



Minutes

NASHVILLE METROPOLITAN TRANSIT AUTHORITY

BOARD OF DIRECTORS MEETING

May 19, 2016

- I. CALL TO ORDER:** The regular meeting of the Nashville Metropolitan Transit Authority Board of Directors was held in the Music City Central (MCC) Meeting Room, 400 Charlotte Avenue, Nashville, Tennessee on May 19, 2016. Present were: Marian Ott, Chair; Gail Carr Williams, Member; Walter Searcy, Member; Secretary Tyler Yarbrow, and CEO Stephen G. Bland. A quorum was established and Chair Ott called the meeting to order at 3:43 p.m.
- II. APPROVAL OF MINUTES:** Proper motion was made to approve the minutes of the April 18, 2016 Board of Directors meeting. There were no additions or corrections, and the vote of approval was unanimous.
- III. PUBLIC COMMENTS:** Chair Ott opened the floor for public comments. The public was reminded that comments are limited to three minutes.

Margo Chambers of Nashville had these comments:

- She is impressed with the amount of information, the clarity, and the accuracy of the data that is being shared with the public at these meetings.

John Bull of Nashville had these comments:

- Mr. Bull lives in midtown and is a frequent rider and notes a recent improvement in the condition of the men's restrooms.
- He is sorry to see that the extended service hours for bus service is in doubt as well as the pilot program related to Uber and Lyft. He would love to see that back on the table and implemented.

Steve Reiter of Nashville had these comments:

- He thinks that riders on the circulator should pay to ride.
- Greater service hours would benefit a lot of transit dependent people.

There were no other public comments and the time for public comments closed.

- IV. PERFORMANCE & OVERSIGHT COMMITTEE REPORT:** Chair Gail Carr Williams reported that the committee discussed the monthly financials and the most important note is that we are going to come in on budget. CFO Ed Oliphant reported to the committee on the Debt Obligation Notification. In March 2016, the Board authorized Nashville MTA to enter into a temporary loan for \$11.1 million with Fifth Third Bank. The loan

was needed due to delays in receiving the FY 2016 Section 5307 formula capital grant funding. As a result of those funds having not been received, we have exercised that option; and, as required for reporting purposes, Mr. Oliphant has filed a report of debt obligation. Mr. Oliphant presented the same to the committee.

Chair Williams also reported that COO India Birdsong presented to the committee the monthly operating statistics report. She noted that these reports are still a work in progress in terms of what will be included in the dashboard report. Focus was given to the miles between preventable and non-preventable accidents report. An in-depth look revealed a number of instances when bus mirrors are hit by passing vehicles that often times do not stop. Staff is working diligently to improve these statistics including additional driver training when needed.

Ms. Birdsong also presented a very lengthy report on the maintenance department. This report was broad and very informative and let the Board know what some of our true needs are in maintenance. To that, Ms. Birdsong noted to the committee that she thinks she can probably improve some of the statistics on the dashboard by virtue of this maintenance report. The report contains goals. There will be another review; and, now there are measurements to help us improve.

Project Engineer Mike P. White presented the capital projects summary report. He shared with the committee what we have going on, when we want it completed, and what are some of the challenges we face in getting some of the projects done.

Chair Williams then presented the following action item:

- a. **ADA COMPLIMENTARY OVERFLOW PARATRANSIT SERVICES CONTRACT (A-16-009)**: MTA provides paratransit services through our AccessRide services using our own paratransit vans as well as back-up support from local taxi operators. In October 2013, the Board approved entering into a contract with Taxi USA of Tennessee for an initial three-year contract at a price not to exceed \$7.5 million over the term of the contract which expires October 31, 2016. There are also two one-year options on the contract at a cost not to exceed \$2.5 million per each option year.

We continue to see increases in AccessRide paratransit trips, particularly in our overflow services. The increased use of taxis is due to the driver shortage we have been working diligently to remedy. We estimate that we will reach the \$7.5 million contract limit amount in the contract at the end of May 2016. Consequently, we need to increase the not to exceed limit on the contract to account for the increased use of taxis through October 2016 which is the end of the initial contract term.

In order to cover the anticipated use of taxis through October 2016, we are estimating, based upon current usage, that an additional \$1.6 million be added to the initial term of the taxi contract.

It is the recommendation of the Performance and Oversight Committee that we approve to increase, but not to exceed, the price on our contract with Taxi USA of Tennessee an additional \$1.6 million to \$9.1 million for the initial contract term that

expires October 31, 2016. The increase is already included in our current year budget reforecast as well as next year's FY 2017 budget request.

There was no further discussion and the vote of approval was unanimous.

- V. **PLANNING COMMITTEE:** Member Walter Searcy reported that the committee heard presentations on improvements and priorities for the Murfreesboro Pike Corridor. nMotion provided the committee with an update on their activities and outreach; identifying, among other things, some of their priorities in terms of reaching out to faith-based communities and the northern communities. We had an extensive budget discussion and received an extensive budget report from CFO Ed Oliphant with the projection that the budget shall be balanced.
- VI. **AVL SOFTWARE LICENSE LAWSUIT SETTLEMENT (A-16-010):** Chair Ott recognized CFO Ed Oliphant. Mr. Oliphant, on advice of Nashville MTA Counsel Margaret Behm, presented the recommendation directly to the Board as opposed to going through a committee. Mr. Oliphant reported that in 2006, MTA entered into a contract with ACS Corporation for the purchase and installation of a computer aided dispatch and automatic vehicle locator system (CAD/AVL) for its bus fleet as well as a second contract for the installation of way finding signage to be used in conjunction with the AVL system. In September 2012, MTA cancelled both ACS contracts for nonperformance.

There was a state trial in which we prevailed, and they were found in breach of the contract. There was a secondary lawsuit which is what we are here to discuss today. On October 11, 2013, ACS filed a lawsuit against MTA asserting a claim against us for copyright infringement on their software. We actually did use their software after cancellation of the contract because that was all we had the option to do. We felt that the license was separate from the original contract.

Both parties filed summary judgment motions in the case. The trial court ruled in their favor that the license was attached to the original contract, so when we cancelled, we lost the license. However, the trial court also ruled that MTA had an implied license to be used by MTA during a legal period of time it would take for us to replace that CAD/AVL system through another provider. It was determined that it would be much better for both parties involved to seek settlement as opposed to going to trial. Given the trial court ruling, ACS made an out of court settlement offer to MTA of \$285,000.

MTA maintains that it has strong legal grounds to prevail in the litigation since it completed the installation of the Trapeze system in two years and one month which a jury could conclude is a reasonable time frame. However, after evaluating the cost of continued litigation and the potential risk of liability, we have determined it would be in the best interest of MTA to settle the case. The parties have reached a settlement pending MTA Board approval which provides the MTA will pay ACS Corporation \$100,000.

Based upon the explanation above, we recommend that the Board approve the proposed settlement to pay ACS Corporation \$100,000. This will close the open lawsuit and curtail any future costs. The payment will be funded through Nashville MTA's current operating budget.

Motion was made and seconded to put this on the table for discussion. There was some light discussion and it was noted for the record that Nashville MTA Board Counsel Margaret Behm concurs with this recommendation. There was no further discussion and the motion was passed unanimously.

- VII. CHAIR'S REPORT:** Chair Marian Ott reported that she and CEO Steve Bland and Board Member Walter Searcy had the opportunity to attend a conference this morning on Public Private Partnership (P3), a different way to finance projects. She noted that innovation and collaboration seemed to be the keys in the success of big projects.

Chair Ott noted that the Metro Council budget presentation is tonight. She is pleased that the Mayor has agreed that we need to have the Nolensville Pike service; and that the next budget is going to allow us to fully fund that service for a year. She added that we will also be able to do a little bit with maintenance; and though not as much as we wanted, we are still moving forward.

- VIII. CEO'S REPORT:** CEO Steve Bland reported the following:

- Smart Cities Initiative – He was able to attend Mayor Barry's kick-off to her Smart Cities initiative. Keith Durbin will be heading that up that effort of partnership and collaboration. It was a good experience, and we are looking forward to very good things coming out of that process.
- Council Budget Hearing this evening – Included in the operating budget is our request of a \$2 million increase from \$40 million to \$42 million. The Mayor's capital budget is recommending \$20 million. Largely that would go towards normal routine replacement buses, but would also allow us to get a start on the fare collection that we are looking to do.
- Rita Roberts-Turner – Is now officially here, and we welcome her. Vanderbilt's loss is our gain.
- Metro Employees Charitable Funds Golf (sponsored by the Police Dept.) – IT Manager Rob McElhaney, Steve, and CFO Ed Oliphant participated.

- IX. Other Business:** There was no other business to come before the Board.

- X. Adjournment:** The meeting was adjourned at 4:08 p.m.