

MINUTES
DALLAS AREA RAPID TRANSIT
BOARD OF DIRECTORS'
April 13, 2010

The Dallas Area Rapid Transit **Board of Directors'** meeting convened on Tuesday, April 13, 2010, at 6:31 p.m., at DART Headquarters, 1401 Pacific Avenue, Dallas, Texas, with Chair Velasco presiding.

City of Dallas

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

City of Garland

Tracey M. Whitaker

City of Irving

John C. Danish – **Vice-Chair**

City of Plano

Loretta Ellerbe - **Assistant Secretary**

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

Raymond Noah

Cities of Carrollton and Irving

Randall Chrisman

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

Faye Moses Wilkins

Cities of Farmers Branch, Garland, and Rowlett

Mark C. Enoch

Angel Reyes was absent.

General Items:

1. Approval of Minutes: March 23, 2010

Ms. Ellerbe made a motion to approve the Minutes from the March 23, 2010, Board of Directors Meeting as amended.

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

2. Public Comments

Chair Velasco 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 with the Office of Board Support).

Mr. Velasco stated that both pre-registered Public Speakers had already addressed the Board within the last 30 thirty days and would be called forward when the Board reached Item 15., Public Comments, at the end of the meeting.

Consent Items:

Mr. Danish made a motion to approve Consent Items 3. – 9.

3. Incorporation of Radio Replacement into the Super Light Rail Vehicle

Approval of Resolution No. 100040 that authorizes the President/Executive Director or his designee to incorporate radio replacement for 48 super light rail vehicles (SLRV's) into the SLRV contract with Kinkisharyo International, L.L.C., in the amount of \$489,626. This amount will be funded from existing contingency; therefore, the total authorized amount not to exceed \$298,879,836 will remain unchanged.

4. Approval of a Memorandum of Understanding (MOU) Between DART and North Texas Tollway authority (NTTA) and Incorporation of NTTA Aesthetic Request into the Irving-1/Irving-2 (I-1/I-2) Design-Build Contract

Approval of Resolution No. 100041 that authorizes the President/Executive Director or his designee to:

Section 1: Execute a Memorandum of Understanding (MOU) with the North Texas Tollway Authority (NTTA) for use of NTTA property (SH161 President George Bush Turnpike) for the construction and operation of DART's Irving-2 (1-2) segment of the Orange Line.

Section 2: Incorporate the NTTA aesthetic request into the Irving-IIIrving-2 (1-111-2) design-build contract with Kiewit, Stacy and Witbeck, Reyes, and Parsons, a Joint Venture (KSWRP), in an amount not to exceed \$485,577. This amount will be funded from existing contingency; therefore, the total authorized amount not to exceed \$447,371,910 will remain unchanged.

5. Incorporation of an Additional Switch and Crossover Track into the Contract for Furnishing and Installing Trackwork and Signals for the Belt Line Road Grade Separation Project and for Furnishing and Installing Trackwork for the Lisa-Perkins Double Tracking Project

Approval Resolution No. 100042 that authorizes the President/Executive Director or his designee to incorporate an additional switch and crossover track into the contract for furnishing and installing trackwork and signals for the Belt Line Road Grade Separation Project and for furnishing and installing trackwork for the Lisa-Perkins Double Tracking Project with Herzog Contracting Corporation (HCC) for a not-to-exceed amount of \$394,656. This amount will be funded from existing contingency; therefore, the total authorized amount not to exceed \$11,838,992 will remain unchanged.

6. Authorization to Accept the Terms, Provisions, and Conditions of City of Dallas Street Closure Ordinance for Cullum Lane

Approval Resolution No. 100043 that accepts the terms, provisions, and conditions of the City of Dallas street closure ordinance #27602 for the Northwest Corridor, as shown in Exhibit 1.

7. Declare Public Necessity, Establish Just Compensation, and Authorize the Acquisition of Parcel IR 3E Located in the City of Irving for the TRE Valley View Project and Authorize Eminent Domain Proceedings if Necessary

Approval of Resolution No. 100044 that authorizes the President/Executive Director or his designee to

Section 1: There is a public necessity for the acquisition of the property described in Exhibit 1.

Section 2: This property is necessary and proper for construction of the TRE Valley View Project 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 paid represents just compensation for the parcel required for the TRE Valley View Project as determined by ONCOR and reviewed by DART's Chief Appraiser.
- Section 4:** In the event the property owner accepts the payment 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 decline the payment of just compensation, then the President/Executive Director or his designee is hereby authorized and directed to negotiate the purchase of such parcel 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 parcel 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 Parcel for the TRE Valley View Project.
- Section 7:** DART shall not exercise its power of eminent domain for the acquisition of the parcel described in Exhibit 1 without the approval of such acquisition by the City Council of the City of Irving.
- Section 8:** DART's exercise of power of eminent domain in acquiring the herein described parcel 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.
- 8. Call for Public Hearing for a Service Plan Amendment on the DFW Light Rail Transit (LRT) Extension Project (I-3) regarding Alignment, Station Location, Storage Yard, and Grade Separations**

Approval of Resolution No. 100045 that authorizes the President/Executive Director or his designee to schedule and give notice of a public hearing to receive public comments on the proposed DFW LRT extension alignment, station location, storage yard, and grade separations.

9. **Local Assistance Program (LAP)/Congestion Management System (CMS) Programming Request for the City of Farmers Branch**

Approval of Resolution No. 100046 that approves the LAP/CMS programming request for the City of Farmers Branch, as contained in Exhibit 1.

Ms. Ellerbe seconded the motion and it was approved unanimously.

Individual Items:

10. **+Appointment of Regional Rail Right-of-Way Company Board Members**

Ms. Wilkins made a motion to approve Resolution No. 100047 that states DART Board Member Randall Chrisman, DART Board Member Ray Noah, and DART President/Executive Director Gary C. Thomas are appointed as directors of Regional Rail Right-of-Way Company for a two-year term, commencing April 13, 2010 and ending April 12, 2012. Said persons shall serve in this capacity as an additional duty of their current DART position.

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

11. **Incorporation of Prototype Propulsion System Retrofit into the Super Light Rail Vehicle (SLRV) Contract**

Ms. Wilkins reviewed that the Item had been thoroughly discussed by the Rail Program Development Committee and by the Committee-of-the-Whole. The Item had secured unanimous approval at the Committee-of-the-Whole.

Ms. Wilkins made a motion to approve Resolution No. 100048 that authorizes the President/Executive Director or his designee to incorporate a propulsion retrofit for one SLRV into the SLRV contract with Kinkisharyo International, LLC, in the amount of \$459,307. The total authorized amount not to exceed \$298,879,836 will remain unchanged.

Ms. Ellerbe seconded the motion and it was approved unanimously.

12. **Closure of the University of Dallas (UD)/Texas Stadium Light Rail Transit (LRT) Alignment Interlocal Agreement (ILA) between DART and the City of Irving; and Incorporation of Specific Scope Elements into and Deferral of Construction of the Las Colinas Carpenter Ranch Station from the Irving 1/Irving-2 (I-1/I-2) Design-Build Contract**

This Item was deferred by the Committee-of-the-Whole.

13. **Review of Commercial Paper Financing Alternatives and Approval to Amend First Supplemental Debt Resolution to Extend DART's Commercial Paper Program**

Mr. Chrisman made a motion to approve a Resolution No. 100049 that states:

Section 1: Section 1.2 of the First Supplemental Debt Resolution, as amended, is hereby amended by deleting the definition of "Maximum Maturity Date" and in place thereof inserting the following:

"Maximum Maturity Date — means the date that is the earlier of (i) the Business Day prior to the Current Revolving Credit Agreement Expiration Date in effect at the time of issuance of an installment of Notes, (ii) the final date of the last five-year period for which a certification pursuant to Section 452.352(d)(3) and (e), Texas Transportation Code, has been provided to the Issuing and Paying Agent, or (iii) January 15, 2041."

Section 2: Subsection (c) of Section 4.1 of the First Supplemental Debt Resolution, as amended, as follows:

"(c) Notwithstanding the provisions of subsection (a) of this Section, Notes shall not be authenticated and issued under this Resolution unless as certificated by an Authorized Officer in the Form of Instructions to the Issuing and Paying Agent, (i) the Revolving Credit Agreement is and remains in full force and effect, and, according to its terms, will provide Loans to DART in amounts sufficient to pay the principal of, and the interest on, the Notes being issued on their Stated Maturity Date; and (ii) there shall be on file in the official records of DART a current certification in accordance with Section 452.352(d)(3) and (e), Texas Transportation Code, executed by the chief financial officer of DART that the maximum principal amount of Notes permitted to be issued hereunder (including the principal amount of Notes issued hereunder following the payment of Notes from DART's Sales Tax Revenues), based on reasonable estimates of pledged sales and use tax revenues, can be repaid in full within five years after the date of the then most recent certification, taking into consideration any other bonds or notes having a prior or parity lien on Pledged Revenues."

- Section 3:** Exhibit D, Form of Instructions to the Issuing and Paying Agent, shall be revised as set forth in Exhibit 1 hereto.
- Section 4:** Except as specifically amended in Section 1, 2 and 3 hereof, the Master Debt Resolution; the First Supplemental Debt Resolution; the "Revolving Credit Agreement," dated as of February 1, 2001, as amended by the "First Amendment to Revolving Credit Agreement," dated as of February 1, 2001, and further amended by the "Second Amendment to Revolving Credit Agreement," dated as of January 21, 2005 and as further amended by the "Third Amendment to Revolving Credit Agreement," dated June 11, 2006, among DART, the Lenders named therein and WestLB, acting through its New York Branch, as Administrative Agent for the Lenders; the "Dealer Agreement," the "Co-Dealer Agreement" and the "Issuing and Paying Agent Agreement" currently in effect with respect to the Commercial Paper Notes; and such other agreements providing for the security for and payment of the Commercial Paper Notes are hereby confirmed.
- Section 5:** The Authorized Officers are each authorized, empowered, and directed to execute such documents and to take such other actions as they deem necessary or advisable in order to carry out and perform the purposes of the Resolution, including, without limitation, obtaining the consents of the Credit Providers to the amendments set forth herein and providing the certifications referenced in Section 2 hereof.
- Section 6:** The Authorized Officers are authorized, empowered and directed to provide the required request set forth in Section 2.15(b) of the Revolving Credit Agreement, as revised by the Second Amendment to Revolving Credit Agreement, requesting that State Street deliver to DART a "Renewal Notice" with respect to the Commercial Paper Program.
- Section 7:** The effective date of this Resolution (the "Effective Date") and the amendments set forth herein shall be the later of the date of the approval hereof by the Board or at such later date as DART has received the consents of the Credit Providers and the approval of the Texas Attorney General. The amendments set forth herein shall apply to any and all Commercial Paper Notes issued after the Effective Date. The purchasers of Commercial Paper Notes after the Effective Date shall be deemed to have specifically consented to the amendments set forth herein.

Ms. Dunlop Gates seconded the motion and it was approved unanimously.

14. Complaint Against DART Board Member

Chair Velasco stated that the Committee-of-the-Whole had approved by majority vote a motion recommending that the complaint against a DART Board member be forwarded to the appointing municipality without recommendation.

Mr. Christian made a motion to approve forwarding the complaint against the DART Board member to the appointing municipality without recommendation.

Ms. Wilkins seconded the motion.

Mr. Enoch asked for discussion and was recognized by the Chair.

Mr. Enoch stated he did not support the motion because he believed the DART Board should handle the matter themselves. He continued that he was not opposed to advancing the matter to the appropriate municipality, but was opposed to the Board not continuing its investigation of the matter.

Chair Velasco asked if any additional discussion was warranted. Mr. Danish stated that he supported the motion although he believed the motion should have been amended to include that the Board member is vindicated.

Chair Velasco called for the vote and the motion passed by majority. (11/3; Mr. Enoch, Mr. Noah, and Ms. Ellerbe voted against the motion.)

Other Items:

15. Public Comments

Chair Velasco reminded all those present that the usual guidelines that govern Public Comments, explained in detail during Item 2., **Public Comments**, were still in effect. The following individuals addressed the Board:

Mr. John Lozano, 9900 Starlight, Dallas, Texas, (214) 366-9150: Mr. Lonzano thanked the Board for their courtesy and hospitality during his recent involvement in deliberating Item 14., **Complaint Against DART Board Member**.

Ms. Patty Fink, 324 Easton Road, Dallas, Texas, 75218, (214) 341-1985: Ms. Fink state that she spoke on behalf of the Dallas Gay and Lesbian Alliance. She continued that she was pleased that DART had begun the process of formally changing its EEO Policy to include gender identity/gender expression. Ms. Fink said it was apparent from the questions and discussion that took place earlier

during the Economic Opportunity and Diversity Committee meeting that additional training and education is needed.

16. Identification of Future Agenda Items

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

17. Adjournment

There being no further business to discuss, the meeting was adjourned 6:38 p.m.

Gail Cook
Board/Committee Secretary

+ Same Night Item
* Briefing Item