

EXECUTIVE COMMITTEE MEETING FOR THE
METROPOLITAN TRANSIT SYSTEM (MTS),
SAN DIEGO TRANSIT CORPORATION (SDTC),
AND SAN DIEGO TROLLEY, INC. (SDTI)

April 20, 2006

MTS
1255 Imperial Avenue, Suite 1000, San Diego

MINUTES

A. ROLL CALL

Chairman Mathis called the meeting to order at 9:04 a.m. A roll call sheet listing Executive Committee member attendance is attached.

B. APPROVAL OF MINUTES

Mr. Rindone moved approval of the minutes of the April 6, 2006, Executive Committee meeting. Ms. Atkins seconded the motion, and the vote was 4 to 0 in favor.

C. COMMITTEE DISCUSSION ITEMS

1. MTS: Update on the Status of the Grossmont Trolley Station Joint Development Project (LEG 460, PC 50787)

Ms. Tiffany Lorenzen, MTS General Counsel, introduced outside counsel Marty Bohl and gave a report on the latest developments related to the Grossmont Trolley Station Joint Development project. Ms. Lorenzen advised the Committee that MTS had received comments from the City of La Mesa regarding the ground lease and affordable housing aspects of the project, and that their requests are reasonable and will be accommodated. She stated that no comments have been received yet from the City of La Mesa on the Disposition and Development Agreement. She added that the purchase and sale agreement for the City of La Mesa's excess right-of-way has not yet been completed.

Ms. Lorenzen then advised the Committee that the lender has 15 outstanding issues with respect to the ground lease, up from the list of 7 that MTS got the prior week. She added that Fairfield has 33 issues on its list, down from 45. She added that the lenders (JP Morgan Chase and Massachusetts Mutual) are only identifying business issues and have specifically reserved comment on outstanding legal issues. She reported that the lenders have specifically indicated that they are unwilling to negotiate the terms of the Estoppel Certificate until the ground lease has been finalized. Ms. Lorenzen reviewed the outstanding major business issues related to the ground lease.

Estoppel Certificate: Mr. Bohl advised the Committee that the negotiating team is concerned that the lender might not be identifying all of the issues about which they are concerned and over the fact that they are reserving comments on the legal issues and the Lessor's Estoppel Certificate. Mr. Bohl felt that items included on

the lender's list of business issues are either minor or associated with legal issues. He stated that, in order to deal effectively with the lenders, all issues need to be presented before the negotiating team can effectively negotiate these matters. Proposed Action: Require the lender to put all issues (legal, Estoppel certificate, and business terms) on the table before negotiations are completed.

Ms. Lorenzen stated there are two major issues related to project completion and rent that will be discussed during Closed Session at the Board meeting next week.

Building Permits: Ms. Lorenzen stated that MTS typically requires, which is common for public agencies, that the developer pull all necessary permits at the close of escrow. Mr. Bohl pointed out that this requirement will ensure that Fairfield has all the entitlements they need to build the project. He stated that Fairfield is opposed to doing this because of the cost, which Fairfield estimates to be about \$7 million. Mr. Bohl reported that project construction will occur in phases, and the first phase includes the parking garage on the west parcel. He added that construction on the east parcel would begin about one year later. He added that consideration has been given to requiring Fairfield to pull all grading, utility, and garage permits for both structures but not the building permits, for which the fees are the largest. Building permits could be pulled at the appropriate time according to the construction schedule and, should Fairfield fail to do so after a reasonable grace period, liquidated damages would apply in the amount they're saving by not pulling them at close of escrow. Mr. Bohl also reviewed other options such as requiring Fairfield to post a performance bond to ensure completion of the work and conveying leasehold title in phases. He stated that Fairfield feels that these options would create lender problems.

In response to a question from Mr. Rindone, Ms. Lorenzen stated that the grading, utilities, and two garage permits could be pulled up front, building permits 1, 2, and 3 could be pulled approximately one year out, and building permits 4, 5, and 6 for the buildings on top of east parcel could be pulled approximately two years into construction. She estimated that the project would be completed in three and one-half years. Mr. Jablonski, MTS Chief Executive Officer (CEO), stated that he felt Fairfield would agree to pull permits consistent with their construction schedule. Ms. Lorenzen clarified that the performance bond would be to secure performance on the pulling the permits, not completion of the project. Proposed Option: Require Fairfield to pull permits in phases with penalty provisions for the failure to do so. Ms. Lorenzen stated that she understands that Fairfield has already agreed to the proposed option. In response to a question from Mr. Lewis, Mr. Bohl stated that time periods would be extended by any force majeure (things beyond Fairfield's control). Mr. Jablonski stated that MTS will be giving up one-half of its parking when this project starts, and it is critical to MTS that the parking garages be completed and opened to patron parking as soon as possible.

Mr. Lewis asked if the project was structured such that MTS could get a loan based upon the projected payments. Ms. Lorenzen stated that she was not familiar with banking requirements, and that there might be difficulty because there is no guaranteed rental stream.

Construction Schedule: Ms. Lorenzen reported that Fairfield does not want to be committed to a schedule other than for completion. She added that Fairfield

prefers a start and a finish date that includes a three-year construction schedule with an 18-month grace period at the end. Mr. Bohl stated that MTS would like to establish milestones to ensure that Fairfield stays on schedule. In response to a question from Mr. Lewis, Mr. Bohl reported that, before the project is completed, the developer would not have the right to transfer its interest in the ground lease without the Board's consent. Mr. Jablonski stated it is likely that Fairfield will build this project, operate it for four to five years, and then sell it. Mr. Bohl stated that is their building plan. Mr. Jablonski added that MTS has Fairfield's one-page construction schedule. He added that Fairfield will not want to delay the project given their \$80 million construction loan and CalSTERS backing as it will start to have a negative impact on their profit. He felt that MTS would be able to get a more detailed construction schedule but would run into problems getting Fairfield's agreement to meet multiple milestones with penalties for failure to do so. Ms. Lorenzen stated that the lease is drafted to say that the builder will construct the project pursuant to a construction schedule and that failure to do so will mean they are in default. Mr. Emery suggested that milestones be established for the parking garages because this is MTS's critical interest.

Proposed Action as Directed by the Executive Committee: Include a default provision that would only be triggered in the event that the garages are not completed based on the construction schedule and also if the final completion date is not met. Mr. Bohl stated that this sounds reasonable. Ms. Lorenzen reminded Committee members that there are two rents, base and overage, with overage rent directly tied to occupancy. Mr. Bohl explained the structure for the base rent.

In response to a question from Chairman Mathis, Ms. Lorenzen stated that if there is no milestone that triggers default with respect to construction of the units, then the timeframe within which those units are completed may be longer than originally anticipated, occupancy would then occur later, and overage rent would be less. Mr. Jablonski stated that the Committee should be careful in its recommendations to the negotiating team regarding contract default. He felt it would be difficult for Fairfield to accept multiple milestones with default provisions. He added that there will be more discussion next week about rental streams. Mr. Jablonski stated that it is important to bear in mind that MTS is trying to maximize its revenue on this asset. Mr. Rindone stated that staff might want to include an incentive that would facilitate completion of the project to the stage where the second revenue stream begins.

Change in Management Structure: Mr. Bohl explained that CalSTERS does not want MTS to have approval of any new manager that would be selected by them if they decide not to have Fairfield complete the project. He added that CalSTERS will be carrying the greatest risk in this project. Mr. Bohl stated that MTS's position is that it is comfortable with Fairfield and would want some reasonable right to approve any new manager. He added that while the ground lease contains standards that are subjective in nature, it does address issues that are of importance to MTS. Mr. Bohl added that Fairfield is representing CalSTERS' position on this matter, and staff has not discussed this matter with anyone at CalSTERS.

Ms. Lorenzen pointed out that MTS has a vested interest in making sure that the project is well managed because that is tied to the amount of overage rent that is

received. Mr. Emery felt that with the amount of investment CalSTERS has in this project, they will want to ensure it is well managed, and they would only terminate their relationship with Fairfield for malfeasance. He stated that MTS's position should be that the selection of any new manager be made in consultation with but not actual approval by MTS. Mr. Rindone suggested that staff research similar projects with CalSTERS to see how those projects are structured. Ms. Lorenzen pointed out that MTS has this provision in its Morena Vista agreement. Mr. Bohl stated that the agreement states that MTS has the right to approve new management and said consent would not be unreasonably withheld if the new management has experience in building and operating similar types of projects and financial capabilities that are reasonably acceptable to the Board. Mr. Rindone stated that it is important for MTS to protect itself.

Mr. Jablonski stated that CalSTERS' probably feels, especially given the size of the project, that it would want to hire a manager of its own choice should problems develop with Fairfield. He didn't feel they would want that choice to be subject to approval by anyone else. He stated that there is a similar issue with the foreclosure element of the project. He suggested that MTS, even though it would be qualitative, try to document the kind of criteria it would expect and then incorporate those criteria into the document. Ms. Lorenzen suggested that Fairfield be asked to provide MTS with CalSTERS' standard, and, if MTS is comfortable with their standard, this may be a nonissue. Chairman Mathis stated that MTS does not want this to be a "sticking point".

Loan-to-Value (LTV) Ratio: Mr. Bohl stated that this issue relates to the level of loan to value with which the developer encumbers the property. He stated that it is in MTS's interest that the developer have some equity in the project. He added that public agencies typically require between 70 to 85 percent, while Fairfield and its lenders want the LTV ratio increased from 85 percent to 90 percent. He added that the developer is most concerned about how marketable the asset is once completed. He stated that the negotiation team has discussed retaining the 85 percent LTV during the construction period, and after completion, raising it to 90 percent. Mr. Jablonski stated that he didn't feel there was an appreciable risk to MTS to accept a 90 percent LTV. Proposed Action: Authorize 90 percent LTV after construction is completed.

Outstanding Documents: Ms. Lorenzen stated that Fairfield has still not delivered several critical documents and explained which documents are still needed. She stated that much of what is left on Fairfield's list of outstanding issues has to do with these documents. She felt that most of these issues could be worked out but not if MTS is not fully informed. She added that Fairfield has stated that these documents have been completed but has not yet provided them. She added that this is a huge project, and there is a lot of paperwork. Proposed Action: Require Fairfield to produce all outstanding documents as a condition to complete negotiations. The Committee agreed that this is a reasonable requirement. In response to a question from Mr. Lewis, Ms. Lorenzen stated that parking rules in the garages will be enforced by MTS Code Compliance Officers.

In response to a comment by Mr. Lewis regarding the City of La Mesa's role in this project, Ms. Lorenzen stated that La Mesa has been given copies of the DDA and the Ground Lease. She stated that they also have an interest in the affordable

housing element of the project, will receive \$7 million in permit fees, and the project is in a redevelopment zone. She added that there is a codified agreement between Fairfield and the City of La Mesa that has been signed and commits Fairfield to providing the affordable housing aspect of this project.

Action Taken

Ms. Atkins moved to receive an update from General Counsel regarding the status of the Grossmont Trolley Station Joint Development Project and provide direction to agency negotiators as outlined above. Mr. Lewis seconded the motion, and the vote was 4 to 0 in favor.

D. REVIEW OF DRAFT APRIL 27, 2006 BOARD AGENDA

Recommended Consent Items

6. MTS: South Bay/East County Maintenance Facilities Capital Project Budget Adjustments (CIP 11079, 10973, 11026, and 10845. OPS 920.6)

Recommend that the Board of Directors authorize the CEO to (1) approve the transfer of funds between Capital projects (as noted in Attachment A of the agenda item); and (2) approve a three-year contract (Doc. No. B0451.0-06) for rental of self-storage units adjacent to the South Bay Maintenance Facility that provides for additional transit vehicle parking and storage (see Attachment B of the agenda item).

7. MTS: Increased Authorization for Legal Services (LEG 491, PC 50121)

Recommend that the Board of Directors authorize the CEO to enter into a contract amendment (MTS Doc. No. G0934.3-04, Attachment A of the agenda item) with R. Martin Bohl of the Law Offices of R. Martin Bohl, for legal services related to joint development projects, in substantially the same form as attached to the agenda item.

8. SDTC: Contract Award for Brake and Planetary Kits (OPS 960.6)

Recommend that the Board of Directors authorize the CEO to execute a one-year contract (SDTC Doc. No. B05-007, Attachment A of the agenda item) with Truck Trailer Transit, Inc. for brake and planetary kits. The total cost of this procurement, including California sales tax, shall not exceed \$61,268.69.

9. MTS: Budget Transfer and Construction Management Contract Amendment for Mission Valley East (CIP 10426.12)

Recommend that the Board of Directors authorize the CEO to (1) transfer \$250,000 into the Construction Management (CM) line item (WBS #10426-0700) to fund Contract Amendment No. 40 with Washington Group International (WGI) to extend CM services on the Mission Valley East (MVE) Light Rail Transit (LRT) Project (see Attachment A of the agenda item, Budget Transfer History); and (2) execute Contract Amendment No. 40 (MTS Doc. L6343.40-01) with WGI in substantially the same form as shown in Attachment B of the agenda item, in an amount not to

exceed \$248,067 for CM services on the MVE LRT Project, including extension of the CM services through August 31, 2006.

Recommended Consent Items

There was no discussion of the recommended Consent Items.

Recommended Board Discussion Items

Ms. Lorenzen explained that certain Grossmont Trolley Station issues will be discussed at the Board meeting in Closed Session that should have been discussed during Closed Session at the Executive Committee. She stated that the Closed Session was inadvertently left off the Executive Committee agenda.

E. REVIEW OF SANDAG TRANSPORTATION COMMITTEE AGENDA

South Bay Bus Rapid (BRT) Transit Project (Agenda Item No. 8): Ms. Sharon Cooney, MTS Director of Government Affairs and Community Relations, reported that an agenda item on this project is on the SANDAG Transportation Committee agenda for April 21, 2006. She reported that a project development team, consisting of representatives from SANDAG, Caltrans, and the cities of San Diego, National City, and Chula Vista, has been working on this project. She added that MTS was not invited to be a member of this team. Mr. Mathis stated that Mr. Jablonski would determine if this was an oversight or done by design.

Mr. Rindone stated that SANDAG gave a presentation on this item at a recent Chula Vista City Council meeting and reported that the plan currently incorporates some very innovative ideas for reducing travel times, which is of more importance to the consumer than the cost of the service. He added that the plan will have operational impacts, and it would therefore be of benefit to SANDAG to have operator input. Mr. Rindone also stated that SB 1703 supports this concept. Mr. Mathis stated that operator input and buy in is necessary. Mr. Jablonski pointed out that it appears that 60 to 70 new buses will be needed for projects currently proposed, and no consideration seems to have been given to where these buses will be stored and maintained. He stated that if new facilities are needed, planning for this process should start at the same time that planning for the individual project starts.

Mr. Conan Cheung, MTS Director of Planning and Performance Monitoring, discussed the alignment for the South Bay BRT and how it would be better to align this service down Plaza Boulevard rather than down 18th and explained the reasons why. He also displayed the alignment for this service going north and suggested that it would serve a wider range of transportation needs if it connected with the trolley, which could be used to travel to downtown, and then proceeded north through Kearny Mesa and University Town Center. He stated that there are 1,000 daily passengers that need this service, which would justify 7.5-minute frequency during peak hours. He stated that the proposing alignment duplicates Orange Line service into downtown San Diego. Mr. Jablonski stated that rather than duplicating Orange Line service, if demand is present, efforts should be made to improve the existing service. Mr. Cheung then discussed the out-of-direction loop between Imperial Avenue and Market Street currently proposed for the South Bay BRT and questioned the necessity of that stop.

Mr. Cheung also stated that better service is needed within Chula Vista and that the distance from the east to the west side of Chula Vista is about the same distance as from Chula Vista to downtown San Diego. He also stated that 2/3 to 3/4 of the people crossing the border in Tijuana are destined to the South Bay.

Chairman Mathis stated that information gathered during the Comprehensive Operational Analysis (COA) needs to be considered during the planning stages for these types of projects, and BRT services need to be integrated into the entire transit system. He stated that this discussion demonstrates the need for MTS staff involvement. Mr. Jablonski stated that the agenda item also discusses the operating plan for the South Bay BRT, and Mr. Rindone pointed out that SB 1703 specified that the operators are responsible for that element in any transportation plan. It was agreed that Phil Monroe should be apprised of these matters. The Committee also agreed that it would be prudent to request that the SANDAG Transportation Committee continue this item and that SANDAG Chair Joe Kellejian and SANDAG Executive Director Gary Gallegos be informed regarding these discussions. Mr. Rindone also suggested informing Toni Bates, SANDAG Director of Planning.

Ms. Cooney stated that New Starts (Small Starts) funding is going to be used for this project, and applications are not being accepted by the Federal Transit Administration (FTA) until certain regulatory issues are resolved. It was agreed that it was not appropriate to use the need to meet deadlines as a justification for getting premature approval of projects without adequate review and input. Ms. Atkins stated that it is more important to plan and execute projects correctly than quickly.

TransNet and Transportation Development Act (TDA) Audits (Agenda Item No. 10):

Ms. Cooney reported that MTS's TDA audit is expected to be done April 21, 2006, well within the state's deadline of May 30. She added that MTS has requested an extension for the TransNet audit, which should be completed by the end of April or early May. Mr. Jablonski explained that MTS's audit firm, KPMG, has failed to complete the FY 2004 and FY 2005 audits as they were contracted to do. He stated that as a result of recent discussions with them, it is now expected that the FY 2004 audit will be completed by the end of May, and the FY 2005 audit, which is 90 percent complete, should be done shortly after that. Mr. Jablonski felt that KPMG is now more interested in entering into private sector contracts, which are more lucrative. Mr. Jablonski added that MTS has hired Caporicci & Larson to do its FY 2006 audit. He added that future audits should be completed by the end of the calendar year in which the fiscal year ends.

Clive Richard: Mr. Richard felt that the focus of the South Bay BRT Project should be on the data, not on the clock. He stated that the COA produced information that is important to have and should be included in plans for the future. He felt strongly that MTS should be at the table. He also stated that moving the 47th Street Station does not make sense.

F. COMMITTEE MEMBER COMMUNICATIONS AND OTHER BUSINESS

There were no Committee member communications.

G. PUBLIC COMMENTS

Don Stillwell: Mr. Mathis advised Mr. Stillwell that if his comments pertained to Route Nos. 13 and 14, he should submit his comments in writing and staff would respond.

Clive Richard: Mr. Richard made comments regarding the Route No. 14 out-of-direction stop at the 70th Street Station. He stated that there are no passenger facilities at this location, only parking for trolley patrons; therefore, buses should not be taken out of direction to serve that stop. He added that he has been attending SANDAG's smart growth workshops and feels that transit is trying to be everything to everyone and, in the process, is becoming nothing to anyone. He felt that transit should focus on what it does well.

H. NEXT MEETING DATE:

The next meeting is scheduled for Thursday, May 4, 2006, in the Executive Conference Room.

I. ADJOURNMENT

Chairman Mathis adjourned the meeting at 11:03 a.m.

Chairman

Attachment: A. Roll Call Sheet
gailwilliams/minutes