

**Audit Committee**

Thursday, December 11, 2008

**MINUTES**

**CALL TO ORDER**

The Regular Meeting of the Audit Committee was called to order at 11:48 a.m. by Chairperson Gage in the Board of Supervisors' Chambers, County Government Center, 70 West Hedding Street, San Jose, California.

**1. ROLL CALL**

<b>Attendee Name</b>	<b>Title</b>	<b>Status</b>	<b>Arrived</b>
David Casas, Vice Chairperson	Board Member	Present	
Don Gage, Chairperson	Board Member	Present	
Nancy Pyle	Board Member	Present	
Dolly Sandoval	Board Member	Present	

**A quorum was present.**

**2. PUBLIC PRESENTATIONS**

There were no Public Presentations.

**3. ORDERS OF THE DAY**

There were no Orders of the Day.

**CONSENT AGENDA**

**4. Minutes of August 21, 2008**

**M/S/C (Pyle/Casas)** to approve the Minutes of August 21, 2008.

**NOTE:** M/S/C MEANS MOTION SECONDED AND CARRIED AND, UNLESS OTHERWISE INDICATED, THE MOTION PASSED UNANIMOUSLY.

## REGULAR AGENDA

### 5. 2009 Audit Committee Meeting Schedule

M/S/C (Pyle/Sandoval) to approve the 2009 Audit Committee Meeting Schedule.

### 6. Contract Award for Auditor General Services

Michael T. Burns, General Manager, reported the proposed contract award for Auditor General Services is being presented to the Audit Committee for review and anticipated approval of forwarding a recommendation to the Board of Directors to approve the contract award at their January 8, 2009 meeting.

Karen Antion, Consultant, provided a report on the Request for Proposals (RFP) process for the Auditor General Services. She reported on September 5, 2008, the Valley Transportation Authority (VTA) issued a RFP based upon the approval of the Scope of Work by the Audit Committee and Board of Directors. VTA received and evaluated proposals from the following two qualified firms: 1) Deloitte and Touche, LLP and 2) KPMG, LLP. A review board was convened which included the Chief Financial Officers from VTA, BART, City of Palo Alto and VTA Purchasing and Materials Manager. The Review Board evaluated the written proposals submitted by both firms and determined both firms were qualified.

Ms. Antion reported the Review Board determined Deloitte and Touche, LLP, demonstrated a greater experience and understanding of transportation issues. She noted Pat Hagan, the recommended Auditor General, presented a level of national transit experience and his team had a good understanding of the roles and responsibilities of an outsourced Auditor General. Ms. Antion noted the Deloitte and Touche local team includes an audit partner that has direct experience serving as an Auditor General to a large Silicon Valley technology manufacturer.

Ms. Antion reported the cost proposed by Deloitte and Touche, LLP, for the initial scope of developing the Annual Audit Plan was significantly less than that of KPMG. She noted the hourly rates of both firms were essentially equal for all categories. The Task Order Contract will be for a two-year term with three additional one-year options. The Scope of Work for the first Task Order will include the following: 1) Develop and recommend goals and objectives for the Internal Audit Program at VTA; and 2) Develop and recommend an Annual Internal Audit Plan.

Mr. Hagan introduced himself and stated he would be honored to serve as the Auditor General for VTA. He also introduced Deloitte and Touche team members in attendance. Mr. Hagan thanked VTA management for the recommendation and noted Deloitte and Touche's philosophy for internal audit. He indicated one of the things that Deloitte and Touche thinks is important for a world class internal audit group is to match up to the values that have been articulated in VTA's strategic plan.

Upon query of Chairperson Gage, Mr. Hagan noted it is likely that Deloitte and Touche would be attending all VTA Board of Directors meetings. Chairperson Gage noted the importance of Deloitte and Touche providing a report on an annual basis containing their

findings/recommendations so the Board of Directors can be kept apprised.

Vice Chairperson Casas queried about Deloitte and Touche's work plan. Mr. Hagan noted it is anticipated Deloitte and Touche would be presenting an initial work plan and summary of risks at the March 5, 2009 Audit Committee meeting.

**M/S/C (Pyle/Casas)** to approve submitting a recommendation to the Board of Directors to authorize the General Manager to execute a Task Order Contract with Deloitte & Touche, LLP to provide Auditor General Services for a two year period in the amount of \$350,000. Additionally authorize the General Manager to execute three additional one year contract options for \$175,000 per year subject to approval by the Audit Committee.

**7. Independent Auditor's Report on the VTA's Procurement Card Program Agreed-Upon Procedures for the Fiscal Year Ended June 30, 2008**

Joseph T. Smith, Chief Financial Officer, reported on August 21, 2008, the Audit Committee directed staff to request that VTA's Independent Audit Firm, Vavrinek, Trine, Day & Co., LLP (VTD), perform the agreed-upon procedures for VTA's Procurement Card Program.

Leonard Dana, VTD, reported the review was completed as requested in conjunction with the annual audit of VTA. He referenced the report entitled, "Independent Accountant's Report on Applying Agreed-Upon Procedures," highlighting: 1) Agreed Upon Procedures Performed and 2) Results of Procedures.

Chairperson Gage queried if periodic reviews would be conducted. Mr. Dana recommended the periodic reviews be conducted by Internal Audit. Mr. Burns indicated the recommendation is appropriate.

Vice Chairperson Casas noted it is appropriate to have enforcement of the controls to ensure there are no improprieties. He noted the importance of having spot reviews to reaffirm individuals are following established procedures.

Member Pyle directed attention to the Board Memorandum, Page 2 of 2, Compliance Review Results, last sentence contained in first paragraph, and requested the word "were" be placed between the words "there and no".

**M/S/C (Casas/Sandoval)** to approve submitting a recommendation to the Board of Directors to review and receive the Independent Auditor's Report on the agreed-upon procedures performed on VTA's Procurement Card for the fiscal year ended June 30, 2008 (FY2008).

**8. Fiscal Year 2008 Comprehensive Annual Financial Report for the Santa Clara Valley Transportation Authority and the Santa Clara Valley Transportation Authority Amalgamated Transit Union Pension Plan Report**

Joseph T. Smith, Chief Financial Officer, reported VTA is required to have its financial statements audited by a certified public accounting firm pursuant to state law and VTA Administrative Code. He noted an audit of VTA finances for fiscal year ended June 30, 2008 (FY 2008), was conducted by Vavrinek, Trine, Day & Company, LLP

(VTD).

Leonard Dana, VTD, provided an overview of the audited Fiscal Year 2008 Comprehensive Annual Financial Report (CAFR) for VTA and the VTA Amalgamated Transit Union Pension Plan Report for Fiscal Year 2008 highlighting: 1) Audit Results, noting VTD rendered an unqualified opinion on VTA's financial statements; 2) Auditor's Management Letter; and 3) Audited Financial Statements.

In reference to the Financial Statements, VTA has a new accounting principle that will be implemented in 2010. It requires that VTA fair value any derivative financial positions it may have, i.e. Swaps. VTA's Swaps had a negative value of approximately \$21 million.

In reference to the VTA's ATU Pension Plan, Mr. Dana noted subsequent to June 30, 2008, the fair market value of the equity investments in the Plan had declined by approximately \$16 million.

Vice Chairperson Casas requested staff provide a written report regarding the issues to the full Board of Directors.

Upon query of Chairperson Gage, Mr. Smith noted staff would be providing quarterly reports regarding the status of the Swaps.

**M/S/C (Pyle/Sandoval)** to approve submitting a recommendation to the Board of Directors to review and receive the audited Comprehensive Annual Financial Report for the Santa Clara Valley Transportation Authority, and the Valley Transportation Authority Amalgamated Transit Union Pension Plan Report for Fiscal Year 2008.

**9. Audited Santa Clara Valley Transportation Authority Retiree's Other Post Employment Benefits (OPEB) Trust (Trust) Financial Report for Fiscal Year 2008**

Joseph T. Smith, Chief Financial Officer, reported in May 2008, a Trust was established by the Board of Directors to comply with the accounting pronouncement promulgated by the Government Accounting Standards Board (GASB). He noted the VTA Retiree's Other Post Employment Benefits (OPEB) Trust was audited by Vavrinek, Trine, Day & Company, LLP (VTD) as well.

**M/S/C (Sandoval/Pyle)** to approve submitting a recommendation to the Board of Directors that the VTA Board of Directors acting as the Trustees of the Santa Clara Valley Transportation Authority Retirees' Other Post Employment Benefits (OPEB) Trust (Trust) review and receive the audited financial report for Fiscal Year 2008.

**10. Professional Services Contract Audits**

Mark S. Robinson, Acting Chief Engineering & Construction Officer, reported at the November 6, 2008 Board of Directors meeting, staff had several contract amendments agendized for action involving consulting engineering firms. He referenced the attached Board Memorandum of November 6, 2008, entitled, "Kato Road Grade Separation Project – Amendment to Design and Engineering Services Contract." Board Member Casas questioned how VTA audits the charges in a professional services contract, in

particular, a Time and Materials (T&M) contract. Board Member Casas requested staff provide a report back at the December 11, 2008 Audit Committee.

Mr. Robinson noted the informational item outlines the different contract types for consulting engineering firms.

He noted a correction to the Board Memorandum of November 6, 2008. It was not a Time and Materials (T&M) contract; it was a cost plus fixed fee type of contract for engineering services.

Mr. Robinson provided a report on the audit process conducted by VTA on its professional services contracts. VTA audits the performance of the consultant on a T&M type of contract and on the invoice review process.

Vice Chairperson Casas queried about the controls in place regarding a T&M type of contract. Mr. Burns commented either VTA or another firm used by VTA conducts an assessment of the amount of work that is required to be accomplished. Then a negotiation process is held with the consultant prior to contract settlement as to the number of hours necessary to perform a particular task. After this takes place, the whole project managing system is set-up based on those tasks and hours.

Member Sandoval queried the percentage of contracts that are Time and Materials contracts. Mr. Robinson noted nearly 100% of VTA's engineering consultant contracts are negotiated as "Cost Plus Fixed Fee" contracts during the design phases. He commented when entering into a construction phase or in a design-build contract, there will be activities identified during the course of construction or unanticipated events. A consultant who has served VTA during the design phase is then brought in to assist VTA through this particular challenge, and it is in those instances that VTA has a Time and Materials quick method of bringing the consultant onboard. During the course of construction, nearly 100% of the time VTA uses Time and Materials on-call consultant services.

Chairperson Gage requested staff consult VTA Legal Counsel regarding contract issues and Legal Counsel review all contracts and Time and Materials.

**On order of Chairperson Gage** and there being no objection, the Committee received a report on Professional Services Contract Audits.

## **OTHER ITEMS**

### **11. Items of Concern and Referral to Administration**

There were no Items of Concern and Referral to Administration.

### **12. Committee Work Plan**

Michael T. Burns, General Manager, reiterated the anticipation of an initial risks assessment being presented at the March 5, 2009 Audit Committee meeting.

Chairperson Gage queried about the work plan being in coordination with the two-year budget cycle. Mr. Burns noted it would make sense for the work plan to be consistent with VTA's Budget cycle.

**On order of Chairperson Gage** and there being no objection, the Committee reviewed and approved the revised Committee Work Plan.

**13. Committee Staff Report**

There was no Committee Staff Report.

**14. Chairperson's Report**

Chairperson Gage welcomed Deloitte & Touche, LLP.

**15. Determine Consent Agenda for the January 8, 2009 Board Meeting**

**CONSENT: Agenda Item #6.** Authorize the General Manager to execute a Task Order Contract with Deloitte & Touche, LLP to provide Auditor General Services for a two year period in the amount of \$350,000. Additionally authorize the General Manager to execute three additional one year contract options for \$175,000 per year subject to approval by the Audit Committee;

**Agenda Item #7.** Review and receive the Independent Auditor's Report on the agreed-upon procedures performed on VTA's Procurement Card for the fiscal year ended June 30, 2008 (FY2008); and

**Agenda Item #9.** VTA Board of Directors acting as the Trustees of the Santa Clara Valley Transportation Authority Retirees' Other Post Employment Benefits (OPEB) Trust (Trust) review and receive the audited financial report for Fiscal Year 2008.

**REGULAR: Agenda Item #8.** Review and receive the audited Comprehensive Annual Financial Report for the Santa Clara Valley Transportation Authority, and the Valley Transportation Authority Amalgamated Transit Union Pension Plan Report for Fiscal Year 2008.

**16. Announcements**

There were no Announcements.

**17. ADJOURNMENT**

**On order of Chairperson Gage** and there being no objection, the meeting was adjourned at 12:33 p.m.

Respectfully submitted,

Tracene Y. Crenshaw, Board Assistant  
VTA Board of Directors