

JOINT MEETING OF THE BOARD OF DIRECTORS FOR THE  
METROPOLITAN TRANSIT DEVELOPMENT BOARD,  
SAN DIEGO TRANSIT CORPORATION,  
AND SAN DIEGO TROLLEY, INC.

November 18, 2004

BOARD OF DIRECTORS MEETING ROOM, 10<sup>TH</sup> FLOOR  
1255 IMPERIAL AVENUE, SAN DIEGO

MINUTES

1. Roll Call

Chairman Williams called the meeting to order at 9:14 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 28, 2004, Board of Directors meeting. Ms. Sterling seconded the motion and the vote was 8 to 0 in favor.

3. Public Comment

*Victor Hooker:* Mr. Hunter referred the Board to his letter, which was placed at each Board member's place prior to the start of the meeting. He called particular attention to the last two paragraphs of his letter in which he suggested that the property behind the American Plaza at Kettner Boulevard be used as a bus terminal for all downtown routes. He also called attention to his request that fares not be raised for seniors and disabled riders who cannot afford another fare increase. He stated that the passage of TransNet should prevent the need to implement such a fare increase.

*Don Stillwell:* Mr. Stillwell reminded the Board that he reported (at the October 28 Board meeting) that the Route 13 leaves the Mission San Diego trolley stop two minutes before the trolley is scheduled to arrive. He stated that he has since received a response advising him to take the trolley trips closest in time to the Route 13 scheduled arrival time, and now service to this station is going to be discontinued when the Mission Valley East extension opens. He also stated that it is difficult for the public to attend MTD Board meetings when they are held during work hours; therefore, Route 13 riders should be polled to determine how they will be affected by this change. He added that work needs to be done to make it easier for people exiting the trolley at the Grantville Station. He stated that riders currently have to use steps or an elevator to move to street level. He also expressed concern regarding the MVE service change to Route 14, which will

be required to travel along Mission San Diego Road, make cross-traffic turns in an area with very heavy traffic congestion, and drop off passengers on the opposite side of the road from their destination.

*Willis Lewis:* Mr. Lewis stated that transfers currently have a two-hour time limit, which is inadequate for passengers traveling between downtown and North County Fair. He stated that some operators charge the additional fare and some do not. He added that even operators are confused about this policy and some have a bad attitude. He suggested that MTDB issue three-hour transfers or a day pass similar to that issued by North County Transit.

Chief Executive Officer (CEO) Paul Jablonski stated that staff is aware of this problem and is currently working on a solution.

*Phil Monroe:* Mr. Monroe reported that he was very pleased with the cleanliness and on-time performance of his recent trolley trip, but added that the stop announcements were not audible. He stated that the system needs to take steps to ensure a good customer experience. He added that he rode the trolley in Atlanta during the APTA Annual Convention, and their announcements were very crisp and clear.

*Ruth Sterling:* Ms. Sterling stated that there were no announcements during her trolley trip to the Board meeting today, but the windows in the trolley were very clean.

4. Presentation of Employee Awards

Steve St. Pierre, Human Resources Manager of Compensation and Benefits, presented the following awards to San Diego Transit employees: 30 years of service: Carol Hastings (Operators). 25 years of service: Bob Carr (Mechanic).

5. Closed Session Items (ADM 122)

There were no Closed Session items.

CONSENT ITEMS

6. SDTI: Right-Of-Way Vegetation Control Services – Contract Amendment and Extension  
(OPS 970.6, PC 30102)

That the Board of Directors authorize the President-General Manager of San Diego Trolley, Inc. (SDTI), to (1) approve Contract Amendment No. 1 (SDTI Doc. No. C.O.008.1-04), in substantially the same form as shown in Attachment A of the agenda item, with Allied Weed Control, to add 34 additional acres of chemical application on track right-of-way, in an amount not to exceed \$5,421.64; and (2) approve Contract Amendment No. 2 (SDTI Doc. No. C.O.008.2-04) in substantially the same form as shown in Attachment B of the agenda item, with Allied Weed Control, to exercise a contract option to extend the right-of-way Vegetation Control services contract, including an additional 34-acre coverage, for one additional year, for a total cost not to exceed \$28,080.91.

7. MTDB: Review of SD&IV, PSRMA, and CZRY Quarterly Reports, SD&AE Property Matters, and Appointment of SD&AE Corporate Officers (SDAE 710.1, PC 40099)

That the Board of Directors (1) receive the San Diego and Imperial Valley (SD&IV) Railroad, Pacific Southwest Railway Museum Association (PSRMA), and Carrizo Gorge Railway, Inc. (CZRY) quarterly reports; (2) ratify actions taken by the San Diego and Arizona Eastern (SD&AE) Railway Board of Directors at its meeting of October 20, 2004; and (3) appoint the following SD&AE officers as recommended by the SD&AE Board: Paul C. Jablonski as President (replacing Tom Schlosser), Tom Schlosser as Secretary (replacing Mike Ortega), and Mike Ortega as Treasurer.

8. SDTI: Quarterly MTS Security Report (OPS 970.11, PC 30102)

That the Board of Directors receive this report for information.

9. MTDB: FY 05 Revenue Anticipation Notes (OPS 960.5, PC 30100)

That the Board of Directors adopt Resolution No. 04-15 (Attachment A of the agenda item) authorizing MTDB to issue revenue anticipation notes not to exceed \$20 million, in anticipation of receiving federal operating subsidies.

10. MTDB: Approval of FY 05 Federal Highway Administration Disadvantaged Business Enterprise Goals for Publication (LEG 430, PC 30100)

That the Board of Directors approve the proposed Federal Highway Administration (FHWA) disadvantaged business enterprise (DBE) goals for FY 05 and authorize staff to publish a notice of these proposed goals for public information and comments.

11. MTDB: An Ordinance Amending Ordinance No. 5 Relating to the Enforcement Authorities of Code Compliance Inspectors, Assistant Code Compliance Supervisors, the Code Compliance Inspection Supervisor, and Taxicab Inspectors I & II; and an Ordinance Amending Ordinance No. 13, and Ordinance to Repeal and Adopt Document No. 164, Codified Rules and Regulations, as Ordinance No. 13 (ADM 122.2, PC 30100)

That the MTD Board of Directors read the title of Ordinance No. 5, "An Ordinance Relating to Enforcement Authorities of Code Compliance Inspectors, Assistant Code Compliance Supervisors, the Code Compliance Inspection Supervisor, and Taxicab Inspectors I & II" and read the title of Ordinance No. 13, "An Ordinance to Repeal and Adopt Document No. 164, Codified Rules and Regulations, as Ordinance No. 13," waive further readings of the ordinances, introduce the ordinances for further consideration at the next Board meeting, and direct publication of ordinance summaries.

#### Motion on Recommended Consent Items

Ms. Tiffany Lorenzen, General Counsel, read the titles of Ordinance Nos. 5 and 13.

Mr. Lewis moved to approve Consent Agenda Item Nos. 6, 7, 8, 9, 10, and 11. Mr. Cafagna seconded the motion, and the vote was 9 to 0 in favor.

## NOTICED PUBLIC HEARINGS

There were no Noticed Public Hearings.

## DISCUSSION ITEMS

30. MTS: Operators Budget Status Report for August 2004  
(FIN 310, PC 30100)

Mr. Tom Lynch, Controller, and Mr. Larry Marinesi, Budget Manager, reviewed financial results for FY 2005 through August 2004. Mr. Marinesi reported that MTS is under budget for net operating subsidy by \$189,000. He stated that this is primarily due to strong performance in fare revenue for Petco Park trolley operations, which more than offset the negative variances for ridership decreases within internal bus operations, higher energy costs, and increased security-related expenses relating to Petco Park service. Mr. Lynch and Mr. Marinesi reviewed comparison to budget for net subsidies and other expenditures, fare revenues, passenger levels, and operating expenses. Mr. Marinesi also reviewed the impact of energy costs on operations.

Mr. Monroe complimented staff on their presentation. He asked that a reference be added to future reports showing how reserves will be impacted. Mr. Jablonski stated that July and August showed strong performance relative to budget; however, starting in October, that strong performance will be impacted by the fact that Petco Park service has stopped for the season. He stated that, as a result, the impact of energy costs will become more evident.

### Action Taken

Mr. Monroe moved to receive the MTS Operators Budget status Report for August 2004. Ms. Rose seconded the motion, and the vote was 10 to 0 in favor.

31. MTDB: Bus Operating Plan for Mission Valley East (ADM 121.10, PC 20271)

Mr. Conan Cheung, Director of Planning, reviewed the Bus Operating Plan for MVE, which will be opening in early summer 2005. He reviewed the background of this project and the evaluation methodology used. He then reviewed the recommendations for service changes, those that are recommended for review as part of the Comprehensive Operations Analysis (COA), and those routes that will not be altered. During the presentation of the route analysis for Routes 81, 13, 876, 936, 1, and the new route, Route 18, Mr. Cheung provided Board members with the results of ridership counts that Planning Department staff conducted in the field to determine the number of passengers that would be affected by these changes. He stated that staff also investigated Mr. Stillwell's comments regarding the Route 13. He added that it was determined that a minimal number of passengers would be affected by the proposed service changes. He also reviewed the budget impact reporting that approximately \$526,632 will be saved on an annual basis. Mr. Cheung then reviewed the process that was used to provide public notice and presented the Board with copies of a report detailing all of the public comments received to date.

Mr. Cheung reported that the formal public hearing for the Bus Operating Plan will be conducted at the SANDAG Transportation Committee meeting on December 10, at which time the Plan will also receive final approval.

*Public Comments:*

*Mr. Jim W. Hawkins:* Mr. Hawkins expressed support for the Bus Operating Plan. He stated that the restructure of Route 13 offers great improvement in travel time for the North Park area and further south, which is important for people who are accessing the hospital and medical center. He also spoke in favor of the proposed changes to the Route 14 and requested that the end of that route, which goes to the hospital and medical center, not be eliminated in the future. He added that the proposed changes to Route 1 offer a much faster connection to the trolley rather than going all the way downtown.

*Clive Richard:* Mr. Richard referenced Mr. Cheung's comment regarding the notification of City Council District Nos. 3, 4, and 6, and asked if District No. 7 was notified. Mr. Cheung stated that District No. 7 was not notified, but Take Ones were placed on all buses, and the public will have an opportunity to make comments at the formal public hearing at SANDAG on December 10. Mr. Richard stated his approval of the proposal for Route 13 to go to San Diego State University.

*Peter Warner:* Mr. Warner requested that something be done as part of the COA to improve Coaster connections. He suggested that something also be done about Route 44, which duplicates Route 5 between Morena/Linda Vista and Old Town Stations. He stated that truncating the route at Morena/Linda Vista would generate a savings for other changes. He expressed his support of the recommended MVE changes, and stated that he would like to see the Route 13 and 14 changes implemented sooner than June if possible. He also expressed support for the new bus stop at Qualcomm Stadium, which replaces the existing stop across the street from the stadium on Friars Road.

*Betty Sund:* Ms. Sund stated that Route 81 is currently a quick and efficient route. She stated that the proposed elimination of Route 81 will force in riders from the North Park/Kensington area traveling to Mission Valley to make two transfers and will increase their walking distance.

Ms. Sterling stated that she was concerned about the recommended changes to Route 81 and 876 because Route 876 will only replace weekday service, not weekend service on the Lake Murray/Fletcher Parkway/Baltimore Road portion of Route 81. She stated that La Mesa has already supported population density along transit corridors and has also always supported Trolley service within the community. She expressed dismay that this change is occurring in addition to La Mesa's previous loss of Dial A Ride service and stated La Mesa's opposition to this change. She asked that this recommendation be reconsidered. Mr. Cheung stated that staff surveyed this portion of Route 81 and counted only four passengers per trip using this segment on the weekend. He added that 3 out of 4 of these riders will be served by Route 854 on the weekends on the Baltimore Road segment. Mr. Cheung confirmed for Ms. Sterling that riders will be able to access the Kroc Center using Route 875.

In response to a question from Mr. Lewis, Mr. Cheung stated that District No. 7 was not notified because the service changes affecting that district consist of changes included in a previous study conducted with a substantial amount of public outreach and approved by the Board in 2002. In response to Mr. Lewis's question about tabling this item, Mr. Cheung reported that there are many phases to the implementation of service changes, and a delay would impact the timely implementation of these service changes. Mr. Cheung stated that Take Ones were posted on all routes and a hearing notice was published in the San Diego Daily Transcript, but staff will notify and present this information to District No. 7. Mr. Cheung advised Mr. Lewis that publishing in the San Diego Daily Transcript is a legal requirement by SANDAG.

Mr. Jablonski expressed support of the proposed service changes and emphasized the importance of an efficient system in light of MTDB's current reliance on reserves to balance the budget. Mr. Williams stated that, even if TransNet passes, budget issues will still exist. He stated that the system needs to use its funding efficiently and wisely. Mr. Cafagna stated that he was very pleased to see the savings that will result from the proposed service changes and added that he looks forward to the COA. He stated that this is the type of thing the system should be pursuing and this is what was promised to the voters during the promotion of TransNet.

#### Action Taken

Mr. Cafagna moved to approve the Bus Operating Plan for Mission Valley East (MVE) and forward a recommendation to the San Diego Association of Governments' (SANDAG's) Transportation Committee to approve the plan and conduct the public hearing scheduled for December 10, 2004, regarding the service changes. Mr. Monroe seconded the motion, and the vote was 11 to 0 in favor.

32. MTDB: Update on Morena/Linda Vista Station Joint Development Project  
(LEG 430, PC 30100)

Ms. Lorenzen provided the Board with an overview of the history on this project and then reviewed the terms of the Deposition and Development Agreement (DDA). She then reviewed the complications that resulted from the City's desire to construct a roundabout at the intersection of Linda Vista Road and Napa Street, the prime corner of the project, which caused a three-year delay in the project. She stated that City View, the developer on this project, lost its anchor tenant and discussions with other tenants had to be terminated. She stated that in late 2002, the City decided not to pursue the roundabout. She then reviewed the project modifications, including an amended DDA, that had to be made and how the project was redesigned. She showed the Board pictures of the project and reviewed the financial contributions of the involved parties. Ms. Lorenzen also provided the Board with a history of events that have occurred since the amendment of the DDA and project redesign. She also reported on staff's current concerns and recommendations for completing the project. During her review of the recommendations, she stated that the Board could choose to allow Citylink to proceed without the building permits for Building C in place by taking into consideration the significant efforts demonstrated by Citylink in getting this project put through along with all the costs they have incurred to date (\$1.5 million). Ms. Lorenzen also reported that MTDB's financial consultants met with the developer on Wednesday, November 17, and

it appears that the majority of the financial issues have been resolved regarding the prohibition of loan terms that affect overage rent payment due to MTDB. She added that the only issue remaining is to ensure that contingent interest is not included as part of the debt service coverage ratio.

Ms. Lorenzen pointed out that all of staff's recommendations are outlined on page one of the agenda item. She added that an additional issue was brought to her attention early this morning. She stated that UBS has requested an amendment to the DDA to add a clause in the event that the developer defaults on the loan allowing them additional time to find a replacement developer or sell the loan. She reported that they have requested an initial two-year period to find a replacement developer followed by a two-year construction period. She stated that the Board will need to act on this request.

In response to a question from Mr. Cafagna, Mr. Martin J. Bohl, counsel to MTDB, reported that the ground lease provides for the overage rent to be payable based on a percentage of gross income from the property, but during the stabilization period, overage rent is not payable unless a debt service coverage ratio of 1.35 to 1 is reached. Mr. Bohl stated that the inclusion of the contingent interest in the calculation of debt service coverage would have the affect of eliminating any overage rent payable to MTDB during that stabilization period. He added that MTDB's financial analyst, Kaiser Marston, has calculated that to have about a \$200,000 impact to MTDB. He also reported that MTDB has taken the position, which the developer has not objected to, that the documents must make it clear that the contingent interest component not be considered debt service for the purpose of this calculation. He stated that, under this arrangement, MTDB would still receive the \$200,000 of overage rent during the stabilization period.

Mr. Cafagna asked if the managing member would make the guarantees that MTDB needs instead of the single-purpose entity. Mr. Chu agreed with Mr. Cafagna's statement that the single-purpose entity is not going to be able to borrow funds without the guarantee of the managing entity. Mr. Cafagna asked why MTDB could not have the same guarantee. Mr. Chu stated that AETNA life insurance, the creator of the fund in 1981, is the sole member of the LLC and the fund is part of the arrangement. Mr. Cafagna stated that the problem with management agreements is they can be cancelled or modified where a guarantee cannot.

Mr. William Jones, the developer and managing member of Morena Vista LLC, claimed he only saw staff's report yesterday afternoon and therefore felt awkward trying to respond. Ms. Lorenzen stated that she e-mailed staff's report to him yesterday morning. Mr. Jones stated that, even though ground leases of any kind are not popular with lenders, the lender is standing behind CityLink. He asked that MTDB be mindful that UBS, a multimillion-dollar institution, has made a commitment to loan \$44.5 million to help make this project a reality. He added that he, William Jones, through CityLink Investment Corporation and Morena Vista LLC, is responsible through the indemnity provisions of the agreement, which was negotiated some years ago. He stated that he has made extreme efforts to keep this project moving forward at much expense in spite of the delays caused by the City's desire to construct the roundabout, and many of his requests to MTDB have been in the spirit of moving the project forward. He stated that he has funded cost differences without asking MTDB to amend the DDA. He added that

there is a construction schedule and escrow needs to be closed or he will lose his funding. He stated that this is a very specialized loan in that the lender is taking a second position to MTDB, and the investors are taking a third position behind the lender. He added that this type of arrangement is creating history, and he doesn't think it is reasonable for MTDB to request a guarantee.

Mr. Cafagna stated that if there's a failure in funding the loan or getting the building permits, MTDB will be left without a transit center on the site. Ms. Lorenzen confirmed for Mr. Cafagna that there will be no transit center once the construction is complete. Mr. Cafagna asked what MTDB would then be losing with the demolition of structures in question. Chairman Williams stated that he has been frustrated with the problems that have been created for this project, and some members of the city council have been frustrated with the way it has been handled. He added that MTDB should move ahead and just take the risk. Mr. Chu added that in the history of the participating mortgage separate account, which has been in existence since 1981, the fund has never defaulted or not funded its obligations. Mr. Jablonski stated that these issues were raised by staff because the current situation is in conflict with actions previously taken by the Board. He stated that staff does not raise these issues out of a desire to obstruct forward movement and, in fact, staff has tried to be as accommodating as possible in moving this project along.

*Public Comments:*

*Clive Richard:* Mr. Richard expressed his support of this project and his hope that this project could be moved forward. He stated that all the problems encountered demonstrate why such projects become so costly.

*Jeannette Temple:* Ms. Temple, Supervising Development Project Manager, City of San Diego, reported that CityLink has pulled and been issued the grading permit for the off-site parking lot and that construction is underway, the grading permit for the entire site is ready to be issued and should happen this week, and building permits for Buildings A, B, and C are ready to be issued save for the finalization of the final map and issuance of the public improvement drawings. Ms. Temple stated that the developer's engineer is anticipated to record the final map by January, possibly sooner. She added that the City is expediting all of their public improvement drawings and final maps and structural, engineering, and planning reviews have all been conducted.

Mr. Jones distributed a booklet providing color pictures to provide Board member's with a visual perspective of the current condition of the project and renderings of the completed project. He stated that tenants have been identified for the commercial space, and it is important to close escrow before they start to become concerned about delivery deadlines. He closed his presentation by stating that they would like to close escrow on November 23.

*Cindy Eldred, CityLink's Land-Use Attorney:* Ms. Eldred requested that the Board decline to approve any of staff's recommendations as outlined in the agenda item. She requested that the Board direct MTDB's CEO to proceed diligently to close escrow, to execute the amended ground lease and all the documents necessary for close of escrow concurrently with close of escrow on the financing, which is scheduled to take



place no later than November 23. She also requested that the Board decline to impose additional contingencies identified in the staff report. In addition she requested that MTDB waive Condition 4.a to Close of Escrow. She stated that all of the other 16 Conditions to Close of Escrow have been or will be satisfied by delivery of documents in the next couple of days. Ms. Eldred advised the Board that Condition 4.a has basically two parts – that the developer obtain discretionary approvals that are enumerated, all of which were obtained in November 2003. She stated that the other part is that the developer obtain a series of ministerial or administrative permits that are due the developer as of right when he satisfies the condition of approval of the discretionary permits or meets the requirements of the building code and similar codes. She requested that MTDB waive condition 4.a of the DDA to allow escrow to close without complete satisfaction of those conditions. She stated that all discretionary permits have been issued. She stated that all that remains are the recordation for the final map and to pull the building permits. She stated that, unless the City manager deems otherwise, maps must be recorded before the permits can be issued, but they are almost ready to be issued. She added that the grading permit is on a city engineer's desk waiting for signature. She stated that any further delays would probably cost CityLink its lender and possibly its construction bid commitments, which may again cause the cost of the project to rise and possibly result in a project that cannot proceed due to negative financial conditions.

*Rod Chu, UBS Realty Investors:* Mr. Chu provided the Board with background on the history of UBS. He advised the Board that UBS has been evaluating Morena/Linda Vista LLC over the last three months, and UBS's participating mortgage separate account is expected to fund the construction and permanent loan for \$44.5 million. The participating mortgage separate account is a fund that was created in 1981 and currently has \$1.1 billion of assets under management. He stated that this project has successfully gone through their investment committee process. He stressed the importance of moving this project along.

Ms. Rose requested a clarification as to whether or not there is agreement on items 3 and 4 in staff's recommendation. Mr. Jones stated that he is not objecting to what has been negotiated with staff and stated that he doesn't understand what item 3 means. He stated that their documents are consistent with the DDA and ground lease and criticized staff for raising issues that are new to the developer. He also expressed surprise that staff would question the experience of a lender of the reputation, character, and financial strength of UBS. Ms. Eldred stated that solutions should be incorporated into the documents and not handled as contingencies. Ms. Lorenzen stated that she and Mr. Bohl met last Thursday with the developer to review these specific issues in great detail. She stated that the reason they are on the agenda is because they differ materially from the amended DDA, which the Board authorized. She stated that the Board must authorize any changes to that document. She added that she would be acting outside the scope of her authority if she authorized changes without coming back to the Board.

Mr. Ryan asked for clarification of the worst-case scenario if the Board does not approve staff's recommendations regarding the contingent interest and how it might affect the overage rent payments to MTDB. MTDB outside counsel Mr. Bohl stated that it would cause a loss of approximately \$200,000 in overage rent over the first five years of the

project. It was confirmed for Mr. Ryan that the participating loan concept was not contemplated in the original DDA.

*Mr. Miguel Smith, Legal Counsel for CityLink:* Mr. Smith stated that they would be happy to include within the ground lease a restriction against counting the contingent interest component against the overage rent. He stated that there should be no issue regarding this.

Mr. Zucchet stated that he initially opposed this project when it was presented to the City Council on the basis of, among other things, the amount of subsidy coming from the redevelopment agency for the city, and other subsidies from other sources. He stated that he also objected to \$4.8 million of affordable housing assistance to subsidize 16 or 18 units at 100 percent of Area Medium Income (AMI). He stated that he supports the project itself and stated that it's all the things that are looked for in good city planning. He added that it is much harder to do urban development, and he recognized Mr. Jones, his frustrations, and his efforts on behalf of the project. He also stated that he didn't appreciate that Ms. Lorenzen was being treated unfairly during this discussion. He stated that she is doing what the Board hired her to do and has done a good job.

Mr. Zucchet referred to page 2 of staff's report that states that the original \$100,000 for outside services has been exhausted and that staff anticipates another \$25,000 in fees in addition to the \$20,475 already spent. He added that staff has requested that CityLink deposit additional monies to cover these expenses. Mr. Jones stated that he was shocked to receive the request. He added that he would deposit those funds if requested to do so by the Board but would not be happy about it. Mr. Zucchet stated that staff indicated that CityLink initiated things that are in everyone's best interest but that caused additional legal fees to be incurred, and since the spirit of the agreement and the original deposit of \$100,000 is that CityLink would be paying these fees for MTDB, that these should also be paid. Mr. Jones stated that he disagreed with that philosophy about these expenses. He stated that the \$100,000 was not an open account – that it was placed in MTDB's hands to be managed wisely. He felt that \$100,000 for negotiating a DDA and ground lease was excessive. Mr. Jablonski stated that while those funds were consumed prior to he and Ms. Lorenzen's involvement in this project, he stated that those funds were used very judiciously. He added that Ms. Lorenzen is currently preventing at least some additional expenditures by doing the work herself.

Mr. Zucchet also stated that he could accept the two-year plus two-year tolling period as requested by UBS. Mr. Chu confirmed UBS's agreement with that parameter. Mr. Zucchet stated that he was also willing to waive staff recommendation no. 2 based on the stage of the project and the representation from the City regarding the permits. He added that he appreciated staff pointing out the Board's exposure in this area. Mr. Smith, in response to a question from Mr. Zucchet, stated that the contingent interest will not be added into the debt service, so there will be no effect on the calculation of overage rent for MTDB. Mr. Bohl stated that there is agreement on this point.

In response to a question from Mr. Zucchet regarding staff recommendation no. 4, Mr. Bohl stated that the staff recommendation is to simply find that the managing member,

UBS Realty Investors, LLC), has sufficient experience and net worth to fund the loan and handle the transaction.

Mr. Morrison suggested that a specific agreement be reached with Mr. Jones about the unexpected expenses that have been incurred over the \$100,000 originally allocated. Ms. Lorenzen stated that she would be happy to provide CityLink with a full accounting of the expenditure of money over the \$100,000 originally allocated and return any unspent funds at the conclusion of the project. Mr. Mathis also suggested that staff provide a full accounting of the expenditures of the originally allocated \$100,000 as well. Mr. Smith stated that the renegotiated DDA called for a \$150,000 payment concurrently at the close of escrow, and that should be sufficient to replenish MTDB's legal expenses.

#### Action Taken

Mr. Zucchet moved 1) that contingent interest not be included as debt service for the purpose of calculating the debt service ratio as agreed to by MTDB and the developer and as recommended in staff recommendation no. 3, which states that the "participating loan" terms not affect the overage rent payments due to MTDB and resolution of all issues outlined in the November 4, 2004 letter (Attachment D of the agenda item) to the satisfaction of the CEO; 2) waive staff recommendation no. 2 that requires that CityLink obtain all "Required Land Use Approval" documents as identified in the DDA or a performance bond (or other security acceptable to the CEO) for that portion of the work for which a Required Land Use Approval document has not been obtained by the close of escrow; 3) approve staff recommendation no. 4 that the CEO approve the lender's use of a "single purpose entity" limited liability company to make the participation loan, based on the experience of the managing member (UBS Realty Investors, LLC) provided that the lender establish the new LLC has sufficient net worth to fund the loan; 4) authorize the CEO to approve the request by UBS to authorize an amendment to the DDA to add a clause in the event that the developer defaults on the loan allowing them an additional two-year period to find a replacement developer followed by a two-year construction period or time to sell the loan; and 5) to provide an accounting to CityLink of MTDB's expenditures of the first \$100,000 expended for legal fees, approve a 50/50 split between MTDB and CityLink of additional fees expended by MTDB with CityLink's share not to exceed \$25,000, and a total not to exceed \$150,000; and 6) complete every task identified on the list (Attachment C of the agenda item) with the exclusion of the final map and public improvement permit as well as the permit for Building C.

Ms. Eldred stated that a great portion of the requirements indicated in staff recommendation no. 1 have to do with the permits, approvals and entitlements, which was covered in Mr. Zucchet's motion to waive staff recommendation no. 2. Ms. Temple confirmed that grading permits and building permits for Buildings A & B will be issued next week. She stated that final map and public improvement permits will not be issued nor will the permit for Building C, and no construction will start until these permits are issued.

Ms. Lorenzen stated that everything listed in Attachment C was in terms and conditions of the DDA that was approved by the Board. She stated that 95 percent of the items on the list are customary for any type of development project like this, and she added that it was her understanding that the tasks can be completed prior to close of escrow.

Mr. Smith stated that MTDB staff needs to submit the ground lease back to the lender and developer.

Mr. Maienschein provided the Board with background on the City Council discussion of this item. He gave Mr. Jones credit for ensuring that community leaders really supported this project. He also expressed support for MTDB staff who have worked on this project and agreed, as a Board member, that he wants staff to continue to be assertive about the Board's rights. Mr. Monroe stated that he is going on faith on the support of the two city councilmembers on MTDB's Board for whom he has much respect and thanked Mayors Cafagna and Rose for their questions. He recognized the complexity of the issues connected with this project. Mr. Mathis complimented Ms. Lorenzen for doing her job very well and assured her that she has the Board's confidence and certainly has presented evidence of how strong she will stand up for MTDB. He thanked Mr. Zucchet for bringing clarity and closure to this issue. He also reminded the Board that this is a public/private partnership, and MTDB has a responsibility to the public for good stewardship. He added that, at the same time, MTDB should act like a good partner in working this out with Mr. Jones, a sincere and motivated developer. Mr. Morrison added his appreciation of the efforts staff makes to protect the Board.

Ms. Rose stated that she was offended at the implication that MTDB is wasting money on legal expenses. She also expressed dismay over the righteous indignation that was expressed by Mr. Jones over things that were agreed to in the DDA. She stated that this was supposed to be a partnership and terms have not been met. Chairman Williams stated that Mr. Jones has endured many frustrations, and everyone must now focus on reaching a solution.

Mr. Maienschein seconded the motion, and the vote was 11 to 0 in favor.

33. MTDB: 25<sup>th</sup> and Commercial/Cesar E. Chavez Station Artwork Enhancement – Final Art Concepts (CIP 10740)

*Public Comment:*

*James Justus:* Mr. Justus expressed his support of the project.

*Katherine Lopez:* Ms. Lopez expressed her support of the project but objected to the manner in which the eagle is displayed. She felt the UFW eagle should have been used. Ms. Lopez presented a letter expressing her concern in more detail.

*Clive Richard:* Mr. Richard waived his request to speak.

*Margaret Walter:* Ms. Walter expressed her support of the project and added that she liked the eagle because it looks like it is going to take off.

*Margo Tanguay:* Ms. Tanguay stated that a cab stand is needed where passengers can be dropped off and picked up.

*John Hiemstra:* Mr. Hiemstra, a member of the art team, thanked San Diego Trolley Vice President of Operations Wayne Terry, SANDAG Sr. Transportation Engineering

Pete d'Ablaing, and SANDAG engineering group employee Louise Torio for their work on this project. He added that this was a terrific opportunity to be able to contribute in making decisions on how to spend tax dollars. He expressed his support of the project.

*Congresswoman Susan Davis:* A letter from Congresswoman Davis was placed at each Board member's place prior to the start of the meeting expressing her support of the project.

Mr. d'Ablaing advised the Board that the bids for this project exceeded budget. He added that the artwork portion of the project was to be carried out as a contract change order. He stated that the scope of the project will have to be downsized or additional funding will have to be identified before the project can go forward.

Action Taken

Mr. Cafagna moved to approve the final artwork for the 25<sup>th</sup> and Commercial/Cesar E. Chavez Station. Mr. Clabby seconded the motion, and the vote was 8 to 0 in favor.

34. MTS: Operations Status Reports – September 2004  
(OPS 920.2, 960.5, 970.5, PC 30100, 30101, 30102)

This agenda item was deferred.

35. MTS; FY 04 Performance Incentive Plan Results and Award (ADM 150.3, PC 30100)

There was no discussion of this item.

Action Taken

Mr. Clabby moved to receive this report for information. Mr. Cafagna seconded the motion, and the vote was 9 to 0 in favor.

36. MTDB: Mission Valley East Final Marketing Plan (CIP 10426.13)

This item was deferred.

*Public Comment:*

*Ed Zouhar:* Mr. Zouhar stated that it is important that a date be identified as quickly as possible for the opening as many other things need to be arranged and cannot go forward without a definite date. He asked that La Mesa be notified as soon as possible so they can proceed with ancillary arrangements (entertainment, etc.) for the east county opening celebration.

*Peter Warner:* Mr. Warner requested that new timetables for the proposed MVE-related service changes be made available to the public in April. He also requested a specific date for the opening of MVE.

Mr. Jablonski stated that the opening date is dependent upon the completion of construction and the arrival of the new trolley cars. He stated that a firm date cannot yet be identified because of those two factors.

37. MTDB: Pension Obligation Bonds – Final Status Update (FIN 300, PC 30100)

Mr. Cliff Telfer, Interim Chief Financial Officer, provided the Board with a brief historical overview of this item. He reported that, as a result of favorable interest-rate conditions, the full-year debt service is estimated at \$3,876,501 compared to a projected debt service of \$4,837,189. He also reported that the estimated gross annual savings for this issue of \$1.632 million over a 30-year period compared to amortizing the unfunded liability at the actuarial rate of eight percent.

Action Taken

Mr. Lewis moved to receive this report and approve the final terms and conditions for the issuance and sale of pension obligation bonds. Mr. Clabby seconded the motion, and the vote was 9 to 0 in favor.

38. SDTI: Padres Baseball 2004 Year-End Summary (OPS 970.2, PC 30102)

This item was deferred.

44. Chairman's Report (ADM 121.7, PC 30100)

There was no Chairman's Report.

45. Chief Executive Officer's Report (ADM 121.7, PC 30100)

*U.S. Department of Transportation Notice and Article on the Future of Energy:* Mr. Jablonski called attention to two items at the table for each Board member. He stated that the first item is a letter from the Department of Transportation informing MTDB that the U.S. Secretary of Transportation, Norman Y. Mineta, has issued a grant for \$26.5 million for the Mission Valley East Light Rail Extension.

He stated that the second item is a "think tank" article on the future of energy. He stated that the energy situation sets a good stage for investing in public transportation.

46. Board Member Communications

There were no Board Member Communications.

47. Additional Public Comments on Items Not on the Agenda

*Jim W. Hawkins:* Mr. Hawkins suggested that Route 892 and 893 be extended from Santa Ysabel. He stated that patrons in this part of the county don't take public transit because the service is insufficient. Mr. Jablonski requested that Mr. Hawkins leave an e-mail address or telephone number so staff could communicate with him to gain a better understanding of his suggestion. Mr. Monroe also stated that rural services are

subsidized at a rate of about \$40 per passenger, and that fact needs to be taken into consideration.

*Charles G. Miller:* Mr. Miller objected to the amount of "baggage" passengers are allowed to bring onboard buses. He also suggested that fare inspectors be more diligent in preventing riders from eating on the bus and placing their feet on the seats. He stated that bus operators need more freedom on who they allow to board. He also pointed out that Route 916 from Euclid to Lemon Grove and Route 992 have extremely low ridership and are a waste of money.

*Peter Warner:* Mr. Warner requested that digital signs be installed at stations without them as soon as possible. He also stated that MTDB has soda vending machines that are taking people's money but not delivering any product.

50. Next Meeting Date

The next regularly scheduled Board meeting is Thursday, December 9, 2004, at 9:00 a.m. in the same location.

60. Adjournment

Chairman Williams adjourned the meeting at 12:24 p.m.

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Chairman  
San Diego Metropolitan Transit  
Development Board

Filed by:

Approved as to form:

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Office of the Clerk of the Board  
San Diego Metropolitan Transit  
Development Board

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Office of the General Counsel  
San Diego Metropolitan Transit  
Development Board

Attachment: A. Roll Call Sheet

gail.williams/minutes