



**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
BOARD OF DIRECTORS MEETING  
2910 East Fifth Street Austin, TX 78702**

~ MINUTES ~

Executive Assistant/Board Liaison Gina Estrada  
512-389-7458

**Tuesday, December 21, 2010  
12:00 PM**

**12:01 PM Meeting Called To Order  
12:55 PM Meeting Adjourned**

**I. Action Items:**

**1. Resolution CMTA-2010-100 Watco Contract**

Approval of a resolution authorizing the president/CEO, or her designee, to finalize and execute a lease agreement with Watco Companies Austin Western Railroad, Inc. (AWRR) for the operation of the agency's freight rail services.

Interim Director-Budget & Financial Analysis, Kevin Timmins, provided a brief presentation on the contract.

John Langmore discussed the renewing of the lease, what Watco will be paying for and that Capital Metro will be getting a tax credit.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	John Langmore, Vice Chairman
<b>SECONDER:</b>	Norm Chafetz, Board Member
<b>AYES:</b>	Chafetz, Silas, Langmore, Stafford, Hlista, Martinez, Riley
<b>ABSENT:</b>	Frank Fernandez

**2. Resolution CMTA-2010-101 Veolia Rail Contract**

Approval of a resolution authorizing the president/CEO, or her designee, to settle all outstanding obligations to Veolia Transportation for the termination of the commuter rail services contract for the amount of \$2,400,000.

Director Contracts & Procurement Shanea Davis provided updates on the Veolia rail contract. She discussed what the \$500,000 pays for, vehicles, trailers etc. that we are keeping.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Ann Stafford, Board Member
<b>SECONDER:</b>	Beverly Silas, Secretary
<b>AYES:</b>	Chafetz, Silas, Langmore, Stafford, Hlista, Martinez, Riley
<b>ABSENT:</b>	Frank Fernandez

**II. Executive Session of Chapter 551 of the Texas Government Code:**

Section 551.071 of the Texas Government Code - Legal advice regarding - Watco and Veolia Contract.

Went into executive session at 12:02 p.m.

Returned from executive session at 12:45 p.m.

No action taken, sought legal advice.

### III. Adjournment

### IV. ADA Compliance

*Reasonable modifications and equal access to communications are provided upon request. Please call 512-389-7458 or email [gina.estrada@capmetro.org](mailto:gina.estrada@capmetro.org) if you need more information.*

**BOARD OF DIRECTORS:** *Mayor Pro Tem Mike Martinez, Chairperson; John Langmore, vice chair; Beverly S. Silas, board secretary; Council Member Chris Riley; Mayor Justine Hlista; Frank Fernandez; Ann M. Stafford and Norm Chafetz. Board Liaison: Gina Estrada (512)389-7458, email [gina.estrada@capmetro.org](mailto:gina.estrada@capmetro.org) if you need more information.*

The Board of Directors may go into closed session under the Texas Open Meetings Act. In accordance with Texas Government Code, Section 551.071, consultation with attorney for any legal issues, under Section 551.072 for real property issues; under Section 551.074 for personnel matters, or under Section 551.076, for deliberation regarding the deployment or implementation of security personnel or devices; arising regarding any item listed on this agenda.

Date: December 21, 2010

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Yvonne Allen  
Legal/Board Support Specialist II

**Capital Metropolitan Transportation Authority  
Board of Directors**

**MEETING DATE: 12/21/2010  
CMTA-2010-100  
Watco Contract**

**SUBJECT:** Approval of a resolution authorizing the president/CEO, or her designee, to finalize and execute a lease agreement with Watco Companies Austin Western Railroad, Inc. (AWRR) for the operation of the agency's freight rail services.

**FISCAL IMPACT:** This action generates revenue.

**COMMITTEE RECOMMENDATION:** This agenda item was presented to the Rail Committee on December 7, 2010.

**EXECUTIVE SUMMARY:** Capital Metro has discharged the freight rail common carrier obligation through various procurement options. This contract allows Capital Metro to discharge the freight rail common carrier obligation through a different contracting mechanism that ensures that the freight operation will cover all direct operating costs and make a continuing contribution to capital costs and allocated overhead costs. This contract will ensure that the freight operation produces net revenue to Capital Metro covering over the life of the contract, all direct expenses associated with the freight operation and make a significant contribution to capital and allocated overhead costs.

Funding for this contract is not required. The adopted FY 11 budget provides for \$9,113,619 for freight rail expense including payment to AWRR of \$3,747,490 for freight rail operations and assumes revenue of \$10,128,868 from freight customers for freight rail operations.

**CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
WATCO PROPOSAL FOR FREIGHT OPERATIONS**

	<u>FY11 Budget</u>	<u>FY12-FY15</u>	<u>Total 5YR Contract</u>
<b>Watco Proposed Payments to CMTA</b>	<b>\$4,160,058</b>	<b>\$17,787,141</b>	<b>\$21,947,199</b>
<b><u>CMTA Paid but Reimbursed Expenses:</u></b>			
Herzog MOW	\$2,708,646	\$11,615,480	\$14,324,126
Mtce Materials	\$475,000	\$2,021,756	\$2,496,756
<b>CMTA EXPENSES REIMBURSED</b>	<b>\$3,183,646</b>	<b>\$13,637,236</b>	<b>\$16,820,882</b>
<b>Watco Payments in Excess of CMTA Reimbursed Expenses</b>	<b>\$976,412</b>	<b>\$4,149,906</b>	<b>\$5,126,317</b>

CMTA Pymts to Watco	\$3,747,490		\$18,737,450
Fuel	<u>\$1,750,680</u>		<u>\$8,753,400</u>
Freight Expenses Avoided	\$5,498,170	(1)	\$27,490,850

Estimated to "redirect" \$25M-\$30M of freight expenses AVOIDED due to (1)  
Watco assuming responsibility for these costs in FY11-FY15

**ROUTE 2025 STRATEGIC ALIGNMENT:** Customer Driven Service Excellence.

**DBE PARTICIPATION:** Due to the specialized nature of this project, DBE participation has been set as race neutral.

**PROCUREMENT:** On December 9, 2009 the Capital Metropolitan Transportation Authority Board of Directors adopted Resolution CMTA-2009-91 authorizing the Authority to enter into a letter contract with Watco Companies, Inc. for the operation of the Authority's freight services for a five-year, nine-month period, and to finalize negotiation of pricing and execution of a complete contract. The proposed contract is the final negotiated agreement.

**RESPONSIBLE DEPARTMENT:** Operations

**LEGAL COUNSEL SIGNATURE:** \_\_\_\_\_



**RESOLUTION  
OF THE  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
BOARD OF DIRECTORS**

**STATE OF TEXAS**

**COUNTY OF TRAVIS**

**RESOLUTION CMTA-2010-100**

**Watco Contract**

**WHEREAS**, the fundamental purpose of Capital Metro is to improve transportation, mobility, and healthy economic development in the region; and

**WHEREAS**, in November 2004 the voters approved a referendum to allow Capital Metro to build Phase 1 of commuter rail on our Giddings/Llano Rail line.

**NOW, THEREFORE, BE IT RESOLVED** by the Capital Metropolitan Transportation Authority Board of Directors that the president/CEO, or her designee, is authorized to finalize and execute a lease agreement with Watco Companies Austin Western Railroad, Inc (AWRR) for the operation of the agency's freight rail services.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	John Langmore, Vice Chairman
<b>SECONDER:</b>	Norm Chafetz, Board Member
<b>AYES:</b>	Chafetz, Silas, Langmore, Stafford, Hlista, Martinez, Riley
<b>ABSENT:</b>	Frank Fernandez

**Date: December 21, 2010**

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**Secretary of the Board  
Beverly Silas**

**SUBJECT:** Approval of a resolution authorizing the president/CEO, or her designee, to settle all outstanding obligations to Veolia Transportation for the termination of the commuter rail services contract for the amount of \$2,400,000.

**FISCAL IMPACT:** Funding for this action is available in the FY2011 operating budget.

**COMMITTEE RECOMMENDATION:** Does not apply.

**EXECUTIVE SUMMARY:** In December 2009, Capital Metro terminated its contract for commuter rail services with Veolia Transportation. Under the terms of the contract, Capital Metro must compensate Veolia for services provided through the date of termination and certain reasonable costs incurred by Veolia to carry-out and terminate the contract. The two parties have met frequently over the course of the last year to identify and value these costs and have agreed that \$2,400,000 will adequately settle all remaining obligations by both parties. A mutual release of any future claims by either party will be executed in order to conclude this matter.

**ROUTE 2025 STRATEGIC ALIGNMENT:** Does not apply.

**DBE PARTICIPATION:** Does not apply.

**PROCUREMENT:** On December 9, 2009 the Capital Metropolitan Transportation Authority Board of Directors approved the termination of the Veolia Transportation Services, Inc. Contract for convenience. Veolia was issued termination instructions to cease all operations, including freight operations by December 18, 2009 at 5:00 P.M, CST. The two parties have met frequently over the course of the last year to identify and value these costs and have agreed that \$2,400,000 will adequately settle all remaining obligations by both parties. A mutual release of any future claims by either party will be executed in order to conclude this matter. This mutual release will be in the form of a supplemental agreement to the Contract.

**RESPONSIBLE DEPARTMENT:** Contracts & Procurement

**LEGAL COUNSEL SIGNATURE:** \_\_\_\_\_



**RESOLUTION  
OF THE  
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY  
BOARD OF DIRECTORS**

**STATE OF TEXAS**

**COUNTY OF TRAVIS**

**RESOLUTION CMTA-2010-101**

**Veolia Rail Contract**

**WHEREAS**, the Capital Metropolitan Transportation Authority Board of Directors desires to settle all outstanding obligations to Veolia Transportation for the termination of the commuter rail services contract; and

**WHEREAS**, Veolia Transportation and Capital Metro have reached a mutually agreeable settlement that adequately compensates Veolia for the termination of the contract.

**NOW, THEREFORE, BE IT RESOLVED**, by the Capital Metropolitan Transportation Authority Board of Directors that the president/CEO, or her designee is authorized to make a final payment to Veolia Transportation of \$2,400,000 to settle all outstanding obligations of the Authority under the Freight and Urban Commuter Rail Operations and Maintenance contract.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Ann Stafford, Board Member
<b>SECONDER:</b>	Beverly Silas, Secretary
<b>AYES:</b>	Chafetz, Silas, Langmore, Stafford, Hlista, Martinez, Riley
<b>ABSENT:</b>	Frank Fernandez

**Date: December 21, 2010**

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**Secretary of the Board  
Beverly Silas**



## MEMORANDUM

**TO:** Board of Directors

**CC:** Linda Watson

**FROM:** Kerri Butcher  
Interim Chief Counsel

**DATE:** January 5, 2011

**SUBJECT: Board Action Item #2- Veolia Rail Contract Settlement**

Action item #2 on the board agenda for tomorrow's board meeting calls for the approval, by the Board of Directors, for Capital Metro to enter into a final agreement with Veolia to settle any remaining obligations under the freight and urban commuter rail contract for \$2.4 million. The agreement will preclude either party from making any future claims with regard to the contract or its services. Counsel is currently finalizing the settlement document and a final modification will be made to the contract to close it out. Once this is complete Capital Metro will issue a check to Veolia by the end of the year so they may close their books for the year with this contract completed.

As you are aware, Capital Metro terminated its contract with Veolia Transportation for Freight and Urban Commuter Rail Operations and Maintenance in December 2009. This Termination for Convenience was carried out in accordance with a section of the contract that allows Capital Metro to end a contract whenever it is deemed necessary for the benefit of the Authority. Under the terms of a Termination for Convenience, Capital Metro must compensate Veolia for any reasonable costs they incurred in performing the contract or preparing to perform. This could include the purchase or lease of equipment or services to be used during the term of the contract and any costs associated with disposing of that equipment or ending leases. It may include severance and benefits to employees who were no longer needed. Veolia is required to make all reasonable efforts to mitigate any costs of termination.

Over the course of the last year Veolia and Capital Metro have worked together to appropriately allocate the costs of terminating the contract. Veolia has worked diligently to mitigate the cost of settlement to Capital Metro and our staff has scrutinized each proposed settlement cost to ensure that it is recoverable under the contract. The two parties have agreed, pending approval by the Board of Directors, to settle all remaining obligations under the contract for \$2.4 million. This amount includes approximately \$1.9 million in invoices for services provided by Veolia from September to December 2009, prior to the termination of the contract, which were in the billing and payment process at the time of termination. The remaining amount reflects a compromise by Veolia and Capital Metro on items believed to be owed by both parties.