed. Ms. Cooney noted that delaying the item was an option and stated that regardless of other issues happening, MTS should continue fulfilling its mission. Board Member Moreno asked that the item be moved to May. Board Member Elo-Rivera suggested that the item stay on the agenda for the April Board meeting with the understanding that the Board may not have enough time to hear the item. Ms. Cooney also noted that the Safety and Security Focus Group results will go to the Public Security Committee in the afternoon and asked if the preference would be for the Public Security Committee to determine which Board meeting to present this item. Board Member Bush was in favor delegating the decision to the Public Security Committee.

**9. Committee Member Communications and Other Business**

There was no Committee Member Communications and Other Business discussion.

**10. Next Meeting Date**

The next Executive Committee meeting is scheduled for May 11, 2023, at 9:00 a.m.

**CLOSED SESSION (TAKEN OUT OF ORDER)**

The Board convened to Closed Session at 9:43 a.m.

**5. Closed Session – Conference with Legal Counsel – Existing Litigation Pursuant to California Government Code Section 54956.9(d)(1)**

Grecia Figueroa v Nathan Fletcher, San Diego Metropolitan Transit System, et al. San Diego Superior Court Case No. 37-2023-00012828-CU-OE-CTL

Karen Landers, General Counsel, reported the following oral report of final actions taken in Closed Session on Item 5: The Board received a report and gave instructions to legal counsel.

**6. Closed Session – Conference with Legal Counsel - Anticipated Litigation**

Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: (Claimant: Veda Short; bus incident 3-19-2023)

Karen Landers, General Counsel, reported the following oral report of final actions taken in Closed Session on Item 6: The Board received a report from legal counsel and gave instructions.

The Board reconvened to Open Session at 11:40 a.m.

**11. Adjournment**

The meeting was adjourned at 11:41 am.

/S/ Stephen Whitburn  
For Chairperson  
San Diego Metropolitan Transit System

/S/ Dalia Gonzalez  
Clerk of the Board  
San Diego Metropolitan Transit System

Attachment: Roll Call Sheet

SAN DIEGO METROPOLITAN TRANSIT SYSTEM  
EXECUTIVE COMMITTEE

ROLL CALL

MEETING OF (DATE):	April 13, 2023	CALL TO ORDER (TIME):	9:02am
RECESS:		RECONVENE:	
CLOSED SESSION:	9:43am	RECONVENE:	11:40am
PUBLIC HEARING:		RECONVENE:	
ORDINANCES ADOPTED:		ADJOURN:	11:41am

REPRESENTING	BOARD MEMBER		ALTERNATE		PRESENT (TIME ARRIVED)	ABSENT (TIME LEFT)
City of San Diego	Elo-Rivera	<input checked="" type="checkbox"/>	Montgomery Steppe	<input type="checkbox"/>	9:02am	11:41am
County of San Diego		<input type="checkbox"/>	Vargas	<input type="checkbox"/>	ABSENT	ABSENT
East County	Hall	<input checked="" type="checkbox"/>	Frank	<input type="checkbox"/>	9:02am	11:41am
SANDAG Transportation Committee	Moreno	<input checked="" type="checkbox"/>	Bush	<input type="checkbox"/>	9:02am	11:41am
South Bay	Bush	<input checked="" type="checkbox"/>	Leyba- Gonzalez	<input type="checkbox"/>	9:02am	11:41am
Vice Chair	Whitburn	<input checked="" type="checkbox"/>	No Alternate	<input type="checkbox"/>	9:02am	11:41am

SIGNED BY THE CLERK OF THE BOARD:

/S/ Dalia Gonzalez