

Date: April 7, 2008

Committee Meeting Date: April 17, 2008

Board Meeting Date: May 1, 2008

BOARD MEMORANDUM

ACTION ITEM

TO: Administration & Finance Committee
Santa Clara Valley Transportation Authority
Board of Directors

THROUGH: Michael T. Burns
General Manager

FROM: Joseph T. Smith
Chief Financial Officer

SUBJECT: Establishment of a Qualified Other Post Employment Benefits (OPEB) Trust

Policy-Related Action: Yes

Government Code Section 84308 Applies: Yes

RECOMMENDATION:

(1) Adopt a resolution to establish the "SANTA CLARA VALLEY TRANSPORTATION AUTHORITY RETIREES' OTHER POST EMPLOYMENT BENEFITS (OPEB) TRUST", and

(2) Authorize the General Manager to transfer all assets held by VTA pertaining to the Retiree Medical Fund to the Trust.

BACKGROUND:

VTA provides retiree health care as a post employment benefit to its employees as provided for in its collective bargaining agreements and the resolution of benefits for non represented employees. VTA has been performing actuarial valuations of this obligation since 1996 to determine the financial condition and contribution requirements of the Plan. VTA has been pre-funding its share of retiree health benefits and has accumulated \$102 Million in assets as of February 29, 2008.

The Governmental Accounting Standards Board (GASB), an independent body that establishes standards of financial accounting and reporting for state and local government entities, has issued Statement Nos. 43 and 45, which requires public agency employers to provide more complete, reliable, and decision-useful financial reporting regarding the costs and financial obligations that they incur when they provide post employment benefits other than pensions (OPEBs). Statement No. 45 requires public employers to recognize the cost of OPEBs in periods when the related services are received and to provide information about the actuarial accrued liabilities for promised benefits associated with past services.

GASB requires that fund assets must be held in a qualifying trust, if VTA's actuaries are to recognize the assets in their actuarial evaluation of the plan and in their computation of the annual required contribution (ARC). It further requires that if the assets are not placed in a qualifying trust, VTA can only assume the rate of return which it earns on its short term portfolio which is approximately 3.5%. The VTA Retiree Medical Fund Actuarial evaluations have assumed a rate of return on investments of 7%.

DISCUSSION:

As required by GASB 45, VTA proposes the establishment of the "SANTA CLARA VALLEY TRANSPORTATION AUTHORITY RETIREES' OTHER POST EMPLOYMENT BENEFITS (OPEB) TRUST" as provided under Section 115 of the Internal Revenue Code. All assets currently held by VTA to discharge its retiree health obligations will be transferred to the Trust. VTA's Board of Directors will be the Trustees and the General Manager will be the Administrator of the Trust. Trust assets will be used solely for the purposes of paying OPEBs to, or for the benefit of, retirees and beneficiaries, and for paying reasonable expenses of administering the Trust and will not be available to creditors of VTA or the retirees and beneficiaries.

VTA must adopt GASB 43 and 45 in FY 2008.

The Trust document has been reviewed by VTA's General Counsel and by outside Counsel for conformity with all applicable rules and regulations.

ALTERNATIVES:

The Board could choose to not establish the Trust. This is not recommended because failure to establish the Trust before June 30, 2008 will result in non compliance with provisions of GASB 45 and will require the actuary to ignore over \$100 million in assets and change the assumed rate of return from 7% to approximately 3.5% in their actuarial evaluation of VTA's Retiree Health Benefit obligations. This will result in significant increases in both the Unfunded Actuarial Accrued Liability and the ARC.

FISCAL IMPACT:

The funds which will be transferred to the Trust are currently held separately as trust funds by VTA. There is no impact on VTA's operating budget.

Prepared by: Ali Hudda, Deputy Director of Accounting

Resolution No.

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA) ESTABLISHING THE “SANTA CLARA VALLEY TRANSPORTATION AUTHORITY RETIREES’ OTHER POST-EMPLOYMENT BENEFITS (OPEB) TRUST”

WHEREAS:

1. The Santa Clara Valley Transportation Authority (VTA) is a public agency of the state of California, created pursuant to Public Utilities Code section 100000 et seq., and as such is exempt from federal income tax under the Internal Revenue Code;
2. Pursuant to Article 1 of Chapter 2 of Part 1 of Division 2 of the Government Code, VTA provides post-employment health care benefits and other non-pension post-retirement benefits (“OPEBs”) to certain VTA retirees and their beneficiaries, as specified from time to time in VTA’s employment policies and collective bargaining agreements;
3. Providing OPEBs is an essential function and integral part of VTA’s exempt activities within the meaning of section 115 of the Internal Revenue Code;
4. VTA, as Trustor, wishes to establish a trust to fund OPEBs, which shall be an entity separate from Trustor, the income on which will be exempt from federal and state income tax, transfers to which will not be taxable to beneficiaries, all assets of which shall be dedicated to payment of the employer’s share of OPEBs, unavailable to creditors of Trustor, with VTA’s Board of Directors serving as the Trustee of the Trust; and
5. The purpose of the Trust is to receive and hold assets for investment in order to fund OPEBs for Retirees and Beneficiaries, and the Trust is intended to meet the requirements of Statements 43 and 45 issued by the Governmental Accounting Standards Board (GASB), so that Trust assets will be recognized to reduce VTA’s reported liability for OPEBs, and is intended to be tax-exempt under section 115 of the Internal Revenue Code.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Santa Clara Valley Transportation Authority that:

Effective _____, 2008, there is hereby established the **SANTA CLARA VALLEY TRANSPORTATION AUTHORITY RETIREES’ OTHER POST-EMPLOYMENT BENEFITS (OPEB) TRUST** (Trust), as set forth in the Declaration of Trust, attached hereto.

PASSED AND ADOPTED by the Santa Clara Valley Transportation Authority

Board of Directors on May 1, 2008 by the following vote:

AYES: DIRECTORS

NOES: DIRECTORS

ABSENT: DIRECTORS

Attachment: Declaration of Trust

**DECLARATION OF TRUST —
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
RETIREES' OPEB TRUST**

Effective _____, 2008

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**SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
RETIREES' OTHER POST EMPLOYMENT BENEFITS (OPEB) TRUST**

RECITALS:

A. The Santa Clara Valley Transportation Authority (VTA) is a public agency of the state of California, created pursuant to Public Utilities Code section 100000 et seq., and as such is exempt from federal income tax under the Internal Revenue Code.

B. Pursuant to Article 1 of Chapter 2 of Part 1 of Division 2 of the Government Code, VTA provides post-employment health care benefits and other non-pension post-retirement benefits ("OPEBs") to certain VTA retirees and their beneficiaries, as specified from time to time in VTA's employment policies and collective bargaining agreements.

C. Providing OPEBs is an essential function and integral part of VTA's exempt activities within the meaning of section 115 of the Internal Revenue Code.

D. VTA, as Trustor, wishes to establish a trust to fund OPEBs, which shall be an entity separate from Trustor, the income on which will be exempt from federal and state income tax, transfers to which will not be taxable to beneficiaries, all assets of which shall be dedicated to payment of the employer's share of OPEBs, unavailable to creditors of Trustor, with VTA's Board of Directors serving as the Trustee of the Trust.

NOW THEREFORE:

ARTICLE I

ESTABLISHMENT OF THE TRUST

Effective _____, 2008, there is hereby established the **SANTA CLARA VALLEY TRANSPORTATION AUTHORITY RETIREES' OTHER POST EMPLOYMENT BENEFITS (OPEB) TRUST** (Trust).

ARTICLE II

PURPOSES

The purpose of the Trust is to receive and hold assets for investment, in order to fund OPEBs for Retirees and Beneficiaries. The Trust is intended to meet the requirements of GASB 43/45 so that Trust assets will be recognized by GASB 43/45 to reduce VTA's reported liability for OPEBs. The Trust is also intended to be tax-exempt under section 115 of the Internal Revenue Code.

ARTICLE III

MANAGEMENT AND OPERATION OF THE TRUST

3.1 Transfer of Assets. All cash and assets in the VTA Retiree Health Benefits Fund are hereby transferred to the Trust. The Trust assets shall be held, administered and distributed by the Trustee, Administrator, or Custodian, as provided in this Declaration of Trust.

3.2 Appointment of Custodian. The Administrator may appoint a Custodian to hold Trust assets; the Custodian shall act solely at the Administrator's direction, and shall not have any discretion over the administration or management of Trust assets.

3.3 No Reversion to VTA. Except as provided in Sections 4.7 and 6.2, no part of the Trust assets shall be returned to or revert to VTA, or be used for or diverted to purposes other than for the exclusive benefit of Retirees and Beneficiaries.

3.4 Contributions. The Trustee shall hold under the Trust all contributions made to the Trust together with any income, gains, or profits, and taking account of any losses. All contributions to the Trust shall be irrevocable.

3.5 Distributions. Trust assets shall be used solely for the purposes of paying OPEBs to, or for the benefit of, Retirees and Beneficiaries, and for paying reasonable expenses of administering the Trust. The Administrator shall direct the time, manner, and recipients of all distributions from the Trust.

3.6 No Individual Accounts. Assets under the Trust may be segregated only for investment purposes. No individual account for any person may be maintained at any time under the Trust, and no Retiree or Beneficiary shall have any right or title with respect to any specific assets of the Trust. Accordingly, no Retiree or Beneficiary shall have a preferred claim, lien on, or security interest in, or any beneficial interest in, any particular assets of the Trust.

3.7 Fiduciary Duties. The Trustee, the Administrator, and the Trust shall be governed by the fiduciary requirements of section 17, article XVI of the California Constitution. The Trustee and the Administrator (and any person or entity to whom the Trustee or Administrator delegates any fiduciary duties under the Trust) are fiduciaries of the Trust, but only with respect to their respective duties and responsibilities. Each fiduciary will (i) act solely in the interest of Retirees and Beneficiaries, in accordance with the Trust and governing California and federal law, and (ii) discharge its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

ARTICLE IV

DUTIES AND POWERS OF THE TRUSTEE

4.1 General Powers. The Trustee shall have all of the powers necessary or appropriate to properly perform its duties under this Trust. The Trustee will have full power to

construe the Trust and to determine all questions that may arise under the Trust. All decisions made, and actions taken, by the Trustee under the Trust will be final, conclusive, and binding on all persons.

4.2 Delegation of Duties. The Trustee hereby appoints the VTA General Manager as Administrator of the Trust and delegates all powers necessary to the Administrator to ensure the efficient and effective administration of the Trust.

4.3 Investment Powers. The Trustee shall determine all investments of the Trust and in this regard shall act in accordance with the rules of section 17, article XVI of the California Constitution. In accordance with these rules, the Trustee may engage professional investment managers, banks, and consultants or advisors. Trust assets shall be invested in strict accordance with the VTA Investment Policy for Unrestricted and Restricted Funds, as adopted by the VTA Board of Directors.

4.4 Agents. The Trustee hereby delegates to the Administrator the authority to employ counsel, accountants, brokers, actuaries, consultants, and other agents to provide clerical, accounting, actuarial and other services as the Administrator may deem advisable to perform its duties under this Trust, or as may be directed by the Trustee.

4.5 Claims. The Trustee hereby delegates to the Administrator the authority to settle, compromise or submit to arbitration, any claims, debts or damages due or owing to or from the Trust; commence or defend suits or legal or administrative proceedings whenever, in his or her judgment, any interest of the Trust so requires; and, provide for representation of the Trust in all suits or legal or administrative proceedings in any court of law or equity or before any other body or tribunal.

4.6 Accounting.

(a) The Administrator shall keep appropriate and accurate accounts and records reflecting all transactions concerning the Trust, including contributions, gains, losses, expenses, and distribution of benefits.

(b) Except as otherwise ordered by a court having jurisdiction, no person other than VTA or the Trustee may require an accounting by the Administrator.

(c) The Trustee may at any time petition any appropriate court for a settlement of the Trust assets or for the court's instructions in executing the Trustee's obligations under the Trust.

4.7 Expenses. No additional compensation shall be paid to any member of the Board of Directors for services provided under this Trust. The Trustee may pay from the Trust reasonable expenses of administering the Trust and investing Trust assets. The members of the Board of Directors shall be paid or reimbursed from the Trust for reasonable expenses incurred in carrying out their duties as Trustee.

4.8 Indemnification and Insurance.

(a) VTA agrees to indemnify the Trustee and the Administrator against, and hold each harmless from, any and all loss, claim, liability, or expense, including reasonable attorneys' fees, imposed upon or incurred by the Trustee or the Administrator in performing their respective duties under this Trust, unless the loss, claim, liability, or expense is the result of gross negligence or willful misconduct of the Trustee or the Administrator, as applicable.

(b) For the Administrator or any individual who is an employee of VTA, his or her duty under this Trust shall be treated as official duties, and he or she will be entitled to relief from liability, and defense and indemnification, to the same extent as provided for any government officer or employee in the conduct of his or her official duties.

(c) To the extent consistent with its fiduciary duties, the Administrator may use Trust assets to purchase fiduciary liability insurance (and other appropriate insurance) to protect the Trust.

ARTICLE V

REPLACEMENT OF THE TRUSTEE

If any individual Trustee ceases to be a member of VTA's Board of Directors, he or she will immediately cease to be a Trustee.

ARTICLE VI

AMENDMENT AND TERMINATION OF THE TRUST

6.1 Amendment. This Trust may be amended at any time in writing by the Trustor. However, no amendment shall reduce the existing benefits due to any Retiree or Beneficiary. No Retiree, Beneficiary, representative thereof, or other person shall have any right to limit the exercise of the powers set forth in the preceding sentences.

6.2 Termination. VTA may terminate the Trust at any time for any reason. Upon termination of the Trust, any assets remaining in the Trust shall be used to pay VTA's remaining OPEB liabilities, and to pay reasonable expenses of administering the Trust. Any assets remaining in the Trust after all OPEB liabilities are satisfied shall revert to VTA. No Retiree, Beneficiary, representative thereof, or other person shall have any right to limit the exercise of the powers set forth in the trust.

6.3 No "Vested Rights". VTA may, at any time terminate or reduce any contributions to the Trust. VTA also may, at any time amend or terminate the Trust in any manner whatsoever, subject to Sections 6.1 and 6.2. No Retiree, Beneficiary, representative thereof, or other person shall have any right to limit the exercise of the powers set forth in the preceding sentences. No person shall have any "vested rights" under California or federal law to have any contributions made to the Trust. No person will have any "vested rights" under California or federal law to have the Trust continued at all or continued in whatever form it takes at any point in time.

ARTICLE VII

MISCELLANEOUS

7.1 Reliance. The Trustee and Administrator will be protected in acting upon any notice, resolution, request, consent order, certificate, report, opinion, statement or other document that it reasonably believed to be genuine and to have been signed by the proper party or parties or by a person or persons authorized to act on its behalf.

7.2 Anti-Alienation. No right or claim to, or interest in, any part of the Trust's assets, or any payment from this Trust will be subject to anticipation, alienation, sale, transfer, assignment, mortgage, pledge, encumbrance, hypothecation, commutation, garnishment, charge, or any other process of any court except as specifically permitted under this Trust or required by law. No benefit payable from the Trust to any person will in any manner be liable for, or subject to that person's debts, contracts, liabilities, engagements, or torts, nor will it be subject to attachment or legal process for or against him or her, except to such extent required by law. Any attempt to anticipate, alienate, sell, transfer, assign, mortgage, pledge, garnish, encumber, charge, or levy against any benefit under the Trust will be void, except as required by law. No portion of the benefits payable under the Trust will be subject to the bankruptcy estate of any Retiree or Beneficiary, except as required by law.

7.3 Law. This Trust is made in the State of California, and will be construed in accordance with its laws and applicable federal law.

7.4 Invalidity. If any provision of the Trust is held illegal or invalid for any reason, the illegality or invalidity will not affect the remaining provisions. The Trust will subsequently be construed and enforced as if the illegal or invalid provisions had never been included.

7.5 Headings and Subheadings. The headings and subheadings in this Trust are inserted for convenience and reference only and are to be ignored in interpreting its provisions.

ARTICLE VIII

DEFINITIONS AND CONSTRUCTION

The capitalized terms and expressions used in the Trust have the meanings below unless the context clearly requires otherwise:

“Administrator” means VTA's General Manager.

“Beneficiary” means a Retiree's spouse, domestic partner or other dependent who survives the Retiree's death and who, due to his or her relationship to the Retiree, is entitled to receive OPEBs under VTA's employment policies or collective bargaining agreements.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and all applicable rules and regulations and related guidance.

“Custodian” means the financial institution appointed by the Trustee or Administrator to hold Trust assets.

“GASB 43/45” means Government Accounting Standards Board Statement Nos. 43 and 45.

“OPEBs” means non-pension retirement benefits provided by VTA to Retirees and Beneficiaries in accordance with VTA’s employment policies and collective bargaining agreements.

“Retiree” means a retired VTA employee who is eligible to receive OPEBs under VTA’s employment policies or collective bargaining agreements.

“Trust” means this Santa Clara Valley Transportation Authority Retirees’ OPEB Trust, as amended from time to time.

“Trustee” means the Board of Directors of VTA. All references to Trustee means the Board of Directors acting in its capacity as Trustee.

“Trustor” means VTA in its capacity as the settlor of the Trust.