Regular Meeting of the Board of Directors
AC Transit General Offices
2nd Floor Board Room
1600 Franklin Street
Oakland, CA 94612

Wednesday, April 13, 2016 at 5:00 p.m.
Closed Session: 4:30 p.m. (Items 5A-5D)

MEMBERS OF THE BOARD OF DIRECTORS
H. E. CHRISTIAN PEEPLES, PRESIDENT (AT-LARGE)
ELSA ORTIZ, VICE PRESIDENT (WARD 3)
JOE WALLACE (WARD 1)
GREG HARPER (WARD 2)
MARK WILLIAMS (WARD 4)
JEFF DAVIS (WARD 5)
JOEL YOUNG (AT-LARGE)

BOARD OFFICERS
MICHAEL A. HURSH, GENERAL MANAGER
DENISE C. STANDRIDGE, GENERAL COUNSEL
LINDA A. NEMEROFF, DISTRICT SECRETARY
The Alameda-Contra Costa Transit District Board of Directors held a regular meeting on Wednesday, April 13, 2016.

The meeting was called to order at 4:32 p.m. for the purpose of Closed Session. All Board members were present, with the exception of Director Davis. The District Secretary announced that the Board would convene in Closed Session to discuss Items 5A-D as listed on the agenda. Closed Session concluded at 4:47 p.m.

President Peeples called the Board of Directors meeting to order at 5:02 p.m.

1. ROLL CALL
   Present: Wallace, Harper, Williams, Davis (arrived at 5:11 p.m.), Young, Ortiz, Peeples

2. PUBLIC COMMENT
   • Jane Kramer commented on transparency and accountability with regard to the need for more complete data before setting a Bus Rapid Transit fare collection policy as discussed at the March 30, 2016 Retreat.
   • David Vartanoff commented that during recent construction on Bancroft in Berkeley, the 1R stop closest to the UC Berkeley campus was moved to Telegraph in front of Bank of America and that turned out to be a preferable location for riders.

3. CONSENT CALENDAR
   MOTION: ORTIZ/WALLACE to receive, approve, or adopt the items on the Consent Calendar as indicated. The motion carried by the following vote:

   AYES:6: Ortiz, Wallace, Harper, Williams, Young, Peeples
   ABSENT:1: Davis

   3A. Consider approving Board of Directors minutes of March 23, 2016.

   3B. Consider adoption of Resolution No. 16-013 giving notice of the General District Election to be held on Tuesday, November 8, 2016, for the election of three (3) Directors, requesting consolidation of said election with the General State Election to be held on the same date, and specifications of the election order (Report 16-069).

   3C. Consider approving Retirement Board minutes of February 22, 2016 (Report 16-084).

3E. Consider authorizing the General Manager, or his designee, to file and execute applications and funding agreements for the Environmental Protection Agency FY 2016-17 Clean Diesel Funding Assistance Program for grant funds to purchase and install engine upgrade kits on 122 buses (Report 16-092).

3F. Consider adoption of Resolution No. 16-018 authorizing the General Manager or his designee to file and execute applications to the Metropolitan Transportation Commission for MTC's FY2015-16 Transit Performance Initiative - Incentive Program for the East Bay Bus Rapid Transit Project (Report 16-091).

3G. Consider review of Board Policy 320 – Debt Limitations with no recommended amendments (Report 16-067).

4. REGULAR CALENDAR

External Affairs Items:

4A. Consider approving one of the recommended Bus Rapid Transit paint schemes, including logo and decaling for vehicles (Report 16-065).

[A revised Concept A paint scheme was presented at the meeting for the Board’s consideration.]

Director of Marketing & Communications Michele Joseph presented the staff report outlining two paint scheme concepts.

Discussion ensued as to whether the paint scheme should resemble other buses in the fleet, why the decals presented in Concept B only depicted landmarks in Oakland, and the amount of upkeep and maintenance the decals would require.

General Manager Michael Hursh explained that the Board was being asked to select a basic paint scheme so the bus manufacturer could start production. He further advised that the decals afforded more design latitude but, in the long run, could require more maintenance. Director of Maintenance Salvador Llamas explained that portions of the decals would have to be replaced if they fade or there is an accident.

Discussion ensued regarding possible variations on Concept B. Mr. Hursh advised that creative issues regarding the decals and logos could be addressed at a later date, but staff needed a decision on the base paint colors.
Public Comment:
David Vartanoff expressed his opinion that too much time was being spent on bus design when it’s more important to passengers that the bus be on time.

Director Wallace made a motion to approve Concept A. The motion failed for lack of a second.

MOTION: ORTIZ/YOUNG to approve Concept B with decal and logo design to be determined. The motion carried by the following vote:

AYES:7: Ortiz, Young, Wallace, Harper, Williams, Davis, Peeples

4B. Consider approving the service mark and vehicle design for AC Transit’s Flex Service (Report 16-099).

Director of Marketing & Communications Michele Joseph presented the staff report.

Members of the Board inquired about the placement of the service mark on the window of the vehicle and about the lifespan of the vehicles. Ms. Joseph advised that staff felt the service mark would have more impact on the window and would distinguish it from fixed route service. Staff advised that the lifespan of the vehicles was only five years and because the design was inexpensive and there were fewer vehicles, it could be easily changed.

Director Davis requested that the flex service phone number and website address be displayed clearly on the outside of the vehicles. Ms. Joseph agreed that should be done.

MOTION: WILLIAMS/WALLACE to approve the service mark and vehicle design for AC Transit’s Flex Service. The motion carried by the following vote:

AYES:7: Williams, Wallace, Harper, Davis, Young, Ortiz, Peeples

Finance and Audit Items:

4C. Consider maintaining the Self-Insured Retention level of $2,000,000, and authorize the binding of the 2016-2017 Excess Liability Insurance and Travel Insurance Policies (Report 16-066).

Claims and Liability Administrator Jean Paul Popoff presented the staff report.

MOTION: WALLACE/ORTIZ to approve staff’s recommendations:
- Maintain the Self-Insured Retention level of $2,000,000 for Auto
Liability and $1,000,000 General Liability;
- Authorize the binding of the 2016-2017 Excess Liability Insurance for $51,000,000; and
- Authorize the binding of the Travel Insurance Policies under the Three Year Policy Lump Sum Payment (Option 3) of $5,414 prepaid.

The motion carried by the following vote:

AYES:7: Wallace, Ortiz, Harper, Williams, Davis, Young, Peeples

Operations Items:


Senior Project Manager Michael Hass presented the staff report.

Discussion ensued regarding the reasonableness of the $320,000 permit fees charged by the City of Richmond. Mr. Hass reported that the permit fees were the normal amount any property owner would have to pay for similar work. General Manager Michael Hursh advised that while the amount seemed normal for developers, it appeared high based on his experience for a public agency. He added that the General Counsel was asked to investigate options available to the District.

MOTION: PEEPLES/WILLIAMS to receive the Monthly Construction Progress Report on the Division 3 Rehabilitation Project. The motion carried by the following vote:

AYES:7: Peeples, Williams, Wallace, Harper, Davis, Young, Ortiz

4E. Consider authorizing the award of a sole source contract to Genfare for up to fifty (50) additional fareboxes to support the District’s upcoming Service Expansion Plan (Report 16-085).

Director of Maintenance Salvador Llamas presented the staff report. In response to questions, he also noted that each farebox manufacturer has its own farebox design and software, and that Genfare would provide the same discount as the initial contract.

Given the cost-effectiveness of Clipper, Director Harper suggested that staff look into whether the cost to purchase and maintain fareboxes was worth the money customers put into them.

MOTION: PEEPLES/WILLIAMS to authorize the award of a sole source contract to Genfare for up to fifty (50) additional fareboxes to support the District’s upcoming Service Expansion Plan. The motion carried by
the following vote:

AYES:7: Peeples, Williams, Wallace, Harper, Davis, Young, Ortiz

4F. Consider receiving report on system security and new proactive measures by AC Transit Police Services to reduce criminal activity [Requested by Director Wallace – 8/19/15 and 11/11/15] (Report 16-075)

Protective Services Manager Kerry Jackson presented the staff report and addressed questions regarding the adjudication process for citations issued for fare evasion as well as the penalties that could result for non-payment of citations.

Director Harper supported the use of the TipNow app and felt it would deter crime if it was marketed effectively and in wide use. As to whether cameras on buses served as a deterrent, Mr. Jackson advised that they were a valuable tool for AC Transit as well as other jurisdictions and were huge deterrent. Lastly, Director Harper suggested a live camera feed would be valuable and Chief Operations Officer James Pachan discussed options currently under review.

President Peeples requested a future report on how staff planned to handle the 160 live feed cameras on the Bus Rapid Transit system.

MOTION: ORTIZ/WILLIAMS to receive report on system security and new proactive measures by AC Transit Police Services to reduce criminal activity. The motion carried by the following vote:

AYES:7: Ortiz, Williams, Wallace, Harper, Davis, Young, Peeples

4G. Consider authorizing the General Manager to enter into negotiations and to execute a proposed three-year lease with two one-year options with M & L Metals for available space within the District’s Newark warehouse facility (Report 16-097).

There was no presentation of the staff report.

MOTION: YOUNG/ORTIZ to authorize the General Manager to enter into negotiations and to execute a proposed three-year lease with two one-year options with M & L Metals for available space within the District’s Newark warehouse facility. The motion carried by the following vote:

AYES:7: Young, Ortiz, Wallace, Harper, Williams, Davis, Peeples
Consider receiving report on discussions between the District and Linde regarding Linde’s proposal to assume operation of the Public Hydrogen Fueling Station at Division 2 and provide direction to staff (Report 16-062).

General Counsel Denise Standridge presented the staff report, noting that direction was being sought with regard to the language concerning indemnification for damage to person and/or property as well as the limitation on damages.

Discussion ensued regarding the risks associated with operating the public fueling station and the potential liability to the District. Also discussed was the District’s option to turn over operation of the public fueling station to Linde or maintain it ourselves. As a public agency funded by taxpayer money, Vice President Ortiz felt it was important to protect AC Transit from future liability and that staff should continue its negotiations with Linde in that regard.

President Peeples commented on the legal complications that would arise from joint liability among several parties and asked how AC Transit would be protected. Ms. Standridge advised that she was requesting sole negligence on the part of AC Transit or that Linde defend AC Transit until apportionment of its negligence was decided by a trier of fact, at which time the parties could apportion costs and damages. She also clarified that the District’s damages would pertain only to employee injuries and property damage.

Director Harper pointed out that from his perspective the issue was more about insurance liability as AC Transit would be covered under its general liability policy if there were an incident. He added that he would go with the standard language as long as everyone was insured. Later, he suggested that it may be even more beneficial for Linde to add AC Transit as an additional insured and pay Linde for putting the District on their policy.

Public Comment:
- Jean Baronas, California Energy Commission, commented that there are 15 hydrogen stations in northern California and 38 in southern California that will have a fueling capacity for 10,000 cars by year end. She added that by 2021, demand should outpace fueling capacity. In response to a question, she further advised that there were only three stations on publicly owned land.
- Andrew Hom, California Energy Commission, commented in support of Linde’s proposal to upgrade the light duty hydrogen refueling station in Emeryville, noting its benefits to the public.
- Nitin Natesan, Linde, spoke about Linde’s proposal to upgrade the light duty refueling station to improve capacity and the user
experience. He further commented on Linde’s experience in building fueling stations, noting that it does not receive a return on its investment for many years. He added that Linde is proposing to take over the day-to-day burden of operating the public fueling station.

- Jaimie Levin, Center for Transportation and the Environment, re-emphasized that the original contract limits were based on potential damage to fuel cells owned by the District. He added that the District was reducing its liability by letting Linde take responsibility for the station. He felt it was a win-win proposal.
- Jerry Grace commented that he hoped the District would prevail in any potential lawsuit that may arise.
- Jane Kramer suggested that the Board let the General Counsel do her job.

MOTION: HARPER/PEEPLES to direct the General Counsel as follows:
- To pursue Option 1 to ask Linde to name AC Transit as an additional insured on its policy and pay the premium to Linde.

If Option 1 fails, then proceed to Option 2:
- Accept the language for intellectual property indemnification;
- Negotiate with Linde in regards to language to apportion out the cost and fees unless there was a real conflict; and
- Accept the language on limitation on damages ($500,000 per occurrence; $1 million in the aggregate).

The motion carried by the following vote:

AYES: 7: Harper, Peeples, Wallace, Williams, Davis, Young, Ortiz

CLOSED SESSION/REPORT OUT
General Counsel Denise Standridge reported on the following:

MOTION: WALLACE/ORTIZ to approve settlement in the amount of 225,000 in the matter of Jean Horace v. AC Transit; WCAB Case No. ADJ7486949. The motion carried by the following vote:

AYES: 6: Wallace, Ortiz, Harper, Williams, Young, Peeples
ABSENT: 1: Davis

MOTION: ORTIZ/WALLACE to approve settlement in the amount of 125,000 in the matter of Michael Kelly v. AC Transit; CCCSC Case No. C14-02151; Claim Number 14-1718. The motion carried by the following vote:

AYES: 6: Ortiz, Wallace, Harper, Williams, Young, Peeples
ABSENT: 1: Davis
5A. Conference with Legal Counsel – Existing Litigation
(Government Code Section 54956.9 (a))
Jean Horace v. AC Transit; WCAB Case No. ADJ7486949
Michael Kelly v. AC Transit; CCSC Case No. C14-02151; Claim Number 14-1718

5B. Conference with Legal Counsel – Potential Litigation
(Government Code Section 54956.9(b)) (Two Cases)

5C. Conference with Labor Negotiators
(Government Code Section 54957.6):
Agency Designated Representative: General Manager
Employee Organizations: ATU Local 192, AFSCME Local 3916, IBEW Local 1245,
Unrepresented Employees

5D. Public Employee Performance Evaluation
(Government Code Section 54957)
Title: General Manager, General Counsel, District Secretary

6. AGENDA PLANNING

Director Harper requested a re-examination of the District’s liability coverage to determine if it would be prudent to separate premises liability from general liability coverage.

Director Wallace requested a mural at Division 3 on the outer wall facing MacDonald Avenue to be painted by citizens or artists of Richmond.

Vice President Ortiz requested that the quarterly report on the Transbay Transit Center Project be expedited to the next meeting to update the Board on recent developments and their impact on AC Transit. (President Peeples concurred)

Director Young left the meeting at 6:49 p.m.

7. GENERAL MANAGER’S REPORT
The General Manager’s report was presented for information only and is incorporated into the file by reference as Staff Report 16-112.

8. BOARD/STAFF COMMENTS
Members of the Board commented on meetings and events attended since the last meeting.

9. ADJOURNMENT
There being no further business to come before the Board of Directors, the meeting was adjourned at 7:01 p.m. The next meeting of the Board of Directors is scheduled for Wednesday, April 27, 2016 at 5:00 p.m.
Respectfully submitted,

Linda A. Nemeroff  
District Secretary