

# **BOARD OF DIRECTORS MEETING**

March 1, 2007

## **MINUTES**

### **1. CALL TO ORDER**

The Regular Meeting of the Santa Clara Valley Transportation Authority's (VTA) Board of Directors was called to order by Chairperson Chu at 5:36 p.m. in the Board of Supervisors' Chambers, County Government Center, 70 West Hedding Street, San Jose, California.

### **2. ROLL CALL**

#### **Members Present**

Nora Campos  
Dean J. Chu, Chairperson  
David Cortese  
Don Gage  
Breene Kerr  
Liz Kniss, Vice Chairperson  
Sam Liccardo  
Chuck Reed  
Dolly Sandoval  
Greg Sellers  
Forrest Williams  
Ken Yeager, Ex-Officio

#### **Members Absent**

Laura Macias

#### **Alternates Present**

Dominic Caserta

#### **Alternates Absent**

Judy Chirco  
Kathleen King  
Pete McHugh  
Roland Velasco

\* Alternates do not serve unless participating as a Member.

**A quorum was present.**

**The Agenda was taken out of order.**

**5. ORDERS OF THE DAY**

Chairperson Chu requested the following changes to the order of the Board of Directors Agenda: **Agenda Item #3.**, Adjourn to Closed Session and **Agenda Item #4.**, Closed Session Report be heard at the end of the Agenda; **Agenda Item #10.**, Policy Advisory Committee (PAC) Chairperson’s Report be heard before **Agenda Item #7.**, General Manager’s Report.

**M/S/C (Gage/Kniss)** to accept the Orders of the Day.

**6. AWARDS AND COMMENDATIONS**

**A. Employees of the Month for March 2007**

Chairperson Chu presented an award and recognized Kim Mojarro, Executive Secretary, River Oaks Administration; Michael Haniger, Coach Operator, Chaboya Division Operations; and Joyce Warner-Manina, Electronic Technician, Guadalupe Maintenance, as Employees of the Month for March 2007.

**B. Employees of the Year for 2006**

Chairperson Chu presented an award and recognized Maria Testa, Information Services Representative, River Oaks Administration; Michael Hoshida, Coach Operator, Chaboya Division Operations as Employees of the Year for 2006. Chairperson Chu presented an award and recognized Charles “Chuck” Maples, Superintendent of the Way, Power, and Signal Department at the Guadalupe Division, as Supervisor of the Year for 2006. Chuck Justice, received the award on Chuck Maples’ behalf.

Mida Smith, Vehicle Maintenance Scheduler, North Division, Employee of the Year 2006 was unable to attend and will be awarded at the April 2007 Board of Directors Meeting.

**C. Resolution of Commendation for Outgoing Board Members**

Chairperson Chu recognized Madison P. Nguyen and thanked her for her service as a VTA Board Member in 2006. Chairperson Chu noted that Madison P. Nguyen continues to serve as San Jose’s representative to VTA’s Silicon Valley Rapid Transit Corridor Policy Advisory Board.

**M/S/C (Williams/Gage)** to adopt Resolution of Commendation No. 07.03.04 for Former Board Member Madison P. Nguyen.

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

## **10. Policy Advisory Committee (PAC) Chairperson's Report**

Chris Moylan, PAC Chairperson, requested that the change made in the sequence of the PAC Report on the Board of Directors Meeting Agenda should become a permanent change. He provided a report regarding the February 8, 2007 PAC Meeting and noted the following:

- 1) The Committee reviewed and made recommendations regarding the proposal to review and screen candidate locations for noise mitigation. PAC recommended that staff defer the study, reconsider the amount of funds necessary for the program, include alternative uses of funds, and include noise prevention alternatives.
- 2) The Committee received a presentation and provided the following suggestions on the Comprehensive Operations Analysis (COA): generate new transit demand, make transit fast to make it an option for motorists, incorporate Global Positioning System (GPS) technology, and highlight environmental benefits of transit.

Board Member Kerr inquired about PAC's quorum issue. PAC Chairperson Moylan responded that PAC will agendize the issue at a future meeting and forward a formal request to the Board of Directors.

Board Member Williams expressed concern about PAC Members' commitment to attend the monthly meeting. He stated that the PAC should determine the reasons for absences and create mechanisms to prevent habitual absences. PAC Chairperson Moylan responded that as the 2007 Chairperson, he will diligently address this issue.

## **7. REPORT FROM THE GENERAL MANAGER**

Michael T. Burns, General Manager, noted that Jeff Funk is resigning as VTA's Construction Deputy Director to move to San Diego and work for a private construction management firm. Mr. Burns thanked Mr. Funk for his dedication to VTA and the residents of Santa Clara County, stating that Mr. Funk has been instrumental in delivering highway improvement projects including those that were part of the 1996 Measure B Program.

Board Member Gage noted Mr. Funk's accomplishments, highlighting that Mr. Funk managed the 1996 Measure B Program and delivered over \$500 million worth of projects. He thanked Mr. Funk for his excellent job performance, especially for the residents of South County.

Mr. Burns reported that on February 28, 2007 the California Transportation Commission (CTC) approved funding from the State Infrastructure Bonds for three of VTA's nominated projects.

Mr. Burns stated that the Sunol/Auzerais Signal bungalow emergency repairs at the Vasona Light Rail line were completed within 60 days. He thanked VTA staff and the signal contractor, Midvale Electric and Rail Systems Solutions, for their diligent work.

Mr. Burns referred to the BART Draft Supplemental Environmental Impact Report (SEIR) and reported that the four public meetings in February 2007 were well attended. Mr. Burns reported that the feedback were mostly positive. The public questions and comments will be formally addressed in the Final SEIR slated for May 2007.

Mr. Burns reported that the planning process for the Community Bus services in Morgan Hill and Gilroy is complete. The comments received from community meetings were used to further refine the service proposal. The Transit Planning and Operations (TP&O) Committee received updates and a preview of the proposed Community Bus service in February 2007. The TP&O Committee will review the item again in March 2007, in preparation for the April 2007 Board approval. The Community Bus is scheduled to begin on July 2, 2007.

**A. Receive Quarterly Progress Report on the 2000 Measure A Program**

Mr. Burns noted that the Citizens Watchdog Committee (CWC) of the 2000 Measure A Transit Improvement Program has been working with VTA staff to develop a Quarterly Progress Report that illustrates the overall financial status and progress of the projects. Mr. Burns noted that the Board of Directors were provided a copy of the first draft of the Quarterly Progress Report in their meeting packet. Mr. Burns noted that Jack Collins, Chief Construction Officer, will provide a brief overview of the report.

Mr. Collins briefly explained the three sections in the report. Section 1 - Program Financial Status, highlights that as of December 31, 2006, the Program had \$851.1 million in revenues and \$619.8 million of expenditures. Section 2 – Program Summary provides brief overview of various projects. Lastly, Section 3 – Project Summary Reports includes project descriptions and status.

**B. Receive a Report on State Legislative Issues from Smith Watts & Company**

Mr. Burns introduced Mark Watts, Partner, Smith, Watts & Company, the VTA State lobbying firm. Mr. Burns noted that Mr. Watts will provide a status update on state legislative issues. Mr. Burns advised that the federal lobbyist, Akin Gump Strauss Hauer & Feld (Akin Gump), will provide a report at the April 2007 Board of Directors' Meeting.

Mr. Watts provided a brief report highlighting the following: 1) The Traffic Congestion Relief Program (TCRP) funding allocation; 2) Dale Bonner will become the new Secretary of Transportation on March 5, 2007; 3) The two new CTC Commissioners Carl Guardino and James Earp; 4) The collaborative efforts of the transportation community to rally against Governor Schwarzenegger's

proposal to redirect \$1.1 billion that would otherwise come to transit; and 5) The four bills sponsored by VTA regarding High Occupancy Toll (HOT) Lanes legislation, Sales Tax Rate, Reimbursement process of State Transportation Improvement Plan (STIP) advancements, and Yield to Bus.

Eugene Bradley, VTA Riders Union, was pleased to know about VTA's effort to oppose Governor Schwarzenegger's proposal. He referred to "Senator Alquist's legislation SB 342" and expressed concern about the possibility of another sales tax measure. He asked why VTA hired a lobbying firm in Sacramento.

Mr. Burns responded that considering the funds secured from the TCRP and the Corridor Mobility Account Program (CMIA), VTA should have a lobbyist in Sacramento. Mr. Burns noted the cost effectiveness of contracting with a lobbying firm versus hiring a permanent VTA employee based in Sacramento. Mr. Burns noted that staff would provide the Board of Directors with a list of specific activities the lobbyist performs for VTA.

## **8. REPORT FROM THE CHAIRPERSON**

Chairperson Chu noted that the CTC approved funding on February 28, 2007 for the following VTA-nominated projects: 1) Interstate 880 HOV lanes from Route 237 to US 101 - \$72 Million; 2) US 101 Widening from I-280/I-680 Interchange to Capitol Expressway/Yerba Buena - \$30 Million; and 3) US 101 Auxiliary Lanes from Route 85 to Embarcadero - \$85 Million. Chairperson Chu noted that in most cases the CTC only funds the construction cost and assumes that sponsoring agencies will fund project development costs. The following VTA-nominated projects were not funded: US 101 Widening to 6 lanes from Route 25 to Monterey Road in South County and I-880/I-280 Interchange Improvements in San Jose. VTA assured the CTC that VTA will work to develop a funding strategy to move all projects forward.

Chairperson Chu noted that the CTC allocation of \$187 million is a significant achievement. He thanked the Board of Directors, VTA staff, and business community for their efforts. He also thanked Board Member Reed for traveling to Southern California to testify on VTA's behalf.

### **Approve Appointments to Board Committees**

Chairperson Chu noted that the Dumbarton Rail Corridor Project Policy Advisory Committee provides policy direction and oversight for the Dumbarton Rail Project. He noted the funding challenges and the regional importance of the project.

**M/S/C (Kerr/Kniss)** to approve appointments to the Dumbarton Rail Corridor Project Policy Advisory Committee including Director Breene Kerr, VTA Board of Directors; Honorable Yoriko Kishimoto, City of Palo Alto; and Honorable David Casas, City of Los Altos.

## 9. Public Presentations

Jerry Grace, Interested Citizen, noted that he is pleased to attend the Board of Directors meeting and to see new Board Members. He inquired about Agenda Items #21, #28 and #31.D. He noted that he attended the Metropolitan Transportation Commission (MTC) the previous day and highlighted what transpired at the MTC meeting.

Board Members Kerr and Kniss left their seats at 6:30 p.m.

Board Members Kerr and Kniss took their seats at 6:31 p.m.

Bruce Stevens, Interested Citizen, noted that VTA should pursue legislation for self-adjudication like Los Angeles and San Francisco. Self-adjudication allows VTA to take care of its own violation tickets and could provide an additional revenue source for VTA. Mr. Stevens noted that Fare Inspectors lost their right for self-defense equipment. He suggested that if VTA considers self-adjudication, they should also consider providing Fare Inspectors the right to carry certain self-defense equipment.

Keith Uriarte, American Federation of State, County, and Municipal Employees (AFSCME), referred to an outside legal opinion letter, which stated that AFSCME is a lawful bargaining unit. He noted that AFSCME and VTA should move forward and begin good faith bargaining.

Edna Pampy, VTA Employee and AFSCME negotiating team, stated that AFSCME is a lawful bargaining unit. She noted that AFSCME should not be split in two or three bargaining units.

John Rolland, VTA Employee and AFSCME Vice President, expressed concern that VTA is splitting AFSCME. He referred to the outside legal opinion letter and noted that AFSCME is a legal bargaining unit. He noted the Department of Industrial Relations' (DIR) decision in 1997 and the Appellate Court's unanimous decision that AFSCME is an appropriate bargaining unit. Mr. Rolland expressed concern that it has been four years since the last contract and noted that it is time to move forward and begin contract negotiations.

John Carlson, VTA Employee and AFSCME President, thanked the Board of Directors for their decision to seek outside opinion regarding the legality of AFSCME as a bargaining unit. He requested that the Board of Directors direct staff to proceed bargaining with AFSCME.

## CONSENT AGENDA

Chairperson Chu stated that members of the public requested the following items be moved from the Consent Agenda and placed on the Regular Agenda: **Agenda Item # 17.**, Authorize the General Manager to extend the 8-Hour Light Rail Excursion Fare Pilot Program through June 30, 2007. This action will provide the opportunity to include public comment in the final staff recommendations as to whether the 8-Hour Light Rail

Excursion Fare should be added to VTA's Fare Ordinance; **Agenda Item #21.**, Adopt a resolution certifying that the VTA is an eligible and responsible sponsor for the Capitol Expressway Light Rail Extension Project in the State Transportation Improvement Program and authorize the General Manager to submit applications for Regional Transportation Improvement Program (RTIP) funding for this project; and **Agenda Item #24.**, Authorize the General Manager to execute task order contracts with up to nine engineering firms for Engineering Design Consultant Services for commuter rail, light rail, and bus rapid transit projects. Each contract shall be for a period of up to three years, with an option to extend the contract for an additional two-year term. The total amount for all nine contracts shall not exceed \$30,000,000. Individual task orders in excess of \$1 million will require approval by the VTA Board of Directors.

Chairperson Chu noted that members of the Board of Directors requested the following items be moved from the Consent Agenda and placed on the Regular Agenda: **Agenda Item #22.**, Authorize the General Manager to execute an Exclusive Negotiating Agreement (ENA) with Republic Properties and Green Valley Corporation as the Selected Developer for the West San Carlos site; and **Agenda Item #23.**, Authorize the General Manager to execute up to eight On-Call General Environmental Engineering Consulting Services task order contracts with the following firms: Earth Tech, Inc.; Geocon Consultants, Inc.; Kennedy/Jenks Consultants, Inc.; Kleinfelder, Inc.; LFR, Inc.; Locus Technologies; Northgate Environmental Management, Inc.; and SECOR International, Inc. The executed contracts would span a maximum five-year period and the total of all executed contracts would not exceed \$2.5 million.

Board Member Reed requested that the following items be removed from the Consent Agenda and placed on the Regular Agenda due to the need to recuse himself per Government Code Section 84308: **Agenda Item #15.**, Authorize the General Manager to execute an agreement with Hynix Semiconductor America Inc., for renewal of the lease for the Silicon Valley Rapid Transit (SVRT) Project Office for the negotiated amount that will be presented at the Board of Directors Meeting on March 1, 2007. This negotiated amount will be for base rent plus ancillary charges over a two-year term, from April 1, 2007 through March 31, 2009; **Agenda Item #16.**, Authorize the General Manager to execute a contract with HDR Engineering, Inc., for preparation of a State Route 152 Realignment Study for a total value of \$150,000. **Agenda Item #22.**, Authorize the General Manager to execute an Exclusive Negotiating Agreement (ENA) with Republic Properties and Green Valley Corporation as the Selected Developer for the West San Carlos site. **Agenda Item #23.**, Authorize the General Manager to execute up to eight On-Call General Environmental Engineering Consulting Services task order contracts with the following firms: Earth Tech, Inc.; Geocon Consultants, Inc.; Kennedy/Jenks Consultants, Inc.; Kleinfelder, Inc.; LFR, Inc.; Locus Technologies; Northgate Environmental Management, Inc.; and SECOR International, Inc. The executed contracts would span a maximum five-year period and the total of all executed contracts would not exceed \$2.5 million; and **Agenda Item #24.**, Authorize the General Manager to execute task order contracts with up to nine engineering firms for Engineering Design Consultant Services for commuter rail, light rail, and bus rapid transit projects. Each contract shall be for a period of up to three years, with an option to extend the contract for an additional two-year term. The total amount for all nine

contracts shall not exceed \$30,000,000. Individual task orders in excess of \$1 million will require approval by the VTA Board of Directors.

**11. Minutes of the Board of Directors' Workshop Meeting of January 26, 2007**

M/S/C (Gage/Sandoval) to approve the Minutes of the Board of Directors' Workshop Meeting of January 26, 2007.

**12. Minutes of the Regular Board of Directors' Meeting of February 1, 2007**

M/S/C (Gage/Sandoval) to approve the Minutes of the Regular Board of Directors' Meeting of February 1, 2007.

<b>ADMINISTRATION AND FINANCE COMMITTEE</b>
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**13. Amendment to the Bicycle & Pedestrian Advisory Committee Bylaws and VTA Administrative Code to Add the Silicon Valley Bicycle Coalition as an Ex-Officio Member**

M/S/C (Gage/Sandoval) to adopt Resolution No. 07.03.05 to amend Section 4-30 (a) of the VTA Administrative Code to add a representative of the Silicon Valley Bicycle Coalition as an ex-officio member of the Bicycle and Pedestrian Advisory Committee (BPAC); and further, amend Section 3.1 of the Bicycle and Pedestrian Advisory Committee (BPAC) bylaws to conform to this change.

**14. Amendment to the Citizens Advisory Committee (CAC) Bylaws to provide for a Temporary Waiver of the Existing CAC Attendance Requirements**

M/S/C (Gage/Sandoval) to adopt Resolution No. 07.03.06 to amend Section 5.7 of the Citizens Advisory Committee (CAC) bylaws, as indicated, to provide for a temporary waiver of the existing CAC attendance requirements.

**15. (Removed from the Consent Agenda and placed on the Regular Agenda.)**

Authorize the General Manager to execute an agreement with Hynix Semiconductor America Inc., for renewal of the lease for the Silicon Valley Rapid Transit (SVRT) Project Office for the negotiated amount that will be presented at the Board of Directors Meeting on March 1, 2007. This negotiated amount will be for base rent plus ancillary charges over a two-year term, from April 1, 2007 through March 31, 2009.

**16. (Removed from the Consent Agenda and placed on the Regular Agenda.)**

Authorize the General Manager to execute a contract with HDR Engineering, Inc., for preparation of a State Route 152 Realignment Study for a total value of \$150,000.

**17. (Removed from the Consent Agenda and placed on the Regular Agenda.)**

Authorize the General Manager to extend the 8-Hour Light Rail Excursion Fare Pilot Program through June 30, 2007. This action will provide the opportunity to include public comment in the final staff recommendations as to whether the 8-Hour Light Rail Excursion Fare should be added to VTA's Fare Ordinance.

**18. Budget Allocation and Authorization to enter into a Cooperative Agreement for the Dumbarton Rail Corridor Project**

M/S/C (Gage/Sandoval) to authorize the General Manager to execute a cooperative agreement with the Peninsula Corridor Joint Powers Board (JPB); and approve \$250,000 to help fund a project phasing and alternatives analysis, to be completed by May 2007, and placed on reserve \$1,750,000 of future funding pending the results of the alternatives analysis and further direction from the Policy Advisory Board.

**19. Purchase of Insurance Policy Extensions for the Highway Construction Owner Controlled Insurance Program (OCIP)**

M/S/C (Gage/Sandoval) to authorize the General Manager to purchase Highway Construction OCIP policy extensions and premium variances to cover Workers Compensation, General Liability, Contractors' Pollution Liability and Builder's Risk exposures for an amount not to exceed \$542,075. Policies will be purchased from TIG Insurance Company, Zurich American Insurance Company, Landmark American Insurance, American Guarantee & Liability Insurance, and American International Specialty Lines Insurance Company. The extensions will cover the completion of the covered projects for the policy period from March 8, 2007 through August 3, 2009. With these extensions, the total premiums paid for these policies over the life of the projects will be \$10,148,040.

<b>CONGESTION MANAGEMENT PROGRAM AND PLANNING COMMITTEE</b>
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**20. Proactive CMP Reviewed and Approved Projects Quarterly Status Report October through December 2006**

M/S/C (Gage/Sandoval) to review the Proactive CMP Reviewed and Approved Projects Quarterly Status Report October through December 2006.

**21. (Removed from the Consent Agenda and placed on the Regular Agenda.)**

Adopt a Resolution certifying that the VTA is an eligible and responsible sponsor for the Capitol Expressway Light Rail Extension Project in the State Transportation Improvement Program and authorize the General Manager to submit applications for Regional Transportation Improvement Program (RTIP) funding for this project.

**22. (Removed from the Consent Agenda and placed on the Regular Agenda.)**

Authorize the General Manager to execute an Exclusive Negotiating Agreement (ENA) with Republic Properties and Green Valley Corporation as the Selected Developer for the West San Carlos site.

<b>TRANSIT PLANNING AND OPERATIONS COMMITTEE</b>
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**23. (Removed from the Consent Agenda and placed on the Regular Agenda.)**

Authorize the General Manager to execute up to eight On-Call General Environmental Engineering Consulting Services task order contracts with the following firms: Earth Tech, Inc.; Geocon Consultants, Inc.; Kennedy/Jenks Consultants, Inc.; Kleinfelder, Inc.; LFR, Inc.; Locus Technologies; Northgate Environmental Management, Inc.; and SECOR International, Inc. The executed contracts would span a maximum five-year period and the total of all executed contracts would not exceed \$2.5 million.

**24. (Removed from the Consent Agenda and placed on the Regular Agenda.)**

Authorized the General Manager to execute task order contracts with up to nine engineering firms for Engineering Design Consultant Services for commuter rail, light rail, and bus rapid transit projects. Each contract shall be for a period of up to three years, with an option to extend the contract for an additional two-year term. The total amount for all nine contracts shall not exceed \$30,000,000. Individual task orders in excess of \$1 million will require approval by the VTA Board of Directors.

## **REGULAR AGENDA**

Board Member Reed explained that he is required to recuse himself under Government Section Code 84308, which states “the law disqualifies the officer from participating in certain proceedings if the official has received campaign contributions, participant or their agents within the 12 months preceding the decision.”

Board Member Reed left his seat at 6:39 p.m.

Board Member Liccardo noted that he will recuse himself on Agenda Items # 22, #23, and #24 per Government Section Code 84308.

**15. Silicon Valley Rapid Transit Project – Project Office Lease Agreement**

**M/S/C (Sandoval/Cortese)** on a vote of 10 ayes, 0 noes, 0 abstentions, and 1 recusal to authorize the General Manager to execute an agreement with Hynix Semiconductor America Inc., for renewal of the lease for the Silicon Valley Rapid Transit (SVRT) Project Office for this negotiated amount presented at the Board of Directors Meeting on March 1, 2007: Rental of 41,250 square feet of office space for a two-year term, at the rate of \$2.05 per square foot for the first year and \$2.19 per square foot for the second year, for a total of \$2,098,800 for the two-year term. This negotiated amount will be for base rent plus ancillary charges over a two-year term, from April 1, 2007 through March 31, 2009. Board Member Reed recused.

**16. State Route 152 Realignment Study**

**M/S/C (Sandoval/Cortese)** on a vote of 10 ayes, 0 noes, 0 abstentions, and 1 recusal to authorize the General Manager to execute a contract with HDR Engineering, Inc., for preparation of a State Route 152 Realignment Study for a total value of \$150,000. Board Member Reed recused.

Board Member Reed took his seat at 6:41 p.m.

**17. Excursion Fare**

Eugene Bradley, VTA Riders Union, expressed support for extending the 8-Hour Light Rail Excursion Fare Pilot Program and noted that it should eventually be part of the VTA's fare structure. He suggested that VTA consider an 8-Hour Bus Excursion Fare as well.

Member Liccardo requested historical background of the 8-hour Light Rail Excursion Fare and inquired about the implication of extending it for more than eight hours. Michael T. Burns, General Manager, noted that the 8-hour Light Rail Extension Fare was a recommendation of the RIDE Task Force. Mr. Burns noted that this ticket is specifically designed for special events such as the San Jose Grand Prix. He noted that the intent was to address traffic at ticket machines at light rail stations and provide convenience for riders who are attending special events. He further explained that for riders who use transit more than three times, a monthly pass is more cost effective. If the excursion pass is extended beyond eight hours, it essentially reduces VTA's fare structure.

Bruce Stevens, Interested Citizen, noted that the program is good, beneficial, and convenient for transit riders. He noted that he observed mid-day usage of the Excursion Fare.

**M/S/C (Gage/Liccardo)** to authorize the General Manager to extend the 8-Hour Light Rail Excursion Fare Pilot Program through June 30, 2007. This action will provide the opportunity to include public comment in the final staff recommendations as to whether the 8-Hour Light Rail Excursion Fare should be added to VTA's Fare Ordinance.

**21. Resolution for a 2006 State Transportation Improvement Program (STIP) Augmentation for the Capitol Expressway Light Rail Extension Project**

At the request of a member of the public, Michael T. Burns, General Manager, noted that this item relates to the fund swap approved by the Board of Directors in February 2007. The process to qualify for federal funds requires Board of Directors' action to demonstrate local support. VTA will forward the resolution to MTC and include it as part of the process to acquire federal funds.

**M/S/C (Williams/Cortese)** to adopt Resolution No. 07.03.07 certifying that the VTA is an eligible and responsible sponsor for the Capitol Expressway Light Rail Extension Project in the State Transportation Improvement Program and authorize the General Manager to submit applications for Regional Transportation Improvement Program (RTIP) funding for this project.

Board Members Liccardo and Reed left their seats at 6:49 p.m.

**22. Exclusive Negotiating Agreement for Joint Development of West San Carlos Site**

Board Member Campos requested that the following terms be added on the Exclusive Negotiating Agreement (ENA) process: 1) The developer will create the project site plan and design through a community led process which shall include a design meeting with surrounding businesses and communities to identify and incorporate public ideas for the project; 2) A review meeting with surrounding businesses and communities to evaluate and provide feedback for the proposed project. 3) All meetings should occur in the evening to allow full community participation; and 4) If the Disposition and Development Agreement (DDA) is reached and presented to the Board for consideration, staff will evaluate the developer's performance on the items described above. She noted the importance of including public input and getting community buy-in earlier in the process to avoid delays in the project.

Board Member Cortese requested clarification on when a Board Member must recuse themselves per Government Section Code 84308. Suzanne Gifford, General Counsel, advised Board Members to count back 12 months prior to when the agenda was published to determine if they must recuse themselves from an item.

Board Member Cortese noted that he will recuse himself from this item per Government Section Code 84308.

Board Member Cortese left his seat at 6:52 p.m.

Michael T. Burns, General Manager, referred to Board Member Campos' statements and clarified that the action requested on this item is to approve the ENA, which initiates exclusive negotiations between VTA and the developer. If the negotiations fail, VTA will negotiate with the second bidder. He noted that staff will incorporate the directions mentioned by Board Member Campos as part of the DDA. Mr. Burns added that the DDA process will last approximately six months. After that time, the developer will move forward with the City of San Jose entitlement approvals process.

Board Member Campos modified her statements to note that her request is applicable to the DDA and not the ENA.

Ex-Officio Board Member Yeager expressed his appreciation for the comments made by Board Member Campos and referred to the August 3, 2006 Board of Directors Meeting Minutes that included a motion which stated: *“Include a community outreach component in the next phase of the project that includes discussions with Council Member Yeager, the surrounding neighborhoods throughout Council Member Yeager’s district, and City staff.”* He inquired about staff efforts to follow this direction.

Mr. Burns stated that the DDA will include a community outreach process and will commence after the execution of the ENA.

Ex-Officio Board Member Yeager reiterated the importance of gathering community input and keeping the process open to the public.

Vice Chairperson Kniss suggested that staff provide historical data to the Board of Directors in the future. She also expressed the need to involve the elected officials in the process.

**M/S/C (Williams/Gage)** on a vote of 8 ayes, 0 noes, 0 abstentions, and 3 recusals to authorize the General Manager to execute an Exclusive Negotiating Agreement (ENA) with Republic Properties and Green Valley Corporation as the Selected Developer for the West San Carlos site and further directed staff to seek additional terms for Disposition and Development Agreement (DDA) to include: 1) The developer will create the project site plan and design through a community led process which shall include a design meeting with surrounding businesses and communities to identify and incorporate public ideas for the project; 2) A review meeting with surrounding businesses and communities to evaluate and provide feedback for the proposed project; 3) All meetings should occur in the evening to allow full community participation; 4) If the DDA is reached and presented to the Board for consideration staff will evaluate the developer’s performance on the items described above. Board Members Cortese, Liccardo, and Reed recused.

## **23. On-Call General Environmental Engineering Services**

Chairperson Chu noted for the record that Members Cortese, Liccardo, and Reed are recusing themselves from Agenda Item #23 per Government Section Code 84308.

**M/S/C (Sandoval/Gage)** on a vote of 8 ayes, 0 noes, 0 abstentions, and 3 recusals to authorize the General Manager to execute up to eight On-Call General Environmental Engineering Consulting Services task order contracts with the following firms: Earth Tech, Inc.; Geocon Consultants, Inc.; Kennedy/Jenks Consultants, Inc.; Kleinfelder, Inc.; LFR, Inc.; Locus Technologies; Northgate Environmental Management, Inc.; and SECOR International, Inc. The executed contracts would span a maximum five-year period and the total of all executed contracts would not exceed \$2.5 million. Board Members Cortese, Liccardo, and Reed recused.

**24. On-Call Engineering Design Consultant Services for Transit Projects**

Chairperson Chu noted for the record that Members Cortese, Liccardo, and Reed are recusing themselves from Agenda Item #24 per Government Section Code 84308.

Eugene Bradley, VTA Riders Union, expressed concern about the lack of formal performance standards for the engineering design consultants listed in the Board memorandum. He inquired about the ramifications of late or defective designs.

Michael T. Burns, General Manager, explained that the item only sets-up the list for consultants and does not award a contract. When a specific project is ready for an award contract, the contract will contain provisions such as liability, liquidated damages, and penalties if the contractor does not meet the deadline or standards.

Jerry Grace, Interested Citizen, expressed concern about Express Bus #180 and the completion of the BART Project.

Board Member Kerr left his seat at 7:08 p.m.

Board Member Kerr took seat at 7:09 p.m.

**M/S/C (Sandoval/Gage)** on a vote of 8 ayes, 0 noes, 0 abstentions, and 3 recusals to authorize the General Manager to execute task order contracts with up to nine engineering firms for Engineering Design Consultant Services for commuter rail, light rail, and bus rapid transit projects. Each contract shall be for a period of up to three years, with an option to extend the contract for an additional two-year term. The total amount for all nine contracts shall not exceed \$30,000,000. Individual task orders in excess of \$1 million will require approval by the VTA Board of Directors. Board Members Cortese, Liccardo, and Reed recused.

Ex-Officio Board Member Yeager left his seat at 7:10 p.m.

<p style="text-align: center;"><b>ADMINISTRATION AND FINANCE COMMITTEE CHAIRPERSON'S REPORT – (See Agenda Item #29.A.)</b></p>
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Board Member Reed took his seat at 7:11 p.m.

Board Members Cortese and Liccardo and Ex-Officio Board Member Yeager took their seats at 7:12 p.m.

**25. Valley Transportation Plan – Route 152/156 Improvement Project – Construction Contract Award**

Michael T. Burns, General Manager, provided a brief background regarding the contract award for Route 152/156 Improvement Project. Upon approval of the contract award, construction is scheduled to commence by March 22, 2007 and will be completed in approximately two years.

Board Member Sellers expressed concern about RGW's "significant below the engineering bid" proposal. He requested that staff outline the management of the project that will ensure that delays are minimized or eliminated.

Board Member Gage noted confidence in RGW and added that RGW was the same construction firm that completed the U.S. 101 Widening Project six months ahead of schedule and under budget.

Mr. Burns added that VTA has an excellent record of performance in delivering projects within schedule and budget. Mr. Burns noted that staff was concerned about the "significant below the engineering bid" proposal and staff performed an exhaustive review of the bid to ensure that nothing was missed.

Board Member Gage reiterated that VTA has a good track record and thanked staff for their efforts to ensure that projects are delivered on time and within budget.

**M/S/C (Kniss/Gage)** to authorize the General Manager to execute a contract with RGW Construction, the lowest responsible bidder, in the amount of \$17,260,657 for construction of the Route 152/156 Improvement Project, a Valley Transportation Plan project. The contract award is contingent upon receiving no protests from other bidders during VTA's five-day bid protest period that will expire on March 5, 2007. This project is 57 percent federally funded.

**CONGESTION MANAGEMENT PROGRAM AND PLANNING COMMITTEE  
CHAIRPERSON'S REPORT – (See Agenda Item #29.B.)**

There were no items submitted for the Regular Agenda by the Congestion Management Program and Planning Committee.

**TRANSIT PLANNING AND OPERATIONS COMMITTEE  
CHAIRPERSON'S REPORT – (See Agenda Item #29.C.)**

There were no items submitted for the Regular Agenda by the Transit Planning and Operations Committee.

## **OTHER ITEMS**

### **26. Proposed Open Government Initiatives**

Board Member Reed referred to staff for analysis and recommendations regarding the following open government initiatives: 1) Require staff recommendations on policy matters be published and made available to the Board or committees not less than 10 days before the meeting compared to what Rules of Procedure which states 5 days; 2) Items potentially requiring recusal under Government Code Sect. 84308 be specifically identified on the agenda; 3) Adopt process integrity guidelines for Request for Proposals (RFP) to prohibit interference in the evaluation process by Members of the Board; b) require results of evaluations of all vendors and proposers be included in staff reports;

and c) make the bids and documents related to the bid be made public; and 4) Designate the Administration and Finance (A&F) Committee as the Committee to hear complaints or issues relative to responses to Public Records Act Requests and all such correspondence should be part of the agenda packet for the committee meetings.

Vice Chairperson Kniss requested clarification on Item #3. Board Member Reed noted that Item #3 will apply to those RFP's with discretionary evaluations of consultants and not RFP's that deal with "lowest responsible bid". Board Member Reed further clarified that he would like to analyze how the consultants ranked and the basis for staff recommendation.

Board Member Sandoval noted that for RFP's with discretionary evaluations, the previous practice is that staff includes a matrix that illustrates the basis for recommendations. She referred to Item #1 and requested that staff prepare an analysis of the implication of the 10-day notice requirement and noted that she wants to ensure that the Board of Directors is not "handcuffed with the dates." She referred to Item #2 and requested that staff provide the date when the one year initial action started for agenda items relating to Government Section Code 84308.

Board Member Sandoval referred to Item #3 and requested clarification on the "evaluation process." Board Member Reed replied that he is concerned about activities that happen outside of a public meeting such as when staff evaluates a proposal.

Board Member Sandoval referred to Item #3-C and requested staff to carefully review this because she is uncertain how financial information from contractors can be made public. She referred to Item #4 – Public Records Act Requests and noted that she is interested to know when, what, and who makes a Freedom of Information Act (FOIA) request to VTA.

Board Member Reed clarified that he would like the A&F Committee to hear the complaints rather than go immediately to litigation. He noted that this provides the opportunity for the Board of Directors to deal with the issue early as an attempt to avoid future litigation.

Board Member Gage expressed concern about the impact of the 10-day requirement and expressed interest in hearing staff's analysis on the implications of the recommendation. He noted that he does not want the Board of Directors to inadvertently miss time sensitive items due to the 10-day requirement.

Board Member Kerr concurred with Board Member Gage's comments and noted that VTA has a highly organized process for moving items from the Committees to the Board of Directors level. He expressed concern that the 10-day period is more than what the Board of Directors need. He noted that VTA has a good and open process and that he is satisfied with the current process.

Board Member Reed referred to Item #3-C and noted correction on the language to reflect “require RFP process and documents related to the bid be made public.” He clarified that he is interested in the RFP process and not the bidding process.

Eugene Bradley, VTA Riders Union, supported Board Member Reed’s idea of a 10-day notice requirement for the Board of Directors, Committees, and members of the public. Mr. Bradley suggested that Committee meetings take place in the evening to provide the public an opportunity to attend.

Michael T. Burns, General Manager, stated that the meaning of “policy matters” should be defined. He referred to Item #1 and inquired if it applies to items being forwarded to the Board by committees for action or at the time the item is introduced for discussion.

Board Member Reed stated that committee discussion items are significantly different than action items where the Board of Directors needs to make a decision.

Board Member Cortese suggested that Committees should determine which items are urgent if the item comes forward within the 10-day window. He stated that there should be no difficulty meeting the 10-day rule for Board meetings because virtually all staff reports for Committee are forwarded to the Board.

Upon inquiry of Vice Chairperson Kniss, Board Member Reed responded that his request does not include evening Committee meetings.

Board Member Williams expressed concern about evening meetings and stated that if an issue is not addressed at the Committee level, it could be addressed at the evening Board of Directors’ meeting. Board Member Williams suggested that staff evaluate the current process and determine if changes are necessary to enhance VTA operations.

Board Member Sellers inquired if this item requires a motion and if it should be forwarded to a sub-committee for discussion. Suzanne Gifford, General Counsel, responded that staff will review the request. The item could be put on a future agenda as a discussion item or can be discussed in a form of a Board Workshop

Ex-Officio Board Member Yeager left the meeting at 7:40 p.m.

**27. ITEMS OF CONCERN AND REFERRAL TO ADMINISTRATION**

There were no items of concern and referral to Administration.

**28. MONTHLY LEGISLATIVE HISTORY MATRIX**

**On order of Chairperson Chu**, there being no objection, the Monthly Legislative History Matrix was accepted as contained in the Agenda Packet.

**29. SUMMARY MINUTES FROM STANDING COMMITTEES**

**A. Administration and Finance Committee**

**On order of Chairperson Chu**, there being no objection, the February 15, 2007 Administration and Finance Committee Summary Minutes was accepted as contained in the Agenda Packet.

**B. Congestion Management Program and Planning**

**On order of Chairperson Chu**, there being no objection, the February 15, 2007 Congestion Management Program and Planning Summary Minutes was accepted as contained in the Agenda Packet.

**C. Transit Planning and Operations Committee**

**On order of Chairperson Chu**, there being no objection, the February 14, 2007 Transit Planning and Operations Committee Summary Minutes was accepted as contained in the Agenda Packet.

**30. REPORTS (UNAPPROVED MINUTES) FROM ADVISORY COMMITTEES**

**A. Committee for Transit Accessibility (CTA)**

**On order of Chairperson Chu**, there being no objection, the February 7, 2007 Committee for Transit Accessibility Minutes was accepted as contained in the Agenda Packet.

**B. Citizens Advisory Committee (CAC)**

**On order of Chairperson Chu**, there being no objection, the February 7, 2007 Citizens Advisory Committee Minutes was accepted as contained in the Agenda Packet.

**C. Bicycle & Pedestrian Advisory Committee (BPAC)**

**On order of Chairperson Chu**, there being no objection, the January 10, 2007 and February 7, 2007 Bicycle & Pedestrian Advisory Committee Minutes were accepted as contained in the Agenda Packet.

**D. Technical Advisory Committee (TAC)**

**On order of Chairperson Chu**, there being no objection, the February 8, 2007 Technical Advisory Committee Minutes was accepted as contained in the Agenda Packet.

**E. Policy Advisory Committee (PAC)**

**On order of Chairperson Chu**, there being no objection, the February 8, 2007 Policy Advisory Committee Minutes was accepted as contained in the Agenda Packet.

**31. REPORTS FROM JOINT POWERS BOARDS (JPBs) & REGIONAL COMMISSIONS**

Chairperson Chu advised the Board of Directors that the Reports from the Joint Powers Boards (JPBs) & Regional Commissions were placed on the dais.

**A. Peninsula Corridor JPB**

**On order of Chairperson Chu**, there being no objection, the Peninsula Corridor JPB Report was received.

**B. Capitol Corridor JPB**

There was no report from the Capitol Corridor JPB.

**C. Dumbarton Rail Corridor Policy Committee**

There was no report from the Dumbarton Rail Corridor Policy Committee.

**D. Metropolitan Transportation Commission (MTC)**

**On order of Chairperson Chu**, there being no objection, the Metropolitan Transportation Commission (MTC) Report was received.

**32. REPORTS FROM VTA POLICY ADVISORY BOARDS (PABs)**

**A. Vasona Light Rail PAB**

There was no report from the Vasona Light Rail PAB.

**B. Silicon Valley Rapid Transit Corridor PAB**

There was no report from the Silicon Valley Rapid Transit Corridor PAB.

**C. Downtown East Valley PAB**

**On order of Chairperson Chu**, there being no objection, the February 1, 2007 Downtown East Valley PAB Minutes was accepted as contained in the Agenda Packet.

**D. Highway PAB – South**

Chairperson Chu advised the Board of Directors that the Report from the Highway PAB – South was placed on the dais.

**On order of Chairperson Chu**, there being no objection, the Highway PAB – South Report was received.

**E. I-680 Sunol SMART Carpool Lane Policy Advisory Committee**

There was no report from the I-680 Sunol SMART Carpool Lane Policy Advisory Committee.

**33. ANNOUNCEMENTS**

There were no Announcements.

**3. ADJOURNED TO CLOSED SESSION at 7:41 p.m.**

**A. Existing Litigation – Conference with Legal Counsel**  
[Government Code Section 54956.9(a)]

1. Santa Clara Valley Transportation Authority v. Lin  
(Santa Clara Superior Court No.: 1-06-CV-063644) (Eminent Domain)
2. Muriel Smith vs. Santa Clara Valley Transportation Authority  
Workers' Compensation Appeals Board Case no. SJO 203795

**B. Conference with Labor Negotiators**  
[Government Code Section 54957.6]

VTA Designated Representatives:  
Roger Contreras, Chief Financial Officer  
Bill Lopez, Chief Administrative Officer  
Robert Escobar, Manager, Office of Employee Relations

Employee Organization:  
American Federation of State, County, and Municipal Employees (AFSCME)

**RECONVENED TO OPEN SESSION at 8:01 p.m.**

#### 4. CLOSED SESSION REPORT

**A.** Existing Litigation – Conference with Legal Counsel  
[Government Code Section 54956.9(a)]

1. Santa Clara Valley Transportation Authority v. Lin  
(Santa Clara Superior Court No.: 1-06-CV-063644) (Eminent Domain)

Suzanne Gifford, General Counsel, reported that the Board of Directors convened in Closed Session and approved a settlement and details of the settlement would be available for public review when agreed to by the other party.

2. Muriel Smith vs. Santa Clara Valley Transportation Authority  
Workers' Compensation Appeals Board Case no. SJO 203795

Ms. Gifford reported that the Board of Directors convened in Closed Session and approved a settlement and details of the settlement would be available for public review when agreed to by the other party.

**B.** Conference with Labor Negotiators  
[Government Code Section 54957.6]

VTA Designated Representatives:

Roger Contreras, Chief Financial Officer  
Bill Lopez, Chief Administrative Officer  
Robert Escobar, Manager, Office of Employee Relations

Employee Organization:

American Federation of State, County, and Municipal Employees (AFSCME)

There was no reportable action on this item taken during Closed Session.

#### 34. ADJOURNMENT

**On order of Vice Chairperson Chu**, there being no objection, the meeting was adjourned at 8:03 p.m.

Respectfully Submitted,

Elaine F. Baltao, Board Assistant  
VTA Board of Directors