

**MINUTES
DALLAS AREA RAPID TRANSIT
BOARD OF DIRECTORS'
October 14, 2008**

The Dallas Area Rapid Transit **Board of Directors'** meeting convened on Tuesday, October 14, 2008, at 6:40 p.m., at DART Headquarters, 1401 Pacific Avenue, Dallas, Texas, with Chair Chrisman presiding.

City of Dallas

Scott Carlson
Jerry L. Christian
Pamela Dunlop Gates – **Assistant Secretary**
Angel Reyes
Robert Strauss – **Vice-Chair**
William Tsao
William M. Velasco
Claude Williams

City of Garland

Tracey M. Whitaker

City of Irving

John C. Danish – **Secretary**

City of Plano

Loretta Ellerbe

Cities of Addison, Highland Park, Richardson, and University Park

Raymond Noah

Cities of Carrollton and Irving

Randall Chrisman – **Chair**

Cities of Dallas, Plano, Glenn Heights, and Cockrell Hill

Faye Moses Wilkins

Cities of Farmers Branch, Garland, and Rowlett

Mark C. Enoch

General Items:

1. **Approval of Minutes:** September 23, 2008

Mr. Noah made a motion to approve the September 23, 2008, Board of Directors' Meeting minutes with no corrections, deletions, or additions.

Mr. Danish seconded the motion and it was approved unanimously.

Chair Chrisman stated that Ms. Dunlop Gates had requested Item 8., **Sale of Surplus Property Located at 1515 Compton Street in the City of Dallas for Transit-Oriented Development Purposes**, be removed from the Consent Items.

Consent Items:

Ms. Ellerbe made a motion to approve Consent Items 3. – 7. and Item 9.

3. **Contract Modification for the Acceleration of the Trinity Railway Express (TRE) Belt Line Grade Separation and Bridge Construction Project**

Approval of Resolution No. 080163 that authorizes the President/Executive Director or his to is authorized to execute a contract modification, subject to legal review, for the acceleration of the Trinity Railway Express (TRE) Belt Line Grade Separation and Bridge Construction Project with McCarthy Building Companies, Inc., in an amount not to exceed \$350,000. This modification will be funded from existing contingency; therefore, the total authorized amount not to exceed \$46,446,873 remains unchanged.

4. **Contract Modification for Settlement of Costs Related to the Redesign of Slurry Drilled Shafts for the Trinity Railway Express (TRE) Belt Line Grade Separation and Bridge Construction Project**

Approval of Resolution No. 080164 that authorizes the President/Executive Director or his designee to:

Section 1: Execute a contract modification, subject to legal review, for settlement of the request for equitable adjustment submitted and subsequently amended, including issues relating to Notice to Proceed and redesign of slurry drilled shafts for the TRE Belt Line Grade Separation and Bridge Construction Project with McCarthy Building Companies, Inc., in an amount not to exceed \$2,724,933, which will be funded from existing contingency.

Section 2: Add additional contingency in the amount of \$245,244 (9% of modification) for future unanticipated changes, for a new total authorized amount not to exceed \$46,692,116.

5. Exercise Contract Option to Purchase 23 Super Light Rail Vehicles (SLRVs) in Support of the Orange and Blue Line Corridors

Approval of Resolution No. 080165 that authorizes the President/Executive Director or his designee to execute a contract modification to exercise a contract option, subject to legal review, to purchase 23 SLRVs in support of the Orange and Blue Line corridors with Kinkisharyo International, L.L.C., in the amount of \$126,730,327 (which includes a CCTV camera-ready option for the full 48 SLRV order), plus a supplemental work contingency of \$2,843,881 for unanticipated expenses (which includes an amount of \$1,200,000 to cover the estimated shipping cost increase due to the potential use of U.S. flagship vessels), for an amount of \$129,574,208 and a total authorized amount not to exceed \$298,879,836. If U.S. flagshipping is required and actual shipping cost increases exceed the estimated amount, staff will return to the Board to request authorization for use of the contingency funds for the additional funding.

6. Declare Public Necessity for Parcels NW4-22-1, NW4-77, NW4-94, COC-7-5, COC-12, and COC- 23-1; Declare DART's Interests in Parcels NW4-41-2 (E), NW4-42-2 (E), NW4-43-2 (E), NW4-44-2 (E), NW4-55, NW4-84 (E), NW4-103, and NW4-56-1 (except portion referred to as NW4-56-4) Surplus to DART's Mass Transit Requirements; and Authorize an Interlocal Agreement with the City of Carrollton, Subject to Legal Review

Approval of Resolution No. 080166 that authorizes the President/Executive Director or his designee, subject to legal review, to execute an Interlocal Agreement with the City of Carrollton, which provides for the exchange of the City's Parcels NW4-22-1, NW4-77, NW4-94, COC-7-5, COC-12, and COC-23-1, which are required for the construction of the Northwest Corridor and which are described in Exhibit 1 to this Resolution, for DART's interest in Parcels NW4-41-2 (E), NW4-42-2 (E), NW4-43-2 (E), NW4-44-2(E), NW4-55, NW4-84(E), NW4-103, and NW4-56-1(except the portion referred to as NW4-56-4), which are surplus to DART's mass transit requirements and which are also described in Exhibit 1 to this Resolution, and to execute all documents and make all payments required pursuant to this Agreement.

7. **Declare Public Necessity, Establish Just Compensation, and Authorize the Acquisition of Parcels R1-82, R1-104, R1-105, and R1-106 Located in Rowlett for the Rowlett Corridor Line Section Rowlett-1 (R-1) and Authorize Eminent Domain Proceedings if Necessary**

Approval of Resolution No. 080167 that states:

- Section 1:** There is a public necessity for the acquisition of the properties described in Exhibit 1.
- Section 2:** These properties are necessary and proper for construction of the Rowlett Corridor and for any other use authorized by Chapter 452 of the Texas Transportation Code, and such use is hereby declared to be a public use for a public purpose.
- Section 3:** The amount to be offered as just compensation for the parcels required for the Rowlett Corridor shall be the value of the properties as determined by DART's appraisals.
- Section 4:** In the event the property owner(s) accepts the offer of just compensation, the President/Executive Director or his designee is hereby authorized to execute all necessary legal instruments and to pay necessary relocation expenses, title policy expenses, closing costs, and other such costs as may be required by law to close the purchase of the property.
- Section 5:** Should the property owner(s) decline the offer of just compensation, then the President/Executive Director or his designee is hereby authorized and directed to negotiate the purchase of such parcels in accordance with DART's Real Estate Policy.
- Section 6:** If the President/Executive Director or his designee is unable to negotiate the purchase of the parcels for just compensation, the General Counsel is hereby authorized and directed to initiate and prosecute to completion eminent domain proceedings for the acquisition of the parcels for the Rowlett Corridor.
- Section 7:** DART shall not exercise its power of eminent domain for the acquisition of the parcels described in Exhibit 1 without the approval of such acquisition by the City Council of the City of Rowlett.
- Section 8:** DART's exercise of the power of eminent domain in acquiring the herein described parcels will not unduly impair the then

existing neighborhood character of property surrounding or adjacent to the property to be condemned, nor unduly interfere with interstate commerce, nor authorize DART to run its vehicles on railroad tracks which are used to transport property.

9. **Interlocal Cooperative Agreement with the North Central Texas Council of Governments (NCTCOG) for Funding for Additional Parking Spaces at the Parker Road LRT Station**

Approval of Resolution No. 080169 that authorizes the President/Executive Director or his designee to execute an Interlocal Cooperative Agreement with the North Central Texas Council of Governments (NCTCOG) for funding for additional parking spaces at the Parker Road LRT Station, in substantially the form as shown in Exhibit 1 to this Resolution.

Mr. Velasco seconded the motion and it was approved unanimously.

Chair Chrisman then asked the Board to consider Item 8. separately and stated that he would entertain a motion.

8. **Sale of Surplus Property Located at 1515 Compton Street in the City of Dallas for Transit-Oriented Development Purposes**

Mr. Velasco made a motion to approve Resolution No. 080168 that states:

Section 1: The Property located at 1515 Compton Street and described and shown on Attachment 1 is not needed by DART for the efficient operation and maintenance of the public transportation system and is surplus to DART's needs.

Section 2: The President/Executive Director or his designee is authorized to take such action and execute such documents as shall be necessary to convey the Property to the Sphinx Development Corporation for development as a transit-oriented development for fair market value as determined by appraisal.

Mr. Danish seconded the motion and it was approved by majority. (11/4). Mr. Williams, Ms. Dunlop Gates, Mr. Strauss, and Mr. Reyes voted "no".

Chair Chrisman stated he had been remiss and had unintentionally bypassed the Public Comments (Item 2.) portion of the meeting. He apologized and returned to the skipped item.

2. Public Comments

Chair Chrisman reviewed the rules that govern the Public Comments portion of the meeting, including the Code of Conduct for Citizens, News Media, and Visitors at DART Board Meetings (on file in the Office of Board Support).

The following individuals addressed the Board:

Mr. Julius Thomas, 1708 Joan Drive, Dallas, Texas, (800) 427-1778: Mr. Thomas stated that he, and other passengers, witnessed a very upsetting incident on September 30, 2008. Mr. Thomas continued that he was so troubled by this incident he written a letter (to the Board) and asked if the letter had been received and, if so, wished to know the Board's reaction to the contents of the letter.

Ms. Kathy Meissner, 2912 Monet Court, Flower Mound, Texas, 75022, (817) 430-0405: Ms. Meissner stated that she represented Texas Instruments employees who wanted the Board to consider increasing the number of vans in the program by (a minimum of) 50. Ms. Meissner complimented the effectiveness of the program and said that there are many Texas Instrument employees that want to form vanpools but cannot do so because a lack of available vehicles.

Ms. Viola Blocker, 1342 S. Corinth Street, Dallas, Texas, 75203, (972) 841-0174: Ms. Blocker stated that she was a citizen of Dallas and had been concerned (in the past) by the media reports of DART's cost overruns, over budgeting, etc. Ms. Blocker then related the circumstances surrounding several unsuccessful attempts to secure employment with DART and called DART's hiring practices into question.

Mr. Dan Glazner, 8550 Midpark Road, #819, Dallas, Texas, 75240, (214) 394-4404: Mr. Glazner stated that he wished to make the Board aware that some bus drivers do not wear a safety belt and, in general, he was concerned that DART's buses are inadequately equipped (lap belts versus chest/lap). Mr. Glazner added that additional benches/seats were needed at train stations, particularly at the Spring Valley station. He concluded by saying that riders need better protection from the weather.

Ms. Rebecca Williams, 318 Kirby Creek Drive, Grand Prairie Drive, Grand Prairie, Texas, 75052, (817) 718-8389: Ms. Williams stated that it had come to her attention that the Board had recently shown interest knowing whether DART employees suffer retaliation as a result of filing a grievance (complaint). Ms. Williams stated that, from her point of view, retaliation was very much a part of the DART workplace. Ms. Williams continued that she had been terminated by DART and had evidence of multiple serious policy violations. Ms. Williams then reviewed a series of dates that delineated the sequence of events that culminated

in her termination and the legal steps she had taken since her termination to contest the way her termination was handled.

Ms. Barbara Carr, 321 Trees Drive, Cedar Hill, Texas, 75104, (972) 293-2787: Ms. Carr stated that she had been intimidated and retaliated against for filing a grievance while in DART's employee. Ms. Carr added that she had recently sent a letter to Mr. Victor Burke, Executive Vice President of Operations, concerning racial profiling of African-American bus operators and said Mr. Burke has not acknowledged or responded to the letter (or the problem). Ms. Carr continued that she had sought assistance (concerning her termination) from State Representative, Helen Giddins, and discovered that Ms. Giddins is the mother of a DART Employee who is directly involved in the grievance process. Ms. Carr said this is a conflict of interest.

Individual Items:

10. Use of Outside Counsel in Monroe Shop Partners, Ltd. V. Dallas Area Rapid Transit, Cause No. DC-08-01935-B

Ms. Dunlop Gates recapped that the item had been approved by the Administrative Committee and at the Committee-of-the-Whole earlier in the day.

Ms. Dunlop Gates made a motion to approve Resolution No. 080170 that authorizes the General Counsel to continue the engagement of Thomas Brandt and the firm of Fanning, Harper & Martinson, P. C. in litigation styled Monroe Shop Partners, Ltd. V. Dallas Area Rapid Transit, Cause No. DC-08-01935-B, in an additional amount of \$10,000, for a total amount not to exceed \$235,000.

Mr. Strauss seconded the motion and it was approved unanimously.

11. Options for Design and Construction of DART Police Facilities

Ms. Wilkins stated the item had been discussed several times at the Project Management Committee and at the Committee-of-the-Whole. Ms. Wilkins said she does not support the item for previously stated reasons and deferred to Mr. Danish.

Mr. Danish made a motion to approve Resolution No. 080171 that authorizes the President/Executive Director or his designee to execute a contract modification, subject to legal review, with The Joint Venture of Lockwood, Andrews & Newnam, Inc.; Chiang, Patel & Yerby, Inc.; Aguirre Corporation; and APM and Associates, Inc. (TRACK 3) for General Engineering Consultant III services for design leading to multiple construction contracts for DART Police Facilities in the amount of

\$2,145,246, plus a supplemental work contingency of \$64,358 (3%) for unanticipated expenses, for an amount of \$2,209,604 and a new total authorized amount not to exceed \$15,156,024.

Ms. Ellerbe seconded the motion and it was approved by majority (8/7)

12. +Adoption of Fiscal Year 2009 Agency Goals

Mr. Noah made a motion to approve Resolution No. 080172 that adopts the goals listed on Exhibit 1 to the Resolution for Fiscal Year 2009.

Mr. Christian seconded the motion and it was approved unanimously.

13. *Update on Customer Complaint Process

This item was considered at the Committee-of-the-Whole only.

14. *Update on Design-Build Reuest for Proposals (RFP) Process for Irving and Rowlett Corridors

This item was considered at the Committee-of-the-Whole only.

15. Election of Officers

Chair Chrisman stated the Board would proceed with electing new DART Board Officers for the positions of Chair, Vice Chair, Secretary, and Assistant Secretary.

Chair Chrisman continued that the Board By-Laws require that Board Officers be elected at the annual meeting of the Board, which is the first regular meeting in the month of October. He said that they would shortly elect a Board Chair, a Board Vice Chair, Secretary, and Assistant Secretary and explained that the specific procedure for electing officers is established in Rule 1 (on file with the Office of Board Support) of the DART Board Rules of Procedure. He confirmed that each of the Board members had been provided a copy of that Rule and then preceded to read the Rule aloud in its entirety.

Chair Chrisman then stated that the floor was open for nominations for the position of Board Chair.

Mr. Christian said he would like to nominate Randall Chrisman for the position of Chairman of the DART Board of Directors.

Ms. Ellerbe seconded the nomination.

Chair Chrisman asked if there were any other nominations for Chair and no additional candidates were made known.

By show of hands, Chair Chrisman was elected Chairman of the DART Board of Directors' by unanimous vote.

Chair Chrisman thanked his fellow Board members for the honor and moved the assembly to consider the position of Vice-Chair.

Ms. Dunlop Gates nominated Robert Strauss for the position of Vice-Chairman. Mr. Christian seconded the nomination and, by a show of hands, Mr. Strauss was elected unanimously.

Chair Chrisman nominated Mr. Danish for the position of Secretary and Mr. Noah seconded the nomination. Chair Chrisman asked if there were any other nominees for Secretary and, hearing no others, asked the Board to vote. Mr. Danish was unanimously elected Secretary by a show of hands.

Mr. Christian said he wished to nominate Ms. Dunlop Gates for the position of Assistant Secretary. Mr. Tsao seconded the nomination and Ms. Dunlop Gates was unanimously elected by a show of hands.

Other Items:

16. Officer Reports

There was no report.

17. Chair Report

Chair Chrisman extended birthday congratulations to Mr. Noah and Mr. Danish.

18. General Counsel's Report

There was no report.

19. President/Executive Director's Report

Mr. Thomas reminded the assembly that DART's SLRV is still on display at Fair Park for the duration of the State Fair of Texas. He added that the exhibit has been well received and the agency looked forward to September 14, 2009, when service to Fair Park would be achieved.

20. Communications and Public Comments

There were no additional Communications and Public Comments.

21. Adjournment

There being no further business to discuss, the meeting was adjourned at 7:06 p.m.

Gail Cook
Board/Committee Secretary

/glc

+ Same Night Item
* Briefing Item