

**MINUTES
METROPOLITAN TRANSIT AUTHORITY
BOARD OF DIRECTORS
REGULAR BOARD MEETING
July 13, 2009**

An Executive Session with the Board of the Metropolitan Transit Authority of Harris County, Texas ("METRO") preceded the regularly-scheduled board meeting. The Executive Session, which commenced at 12:25 p.m., was publicly announced and concluded at 1:10 p.m. The regularly-scheduled monthly Board of Directors' ("Board") meeting convened and was called to order at 3:08 p.m. by Board Chairman David S. Wolff. Board Members present were Mr. Jackie L. Freeman, Board Secretary; and Board Members Mr. Burt Ballanfant, Mr. Terence Fontaine, Ms. Carmen Orta, Ms. Trinidad Mendenhall Sosa, and Mr. C. Jim Stewart, III. Vice Chairman George Demontrond, III, and Vice Chairman Gerald B. Smith were not present. The members present constituted a quorum.

MOTION NO. 2009 -24

Board Chairman David S. Wolff convened the meeting and called for a motion for approval of the minutes of the regularly-scheduled Board Meeting of Jun 11, 2009. Board Member C. Jim Stewart, III moved for approval of the minutes. The motion was seconded by Board Member Trinidad Mendenhall Sosa. All Board Members present voted in favor and the motion to approve the June 11, 2009, minutes passed.

Board Chairman Wolff introduced the next order of business, which was to administer the oath of office to new Board Member Terence Fontaine. Chairman Wolff first provided an introduction of Mr. Fontaine.

Chairman Wolff told of Mr. Fontaine's history as a native Houstonian, a graduate of Bellaire High School, a Marine with the United States Marine Corps of Aviation, and a Bachelor's of Science Degree from Southern Illinois University in 1989. Chairman Wolff further described Mr. Fontaine's career with Continental Airlines, first as a pilot, and then as an instructor. Mr. Fontaine served as the Deputy Chief of Staff for Mayor Bill White. In January of 2009, Mr. Fontaine joined Center Point Energy as a senior consultant.

Chairman Wolff introduced Mr. Fontaine's parents, Sam and Beverly Fontaine, and his wife, Deidre Booker, and his daughter, Courtney Anne Fontaine.

Chairman Wolff administered the oath of office to Mr. Fontaine, who, after being duly sworn, took his place among his fellow METRO Board Members as Chairman Wolff offered his congratulations.

Board Chairman Wolff invited those members of the public who had requested to speak before the Board to make their individual presentations. The public speakers and their comments are summarized below:

1. **Ms. Fletia Jones**: When called for her presentation to the Board, Ms. Jones did not appear.
2. **Mr. James Partsch-Galvan**: When called for his presentation to the Board, Mr. Partsch-Galvan did not appear.
3. **Barry Klein**: Mr. Klein introduced himself as a member the Houston Property Rights Association. He asserted his belief that METRO is in violation of the contract it created with the voters in 2003. As an example, Mr. Klein cited the inclusion of the Uptown section, which he acknowledged is not included in this phase of the project. He asserted that METRO committed that METRO would not build anything until METRO had a federal commitment for the capital costs and that he believes METRO does not have a federal commitment.

Mr. Klein predicted that Houston would see “ruination”, as he contends was already seen on Main Street. He then passed around to the Board Members a document that he contended demonstrated the costs for the project of approximately five hundred dollars (\$500) per household in the METRO district.

Senior Vice President and General Counsel, Pauline E. Higgins, informed Mr. Klein that his time had expired.

Chairman Wolff informed Mr. Klein that if he had a written version of his comments, Mr. Wolff would be happy to review them. Chairman Wolff stated that though the Board does not agree with Mr. Klein, the members respect his ability to speak to them.

4. **Mr. Mark Hogue**: Mr. Hogue stated that he believes that the 47 Hillcroft Crosstown needs to be extended. He proposed suggested routes. He also stated that he is of the opinion that the 46 should extend to the DPS office on West Airport. Finally, Mr. Hogue shared a proposed route design for Eldridge.

The Chairman then asked Mr. John Haley, Jr., Vice President of Planning and Development, if he had spoken with Mr. Hogue about his ideas. Mr. Haley stated that he had spoken with Mr. Hogue, and that Mr. Hogue has a number of good ideas. He further stated that Mr. Hogue works tirelessly to support METRO’s efforts to get the word out regarding service.

Mr. Hogue stated that he has signatures to support his suggestion that the 42 route run on weekends. Chairman Wolff thanked him for his efforts.

5. **Mr. Robert Duke**: Mr. Duke introduced himself, stated he is with the Surety Fidelity Association of America, and that he was accompanied by other members of the association, representing Travelers, Zurich, Liberty Surety, and Suretec.

Mr. Duke noted that he was speaking before the Board in order to present questions and concerns that the Surety Association has regarding the surety

bonding arrangements for the rail project. He expressed his understanding that it is a 1.3 Billion dollar project with no requirement of payment and performance bonds. Mr. Duke stated his belief that the law required payment and performance bonds, citing Section 2253.021 of the Texas Government Code.

Mr. Duke further stated that, in addition to the legal requirements, requiring bonds is simply good public policy. He said a performance bond provides financial assurance to the Authority and protects the public interest. He said a payment bond is necessary to protect the interests of the subcontractors.

Mr. Duke asserted his belief that the reliance on Parent Company Guarantees is inadequate because if the contract and parent fail, the parental guarantee is not sufficient. Mr. Duke closed by stating that they request the Authority require performance and payment bonds or at least provide insight into why it thinks those bonds are not required.

Chairman Wolff thanked Mr. Duke, and stated that because there were additional speakers on the same topic, he would ask the President and CEO, Frank J. Wilson, to respond to all at the same time.

6. **Mr. Bill King:** Mr. King introduced himself as the president of SureTec Insurance Company, a locally owned surety company. SureTec is a member of Surety and Fidelity Association of America, as well as Associated General Contractors, the American Subcontractors Association, and the Houston Contractors Association.

Mr. King stated that, with all that said, he appeared as a citizen and taxpayer. He stated that he endorses the position of Surety and Fidelity Association of America. He said he has lived, worked, and raised a family in Houston since 1973. He said he cannot fathom the decision the Board has made to undertake the project [METROSolutions, Phase 2] without surety protection. He stated that the decision is shortsighted, perhaps saving money in the short term, but if problems arise, the cost will far outweigh the savings. Additionally, Mr. King asserted his opinion that while some companies may be able to withstand the economic setback of an unbonded project in trouble, without surety bonds there is no guarantee for vendors, subcontractors, and laborers who cannot.

Ms. Higgins informed Mr. King that he had thirty seconds remaining.

Mr. King concluded by saying that he wants this to be a successful project and thinks it is one that should be built with surety protection for the taxpayers and citizens employed on the project. He asked the Board to reconsider its decision.

7. **Mr. Howard Cowan:** Mr. Cowan introduced himself as the president of the Texas Surety Federation. He stated his members have no direct financial interest in the project. Further, Mr. Cowan pointed out what he believes to be the risk of not requiring bonds on the project. Specifically, he pointed out that the vendors, subcontractors and laborers cannot place liens on this project. Failure

to receive payment can lead to bankruptcy. Mr. Cowan asserted that only third-party credit guarantees give those workers protection.

Mr. Cowan complimented the Authority on its selection of contractors and stated that the largest surety companies in the country are willing to back the project. He stated that most construction projects run into challenges and disputes. He informed that parent company guarantees eliminate the possibility of a third-party to resolve those disputes.

Ms. Higgins informed Mr. Cowan that his time had expired.

Chairman Wolff thanked Mr. Cowan and invited Mr. Wilson to respond.

Mr. Wilson began by extending an invitation for all three gentlemen to meet with him after the Board meeting and informed them that no final decision has been made with regard to performance and payment bonds. He said that METRO has been looking at the issue of project security for some time and that METRO is looking for its value. Mr. Wilson highlighted that METRO is looking to the industry to give guidance, including the price versus risk structure. Mr. Wilson stated that METRO is ready to use bonds or not to use them, depending on the value and price offered.

Mr. Wilson described the current status, stating that METRO currently has not one but five parent company guarantees. He stated that, in addition, the parent companies have signed joint and several liability agreements. METRO has not ruled out performance bonds. The risk for performance bonds will be weighed in light of the parent company guarantees.

Mr. Wilson then explained that the market wasn't appropriate for one-hundred percent bonding. METRO requested partial bonding and was told it could only be bonded for one hundred percent of the project. Recently, Mr. Wilson noted, METRO did see interest on bonding a forty million dollar portion of the work and METRO is waiting to obtain and see the rates.

Mr. Wilson stated that in addition to the parent company assurances, the trustee protecting the interests of private investors will have an eye on the proceedings. At the first sign of an issue, the trustee will raise it with METRO.

Mr. Wilson concluded by stating that the current course is a blended solution. If the market returns to normal and METRO has legitimate alternatives to the current plan, METRO will be very open to discussion and investigation. Further, in some parts of the project, METRO will want performance bonds. In other parts, the work is routine enough to be safe without them. Mr. Wilson stated that it is METRO's responsibility to act prudently across the board, using every tool available without exclusion.

Chairman Wolff thanked Mr. Wilson and called for the President & CEO's business report.

Mr. Wilson expressed his gratitude to the Chairman and the Board for their work and involvement in furthering METROSolutions. He stated METRO could not have gotten where it is today without them. Mr. Wilson also expressed his appreciation to METRO Staff involved in METROSolutions.

Chairman Wolff called for consideration of the Summary Agenda, which included Agenda Items 6, 9, 10, 11, 13, 14, 15, 16, and 17. Board Member Stewart moved for approval of the Summary Agenda. Board Member Mendenhall Sosa seconded the Motion and all Board Members who were present voted in favor of the motion to approve the Summary Agenda.

MOTION NO. 2009-25

RESOLUTION NO. 2009-54

Approval of projects to be funding by the Job Access/Reverse Commute and New Freedom grant funding; Authorization for the President & CEO to execute all necessary documents

RESOLUTION NO. 2009-55

Authorization for the President & CEO to execute and deliver a contract with Hewlett-Packard for wireless bus communications.

RESOLUTION NO. 2009-56

Authorization for the President & CEO to execute and deliver a contract for medical plan administration with United Healthcare and a contract for pharmacy benefits with Express Scripts.

RESOLUTION NO. 2009-57

Authorization for the President & CEO to negotiate, execute, and deliver a contract with Fastenal, Inc. for consignment services.

RESOLUTION NO. 2009-58

Authorization for the President & CEO to execute and deliver a contract with Neopart, LLC for the purchase and delivery of Arvin Meritor Axle parts.

RESOLUTION NO. 2009-59

Authorization for the President & CEO to execute and deliver a contract with Muncie Transit Supply for the purchase and delivery of Haldex slack adjusters.

RESOLUTION NO. 2009-60

Authorization for the President & CEO to execute and deliver a contract for corrosion control testing services with V&A Consulting.

RESOLUTION NO. 2009-61

Authorization for the President & CEO to execute and deliver a contract with National Bus Sales and Leasing Inc for the purchase of 119 METROLift vehicles.

RESOLUTION NO. 2009-62

Approval of the projects for submission of a grant application to the Criminal Justice Division of the Texas Governor's Office.

.MOTION NO. 2009-26

Board Secretary Freeman presented Agenda Item 7 and moved for the approval of the extension of the contracts with various contractors to allow community outreach efforts to continue as needed through June 30, 2010, in an amount not to exceed \$2 million dollars. The motion was seconded by Board Member Fontaine and approved unanimously by all Board Members present.

RESOLUTION NO. 2009-63

Authorization for extension of community outreach contracts with various contractor through June 30, 2010, for an amount not to exceed \$2 million dollars.

MOTION NO. 2009 -27

Board Secretary Freeman presented Agenda Item 8 and moved for the approval of expenditures for the first year of the SBE/DBE program for necessary activities and services in an amount not to exceed \$3 million dollars. Board Member Mendenhall Sosa seconded the motion, which was then unanimously approved by all Board Members present.

RESOLUTION NO. 2009-64

Authorization for the expenditures for the METRO Solutions' SBE/DBE program, for one year, for an amount not to exceed \$3 million dollars.

MOTION NO. 2009 -28

Prior to the presentation of Agenda Item 12, Ms. Higgins announced that Board Member C. Jim Stewart, III would abstain from deliberation and voting on this matter. Board Member Fontaine then presented Agenda Item 12 and moved that the President & CEO be authorized and directed to negotiate, execute, and deliver a contract with Stewart & Stevenson, LLC to provide engine parts for buses. The motion was seconded by Board Member Ballanfant and was then unanimously approved by all Board Members present with the exception of Board Member Stewart who abstained.

RESOLUTION NO. 2009-65

Authorization for the President & CEO to negotiate, execute and deliver a contract for engine parts with Stewart and Stevenson for a period of three years and for an amount not to exceed \$3, 917,000.00.

MOTION NO. 2009-29

Board Member Stewart presented Agenda Item 18 and moved that the President and CEO be authorized to execute the delivery of a one-year contract for professional consulting services with Dhiren Chakraborty for rail-related services. Board Member

Fontaine seconded the motion, which was then unanimously approved by all Board Members present.

RESOLUTION NO. 2009-66

Authorization for the President & CEO to execute and deliver a one-year contract with Dhiren Chakraborty for rail-related professional services in an amount not to exceed \$96,300.00.

MOTION NO. 2009-30

Secretary Freeman presented Agenda Item 19 and moved that the Board of Directors approve the security-related measures for the Southeast and East End rail corridors. Board Member Mendenhall Sosa seconded the motion, which was then unanimously approved by all Board Members present.

RESOLUTION NO. 2009-67

Approval of security-related measures on the Northeast and East End rail corridors and authorization for the President & CEO to authorize the design and construction plan modifications necessary to execute the measures.

There being no other matters to come before the Board for its consideration, the meeting adjourned at 3:45 p.m. The next regularly-scheduled Board Meeting is scheduled for August 10, 2009, at 1:00 p.m.

Respectfully submitted,



Pauline E. Higgins
Senior Vice President and General Counsel
Metropolitan Transit Authority of Harris County, Texas