

the City should use appropriate civil remedies to recover revenues that belong to the taxpayers of Vallejo.

**Response: The recommendation has been implemented as the City will use appropriate civil remedies to recover revenues owed to the taxpayers of Vallejo in the future.**

**Finding #2:** At the time of this report, the City was negotiating with the owners of Mugg's to repay the missing ticket revenue totaling \$185,058.60.

**Response: The City agrees with the finding.**

**Recommendation #2:** The entire sum owed to the citizens of Vallejo should be collected by the City from the owners of Mugg's in an expeditious manner.

**Response: The recommendation has not been implemented but is expected to be implemented within the next sixty (60) days. The City is currently negotiating with the owners of Mugg's to recover City revenues, as well as, exploring other legal remedies.**

**Finding #3:** Eight months elapsed before the City was notified by VCTC of the missing ticket revenue.

**Response: The City agrees with the finding.**

**Recommendation #3:** The City should ensure that revenues from the transit company are accounted for at least on a monthly basis, which would identify shortfalls in a timely manner.

**Response: The recommendation has been implemented. The City has established revenue collection review and audit procedures to ensure that revenues from VCTC are accounted for on a monthly basis. Additional staff is being hired to help monitor this and other transit-related issues as well.**

**Finding #4:** At the time of the missing funds, VCTC's agreement did not include theft insurance which would have compensated the City for the loss. The current agreement between VCTC and the City requires fidelity/theft insurance.

**Response: The City partially agrees with the finding. The VCTC agreement did contain a provision requiring a fidelity bond or theft insurance (section 12 b); however, City Transportation Division staff did not require VCTC to comply with this provision.**

**Recommendation #4:** The City Attorney should ensure that all management service agreements that involve the collection of public funds should contain provisions that protect the City from potential losses. If the terms and conditions of the existing agreement are not met, the City should begin the termination process as specified in paragraph five of the agreement.

**Response: This recommendation has always been followed by the City Attorney's office while drafting agreements that involve the collection of public funds and the appropriate provisions were included in the VCTC agreement. As noted above, City Transportation Division staff did not enforce those provisions. The City Attorney will continue to routinely**

**and thoroughly review all agreements to be presented to the City Council for approval. Upon the City's determination that material terms of its agreements are not being met, the City will initiate termination of those agreements as legally appropriate.**

**Finding #5:** VCTC entered into agreements with vendors to sell Baylink and Vallejo Transit passes and tickets. Prior to the approval of VCTC's March 8, 2005 one-year agreement extension, the vendor agreement was vague and did not include specific financial procedures and bonding for theft.

**Response: The City agrees with the finding.**

**Recommendation #5:** The City should reserve the right to review and approve all vendors and agreements prior to VCTC authorizing the sale of Baylink and Vallejo Transit passes. The vendor agreement and the agreement between the City and VCTC should include an indemnity provision holding the City harmless from any and all liabilities from losses, damages or actions that may arise from services rendered by VCTC through subcontracted services.

**Response: This recommendation has been implemented. VCTC has purchased theft insurance and the City is named as an additional insured. VCTC has redrafted its vendor agreement to include an employee dishonesty bond in the amount of \$100,000.00 and the City has reviewed and approved this agreement.**

**Finding #6:** There are major ticket vendors in the Bay Area that have established ticket systems with essential financial controls and the ability to provide required insurance and bonding.

**Response: The City agrees with the finding.**

**Recommendation #6:** VCTC and the City should explore the use of these providers to modernize ticket service and maximize the protection of ticket revenues.

**Response: This recommendation will be implemented by the end of October 2005. The City will work with VCTC to explore the use of, modernized ticket services to sell tickets and maximize the protection of ticket revenues.**

**Finding #7:** Prior to contract renewal between the City and VCTC in June 2002, the City notified VCTC of six procedural changes designed to produce measurable improvements to address performance deficiencies.

They were:

1. Reduce all accident frequencies
2. Be current on all regulatory compliances
3. Report all accidents in excess of \$1,000 to the City within 24 hours
4. Report all passenger complaints
5. Report manpower turnover ratios, overtime percentages and staff shortages on a monthly basis
6. Implement the full CalTIP Safety Program

Prior to and included in the extension of the contract dated March 8, 2005, the abovementioned performance deficiencies were again identified as well as:

1. Lack of employee performance reviews and management training
2. Monthly invoices must separately specify amounts due for operating expenses, capital expenses and the management fee.

Other requirements included:

1. Provide working capital in the amount of \$1,376,250
2. Provide Performance and Surety Bonds
3. Submit revised vendor ticket sales agreement for City approval
4. Expand express bus service

**Response: The City agrees with the finding.**

**Recommendation #7:** If terms and conditions of the existing agreement are not met, the City should begin the termination process as specified in paragraph five of the 2002 agreement.

**Response: This recommendation is an anticipatory recommendation and the City cannot respond directly as to whether it has, has not or will not implement the recommendation. The City will initiate the termination provisions of the VCTC agreement if the conditions of the existing agreement are not met.**

**Finding #8:** The City of Vallejo City Council rejected a January 7, 2005 staff recommendation to terminate the agreement with VCTC and did not consider other transit operators when awarding the June 2002 contract and its March 8, 2005 one-year extension.

**Response: The City agrees with the finding.**

**Recommendation #8:** Although public bidding for transit management services is not required by city ordinance, in light of continued deficiencies in VCTC's performance, the City Council should not enter into any further contract extensions without soliciting Requests for Proposals to operate Vallejo's transit system.

**Response: This recommendation has not been implemented, but will be implemented by January 31, 2006. City staff is preparing a Request For Proposal to operate Vallejo's public transit fixed route service, which is expected to be ready in the winter.**

**Finding #9:** Accordingly to a letter from VCTC to the City of Vallejo dated April 17, 2002, the current president of VCTC was a business partner with a City of Vallejo councilmember. The 2002, 2003, 2004, and 2005 California Fair Political Practices Commission Form 700 filed with the city clerk and State of California indicates that the councilmember shares a financial interest in real property with the current president of VCTC. During 2005, the councilmember voted against staff's recommendation to terminate the VCTC agreement and voted to extend the existing agreement with VCTC. In 2002, the same councilmember voted in a unanimous consent vote to approve the current management agreement. While the Grand Jury does not see a criminal violation, the Jury is concerned about the appearance of impropriety. Given that the

councilmember has a shared interest in real property with an officer of VCTC, this may have improperly influenced his vote on the VCTC agreement. The Grand Jury was not able to determine whether or not the councilmember received any direct financial gain from his actions as defined in California Statement of Economic Interest Code and Government Code Secs. 1090 and 1091.

**Response:** The City wholly disagrees with the finding to the extent it implies that the Vallejo councilmember acted inappropriately or did not take into account the requirements and prohibitions of the California Political Reform Act (Gov. Code Sec. 87100 et seq.). Furthermore the City wholly disagrees that Government Code section 1090 applies in the situation under review by the Grand Jury, as is explained below.

On January 7, 2005, a special meeting of the Vallejo City Council was held to consider staff's recommendation to terminate the 2002 agreement between VCTC and the City of Vallejo and enter into a new agreement with ATC/Vancom, Inc. On the afternoon of the special meeting, the councilmember in question called the City Attorney for a conflict of interest opinion concerning a parcel of real property, half of which was owned by the councilmember and half of which was owned by the president of VCTC. The real property had no connection to VCTC. After considering the issue, the City Attorney concluded that there was no economic conflict of interest under the California Political Reform Act. However, the City Attorney told the councilmember that he would check with staff of the State of California, Fair Political Practices Commission ("FPPC") to verify that his conclusion was correct. The City Attorney then placed a call to the FPPC to speak with staff about the conflict issue. The City Attorney was advised by an FPPC staff analyst that there did not appear to be an economic conflict of interest. The City Attorney then called the councilmember to convey this information. The councilmember was told that if he believed he could not be impartial in considering staff's recommendation due to his relationship with the president of VCTC involving the ownership of the real property in question, he could declare a conflict of interest based on constitutional due process principles. The councilmember was of the opinion that he could fairly and impartially vote on the matter and so advised the City Attorney.

Government Code Sections 1090 (Contracts, sales and purchases made in official capacity) and 1091 ("Remote interest" in contract) do not apply to the situation herein reviewed by the Grand Jury. Government Code Section 1090 states that city officers, among others, shall not be financially interest in any contract made by them in their official capacity or by any board or body of which they are members. The councilmember in question had no financial interest whatsoever in the contract between VCTC and the City of Vallejo. The real property in which the councilmember had a financial interest was never before the City Council and was never in any way related to the agreement with VCTC, either in 2002 or 2005. Likewise, the councilmember did not have a "remote interest" in the agreement between VCTC and the City of Vallejo based on his real property ownership interest.

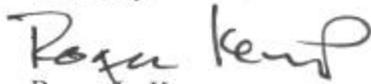
Finally, concerning the "appearance of impropriety" comment in the Grand Jury finding, keep in mind that a councilmember having no conflict of interest under the California Political Reform Act or Gov. Code Sec. 1090 is faced with Vallejo Municipal Code Sec. 2.02.680 (Abstention) which provides that each councilmember has a duty to vote on each matter before the Council.

**Recommendation #9:** The City Attorney should advise council members of the Conflict of Interest obligations and consult with the Fair Political Practices Commission when questions of impropriety arise.

**Response:** This recommendation has always been followed by and is the practice of the City Attorney's Office. Furthermore, the City Attorney followed this practice in this case. The City agrees that the City Attorney should to the extent possible advise council members about applicable conflict of interest laws such as the Political Reform Act and Government Code Section 1090 when the City Attorney is made aware of a possible conflict of interest.

Please let me know if you have any questions or require further information.

Sincerely,



Roger L. Kemp  
City Manager

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cc: Honorable Mayor and Members of the City Council  
Mark K. Akaba, Public Works Director  
Frederick G. Soley, City Attorney