

# Napa Valley Transportation Authority

625 Burnell Street  
Napa, CA 94559



## Agenda - Final

**Wednesday, September 19, 2018  
10:00 AM**

**\*\*\*\*\*SPECIAL BOARD RETREAT MEETING\*\*\*\*\***

**Tre Posti**

**641 Main Street, St. Helena, CA 94574**

**NVTA Board of Directors**

All materials relating to an agenda item for an open session of a regular meeting of the NVTA Board of Directors are posted on the NVTA website at <https://nctpa.legistar.com/Calendar.aspx> at least 72 hours prior to the meeting and will be available for public inspection, on and after at the time of such distribution, in the office of the Secretary of the NVTA Board of Directors, 625 Burnell Street, Napa, California 94559, Monday through Friday, between the hours of 8:00 a.m. and 4:30 p.m., except for NVTA Holidays. Materials distributed to the present members of the Board at the meeting will be available for public inspection at the public meeting if prepared by the members of the NVTA Board or staff and after the public meeting if prepared by some other person. Availability of materials related to agenda items for public inspection does not include materials which are exempt from public disclosure under Government Code sections 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22.

Members of the public may speak to the Board on any item at the time the Board is considering the item. Please complete a Speaker's Slip, which is located on the table near the entryway, and then present the slip to the Board Secretary. Also, members of the public are invited to address the Board on any issue not on today's agenda under Public Comment. Speakers are limited to three minutes.

This Agenda shall be made available upon request in alternate formats to persons with a disability. Persons requesting a disability-related modification or accommodation should contact Karrie Sanderlin, NVTA Board Secretary, at (707) 259-8633 during regular business hours, at least 48 hours prior to the time of the meeting.

This Agenda may also be viewed online by visiting the NVTA website <https://legistar.com/Calendar.aspx>

Note: Where times are indicated for agenda items, they are approximate and intended as estimates only, and may be shorter or longer as needed.

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Adoption of the Agenda
5. Public Comment
6. Chairperson's, Board Members' and Metropolitan Transportation Commissioner's Update
7. Director's Update

Note: Where times are indicated for the agenda item, they are approximate and intended as estimates only and may be shorter or longer as needed.

#### **8. CONSENT AGENDA ITEMS (8.1 - 8.3)**

##### **8.1 Meeting Minutes of July 18, 2018 (Karrie Sanderlin) (Pages 8-15)**

**Recommendation:** Board action will approve the meeting minutes of July 18, 2018.

**Estimated Time:** 10:15 a.m.

**Attachments:** [Draft Minutes](#)

##### **8.2 Citizens Advisory Committee (CAC) Member Appointment (Karrie Sanderlin) (Pages 16-21)**

**Recommendation:** Board action will approve the appointment of Gary Woodruff to the Citizens Advisory Committee as the City of Napa representative.

**Estimated Time:** 10:15 a.m.

**Attachments:** [Staff Report](#)

**8.3 Resolution No. 18-20 Authorizing the Executive Director to Execute Agreements with the California Department of Transportation (Caltrans) (Rebecca Schenck) (Pages 22-25)**

**Recommendation:** Board action will authorize the Executive Director, or designee, to execute agreements with Caltrans.

**Estimated Time:** 10:15 a.m.

**Attachments:** [Staff Report](#)

**9. REGULAR AGENDA ITEMS**

**9.1 First Amendment to Napa Valley Transportation Authority (NVTB) Agreement No. 18-42 with Project Finance Advisory Limited (PFAL) (Rebecca Schenck) (Pages 26-53)**

**Recommendation:** Board action will approve the First Amendment to NVTB Agreement 18-42 with PFAL for financing services for the Vine Transit Maintenance Facility Project in an amount not to exceed \$90,000.

**Estimated Time:** 10:15 a.m.

**Attachments:** [Staff Report](#)

**9.2 State Legislative Update and State Bill Matrix (Kate Miller) (Pages 54-80)**

**Recommendation:** Board will receive the State Legislative update and Bill Matrix, and take an oppose position on Proposition 6 which will be on the November 2018 ballot.

**Estimated Time:** 10:30 a.m.

**Attachments:** [Staff Report](#)

**10. RETREAT AGENDA ITEMS - ADVANCING MOBILITY IN NAPA VALLEY**

**10.1 Retreat Framework (Kate Miller)**

**Recommendation:** The Board will received an overview of the retreat purpose and framework.

**Estimated Time:** 10:45 a.m.

**10.2 Vine Vision: Transit Restructuring Overview (Rebecca Schenck)**

**Recommendation:** Information and Discussion

**Estimated Time:** 11:00 a.m.

**LUNCH BREAK 11:30 AM - 12:15 PM****10.3 Travel Demand Technologies (Diana Meehan/Victor Fani, Ride Amigos)**

**Recommendation:** Information and Discussion

**Estimated Time:** 12:30 p.m.

**10.4 Autonomous Vehicle Demonstration (Shaveta Sharma/Andrew Chatham, Transdev)**

**Recommendation:** Information and Discussion

**Estimated Time:** 1:00 p.m.

**10.5 Engaging the Community (Christina Lee)**

**Recommendation:** Information and Discussion

**Estimated Time:** 1:30 p.m.

**11. FUTURE AGENDA ITEMS****12. ADJOURNMENT**

**12.1                      Approval of Next Meeting Date of October 17, 2018 at 1:30 p.m.  
                                 and Adjournment**

**Estimated Time:**    2:00 p.m.

I hereby certify that the agenda for the above stated meeting was posted at a location freely accessible to members of the public at the NVTA Offices, 625 Burnell Street, Napa, CA and at Tre Posti, 641 Main Street, St. Helena, CA, by 5:00 p.m. on Friday, September 14, 2018.

**Karalyn E. Sanderlin (e-sign) September 12, 2018**

Karalyn E. Sanderlin, NVTA Board Secretary

## Glossary of Acronyms

<b>AB 32</b>	Global Warming Solutions Act	<b>HBRR</b>	Highway Bridge Replacement and Rehabilitation Program
<b>ABAG</b>	Association of Bay Area Governments	<b>HIP</b>	Housing Incentive Program
<b>ADA</b>	American with Disabilities Act	<b>HOT</b>	High Occupancy Toll
<b>ATAC</b>	Active Transportation Advisory Committee	<b>HOV</b>	High Occupancy Vehicle
<b>ATP</b>	Active Transportation Program	<b>HR3</b>	High Risk Rural Roads
<b>BAAQMD</b>	Bay Area Air Quality Management District	<b>HSIP</b>	Highway Safety Improvement Program
<b>BART</b>	Bay Area Rapid Transit District	<b>HTF</b>	Highway Trust Fund
<b>BATA</b>	Bay Area Toll Authority	<b>HUTA</b>	Highway Users Tax Account
<b>BRT</b>	Bus Rapid Transit	<b>IFB</b>	Invitation for Bid
<b>CAC</b>	Citizen Advisory Committee	<b>ITIP</b>	State Interregional Transportation Improvement Program
<b>CAP</b>	Climate Action Plan	<b>ITOC</b>	Independent Taxpayer Oversight Committee
<b>Caltrans</b>	California Department of Transportation	<b>IS/MND</b>	Initial Study/Mitigated Negative Declaration
<b>CEQA</b>	California Environmental Quality Act	<b>JARC</b>	Job Access and Reverse Commute
<b>CIP</b>	Capital Investment Program	<b>LIFT</b>	Low-Income Flexible Transportation
<b>CMA</b>	Congestion Management Agency	<b>LOS</b>	Level of Service
<b>CMAQ</b>	Congestion Mitigation and Air Quality Improvement Program	<b>LS&amp;R</b>	Local Streets & Roads
<b>CMP</b>	Congestion Management Program	<b>MaaS</b>	Mobility as a Service
<b>CalSTA</b>	California Transportation Agency	<b>MAP 21</b>	Moving Ahead for Progress in the 21 <sup>st</sup> Century Act
<b>CTP</b>	Countywide Transportation Plan	<b>MPO</b>	Metropolitan Planning Organization
<b>COC</b>	Communities of Concern	<b>MTC</b>	Metropolitan Transportation Commission
<b>CTC</b>	California Transportation Commission	<b>MTS</b>	Metropolitan Transportation System
<b>DAA</b>	Design Alternative Analyst	<b>ND</b>	Negative Declaration
<b>DBB</b>	Design-Bid-Build	<b>NEPA</b>	National Environmental Policy Act
<b>DBF</b>	Design-Build-Finance	<b>NOAH</b>	Natural Occurring Affordable Housing
<b>DBFOM</b>	Design-Build-Finance-Operate-Maintain	<b>NOC</b>	Notice of Completion
<b>DED</b>	Draft Environmental Document	<b>NOD</b>	Notice of Determination
<b>EIR</b>	Environmental Impact Report	<b>NOP</b>	Notice of Preparation
<b>EJ</b>	Environmental Justice	<b>NVTA</b>	Napa Valley Transportation Authority
<b>FAS</b>	Federal Aid Secondary	<b>NVTA-TA</b>	Napa Valley Transportation Authority-Tax Agency
<b>FAST</b>	Fixing America's Surface Transportation Act	<b>OBAG</b>	One Bay Area Grant
<b>FHWA</b>	Federal Highway Administration	<b>PA&amp;ED</b>	Project Approval Environmental Document
<b>FTA</b>	Federal Transit Administration	<b>P3 or PPP</b>	Public-Private Partnership
<b>FY</b>	Fiscal Year	<b>PCC</b>	Paratransit Coordination Council
<b>GHG</b>	Greenhouse Gas	<b>PCI</b>	Pavement Condition Index
<b>GGRF</b>	Greenhouse Gas Reduction Fund	<b>PCA</b>	Priority Conservation Area
<b>GTFS</b>	General Transit Feed Specification		
<b>HBP</b>	Highway Bridge Program		

## Glossary of Acronyms

<b>PDA</b>	Priority Development Areas	<b>STIP</b>	State Transportation Improvement Program
<b>PID</b>	Project Initiation Document	<b>STP</b>	Surface Transportation Program
<b>PMS</b>	Pavement Management System	<b>TAC</b>	Technical Advisory Committee
<b>Prop. 42</b>	Statewide Initiative that requires a portion of gasoline sales tax revenues be designated to transportation purposes	<b>TCM</b>	Transportation Control Measure
<b>PSE</b>	Plans, Specifications and Estimates	<b>TCRP</b>	Traffic Congestion Relief Program
<b>PSR</b>	Project Study Report	<b>TDA</b>	Transportation Development Act
<b>PTA</b>	Public Transportation Account	<b>TDM</b>	Transportation Demand Management Transportation Demand Model
<b>RACC</b>	Regional Agency Coordinating Committee	<b>TE</b>	Transportation Enhancement
<b>RFP</b>	Request for Proposal	<b>TEA</b>	Transportation Enhancement Activities
<b>RFQ</b>	Request for Qualifications	<b>TEA 21</b>	Transportation Equity Act for the 21 <sup>st</sup> Century
<b>RHNA</b>	Regional Housing Needs Allocation	<b>TFCA</b>	Transportation Fund for Clean Air
<b>RM2</b>	Regional Measure 2 (Bridge Toll)	<b>TIGER</b>	Transportation Investments Generation Economic Recovery
<b>RM3</b>	Regional Measure 3	<b>TIP</b>	Transportation Improvement Program
<b>RMRP</b>	Road Maintenance and Rehabilitation Program	<b>TLC</b>	Transportation for Livable Communities
<b>ROW</b>	Right of Way	<b>TLU</b>	Transportation and Land Use
<b>RTEP</b>	Regional Transit Expansion Program	<b>TMP</b>	Traffic Management Plan
<b>RTIP</b>	Regional Transportation Improvement Program	<b>TMS</b>	Transportation Management System
<b>RTP</b>	Regional Transportation Plan	<b>TNC</b>	Transportation Network Companies
<b>SAFE</b>	Service Authority for Freeways and Expressways	<b>TOAH</b>	Transit Oriented Affordable Housing
<b>SAFETEA-LU</b>	Safe, Accountable, Flexible, and Efficient Transportation Equity Act-A Legacy for Users	<b>TOD</b>	Transit-Oriented Development
<b>SB 375</b>	Sustainable Communities and Climate Protection Act 2008	<b>TOS</b>	Transportation Operations Systems
<b>SB 1</b>	The Road Repair and Accountability Act of 2017	<b>TPA</b>	Transit Priority Area
<b>SCS</b>	Sustainable Community Strategy	<b>TPI</b>	Transit Performance Initiative
<b>SHA</b>	State Highway Account	<b>TPP</b>	Transit Priority Project Areas
<b>SHOPP</b>	State Highway Operation and Protection Program	<b>VHD</b>	Vehicle Hours of Delay
<b>SNCI</b>	Solano Napa Commuter Information	<b>VMT</b>	Vehicle Miles Traveled
<b>SNTDM</b>	Solano Napa Travel Demand Model		
<b>SR</b>	State Route		
<b>SRTS</b>	Safe Routes to School		
<b>SOV</b>	Single-Occupant Vehicle		
<b>STA</b>	State Transit Assistance		
<b>STIC</b>	Small Transit Intensive Cities		

**Napa Valley Transportation  
Authority  
Meeting Minutes - Draft  
NVTB Board of Directors**

September 19, 2018  
NVTB Agenda Item 8.1  
Continued From: New  
**Action Requested: APPROVE**

625 Burnell Street  
Napa, CA 94559

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Wednesday, July 18, 2018

1:30 PM

NVTB Conference Room

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**1. Call to Order**

Chair White called the meeting to order at 1:40 p.m.

**2. Pledge of Allegiance**

The Pledge of Allegiance was recited at the proceeding Napa Valley Transportation Authority-Tax Agency meeting.

**3. Roll Call**

Alan Galbraith  
James Barnes  
Jill Techel  
Peter White  
Alfredo Pedroza  
Mark Joseph  
John F. Dunbar  
Doris Gentry  
Kerri Dorman  
Belia Ramos  
Beth Kahiga  
Leon Garcia  
Chris Canning

**4. Adoption of the Agenda**

[Member Ramos in attendance]

Motion MOVED by BARNES, SECONDED by JOSEPH to APPROVE adoption of the agenda. Motion carried by the following vote:

**Aye:** 21 - Galbraith, Barnes, Techel, White, Pedroza, Joseph, Dunbar, Gentry, Dorman, and Ramos

**Absent:** 3 - Garcia, and Canning

**5. Public Comment**

None



## **6. Chairperson's, Board Members', Metropolitan Transportation Commissioner's, and Association of Bay Area Governments Update**

### **MTC Commissioners Update**

Alfredo Pedroza reported on recent MTC activities.

Board Members Dunbar and Pedroza praised Caltrans and work crews for their efforts in road clean-up and traffic control during the Rock the Ride event.

## **7. Executive Director's Update**

### **Kate Miller, Executive Director**

- Introduced Christina Lee, NVTA's new Marketing & Communications Specialist.
- Introduced the 2018 MTC Summer Internship Program interns, Hibah Shafi and Hari Ambu.
- Announced NVTA's participation at the Napa Valley Grapegrowers Dia de la Familia event.
- Thanked Caltrans for their work [on SR 29] during the Rock the Ride event.
- Reported that the regular September 19th meeting has been canceled and that a Special Board Retreat meeting will be held in its place at 10:00 a.m. at Tre Posit in St. Helena, CA.

## **8. Caltrans' Update**

Kelly Hirschberg, Caltrans, provided an update on the status of various projects located in the county.

## **9. PRESENTATIONS**

### **9.1 Special Presentation by the Yes on Regional Measure 3 Campaign**

Barbara Pahr, campaign facilitator for Keep the Bay Area Moving Coalition, presented Regional Measure 3 Ballot supporters with a certificate of appreciation. Individuals receiving certificates included:

Senator Bill Dodd

Supervisor Bard Wagenknecht

Mayor Jill Techel

Patrick Band, Napa County Bicycle Coalition

Oscar Renteria, Renteria Vineyard Management

Chuck McMinn, Napa Valley Vine Trail (accepted by Philip Sales, Napa Valley Vine Trail)

Gary Rose

Supervisor Alfredo Pedroza

Senator Mike Thompson

## **10. CONSENT AGENDA ITEMS (10.1- 10.2)**

Motion MOVED by PEDROZA, SECONDED by JOSEPH to APPROVE Consent Items 10.1-10.2.

Motion carried by the following vote:

**Aye:** 21 - Galbraith, Barnes, Techel, White, Pedroza, Joseph, Dunbar, Gentry, Dorman, and Ramos

**Absent:** 3 - Garcia, and Canning

**10.1 Meeting Minutes of June 20, 2018 (Karrie Sanderlin) (Pages 9-14)**

Attachments: [Draft Minutes](#)

Board action approved the meeting minutes of June 20, 2018.

**10.2 Resolution No. 18-17 Authorizing the Filing with the Metropolitan Transportation Commission (MTC) for Allocation for Transportation Development Act, Regional Measure 2, and State Transit Assistance (STA) Funds for Fiscal Year 2018-19 (Justin Paniagua) (Pages 15-19)**

Attachments: [Staff Report](#)

Board action approved Resolution No. 18-17 authorizing the filing of a claim with MTC for allocation for TDA, RM2, and STA funds for FY 2018-19.

**11. REGULAR AGENDA ITEMS****11.1 Election of Chair and Vice Chair for Fiscal Year (FY) 2018-19 (Karrie Sanderlin) (Pages 20-21)**

Attachments: [Staff Report](#)

The 2018 nominating committee comprised of Board members White, Garcia and Dunbar nominated Chris Canning for Chair, and Alfredo Pedroza for Vice Chair for FY 2018-19.

Motion MOVED by TECHEL, SECONDED by GALBRAITH to APPROVE electing Chris Canning as NVTA Chair and Alfredo Pedroza as NVTA Vice Chair for FY 2018-19. Motion carried by the following vote:

**Aye:** 21 - Galbraith, Barnes, Techel, White, Pedroza, Joseph, Dunbar, Gentry, Dorman, and Ramos

**Absent:** 3 - Garcia, and Canning

**11.2 (1) Resolution No. 18-18 Approving the Fiscal Year (FY) 2018-19 Salary Ranges for Napa Valley Transportation Authority (NVTA) Job Classifications and (2) Approving the Reclassification of the Accounting Technician Position to a Full-Time Position and Related Salary Range (Karrie Sanderlin) (Pages 22-33)**

Attachments: [Staff Report](#)

Board action approved the FY 2018-19 Salary Ranges for NVTA Job Classifications based on the Bay Area CPI ending December 2017 of 2.9%. Further, the Board approved the reclassification of the Accounting Technician position from a part-time position to a full time position and approved the salary range at \$57,470 - \$69,534 annually.

Motion MOVED by RAMOS, SECONDED by JOSEPH to APPROVE (1) approve Resolution No. 18-18 approving the FY 2018-19 Salary Ranges for NVTA Job Classifications based upon the Bay Area Consumer Price Index (CPI) ending December 2017 of 2.9%, and (2) approve the reclassification of the Accounting Technician position from a part-time position to a full time position and approve the salary range at \$57,470 - \$69,534 annually. Motion carried by the following vote:

**Aye:** 21 - Galbraith, Barnes, Techel, White, Pedroza, Joseph, Dunbar, Gentry, Dorman, and Ramos

**Absent:** 3 - Garcia, and Canning

**11.3 Options to Improve Napa Valley Transportation Authority's (NVTA) Standard & Poor and Moody's Investment Rating (Kate Miller) (Pages 34-59)**

Attachments: [Staff Report](#)

Information Only / No Action Taken

Staff reviewed options to improve the agencies Standard & Poor and Moody's investment grade ratings.

Member Joseph suggested that the agency look in to purchasing Bond insurance.

Member Dorman suggested that the agency hire a financial advisor.

**11.4 Resolution No. 18-19 Authorizing the Executive Director to Execute the Cooperative Agreement 04-2694 between the State of California Department of Transportation (Caltrans) and the Napa Valley Transportation Authority (NVTA) for the Project Initiation Document (PID) Phase of the Napa Valley Vine Trail Calistoga to St. Helena Project (Rebecca Schenck) (Pages 60-79)**

Attachments: [Staff Report](#)

Board action approved the cooperative agreement with Caltrans for the PID phase of the Napa Valley Vine Trail Calistoga to St. Helena Project.

Public Comment was provided by:  
Phillip Sales, Napa Valley Vine Trail Coalition

Motion MOVED by JOSEPH, SECONDED by WHITE to APPROVE adopting Resolution No. 18-109 approving the Cooperative Agreement 04-2694 with Caltrans and authorized the Executive Director, or designee, to sign the Cooperative Agreement and amendments for the Project Initiation Document (PID) phase of the Napa Valley Vine Trail (Vine Trail) Calistoga to St. Helena Project. Motion carried by the following vote:

**Aye:** 21 - Galbraith, Barnes, Techel, White, Pedroza, Joseph, Dunbar, Gentry, Dorman, and Ramos

**Absent:** 3 - Garcia, and Canning

**11.5 Authorizing the Executive Director to Execute (1) Project Work Order No. E-01 with DKS, and (2) Project Work Orders Nos. E-02 through E-07 with T. Y. Lin International (TyLin) for On-Call A/E and Project Delivery Services (Rebecca Schenck) (Pages 80-130)**

Attachments: [Staff Report](#)

NVTA is entering into the project delivery phase of a number of large projects and staffing at the agency is insufficient to manage the day to day time demand. Staff requested that the Board approve agreements with two consulting firms, DKS and TyLin, for Program/Project Management services to assist the Agency in delivering key capital projects on and off the State Highway system. Hiring consulting firms offers a level of expertise in a number of disciplines that NVTA does not currently have on staff nor has the long term resources to hire permanently, including engineering in most transportation disciplines including intelligent transportation systems, highway interchanges, transit facilities, traffic engineering, and other modes and disciplines.

NVTA staff selected the firms to provide Project Delivery Management services for the following projects:

DKS

- Soscol Junction – Plans, Specifications and Estimates

TyLin

- Vine Trail Calistoga to St. Helena
- Imola Park and Ride Improvements
- Carneros Intersection Improvements
- Vine Transit Maintenance Facility

Motion MOVED by JOSEPH, SECONDED by TECHEL to APPROVE authorizing the Executive Director to execute (1) Project Work Order No. E-01 with DKS and (2) Project Work Order Nos. E-02 through E-07 with T.Y. Lin International for On-Call A/E and Project Delivery Services for a combined cost not-to-exceed \$500,000 for a two year period Fiscal Year (FY) 2018-19 and 2019-20.

Motion carried by the following vote:

**Aye:** 21 - Galbraith, Barnes, Techel, White, Pedroza, Joseph, Dunbar, Gentry, Dorman, and Ramos

**Absent:** 3 - Garcia, and Canning

**11.6 Second Amendment to Agreement No. 16-11 between the Napa Valley Transportation Authority (NVTA) and the City of Napa (Rebecca Schenck) (Pages 131-162)**

Attachments: [Staff Report](#)

Board action approved the amendment to the agreement with the City of Napa for specialized consultant engineering services to have GHD/OmniMeans conduct additional traffic analysis, forecasts, and preliminary design for the Soscol Junction Project Alternatives.

Motion MOVED by TECHEL, SECONDED by WHITE to APPROVE authorizing the Executive Director to execute the Second Amendment to Agreement No. 16-11 between NVTA and the City of Napa for specialized consultant engineering services to have GHD/OmniMeans conduct traffic analysis and forecasts, and preliminary design for the Soscol Junction Project Alternative(s) in an amount not to exceed \$202,270. Motion carried by the following vote:

**Aye:** 21 - Galbraith, Barnes, Techel, White, Pedroza, Joseph, Dunbar, Gentry, Dorman, and Ramos

**Absent:** 3 - Garcia, and Canning

**11.7 Designation of Napa Metropolitan Transportation Commission (MTC) Commissioner to Represent NVTA on the California Association of Council of Governments (CalCOG) Board of Directors (Kate Miller) (Pages 163-164)**

Attachments: [Staff Report](#)

The Board designated the Napa MTC Commissioner to represent the NVTA on the CalCOG Board of Directors.

Motion MOVED by WHITE, SECONDED by DUNBAR to APPROVE designating the Napa Metropolitan Transportation Commission (MTC) Commissioner to represent NVTA on the California Association of Council of Governments (CalCOG) Board. Motion carried by the following vote:

**Aye:** 21 - Galbraith, Barnes, Techel, White, Pedroza, Joseph, Dunbar, Gentry, Dorman, and Ramos

**Absent:** 3 - Garcia, and Canning

**11.8 State Legislative Update and Bill Matrix (Kate Miller) (Pages 165-177)**

Attachments: [Staff Report](#)

Information Only / No Action Taken

The Board received the monthly State Legislative update and Bill Matrix.

**12. FUTURE AGENDA ITEMS**

Chair Pedroza suggested a Transportation Summit be held in the near future. Kate Miller, NVTA Executive Director stated that a summit is being planned for early in 2019.

**13. ADJOURNMENT****13.1 Approval of Special Board Retreat Meeting Date of September 18, 2018 at 10:00 a.m. (location to be determined ) and Adjournment**

The agenda listed the Board Retreat date incorrectly as September 18, 2018. The Board Secretary stated that the correct date for the Special Board Retreat Meeting is Wednesday, September 19, 2018 at 10:00 am and will be held at Tre Posti in St. Helena [641 Main Street, St. Helena CA 94574].

Vice Chair Pedroza adjourned the meeting at 3:00 p.m.

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Karalyn E. Sanderlin, NVTA Board Secretary



## **NAPA VALLEY TRANSPORTATION AUTHORITY Board Agenda Letter**

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**TO:** NVTA Board of Directors  
**FROM:** Kate Miller, Executive Director  
**REPORT BY:** Karrie Sanderlin, Program Manager-Administration and Human Resources  
(707) 259-8633 / Email: [ksanderlin@nvta.ca.gov](mailto:ksanderlin@nvta.ca.gov)  
**SUBJECT:** Citizen Advisory Committee (CAC) Member Appointment

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### **RECOMMENDATION**

That the Napa Valley Transportation Authority (NVTA) Board approve the appointment of new member Gary Woodruff as the City of Napa representative to the Citizen Advisory Committee (CAC).

### **COMMITTEE RECOMMENDATION**

None

### **EXECUTIVE SUMMARY**

On December 15, 2015 the NVTA Board approved the formation of the Citizen Advisory Committee (CAC). The committee currently has 12 members with on-going recruitment for vacancies. With the appointment of Gary Woodruff as the City of Napa representative, the CAC will have 13 members.

The following CAC vacancies still exist:

- City of St. Helena representative
- City of Calistoga representative
- Chamber of Commerce representative
- Agricultural representative
- Member at-large
- Active Transportation representative



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**PROCEDURAL REQUIREMENTS**

1. Staff Report
2. Public Comments
3. Motion, Second, Discussion and Vote

**FISCAL IMPACT**

Is there a Fiscal Impact?      No

**CEQA REQUIREMENTS**

**ENVIRONMENTAL DETERMINATION:** The proposed action is not a project as defined by 14 California Code of Regulations 15378 (California Environmental Quality Act (CEQA) Guidelines) and therefore CEQA is not applicable.

**BACKGROUND AND DISCUSSION**

The CAC was formed by NVTA to replace a number of ad hoc committees that had been convened to advise the NVTA Board and NVTA staff on various projects. A permanent committee was desired to ensure representation from all aspects of the communities in Napa Valley to build expertise among CAC members that was lost under previous committees that had been formed for specific purposes and then disbanded when a project ended.

The NVTA Board has ordained that the committee structure and representation strive to represent a diverse cross-section of the community including members of underrepresented groups in Napa Valley.

City/Town/County members will be appointed by their respective Councils or Board of Supervisors whichever is applicable before being approved by the NVTA Board. If representation of a certain faction or jurisdiction cannot be filled after solicitation for that position the vacancy may be filled with a member at-large.

Ideally, members will serve two years. Terms are staggered to ensure continuity.

**SUPPORTING DOCUMENTS**

Attachment: (1) Gary Woodruff Application and City of Napa Appointment Letter

City of Napa Boards & Commissions

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## Profile

Gary

First Name

L

Middle Initial

Woodruff

Last Name

Email Address

Street Address

Suite or Apt

Napa

City

CA

State

94558

Postal Code

Mailing Address (if different than Resident Address above)

Mobile: (707)

Primary Phone

Business:

Alternate Phone

30

Length of Residence in the City of Napa:

65

Length of Residence in the County of Napa:

Registered to vote in the City of Napa?

☒ Yes ☐ No

Sutter Health

Employer

Infrastructure Architect

Job Title

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## Interests & Experiences

Which Boards would you like to apply for?

Citizen Advisory Committee (CAC) Napa Valley Transportation Authority : Submitted

Upload a Resume

### Community Service Experience:

I was on the committee for Two Years. I have extensive experience in sauté planning for mobile MRI and CT scanning. Hospital planning for many hospitals in the werstern states.

### Education:

BA in Hospital Administration, AS in Radiology Technology.

### Other relevant experience or expertise:

Have worked as primary coordinator for the Vintage High Band Review for bus parking system overview

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## Additional Questions

What is your understanding of the role and responsibility of this board?

Long term vision of how we should integrate multiple types of infrastructure for transportation needs of the city and valley

Yes , 6 times

Have you ever attended a meeting of this board? If so, how many?

What duties of this board are most interesting to you?

All aspects

What activities of this board are least interesting to you?

What programs or projects would you like to see improved or implemented?

Secondary levels of transportation, bus, bike, communizing issues

How would you approach improving these project(s) or program(s)?

Possible business incentives

Are you involved in any organizations or activities that may result in a conflict of interest if you are appointed to this board?

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No

Please list two local references and their phone numbers:

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Kelli Abernathy city of napa, Ed Moore City of Napa.

How did you learn of this vacancy?

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☒ Internet



CITY CLERK

RECEIVED

JUL 27 P 2:34

July 24, 2018

Danielle Schmitz  
Director, Programs, Projects and Planning  
Napa Valley Transportation Authority  
625 Burnell Street  
Napa, CA 94558

Dear Mrs. Schmitz:

At their meeting on July 17, 2018, City Council recommended the appointment of Gary Woodruff as the City of Napa Representative to the Napa Valley Transportation Authority (NVTa) Citizen Advisory Committee (CAC) for a term of two years to begin the date appointed by the NVTa Board of Directors. Once available, please email [clerk@cityofnapa.org](mailto:clerk@cityofnapa.org) with Gary Woodruff's date of appointment. Thank you.

Sincerely,

Paulette Cooper  
Office Assistant II

CC: Gary Woodruff  
Encl: copy of Gary Woodruff's Application



## **NAPA VALLEY TRANSPORTATION AUTHORITY Board Agenda Letter**

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**TO:** NVRTA Board of Directors  
**FROM:** Kate Miller, Executive Director  
**REPORT BY:** Rebecca Schenck, Transportation Program Planner  
(707) 259-8636 / Email: [rschenck@nvta.ca.gov](mailto:rschenck@nvta.ca.gov)  
**SUBJECT:** Resolution No. 18-20 Authorizing the Executive Director to Execute Agreements with the California Department of Transportation (Caltrans)

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### **RECOMMENDATION**

That the Napa Valley Transportation Authority (NVRTA) Board adopt Resolution No. 18-20 (Attachment 1) authorizing the Executive Director, or designee, to execute all Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements, Fund Transfer Agreements and any amendments thereto with the California Department of Transportation (Caltrans).

### **COMMITTEE RECOMMENDATION**

None

### **EXECUTIVE SUMMARY**

The Napa Valley Transportation Authority (NVRTA) is eligible to receive Federal and/or State funding for certain transportation projects, through the California Department of Transportation. Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements and/or Fund Transfer Agreements need to be executed with the California Department of Transportation before such funds can be claimed.

### **PROCEDURAL REQUIREMENTS**

1. Staff Report
2. Public Comments
3. Motion, Second, Discussion and Vote

**FISCAL IMPACT**

Is there a Fiscal Impact? None

Future Fiscal Impact? None

Consequences if not approved? NVRTA, nor its member agencies, will be able to access State and Federal highway funds.

**CEQA REQUIREMENTS**

**ENVIRONMENTAL DETERMINATION:** The proposed action is not a project as defined by 14 California Code of Regulations 15378 (California Environmental Quality Act (CEQA) Guidelines) and therefore CEQA is not applicable.

**BACKGROUND AND DISCUSSION**

In June of 2006, the Napa County Transportation Planning Agency (NCTPA) Board adopted Resolution No. 06-15 authorizing the Executive Director to sign all Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements, Fund Transfer Agreements and any amendments thereto with the California Department of Transportation. The California Department of Transportation (Caltrans) has requested that the NVRTA Board adopt a new resolution to reflect the agency's name change. Resolution No. 18-20 is an updated resolution reflecting the agency's name change.

With the adoption of Resolution No. 18-20, NVRTA will be able to execute all of the necessary Caltrans Agreements and Amendments using its new Division of Local Assistance Locode 6510.

**SUPPORTING DOCUMENTS**

Attachments: (1) Resolution No. 18-20  
(2) Resolution No. 06-15

**RESOLUTION No. 18-20**

**A RESOLUTION OF THE  
NAPA VALLEY TRANSPORTATION AUTHORITY (NVRTA)  
AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AGREEMENTS WITH  
THE CALIFORNIA DEPARTMENT OF TRANSPORTATION**

**WHEREAS**, the Napa Valley Transportation Authority (NVRTA) is eligible to receive Federal and/or State funding for certain transportation projects, through the California Department of Transportation; and

**WHEREAS**, Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements and/or Fund Transfer Agreements need to be executed with the California Department of Transportation before such funds could be claimed; and

**WHEREAS**, the Napa Valley Transportation Authority wishes to delegate authorization to execute these agreements and any amendments thereto to the Executive Director or designee: and

**NOW THEREFORE BE IT RESOLVED**, that the NVRTA Board hereby authorizes the Executive Director or designee to execute all Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements, Fund Transfer Agreements and any amendments thereto with the California Department of Transportation.

Passed and Adopted the 19<sup>th</sup> day of September 2018.

\_\_\_\_\_  
Chris Canning, NVRTA Chair

Ayes:

Nays:

Absent:

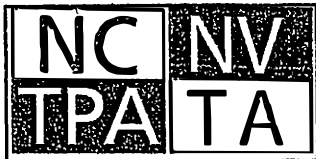
ATTEST:

\_\_\_\_\_  
Karalyn E. Sanderlin, NVRTA Board Secretary

APPROVED:

\_\_\_\_\_  
DeeAnne Gillick, NVRTA Legal Counsel





707 Randolph Street, Suite 100 • Napa, CA 94559-2912  
Tel: (707) 259-8631  
Fax: (707) 259-8638

**RESOLUTION No. 06-15**

**A RESOLUTION OF THE  
NAPA COUNTY TRANSPORTATION PLANNING AGENCY (NCTPA)  
AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN AGREEMENTS WITH THE  
CALIFORNIA DEPARTMENT OF TRANSPORTATION**

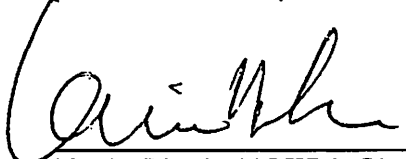
**WHEREAS**, the Napa County Transportation Planning Agency is eligible to receive Federal and/or State funding for certain transportation projects, through the California Department of Transportation and

**WHEREAS**, Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements and/or Fund Transfer Agreements need to be executed with the California Department of Transportation before such funds could be claimed and

**WHEREAS**, the Napa County Transportation Planning Agency wishes to delegate authorization to execute these agreements and any amendments thereto to the Executive Director or the Acting Executive Director and

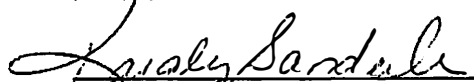
**NOW THEREFORE BE IT RESOLVED** that the Executive Director or Acting Executive Director be authorized to execute all Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements, Fund Transfer Agreements and any amendments thereto with the California Department of Transportation.

Passed and adopted this 20<sup>th</sup> day of September, 2006.

  
Kevin Block, NCTPA Chair

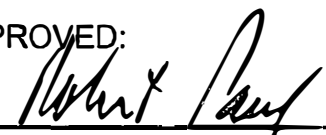
Ayes: **BLOCK, KRIDER, WAGENKNECHT,  
DODD, DUNSFORD, GARCIA, ROSA  
POTTER**

ATTEST:

  
Karalyn E. Sanderlin, NCTPA Board Secretary

Noes: **NONE**

APPROVED:

  
Robert Paul, NCTPA Legal Counsel

Absent: **NONE**



September 19, 2018  
NVTA Agenda Item 9.1

Continued From: New  
**Action Requested: APPROVE**

## **NAPA VALLEY TRANSPORTATION AUTHORITY Board Agenda Letter**

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**TO:** NVTA Board of Directors  
**FROM:** Kate Miller, Executive Director  
**REPORT BY:** Rebecca Schenck, Transportation Program Planner / Policy Analyst  
(707) 259-8636 / Email: [rschenck@nvta.ca.gov](mailto:rschenck@nvta.ca.gov)  
**SUBJECT:** First Amendment to Napa Valley Transportation Authority (NVTA)  
Agreement No. 18-42 with Project Finance Advisory Limited (PFAL)

---

### **RECOMMENDATION**

That the Napa Valley Transportation Authority approve the First Amendment (Attachment 1) to NVTA Agreement 18-42 for an expanded scope of work in an amount not to exceed \$90,000 and authorize the Executive Director to execute contract documents for the completion of the work.

### **COMMITTEE RECOMMENDATION**

None

### **EXECUTIVE SUMMARY**

The First Amendment to Agreement 18-42 expands the scope of work awarded to NVTA's Vine Transit Maintenance Facility financial advisor, Project Finance Advisory Limited (PFAL), to include completion of a Transportation Infrastructure Finance and Innovation Act (TIFIA) Credit Program and all associated negotiations with Build America Bureau (Bureau), the division of the U.S. Department of Transportation (U.S. DOT) that oversees the TIFIA program.

TIFIA is a federal low cost loan program that traditionally serves large-scale transportation infrastructure projects, but has set-aside revenues for rural infrastructure projects as small as \$10 million. PFAL will navigate the complex application process and develop a Letter of Interest (LOI) for the Bureau's consideration.

**PROCEDURAL REQUIREMENTS**

1. Staff Report
2. Public Comments
3. Motion, Second, Discussion and Vote

**FISCAL IMPACT**

Is there a Fiscal Impact? Yes, in the amount of up to \$90,000

Is it currently budgeted? No, an additional \$90,000 in TDA funds must be added to the budget

Where is it budgeted? Professional Services

Future fiscal impact? No.

Consequences if not approved? NVRTA will not be able to apply for a TIFIA loan and achieve substantial cost savings.

**CEQA REQUIREMENTS**

**ENVIRONMENTAL DETERMINATION:** The proposed action is not a project as defined by 14 California Code of Regulations 15378 (California Environmental Quality Act (CEQA) Guidelines) and therefore CEQA is not applicable.

**BACKGROUND AND DISCUSSION**

NVRTA entered into an agreement with PFAL on July 24, 2018 to provide financial advisory service for the Vine Transit Maintenance Facility Project. Under this scope of work, PFAL examined NVRTA's financial capacity and identified alternative funding solutions with an objective of reducing NVRTA's debt payment associated with the project to no more than \$750,000 annually. One of the most promising solutions identified by PFAL to date is the TIFIA Credit Program which has traditionally been reserved for large transit projects. The Fixing America's Surface Transportation (FAST) Act, passed in December 2015, expanded the projects eligible for the TIFIA Credit Program to include rural infrastructure projects and drastically reduced the minimum size of eligible projects in rural areas to \$10 million.

Preliminary work by PFAL indicates that NVRTA would be eligible for the TIFIA Credit Program. As part of the expanded scope of work, PFAL would engage with the Bureau Staff and prepare a Letter of Interest and Application (Attachment 2) for NVRTA to submit. The third and final task in the scope (Included in Attachment 1) would also allow PFAL, if requested by the U.S. DOT, to provide an in-depth creditworthiness review, a feasibility study, and obtain a TIFIA specific ratings opinion letter, in the case that S&P and Moody's

ratings obtained to date are not sufficient. If the U.S. DOT does not request Task 3, PFAL will not complete this task and the cost of Amendment #1 to the PFAL agreement will be reduced to \$30,000.

The TIFIA program has the most favorable loan terms, which includes a 30-year term at a very low interest rate that is indexed to the yield on U.S Treasury securities, options for interest only payments for the early years of the loan and potential fee waivers for rural projects. Take the following simplified example of a \$10 Million loan from the California Infrastructure Bank (I-Bank) versus a TIFIA Loan with the assumptions outlined in the table below

Table 1: Financial Analysis Comparison

Item	State Infrastructure Bank	TIFIA	Difference
Loan Amount	\$10,000,000	\$10,000,000	-
Annual Interest Rate	4.39%	1.50%	2.89%
Loan Period	30 yrs.	30 yrs.	
Transaction Fees	Yes	Yes	
Annual Servicing Fee	No	Yes	
Annual Payments	\$600,204	\$414,144	\$186,060
Total Interest	\$8,006,134	\$2,424,328	\$5,581,806
Total Savings over 30 Years			\$5,581,806
PFAL additional costs			(\$90,000)
<b>Total Benefit</b>			<b>\$5,491,806</b>

NVTA could save up \$5.6 Million in interest over a 30 year period and \$5.5 million overall including the PFAL Scope in Amendment #1 of up to \$90,000. The TIFIA program has a limit based on a percentage of the total project cost, however, the total project cost could include fleet acquisition and other capital expenses associated with the Vine system. Also, TIFIA can be subordinate to other loans such as the California Infrastructure Bank loan program.

### **SUPPORTING DOCUMENTS**

Attachment: (1) Draft First Amendment to NVTA Agreement No. 18-42  
(2) TIFIA Credit Program Letter of Interest Form and Application

**FIRST AMENDMENT TO  
NAPA VALLEY TRANSPORTATION AUTHORITY ("NVRTA")  
AGREEMENT NO. 18-42**

**THIS FIRST AMENDMENT TO NAPA VALLEY TRANSPORTATION AUTHORITY ("NVRTA") AGREEMENT NO. 18-42** herein after referred to as "Agreement" is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2018 between the NAPA VALLEY TRANSPORTATION AUTHORITY (hereinafter referred to as "NVRTA"), and PROJECT FINANCE ADVISORY LIMITED (aka PFAL), whose mailing address is 16A Funston Avenue, The Presidio, San Francisco, CA 94129, hereinafter referred to as "CONTRACTOR";

**RECITALS**

**WHEREAS**, in July 2018 NVRTA contracted for specialized services to receive financial advisory services for the Vine Transit Maintenance Facility Project; and

**WHEREAS**, NVRTA wishes to obtain additional services to assist in the application of and filing for Federal credit assistance available under the Transportation Infrastructure Finance and Innovation Act (TIFIA); and

**WHEREAS**, CONTRACTOR can provide the requested services at a cost to NVRTA in the amount not to exceed \$90,000.

**TERMS**

**NOW, THEREFORE**, the NVRTA and CONTRACTOR agree to amend the Agreement as follows:

1. Section 3, Compensation of the Agreement and the rates set forth in EXHIBIT B are amended to include:
  - a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, NVRTA shall pay CONTRACTOR annually at the rates set forth in EXHIBIT B, attached hereto and incorporated by reference herein.
  - (b) Expenses. Unless explicitly agreed in writing, no direct expenses, including travel or other expenses, will be reimbursed by NVRTA.
  - (c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of **\$139,999** for professional services and expenses; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered.

# DRAFT

2. Except as set forth above, the terms and conditions of the Agreement shall remain in full force and effect as previously approved.

**IN WITNESS WHEREOF**, this Agreement was executed by the parties hereto as of the date first above written.

"NVTA"

"CONTRACTOR"

Project Financial Advisory Limited

By \_\_\_\_\_  
KATE MILLER  
Executive Director

By \_\_\_\_\_  
VICTORIA TAYLOR  
President & CEO

ATTEST:

By \_\_\_\_\_  
KARALYN E. SANDERLIN  
NVTA Board Secretary

APPROVED AS TO FORM:

By \_\_\_\_\_  
DEEANNE GILLICK  
NVTA General Counsel

# DRAFT

## EXHIBIT A

### SCOPE OF WORK

#### APPLICATION FILING SERVICES FOR TIFIA

##### TASK DESCRIPTION

##### 1. Engage with Build America Bureau Outreach Staff to Prior to Submitting TIFIA Application

PFAL will engage with the Build America Bureau's ("the Bureau") Outreach team before formally submitting a Letter of Interest document to ensure that the relevant programmatic requirements are met, initial risk assessments are complete, the project's merits are well understood and acceptable to the Bureau, and there is a reasonable degree of confidence that TIFIA eligibility requirements are satisfied. This will ensure that all key project elements are in place to gain the maximum benefit for NVTa and ensure an efficient application and underwriting process. This will involve PFAL & IDS:

- Working with NVTa staff to collate project information to present in a succinct way;
- Preparing for and holding conference calls to discuss information with the Bureau staff, as needed;
- Addressing Bureau staff questions with supporting information;

Timeline: 3 weeks

##### 2. Submit Letter of Interest

PFAL will prepare a Draft Letter of Interest for NVTa to review and submit to the Bureau, and we will make any necessary revisions based on Bureau feedback prior to a Final version being submitted by NVTa. With the information developed in item 1 above, PFAL will prepare all information required in the TIFIA Letter of Interest template such as; (i) description of the project and the location, purpose, and cost of the project, (ii) outline the proposed financial plan, including the requested credit assistance and the proposed obligor, (iii) provide a status of environmental review, (iv) provide information regarding satisfaction the eligibility requirements of the TIFIA credit program, (v) develop a preliminary financial model to produce key metrics required in the letter of interest, and (v) determine eligibility to use the TIFIA streamlined application process and fee assistance. During this time will maintain regular communication with Bureau staff to keep them involved and included in our process and to get advance notification of any concerns or issues.

To complete the draft application, PFAL will need to explore the other forms of financing (e.g. California I-Bank and Tax Exempt debt options) that could be used alongside TIFIA credit assistance to ensure the financial plan is complete in order to deliver the project. Also, PFAL will ensure that there are no aspects of the other financing sources that would impact the eligibility of TIFIA debt or other preferred financing alternatives.

Timeline: 3 weeks (in parallel with item 1 above)

TASK	DESCRIPTION
------	-------------

3.	<b>If Requested, Provide Additional Information and Preliminary Rating Opinion Letter*</b>
----	--

PFAL will work with NVTB and the Bureau to assist with their in-depth creditworthiness review of the project and the proposed revenue stream identified to repay the TIFIA credit product, as well as any other collateral proposed to secure the credit instrument.

In connection with this review, PFAL will provide a feasibility study (as applicable) with a fully functional Microsoft Excel-based financial model to demonstrate the viability of the project and financial plan as required by the TIFIA program. In addition, PFAL will work with one rating agency to obtain a preliminary rating opinion letter that incorporates the proposed project and plan of finance.

Please note that securing rating agency opinions will bear fees that are separate from our fee indication below. PFAL will assist in negotiating favorable rates with rating agencies.

Timeline: 8 weeks (following item 2 above)

***\* The services to be provided under this Task are optional and will only be implemented if deemed necessary to meet U.S. Department of Transportation (DOT) requirements, Contractor shall not construe this Task as a guaranteed assignment and compensation thereof, however the cost associated with this Task is to be considered in the cost proposal.***



# DRAFT

## EXHIBIT B

### TIFIA APPLICATION COST SHEET

Task	Scope of Work	Timeline	Fee
1.	Engage with Bureau Staff to Determine Relevant Requirements for Draft TIFIA Application	3 weeks	\$10,000
2.	Submit Letter of Interest/Draft Application	3 weeks (in parallel with item 1 above)	\$20,000
3.	Provide Additional Information and Preliminary Rating Opinion Letter	8 weeks (following item 2 above)	\$60,000*
Total – NOT TO EXCEED			<b>\$90,000</b>

**Note:**

\* Contractor shall not construe this Task as a guaranteed assignment and compensation thereof, however the cost associated with this Task is to be considered in the cost proposal. See Task 3 in EXHIBIT A.

TIFIA Credit Program ***Fiscal Year 2016 Letter of Interest Form***

All projects wishing to apply for Transportation Infrastructure Finance and Innovation Act (TIFIA) credit assistance must first submit a Letter of Interest using this revised form. Pursuant to the recently enacted Fixing America's Surface Transportation (FAST) Act, the application process, which includes the submission of Letters of Interest, will be conducted on a rolling basis by the Department of Transportation (DOT). Applicants for Federal credit assistance must complete an acceptable Letter of Interest and meet all eligibility criteria to be permitted to submit a formal application. In the context of a public-private partnership, where multiple bidders may be competing for a concession such that the obligor has not yet been identified, the procuring agency must submit the project's Letter of Interest on behalf of the eventual obligor. DOT will not consider Letters of Interest from entities that have not obtained the legal rights to develop the project.

This revised Letter of Interest form reflects initial changes made to the TIFIA program by the FAST Act. Additional changes may be forthcoming as DOT considers public comments it may receive while continuing to implement the program. To be considered for TIFIA assistance, projects must submit a Letter of Interest that: (i) describes the project and the location, purpose, and cost of the project, (ii) outlines the proposed financial plan, including the requested credit assistance and the proposed obligor, (iii) provides a status of environmental review, and (iv) provides information regarding satisfaction of other eligibility requirements of the TIFIA credit program. Please reference the Notice of Funding Availability posted on March 11, 2016 in the Federal Register. At this time, the TIFIA Program Guide is being updated. Please check the TIFIA website regularly to identify updated program guidance, Letter of Interest, and application materials. Applicants should refer to the TIFIA website often to ensure that the most up-to-date Letter of Interest form is used (file date is included in the footer).

DOT will review each Letter of Interest and may contact project sponsors for clarification of specific information included in the Letter of Interest. DOT will notify project sponsors if DOT determines that their projects are not eligible, or if DOT will not be able to continue reviewing their Letter of Interest until eligibility requirements are addressed. If DOT does not determine a project to be ineligible based on its initial review, DOT will request additional information to supplement the Letter of Interest and complete its eligibility determination. This information may include, among other things, more detailed descriptions of the project, applicant and its organizational structure, the project's readiness to proceed, the project's financial plan (including a financial model), revenue feasibility studies, and financial commitments to the project from sources other than TIFIA. DOT will also request that the applicant provide a preliminary rating opinion letter at this time and the project sponsor will be required to submit a fee to continue the evaluation process. Once the fees have been received, DOT will engage an independent financial advisor to prepare a report and recommendation acceptable in form and substance to DOT. DOT may also engage an independent legal advisor to help complete its evaluation of a project's eligibility.

Except under limited circumstances as described further, the increased demand on TIFIA's resources has led to the discontinuation of the practice of advancing the entire cost of financial and legal advisors engaged to assist DOT in determining a project's creditworthiness and overall eligibility and having those costs reimbursed to DOT after execution of a credit agreement. As such, upon request, project sponsors must pay fees in the amount of \$250,000 before DOT hires financial and/or legal advisors as part of the Letter of Interest review process. These fees are due upon request. Additional fees will be charged after the credit instrument is executed, including additional amounts required to fully cover TIFIA's financial and legal advisory services costs in connection with the evaluation and negotiation of the terms of TIFIA credit assistance for the project. By submitting this Letter of Interest, the applicant certifies that it will pay all required fees. However, for projects having eligible project costs that are reasonably anticipated to be \$75 million or less, the FAST Act provides for the reservation of not less than \$2 million of the TIFIA program's annual funding authority to be used in lieu of the third-party costs charged by DOT. Project sponsors wishing to be considered for this available funding should indicate such in their Letters of Interest.

After concluding its review of each Letter of Interest and related information submitted by the project, along with the independent financial analysis report from DOT's independent financial advisor, DOT will permit sponsors of eligible projects to submit complete applications. DOT will conduct a rolling application process where project sponsors may submit Letters of Interest at any time and DOT will permit project sponsors to apply once a favorable eligibility determination is made.

The boxes below expand as needed to facilitate provision of a sufficient amount of detail to demonstrate to DOT the project's satisfaction of all eligibility criteria. If you have questions regarding completing this form, please contact the TIFIA program office at (202) 366-1059. Please complete all applicable information using this Letter of Interest form and attach this request via email to [TIFIACredit@dot.gov](mailto:TIFIACredit@dot.gov).



## ***Fiscal Year 2016 Letter of Interest Form***

### **A) Describe the Project, Location, Purpose, and Cost of the Project.**

*1. Describe the project:*

(Insert Text Here)

*2. Describe the project location:*

(Insert Text Here)

*3. Describe the project's purpose, including quantitative and qualitative details on public benefits the project will achieve:*

(Insert Text Here)

*4. Provide the estimated capital cost of the project:*

(Insert Text Here)

*5. Provide the design features, development schedule, and other relevant descriptions of the project:*

(Insert Text Here)

### **B) Outline the Proposed Financial Plan, including the Requested Credit Assistance.**

*1. Detail the plan of finance in sufficient detail to assist the DOT in its creditworthiness assessment:*

(Insert Details Here)

*2. Detail the sources and uses of funds:*

(Insert Details Here)

*3. Type of credit assistance:*

(Insert Details Here)



## ***Fiscal Year 2016 Letter of Interest Form***

**4. Amount of credit assistance sought from DOT:**

(Insert Details Here)

**5. Provide a rationale for the amount of TIFIA credit assistance requested, as a percentage of reasonably anticipated eligible project costs (e.g., a project sponsor can demonstrate that traditional sources of financing are not available at feasible rates without the TIFIA assistance, or that the costs of traditional financing options would constrain the sponsor's ability to deliver the project, or that delivery of the project through traditional financing approaches would constrain the sponsor's ability to deliver a group of related projects, or a full capital program):**

(Insert Details Here)

**6. Explain the flexibility in the financial plan to finance the project with a reduced percentage of TIFIA credit assistance:**

(Insert Details Here)

**7. Description of revenue source(s) pledged to repayment:**

(Insert Details Here)

**8. Address the status of any revenue feasibility studies:**

(Insert Details Here)

### **C) Status of Environmental Review.**

**1. Summarize the status of the project's environmental review:**

Insert Text Here

**2. Discuss whether the project has received a Categorical Exclusion, Finding of No Significant Impact, or Record of Decision or whether a draft Environmental Impact Statement has been circulated:**

Insert Text Here



**D) Information Regarding Satisfaction of TIFIA Eligibility Requirements.**

*Please demonstrate the following:*

***1. Creditworthiness:***

***a. Ability to satisfy applicable creditworthiness standards:***

Insert Text Here

***b. Rate covenant, if applicable:***

Insert Text Here

***c. Adequate coverage requirements to ensure repayment:***

Insert Text Here

***d. Ability to obtain two investment grade ratings on senior debt: two ratings on the TIFIA debt (investment grade if senior); if project costs are less than \$75 million only one rating on the senior debt and the TIFIA debt are needed):***

Insert Text Here

***2. Foster partnerships that attract public and private investment for the project:***

(Insert Text Here)

***3. Enable the project to proceed at an earlier date or reduced lifecycle costs (including debt service costs):***

(Insert Text Here)

***4. Reduce the Contribution of Federal Grant Assistance for the Project:***

(Insert Text Here)

***5. Construction contracting process can commence no more than 90 days from execution of a TIFIA credit instrument:***

Insert Text Here



## ***Fiscal Year 2016 Letter of Interest Form***

### **E) Project Participants.**

1. *Name of Applicant/Borrower:*

Insert Text Here

2. *Overall Organizational Structure:*

Insert Text Here

3. *If applicable, detail how the project meets the FAST Act's definition of a rural infrastructure project (a surface transportation infrastructure project with eligible project costs greater than \$10,000,000, but not to exceed \$100,000,000, and located in an area that is outside of an urbanized area with a population greater than 150,000 individuals, as determined by the Bureau of the Census.):*

(Insert Text Here)

4. *What entity (i.e., public-sector agency/authority or private-sector company) will serve as the applicant?*

(Insert Text Here)

5. *Will the applicant and the borrower be the same entity? Who are the members of the project team?*

(Insert Text Here)

6. *Project Website or Applicant/Borrower Website:*

Insert Text Here (If Websites are not available, please provide a brief description of the requesting agency or agencies)

### **F) Other Information.**

*Briefly discuss any other issues that may affect the development and financing of the project, such as community support, pending legislation or litigation:*

Insert Text Here



## ***Fiscal Year 2016 Letter of Interest Form***

### **G) Inclusion in Transportation Plans and Programs.**

*Is the project consistent with the State Transportation Plan and, if applicable, the metropolitan plan and is the requested TIFIA amount reflected in such plan?*

☐ No

☐ Yes

☐ Not applicable

*Please briefly elaborate:* Insert Text Here

### **H) Readiness to Apply.**

*Is the project prepared to submit an application within a short timeframe after receiving an invitation from DOT?*

☐ No

☐ Yes

☐ Unsure

Insert Text Here

*What factors could impact this timetable or the applicant's ability to provide all required information?*

Insert Text Here

### **I) Additional Information.**

*Please provide any other additional information necessary:*

Insert Text Here

### **J) Key Contact Person.**

*Identify a key contact person with whom all communication should flow:*

*Name:* (Point of Contact)

*Title:*

*Street Address:*

*City/State:*

*Phone:*

*Fax:*

*E-mail:*

### **K) Additional information requested.**

*DUNS:*

*Project Location:*

*State:*

*County:*

*City:*

*Congressional Districts Impacted by the Project:*

*Type of Jurisdiction (e.g., rural, urban):*

## ***Fiscal Year 2016 Letter of Interest Form***

**Fees.** Except under limited circumstances as described further, the increased demand on TIFIA's resources has led to the discontinuation of the practice of advancing the entire cost of financial and legal advisors engaged to assist DOT in determining a project's creditworthiness and overall eligibility and having those costs reimbursed to DOT after execution of a credit agreement. As such, upon request, project sponsors must pay fees in the amount of \$250,000 before DOT hires financial and/or legal advisors as part of the Letter of Interest review process. These fees are due upon request. Additional fees will be charged after the credit instrument is executed, including additional amounts required to fully cover TIFIA's financial and legal advisory services costs in connection with the evaluation and negotiation of the terms of TIFIA credit assistance for the project. For projects that enter credit negotiations, the undersigned further certifies a transaction fee will be paid at closing or, in the event no final credit agreement is reached, upon invoicing by the DOT, in the amount equal to the actual costs incurred by the DOT in procuring the assistance of outside financial advisors and legal counsel. This fee is due whether or not the loan closes.

*Note: For projects having eligible project costs that are reasonably anticipated to be \$75 million or less, the FAST Act provides for the reservation of not less than \$2 million of the TIFIA program's annual funding authority to be used in lieu of the third-party costs charged by DOT. Project sponsors wishing to be considered for this available funding should indicate this in their Letters of Interest, **though the undersigned further certifies its acknowledgment that DOT cannot guarantee that funds will be available to satisfy such a request.***

**Debarment.** The undersigned certifies that it is not currently, nor has it been in the preceding three years: 1) debarred, suspended or declared ineligible from participating in any Federal program; 2) formally proposed for debarment, with a final determination still pending; 3) voluntarily excluded from participation in a Federal transaction; or 4) indicted, convicted, or had a civil judgment rendered against it for any of the offenses listed in the Regulations Governing Debarment and Suspension (Governmentwide Nonprocurement Debarment & Suspension Regulations: 49 C.F.R. Part 29).

**Default/Delinquency.** The undersigned further certifies that neither it nor any of its subsidiaries or affiliates are currently in default or delinquent on any debt or loans provided or guaranteed by the Federal Government.

**Signature:** By submitting this Letter of Interest, the undersigned certifies that the facts stated herein are true, to the best of the applicant's knowledge and belief after due inquiry, and that the applicant has not omitted any material facts. The undersigned is an authorized representative of the applicant.

**Submitted by:**

**Applicant/Borrower Name** \_\_\_\_\_

**Title** \_\_\_\_\_

**Organization** \_\_\_\_\_

**Date** \_\_\_\_\_

*Please attach any relevant documents (e.g., maps, organization charts, etc.).*





## ***Fiscal Year 2015 Application***

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**UNITED STATES  
DEPARTMENT OF TRANSPORTATION  
Fiscal Year 2015 APPLICATION FOR FEDERAL CREDIT ASSISTANCE  
Transportation Infrastructure Finance and Innovation Act**

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**Background:** This form is to be completed by eligible applicants for Federal credit assistance under the Transportation Infrastructure Finance and Innovation Act (TIFIA), as amended, invited to submit an application by the U.S. Department of Transportation (DOT). The TIFIA statute is codified under 23 U.S.C. 601-609. The DOT will use the collected information to evaluate and select recipients for credit assistance as authorized under TIFIA. Applicants may be asked to provide additional supporting evidence or to quantify details during the review and negotiation process. If any information submitted, or requested to be submitted, changes after the application is submitted, the applicant will update its application accordingly. Pursuant to Moving Ahead for Progress in the 21st Century Act (MAP-21), the DOT announced the availability of \$1.75 billion (\$750 million in Federal Fiscal Year (FY) 2013 funds and \$1 billion in FY 2014 funds (and any funds that may be available from prior fiscal years)) to provide TIFIA credit assistance for eligible projects. The Highway and Transportation Act of 2014 has extended MAP-21 funding levels into FY 2015. Only after a project sponsor has submitted a Letter of Interest and the DOT has determined that a project has met or is likely to meet all statutory eligibility requirements will the project sponsor be invited to submit an application. MAP-21 contains a timeline for assessing applications for credit assistance.

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**Charges:** The DOT may require reimbursement for expenses related to services provided by the DOT's outside advisors in connection with the evaluation of the TIFIA Letter of Interest, evaluation of the TIFIA application, and negotiation of the TIFIA transaction documents.

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**Format:** Applications must provide all requested information and will not be reviewed if incomplete, which the DOT shall confirm within 30 days after the date of receipt of the application. Applications should be provided in three-hole punch binders with sections and tabs following the sequence shown in the application checklist.

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**Submission:** A copy of the completed application form, without attachments, should be sent by email to [TIFIAcredit@dot.gov](mailto:TIFIAcredit@dot.gov). Hard copies of the completed application (including a computer diskette (CD) containing electronic versions of the entire application with attachments as well as separate working files for Section D and Exhibit VII – ***but NOT in PDF or "values" format***) should follow the electronic submission, as further detailed in this section, and should be sent to the attention of Mr. Duane Callender, TIFIA Joint Program Office, Federal Highway Administration, HITJ, Room E64-301, 1200 New Jersey Avenue, SE, Washington, DC, 20590. Applicants are advised to utilize an express mail or courier delivery service to ensure delivery confirmation of the package. The application checklist appearing on the next page of this application form specifies the number of copies (plus original) required for each section. The DOT requires **two** original hard copy submission of the complete application package with all supporting exhibits and related documentation. As noted on the checklist on the following page, **three** additional hard copies of the completed application form, without attachments are required. Only after a project sponsor has submitted a Letter of Interest and the DOT has determined that a project has met or is likely to meet all statutory eligibility requirements will the project sponsor be invited to submit an application. Please note that an invitation by the DOT to submit an application does not guarantee that a project will receive TIFIA credit assistance, which remains subject to a project's continued eligibility. Please check the TIFIA website regularly to identify updated guidance and application materials.

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**Selection:** The DOT's selection of a project for participation in the TIFIA program does not imply that the DOT has approved all elements proposed in the application. For example, the DOT may require changes in the project's financial plan proposed in the application. Provision of credit assistance is subject to negotiation of a credit agreement on terms and conditions satisfactory in all respects to the DOT.

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**Information Requests:** If an applicant desires that any information submitted in its application or any supplement thereto not be released by the DOT upon request from a member of the public or otherwise made publicly available, the applicant must so state and set forth any reasons why such information is confidential and should not be released, including particulars as to any competitive harm which would potentially result from the release of such information. The DOT will keep such information confidential to the extent permitted by law.

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**Warning:** It is a crime to knowingly make false statements to a Federal agency. Penalties upon conviction can include a fine and imprisonment. For details, see 18 U.S.C. 1001. Misrepresentation of material facts may also be the basis for denial of financial assistance by the U.S. Department of Transportation.

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## APPLICATION CHECKLIST

An application must include the following items.

Item	Page Limit	Copies (Plus Original)
<b>Section A: Contact Information</b>	1	4
<b>Section B: Project Information</b> 1. Project Name 2. Location 3. Project Description 4. Rural Project Description (If Applicable) 5. Project Purpose (quantitative/qualitative details) 6. Project Cost and TIFIA Credit Assistance Request 7. Project Management and Compliance Monitoring Plan 8. Maintenance and Operations	8	4
<b>Section C: Satisfaction of Eligibility Requirements</b> 1. Creditworthiness (rate covenant, coverage requirements, investment grade rating(s)) 2. Foster Partnerships that Attract Public and Private Investment 3. Enable Project to Proceed at an Earlier Date or with Reduced Lifecycle Costs 4. Reduce the Contribution of Federal Grant Assistance 5. Environmental Review (NEPA) 6. Permits and Approvals 7. Transportation Planning and Programming Process Approvals (STIP and TIP) 8. Construction Contracting Process Readiness 9. Project Schedule	20	4
<b>Section D: Financial Plan (include Executable Electronic – NOT PDF – files)</b> 1. Estimated Capital Project Cost, Amount and Type of Credit Assistance Requested 2. Amount of TIFIA Assistance Requested 3. Summary Table: Sources and Uses of Funds 4. Cash Flow Pro Forma 5. Supplementary Narrative: Other Borrowed Funds 6. Supplementary Narrative: Revenue Sources (including pledged repayment source) 7. Proposed Terms for the Requested TIFIA Credit Instrument 8. Reasons for Selecting the Proposed Type(s) of Credit Instrument 9. Flexibility in Financial Plan to Support a Reduced Percent of TIFIA Credit 10. Risks and Mitigation Strategies	20	4
<b>Section E: Applicant's Organizational Structure</b> 1. Background Information and Legal Authority 2. Organization and Management 3. What Entity will Serve as Applicant (public-sector agency or private-sector firm) 4. Is the Applicant the Same Entity as the Borrower (detail project team members) 5. Prior Experience 6. Financial Condition 7. Litigation and/or Conflicts	10	4
<b>Section F: Certifications</b>	3	4
<b>Exhibit I:</b> Project Map		1
<b>Exhibit II:</b> Supporting Documentation: Project Purpose		1
<b>Exhibit III:</b> Supporting Documentation: Financing Documents		1
<b>Exhibit IV:</b> Preliminary Rating Opinion Letter(s)/Creditworthiness		1
<b>Exhibit V:</b> Supporting Documentation: Public-Private Partnerships		1
<b>Exhibit VI:</b> Supporting Documentation: Other Anticipated Funds		1
<b>Exhibit VII:</b> Cash Flow Pro Forma (include electronic files)		1
<b>Exhibit VIII:</b> Supporting Documentation: Revenue and Cost Projections		1
<b>Exhibit IX:</b> Proposed Terms for the Requested TIFIA Credit Instrument		1
<b>Exhibit X:</b> Supporting Documentation: Legal Authority		1
<b>Exhibit XI:</b> Organizational Chart		1
<b>Exhibit XII:</b> Audited Financial Statements (Three Years)		1



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**SECTION A: Contact Information**

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Provide the following information and include this sheet as the first page of the application. If the Applicant is different from the expected Borrower, please provide information for both parties.

1. Applicant's Legal Name:  

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2. Other Names under Which Applicant Does Business:  

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3. Federal Tax Identification Number (to be used to determine whether the applicant is delinquent or in default on any Federal debt, in accordance with 31 U.S.C. 3701, et seq. and 5 U.S.C. 552a at note):  

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4. Business Address:  

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5. Mailing Address (if different from above) – include both U.S. mailing address and courier (*i.e.*, no P.O. Box) address:  

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6. Contact Person Name:  

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7. Contact Person Title:  

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8. Mailing Address for Contact Person (if different from above):  

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9. Telephone:  

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10. Fax:  

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11. E-mail:  

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## **SECTION B: Project Information**

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This section requests narrative information and two exhibits. The list below should be included in the application packet with responses attached and numbered to correspond to the relevant item. Total narrative supporting Section B should not exceed 8 pages, excluding the exhibits.

1. **Project Name.** Assign a short name to the project, for purposes of identification.
  2. **Location.** Describe the location of the project, including major intersecting highway and rail routes, and attach a map as Exhibit I. Include the name(s) of the counties that the project will serve.
  3. **Project Description.** Describe the need for the project, its basic design features, and what it will accomplish. Include an assessment of the current condition of all transportation facilities relating to the project. If the project's current scope differs from what is described in its environmental documents, please explain.
  4. **Rural Project Description (If Applicable).** If invited to apply for consideration as a rural infrastructure project, describe how the project meets MAP-21's definition of a rural infrastructure project. Please also describe whether the project is located outside of an urbanized area as defined under title 23.
  5. **Project Purpose.** Describe the project's purpose, including quantitative or qualitative details on public benefits the project will achieve. Supporting documentation may be attached as Exhibit II.
  6. **Project Cost and TIFIA Credit Assistance Request.** Provide a cost estimate for both the entire project and the eligible project costs under the TIFIA program. Specify the TIFIA credit instrument(s) (i.e., secured loan, loan guarantee, and/or standby line of credit) requested and the amount of TIFIA credit assistance requested for each credit instrument. If requesting a secured loan, please provide a brief explanation of how the plan of finance for the project would be impacted if TIFIA credit assistance was instead provided in the form of a loan guarantee. Please also indicate whether the applicant intends to use a Master Credit Agreement with contingent commitments for purposes of carrying out a program of projects. If requesting a Master Credit Agreement, please provide the expected timing and amount of credit assistance requested for each of the projects in the program. Note that Section D of this application requests a financial plan; information furnished under this item may be cross-referenced to materials provided in Section D, and in all instances, including but not limited to dollar amounts, must be consistent with those materials.
  7. **Project Management and Compliance Monitoring Plan.** Provide a comprehensive project management and monitoring plan that will assure the DOT of the applicant's ability to deliver the project as planned, fulfill all project commitments, and ensure compliance with all terms of the credit agreement, including all applicable regulations and provisions of law. The plan should provide: (a) information on the roles and responsibilities of all entities with decision making authority for the project; (b) status reporting processes that document not only the status but changes and potential risks; and (c) coordination processes that provide for advance notification of potential issues to all appropriate agencies and timely resolution.
  8. **Maintenance and Operations.** Describe the maintenance and operations plan for the project.
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## **SECTION C: Satisfaction of Eligibility Requirements**

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This section allows the applicant to describe the extent to which the project satisfies the eligibility requirements specified under 23 U.S.C. 602(a). ***The applicant should provide relevant quantitative or qualitative data to support its assertions and to justify the benefits to be derived from TIFIA assistance in satisfying these requirements and advancing the proposed project.*** The list below should be included in the application packet with responses and supporting documents attached and numbered to correspond to the relevant item. Total narrative supporting Section C should not exceed 20 pages, excluding the three exhibits.

1. Creditworthiness. Describe the creditworthiness of the project as noted below.
  - a) Detail the project's ability to satisfy applicable creditworthiness standards. Provide information to support the project's creditworthiness, such as: the project's market position; the history of user-based repayments for other obligations; the economic outlook for related commerce; qualifications of the project team; proposed risk mitigation strategies, etc. The applicant may refer to other portions of its application, as applicable.
  - b) Describe the rate covenant, if applicable. Provide a copy of existing financing documents, such as a trust indenture agreement, including any rating agency credit reports, for other creditors of the project or a term sheet indicating the proposed features of the anticipated financing documents, as Exhibit III. The information should indicate the Federal credit instrument's status in relation to pledged security, coverage, and treatment under an additional bonds test. Applicants should be aware that when prior financing based on the proposed TIFIA security is already in place difficult inter-creditor issues often arise in the negotiation of the TIFIA credit instrument.
  - c) Demonstrate that adequate coverage requirements are in place to ensure repayment. Provide information concerning the ability of the applicant (or any significant public or private partners that pledge to repay or provide funding) to repay all borrowed funds, including any obligations to the Federal Government. Describe the extent to which the project includes security features, such as a rate covenant and an additional bonds test, to ensure repayment of the Federal credit instrument.
  - d) Provide one preliminary rating opinion letter with an investment grade rating on senior debt and a rating on the TIFIA debt, as Exhibit IV. This letter is a conditional credit assessment from a nationally recognized statistical rating organization (NRSRO) that must indicate the potential for the senior debt obligations funding the project to achieve an investment grade rating and also must provide a rating on the TIFIA credit instrument. (The senior debt has a lien senior to that of the TIFIA credit instrument on the pledged security; if there are no debt obligations senior to the TIFIA credit instrument, then the TIFIA credit instrument itself must be shown to have the potential to obtain an investment grade rating). This preliminary assessment by the rating agencies will be based on the financing structure proposed by the applicant. The letter should provide a preliminary rating assessment of the financial strength of the overall project and the default risk (*i.e.*, without regard to recovery potential) of the requested TIFIA instrument. This includes a demonstrated capacity to repay the federal credit assistance as well as a determination that the project has appropriate security features, such as proper coverage ratios, rate covenants and reserves as applicable.

The rating opinion letters should not reflect the use of bond insurance or other credit enhancement that does not also secure the TIFIA instrument. The assessment of the senior obligations' investment grade potential and the TIFIA instrument's default risk should be based on the underlying ratings of debt obligations and the project's fundamentals. The DOT will not consider applications without such letters.

Note that Section D of this application requests a financial plan; information furnished under this item may be cross-referenced to materials provided in Section D, and in all instances must be consistent with those materials.



2. Foster Partnerships that Attract Public and Private Investment to the Project. Describe the extent to which the project fosters innovative public-private partnerships and attracts debt and/or equity investment from private capital. Identify private partners and provide evidence of commitments, joint venture agreements, lease, or other supporting documents for the public-private partnerships as Exhibit V. Also, describe the extent to which the project's debt repayment depends on user charges.
3. Enable the Project to Proceed at an Earlier Date or with Reduced Lifecycle Costs. Estimate and explain the effect of TIFIA assistance on the project's start and completion dates, the extent to which TIFIA assistance would help the project to proceed at an earlier date than would otherwise be possible, and any effects of an accelerated project timeline (e.g., reduced costs or increased benefits). Document how applicant has been unable to obtain credit assistance from private sources on reasonable terms. Demonstrate the costs of traditional financing would constrain their ability to deliver the project, or that delivery of this project through traditional financing approaches would constrain their ability to deliver additional components of their capital programs.
4. Reduce the Contribution of Federal Grant Assistance for the Project. Estimate and explain how TIFIA assistance would reduce the project's need for Federal grant assistance. Indicate the percentage of the total project costs that will be funded by Federal grants, Federal credit assistance, and other sources.
5. Environmental Review. Provide a draft Environmental Impact Statement and Record of Decision unless the project has received Categorical Exclusion or Finding of No Significant Impact in connection with the project's compliance with the National Environmental Policy Act (NEPA). Provide a timeline that illustrates the estimated start and completion dates for each major phase or milestone of the environmental review documentation and a brief summary of how the project intends to reach a final agency decision, including (if necessary) a Record of Decision prior to financial close. Please note the DOT will not obligate funds for a project until the project has done so.
6. Permits and Approvals. List all major permits and approvals necessary for construction of the project and the date, or projected date, of the applicant's receipt of such permits and approvals. The list should include permits and approvals required under local, regional, state, and Federal laws and regulations. In particular, indicate when outstanding approvals by state or local government entities are expected. Copies of major permits and approvals will be required upon execution of a credit agreement with the DOT.
7. Transportation Planning and Programming Process Approvals. Provide a brief summary as well as certification that the project is included in both the long-range transportation plan and the approved State Transportation Improvement Programs (STIP) of each state affected by the project. Describe how the project satisfies planning and programming requirements of §134 ("Metropolitan Planning") and §135 ("Statewide Planning") under 23 U.S.C. For projects in metropolitan areas, describe how the project is or can be included in the metropolitan transportation plan.
8. Construction Contracting Process Readiness. Briefly describe how the project is prepared to proceed with the construction contracting process within 90 days of executing the TIFIA credit instrument.
9. Project Schedule. Provide a timeline that illustrates the estimated start and completion dates for each major phase or milestone of project development, construction and/or acquisition, including, for example: major investment study, Federal transportation planning requirements, preliminary engineering and environmental documentation, final design, right-of-way acquisition, construction, and vehicle acquisition. Indicate the applicant's current status on this timeline.





## **SECTION D: Financial Plan**

The following items concern the project's updated financial plan, incorporating preliminary feedback from the DOT in connection with the Letter of Interest. This section requests narrative information and four exhibits. ***Note: For the purposes of this application, applicants should propose a single financing structure, representing the scenario deemed to have the greatest likelihood of occurring. While the DOT will evaluate the proposed financial plan, the DOT's selection of the project for TIFIA assistance does not imply that the DOT has approved the proposed financial; the DOT may require modifications to the financial plan after selection and before execution of the credit agreement. For the financial plan, any combination of the three types of credit assistance offered under TIFIA may be used, provided that the total TIFIA credit amount is capped at 33 percent of eligible project costs for loan guarantees and lines of credits. In certain circumstances, projects requesting a direct loan may be eligible for credit assistance up to 49 percent of eligible project costs. The DOT may ask applicants to develop alternative scenarios, as necessary.***

The financial plan should be prepared in accordance with recognized financial reporting standards such as the "Guide for Prospective Financial Information" of the American Institute of Certified Public Accountants (AICPA). The narrative descriptions for the financial projections should include the sources of information for the forecasts and the methodology used for developing the forecasts as well as describe any changes to the project and financial projections since the submission of the Letter of Interest. The discussion should also identify whether there has been any independent validation of the forecasts or sensitivity testing. Any documentation that provides the basis for the projected costs/revenues (*e.g.*, revenue studies, feasibility studies, economic forecasts) should be included as attachments to the plan.

The list below should be included in the application packet with responses attached and numbered to correspond to the relevant item. Items 1, 2, and 3 below must also be provided on a CD in a spreadsheet format. The DOT must be able to review and adjust the assumptions in these files; *i.e.*, PDF or "values" copies of the spreadsheet are not acceptable. Total narrative supporting Section D should not exceed 20 pages. The pro forma(s) and supporting documentation requested under items 4, 6, and 7 (Exhibits VII, VIII, and IX, respectively) do not count toward the page limit.

### **1. Estimated Capital Project Cost.**

- a) Provide a detailed capital cost estimate for the project. Distinguish between total and "eligible project costs" as defined under TIFIA; and describe any costs or activities that may not be TIFIA-eligible.
- b) For TIFIA-eligible costs, provide an activity breakdown, as applicable, for: feasibility studies, preliminary engineering, environmental assessment, right-of-way-acquisition, vehicle acquisition, construction, construction engineering and inspection, project management, contingencies, and capitalized financing costs (including reserves, capitalized interest, and capital issuance costs for other project financing). Include other cost categories as necessary.

**Note:** All cost estimates should be expressed on a cash (year-of-expenditure) basis and should include a narrative describing assumptions used to arrive at such estimates.

### **2. Provide the total amount and type of TIFIA credit assistance requested, including the percentage of total reasonably anticipated eligible project costs.**

### **3. Summary Table: Sources and Uses of Funds.**

- a) Sources should include separate line items, as applicable, for Federal grants, state grants, local grants, private investment (equity or debt); any other contributions, market value of right-of-way dedications, bond proceeds (general obligation, revenue, and others), other borrowing (specify), investment income, revenues, and Federal credit assistance proceeds. For each line item, describe the status of the source (*e.g.*, requested, committed, and received). Provide supporting documentation to evidence the status of these funds in Exhibit VI.

- b) Uses should include separate line items, as applicable, for feasibility studies, preliminary engineering, design, environmental assessment and mitigation, right-of-way-acquisition, vehicle acquisition, construction, construction



engineering and inspection, insurance, project management, contingency funds, and capitalized financing costs (including debt service reserve funds, capitalized interest, and capital issuance costs for other project financing). Include other categories as necessary.

Note: Total sources and uses should be equal to one another and equal the estimated total project costs. All estimates should be expressed in year-of-expenditure dollars.

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4. **Cash Flow Pro Forma.** Attach the pro forma for the project as Exhibit VII. The pro forma should include both a statement of sources and uses and a projection of monthly or quarterly cash flows during the construction period and annual cash flows thereafter. All amounts should be expressed on a cash (year-of-expenditure) basis and should include a narrative describing assumptions used to arrive at such estimates. The pro forma should include:
- a) Projected cash flows through such time as all project debt is repaid, including separate line items for each category of revenue (such as sales tax proceeds, fares, toll receipts) and expenditure (at a minimum, construction expenditures, operations and maintenance, contributions to reserves and capital replacement funds, debt service, repayments of the TIFIA credit instrument, and repayment of other borrowed funds as well as equity dividends or proceeds (as applicable), if any);
  - b) Estimated debt service coverage, separated into Federal, non-Federal (addressing, as applicable, senior and junior lien debt), and illustrating projected combined coverage, as applicable;
  - c) Amortization schedule for all project debt, separated into Federal, non-Federal (addressing, as applicable, senior- and junior-lien debt), and combined components; and
  - d) Anticipated repayment schedule illustrating the disbursement and repayment of the requested TIFIA credit instrument.
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5. **Supplementary Narrative Information on Sources of Funds: Other Borrowed Funds.**
- a) Provide information on the other types of borrowing, including the form of borrowing (*e.g.*, types of bonds to be issued), the pledged security for such borrowing, its priority with respect to the security pledged to the TIFIA instrument, details on structuring, rating assumptions, and anticipated timing of receipt of such funds. Information on amortization schedules, expected interest rates, and coverage calculations should be included in the cash flow pro forma requested under item D. (4), above.
  - b) For bond issuances, discuss the anticipated tax-status of the bonds, whether an IRS or bond counsel opinion has been sought, and contingency plans in the event that the tax-status differs from that which is anticipated.
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6. **Supplementary Narrative on Revenue Source(s).**
- a) Describe all revenue sources to be used to repay project financing. Specify the nature of the revenue source (dedicated or not dedicated), the expected rate(s), the base to which such rates will be applied (*e.g.*, retail sales, average daily traffic), projected revenues from each source, and projected increases or decreases in such revenues over time.
  - b) Elaborate on existing or anticipated pledges/claims on revenues and provide a brief summary of all claims on the flow of funds.
  - c) Attach documentation (*e.g.*, revenue studies, feasibility studies, traffic studies, and economic forecasts) as Exhibit VIII to provide the basis for projected revenues and their respective anticipated rates of change. If independent revenue projections have not yet been obtained, state when such independent projections will be completed and identify the consultant engaged to perform the analysis.





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7. **Proposed Terms for the Requested TIFIA Credit Instrument.** Identify the type(s) of TIFIA credit instrument being requested (secured loan, loan guarantee, standby line of credit) and, at a minimum, the following proposed terms and conditions for each proposed credit instrument: amount, origination date, final maturity date, estimated interest rate, timing of disbursements, pledged security, repayment sources, amortization schedule, and lien position. The proposed TIFIA credit facility, which must be senior or parity lien in the event of bankruptcy, liquidation or insolvency, can be subordinate as to cash flows absent such an event. Please describe whether a waiver of the nonsubordination requirement is requested and how the applicant meets the applicable requirements. The proposed terms and conditions should be submitted as Exhibit IX.
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8. **Reasons for Selecting the Proposed Type(s) of Credit Instrument.** Describe why you are requesting the specific type(s) of TIFIA credit instrument. If you are requesting only a direct loan and/or a line of credit, specify the project's financial structure if the TIFIA credit assistance was instead in the form of a loan guarantee, including the amount of guaranteed loan assistance that would be required. If applicable, describe why the project intends to use a Master Credit Agreement.
- 
9. **Flexibility in the Financial Plan to Support a Reduced Percentage of TIFIA Credit Assistance.** Explain the flexibility in the financial plan to finance the project with a reduced percentage of TIFIA credit assistance.
- 
10. **Risks and Mitigation Strategies.** Identify risks to project completion and sufficiency of revenues. Sample risks might include cost escalation, approvals, litigation, construction schedules, ridership and traffic levels, availability of grant funding, and market access. Identify all mitigation strategies and any proposed cost-containment approaches (*e.g.*, design-build, value engineering, guaranteed maximum price and/or completion date, warranties, or other incentive/disincentive clauses).
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## **SECTION E: Applicant's Organizational Structure**

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This section requests narrative information and three exhibits. The list below should be included in the application packet with responses attached and numbered to correspond to the relevant item. Total narrative supporting items for Section E should not exceed 10 pages, excluding exhibits.

1. Applicant's Background Information and Legal Authority.
    - a) Describe the applicant's history, ownership, and legal structure (*e.g.*, state governmental agency, local governmental agency, corporation, or partnership). Include a copy of the statutory authority under which the entity was created as part of Exhibit X, if applicable.
    - b) Describe the legal authority of the applicant to carry out proposed project activities described in the application packet, including levying taxes, issuing debt, charging tolls or other fees, and/or receiving dedicated funding from another entity. Provide documentation as part of Exhibit X.
    - c) Identify whether governmental entities (other than the applicant) must approve the submission of the application packet, the funding of activities, or the carrying out of activities in the application (other than permits). Provide documentation as part of Exhibit X.
  2. Organization and Management.
    - a) Describe the applicant's organizational structure and the applicant's relationship to any subsidiaries or affiliates. Include the legal names of key principals and staff (*e.g.*, project manager and chief financial officer) and any recent or proposed changes to the organizational structure.
    - b) Provide an organizational chart as Exhibit XI, to include the major parties involved in planning, owning, financing, constructing, operating, and/or maintaining the project. Include the major service contractors that have been, or will be, retained for the project (*e.g.*, architects, developers, engineers, attorneys, financial advisors and underwriters, environmental consultants). *Note: The DOT may request additional documentation from major parties other than the applicant as part of the project evaluation and selection process.*
  3. Applicant. Describe the entity that will serve as the applicant (*i.e.*, public-sector agency/authority or private-sector firm).
  4. Applicant/Borrower. Will the applicant and borrower be the same? Explain the relationship between the applicant and the borrower, if they are not the same entities.
  5. Prior Experience. Describe the applicant's prior experience as it relates to carrying out projects similar to that being proposed.
  4. Financial Condition. Provide year-end audited financial statements for the past three years, as available, as Exhibit XII.
  5. Litigation and/or Conflicts. Disclose any current, threatened, or pending litigation involving the applicant related to permitting, public involvement, environmental irregularities, construction defects, securities fraud, conflict of interest, failure to perform under a state or Federal contract, or other charges which may reflect on the applicant's financial position or ability to complete the project.
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**SECTION F: Applicant Certifications**

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The following items require certification by an authorized representative of the applicant requesting TIFIA assistance. The list below should be included in the application packet with responses attached and numbered to correspond to the relevant item. The DOT may require that applicants provide documentation of these certifications.

- 
1. Federal Requirements. This project complies with, and/or will comply with, the requirements of (check all that apply):

Title 23 of the U.S. Code, and implementing regulations. \_\_\_\_\_

Chapter 53 of title 49 of the U.S. Code, and implementing regulations. \_\_\_\_\_

Section 5333(a) of title 49 of the U.S. Code. \_\_\_\_\_

If the applicant intends to request waivers to any requirements included in the preceding citations, explain on an attached sheet.

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2. National Environmental Policy Act. The project complies with, and/or will comply with, all provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Yes \_\_\_\_\_ No \_\_\_\_\_ If no, explain on an attached sheet.

The project has (check all that apply):

Yes \_\_\_\_\_ No \_\_\_\_\_ Received a Categorical Exclusion.

Yes \_\_\_\_\_ No \_\_\_\_\_ Received a Finding of No Significant Impact (FONSI).

Yes \_\_\_\_\_ No \_\_\_\_\_ Circulated a Draft Environmental Impact Statement.

Yes \_\_\_\_\_ No \_\_\_\_\_ Circulated a Final Environmental Impact Statement.

Yes \_\_\_\_\_ No \_\_\_\_\_ Received its Record of Decision. (If no, provide on an attached sheet the estimated date for receipt of the Record of Decision.)

- 
3. Uniform Relocation. This project complies with, and/or will comply with, all provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

Yes \_\_\_\_\_ No \_\_\_\_\_ If no, explain on an attached sheet.

- 
4. Civil Rights. This project complies with, and/or will comply with, all provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

Yes \_\_\_\_\_ No \_\_\_\_\_ If no, explain on an attached sheet.

- 
5. Other Requirements as Applicable that apply to projects which receive Federal assistance such as the Federal Water Pollution Control Act as amended by the Clean Water Act (33 U.S.C. 1251 et. seq.), and the Endangered Species Act, (16 U.S.C. 1531 et. seq.). This project complies with, and/or will comply with, all other applicable provisions of Federal law.

Yes \_\_\_\_\_ No \_\_\_\_\_ If no, explain on an attached sheet.

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6. State Transportation Planning and Programming Process. This project is consistent with the long-range state transportation plan(s) of the affected state(s).

Yes \_\_\_\_\_ No \_\_\_\_\_ If no, explain on an attached sheet.

If located in a metropolitan planning area, this project is included on the metropolitan transportation plan.

Yes \_\_\_\_\_ No \_\_\_\_\_ If no, explain on an attached sheet.

This project is listed within the State Transportation Improvement Program (STIP) of the affected state(s).

Yes \_\_\_\_\_ No \_\_\_\_\_ If no, explain on an attached sheet and provide estimated date for project listing on the STIP.

7. Credit Ratings. This applicant has received preliminary rating opinion letter(s) and investment grade ratings on the senior debt instrument, and if TIFIA is not the senior debt, on the TIFIA credit instrument, from one or more Nationally Recognized Statistical Rating Organizations. The letter(s) and rating(s) are attached as Exhibit IV.

8. Charges: The undersigned certifies that it will reimburse the DOT for costs incurred related to services provided by the DOT's outside advisors in connection with the evaluation of the TIFIA Letter of Interest, evaluation of the TIFIA application, and negotiation of the TIFIA transaction documents, irrespective of whether the credit agreement is executed.

9. Lobbying. Section 1352 of Title 31, United States Code and 49 C.F.R. §20.100, provide that none of the funds appropriated by any Act of Congress may be expended by a recipient of a contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, or an employee of a Member of Congress in connection with the award or making of a Federal contract, grant, loan, or cooperative agreement or the modification thereof. The DOT interprets this provision to include the use of appropriated funds to influence or attempt to influence the selection for a secured loan, loan guarantee, or line of credit under the TIFIA program.

TIFIA applicants must file a declaration: (a) with the submission of an application for TIFIA assistance; (b) upon receipt of a TIFIA credit instrument (unless the information contained in the declaration accompanying the TIFIA application has not materially changed); and (c) at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any declaration previously filed in connection with the TIFIA assistance.

A declaration filed in connection with the TIFIA assistance shall contain:

- a) The name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of the TIFIA applicant.
- b) A certification by the person making the declaration that none of the funds appropriated by any Act of Congress has been or will be expended to pay any person for influencing or attempting to influence an officer or employee of the DOT or any Federal agency, a Member of Congress, an officer or employee of Congress, or employee of a Member of Congress with regard to the TIFIA assistance.

In addition, any person or entity that requests or receives a subcontract from a TIFIA applicant is required to file a declaration, which shall contain the name of any registrant under the Lobbying Disclosure Act who has made lobbying contacts and a certification that the person or entity has not made or will not make prohibited payments.



## ***Fiscal Year 2015 Application***

The undersigned certifies, to the best of his or her knowledge and belief, that: (i) no federally appropriated funds have been paid or will be paid by or on behalf of the undersigned to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with an award of TIFIA assistance; *and* (ii) if non-federally appropriated funds have been or will be paid for the above purposes, the undersigned will disclose such payments through the completion and submission of Standard Form LLL ("Disclosure Form to Report Lobbying"). The applicant shall file Standard Form LLL in accordance with its instructions. Submission of this statement with the TIFIA application is a prerequisite for obtaining TIFIA assistance.

Any person who makes an expenditure of appropriated funds prohibited by 31 U.S.C. 1352(a) or fails to file the required statement or amended statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure in accordance with 31 U.S.C. 1352(c).

10. Debarment. The undersigned further certifies that neither it nor its principals is currently, or has been in the preceding three years: 1) debarred, suspended or declared ineligible from participating in any Federal program; 2) formally proposed for debarment, with a final determination still pending; 3) voluntarily excluded from participation in a Federal transaction; or 4) indicted, convicted, or had a civil judgment rendered against it for any of the offenses listed in the Regulations Governing Debarment and Suspension (Government-wide Nonprocurement Debarment and Suspension Regulations: 49 C.F.R. Part 29).

11. Default/Delinquency. The undersigned further certifies that neither it nor any of its subsidiaries or affiliates are currently in default or delinquent on any debt or loans provided or guaranteed by the Federal Government.

**Signature:** By submitting this application, the undersigned certifies that the facts stated and the certifications and representations made in this application are true, to the best of the applicant's knowledge and belief after due inquiry, and that the applicant has not omitted any material facts. The undersigned is an authorized representative of the applicant.

Applicant: \_\_\_\_\_

Signed: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

**END OF FORM**



September 19, 2018  
NVRTA Agenda Item 9.2

Continued From: New  
**Action Requested: APPROVE**

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## NAPA VALLEY TRANSPORTATION AUTHORITY Board Agenda Letter

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**TO:** Board of Directors  
**FROM:** Kate Miller, Executive Director  
**REPORT BY:** Kate Miller, Executive Director  
(707) 259-8634 / Email: [kmiller@nvta.ca.gov](mailto:kmiller@nvta.ca.gov)  
**SUBJECT:** State Legislative Update and State Bill Matrix

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### **RECOMMENDATION**

That the Napa Valley Transportation Authority (NVRTA) Board receive the State Legislative update and Bill Matrix, and take an oppose position on Proposition 6 which will be on the November 2018 ballot.

### **COMMITTEE RECOMMENDATION**

None

### **EXECUTIVE SUMMARY**

The Board will receive the State Legislative update (Attachment 1) and Bill Matrix (Attachment 2).

The Board is also asked to take an oppose position on Proposition 6. Proposition 6, which will be on the November ballot, will eliminate transportation revenues passed by the legislature and signed into law by Governor Brown last year as Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017. SB 1 revenues total \$5.4 billion statewide annually. These revenues are a critical component for maintaining and improving operations along the state's highways and will ensure that its transit systems are well maintained and running on time.

SB 1 also provides jurisdictions in Napa County with over \$5 million annually in new revenues for road maintenance. It also provides over \$600,000 to NVRTA for transit operating and capital improvements, and \$300,000 to match Measure T as part of the Local Partnership Program. The California Department of Transportation (Caltrans) will receive \$1.5 billion annually for the State Highway Operations and Protection Program (SHOPP) to ensure the state's bridges and highways are safe and well maintained.

There are several SB 1 competitive programs that NVTA and the jurisdictions in Napa County are interested in pursuing to complete for high priority projects – including Soscol Junction and the County of Napa/City of American Canyon project that will connect Devlin Road. Without SB 1 revenues, a number of projects will be delayed or eliminated. These include high priority projects on SR 29 in American Canyon and at the intersections of SR 29 and SR 12 (Airport), SR 29 and SR 121 (Carneros Highway), SR 29 transit improvements, and key bicycle and pedestrian projects, such as the Imola Complete Streets Upgrades, the Vine Trail and Oxbow River Crossing.

### **PROCEDURAL REQUIREMENTS**

1. Staff Report
2. Public Comments
3. Motion, Second, Discussion and Vote

### **FISCAL IMPACT**

Is there a Fiscal Impact? No

### **SUPPORTING DOCUMENTS**

Attachments:   (1) August 31, 2018 State Legislative Update (Platinum Advisors)  
                      (2) August 31, 2018 State Bill Matrix (Platinum Advisors)  
                      (3) December 17, 2017 Rules Governing the Use of Public Resources in  
                              Connection with Ballot Measures (Renne Sloan Holtzman Sakai LLP)



August 31, 2018

TO: Kate Miller, Executive Director  
Napa Valley Transportation Authority

FR: Steve Wallauch  
Platinum Advisors

RE: **Legislative Update**

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The Legislature returned to the Capitol on August 6<sup>th</sup> for the final month of session, which ends today. As usual, the Legislature will need every minute of this day to complete their work by the midnight Constitutional deadline. The only firm rule is the legislature must adjourn at midnight on August 31<sup>st</sup>, and all amendments must be in print for at least 72 hours before a floor vote can be taken. This means the deadline for amending legislation was August 28<sup>th</sup>. Only bills with an urgency clause or a tax levy can be acted on after midnight tonight.

Aside from CARB's regulatory activity, the following highlights a few of the interesting bills still pending in the legislature, or on the Governor's desk. The Governor has until September 30<sup>th</sup> to sign or veto all the bills sent to his desk during the final weeks of session.

**Zero Emission Buses:** After a multiyear workshop process, CARB staff finally released its new rule that will require all public transit operators to transition to a zero emission fleets by 2040. Titled the Innovative Clean Transit Rule (ICT), this new regulation requires all transit operators to develop a transition plan, and begin the process of converting its fleet to zero emission vehicles by 2040.

The Air Board is scheduled to review this proposal at its September 27<sup>th</sup> meeting, and adoption of this new rule will be scheduled for the Board's December meeting. Adopting this regulation at the December meeting would allow the Board time to consider changes in the event Proposition 6 is approved in November. The deadline to submit comments for the September 27<sup>th</sup> meeting is September 24<sup>th</sup>. Attached is a summary of the proposed regulations. For more information on the ICT, please contact our office, or visit the ICT website at:

<https://arb.ca.gov/msprog/ict/ict.htm>

The regulations split transit operators into two groups. Transit operators with 100 or more buses in its fleet must submit their transition (a.k.a. rollout) plans by July 1, 2020, and begin purchasing zero emission buses in January 2023. Small operators with less than 100 buses are provided additional time, and must submit rollout plans by July 1, 2023, and begin purchasing



zero emission buses in January 2026. The proposal ramps up every three years the percentage of zero emission buses that must be purchased. While the language exempts some bus types based on commercial availability, and provides a pathway for delaying compliance, this regulation is an unfunded mandate that will strain budgets and potentially impact service.

**Human Trafficking:** AB 2034 was approved by the legislature and is pending on the Governor's desk. During the final weeks of session the bill was significantly amended. While the intent of the bill is to require transit operators to provide employee training on identifying human trafficking, the bill still amends a code section that applies only to business or other establishment that operate intercity passenger rail or light rail stations, or bus stations – "bus stations" is not defined, but this term usually refers to Greyhound type bus stations. Prior versions of the bill also exempted any public entity that implements its own training program before January 1, 2019. The current version of the bill removes that exemption. As pending before the Governor, AB 2034 includes the following requirements:

- A business or other establishment that operates intercity passenger rail or light rail stations, or bus stations shall provide at least 20 minutes of training to its new and existing employees who may interact with, or come into contact with, a victim of human trafficking
- Requires the above training to include, but not be limited to, all of the following:
  - the definition of human trafficking, including sex trafficking and labor trafficking;
  - myths and misconceptions about human trafficking;
  - physical and mental signs to be aware of that may indicate that human trafficking is occurring;
  - guidance on how to identify individuals who are most at risk for human trafficking;
  - guidance on how to report human trafficking, including, but not limited to, national hotlines and contact information for local law enforcement agencies that an employee may use to make a confidential report; and
  - protocols for reporting human trafficking when on the job.
- Provides that this training may include information and material utilized in training Santa Clara County Valley Transit Authority employees, private nonprofit organizations that represent the interests of human trafficking victims, and DOJ.
- Provides that the failure to report human trafficking by an employee shall not, by itself, result in the liability of the business or other establishment that operates a facility, as specified, or of any other person or entity.

**School Start Times:** A similar measure failed passage last year, but Senator Portantino prepared a 200-page report illustrating the importance of not starting classes too early. In mid-August, Senator Portantino gutted and amended SB 328 to prohibit middle and high

schools from starting earlier than 8:30 a.m. This bill is currently pending on the Assembly Floor where it must be approved and sent the Senate for approval before midnight. Enactment of this bill could impact scheduling and operating costs for transit operators that provide public bus service to schools.

**Transit Oriented Development:** There were several measures introduced this year promoting transit oriented development. Many of these bills incentivize the use of infill or transit oriented development, and others focus on financing these projects through of tax increment financing. Most of these bills failed passage along the way, but two bills were sent to the Governor's desk. While next year will see a reenergized effort to re-enact redevelopment financing, the following two bills will likely be signed into law in an effort to promote housing developments near transit.

- *AB 2372 (Gloria)* would allow a city or county to establish a procedure by ordinance to grant a developer of an eligible housing development, upon the request of the developer, a floor area ratio (FAR) bonus, in lieu of a density bonus. The project must include at least 20% affordable units and be located within a transit priority area or within ½ mile of a major transit stop.
- *AB 2923 (Chui)* requires, until January 1, 2029, cities and counties where BART operates to adopt zoning standards in the San Francisco Bay Area Rapid Transit District's (BART) transit-oriented development (TOD) guidelines, and it establishes a streamlined approval process for certain projects on BART-owned land.

**JPA Pensions:** AB 1912 was approved by the legislature, and it is pending on the Governor's desk. Although this bill would place new requirements on Joint Powers Authorities (JPA) regarding JPA members' retirement liability, amendments at the end of session resulted in the League of Cities and CSAC removing their opposition to this bill. Language making any retirement obligation a "joint and severable liability" was removed, and the requirement to apportion any obligation prior to dissolving the JPA was also removed. In general, AB 1912 prohibits member agencies of Joint Powers Authority (JPA) from disclaiming the retirement liability of a JPA. However, assessing and apportioning any retirement liability only occurs if the member agencies decide to dissolve the JPA.

This bill was introduced in response to the dissolution of the East San Gabriel Valley Human Services Consortium, where CalPERS reduced the retirement benefits of almost 200 employees after that JPA's sole source of revenue was terminated. CalPERS requested payment of the JPA's retirement obligations from the member agencies, but the member agencies cited existing JPA law and case law to claim they were not responsible for the JPA's retirement obligations.

Under AB 1912 the requirement to address any unfunded retirement obligation would commence when the members of a JPA elect to dissolve the JPA. Prior to filing a notice of termination, the member agencies shall mutually agree to the apportionment of the agency's

retirement obligations. This agreement must be signed by all parties. If an agreement cannot be reached, the retirement board shall apportion the costs to each member agency based on the share of services received from the agency or by population of each member agency. A member to the agency may appeal the apportionment decision, in which case it would be resolved through arbitration.

***North Coast Rail Authority:*** SB 1029 by Senator McGuire has been significantly amended. This bill aims to dissolve the North Coast Rail Authority (NCRA) and utilize the northern segment of the rail right-of-way as a multiuse trail, and preserve the southern section, from Willets south, for freight and passenger rail service. As drafted, SB 1029 significantly limits the authority of NCRA, and directs the California State Transportation Agency to conduct an audit of all assets and liabilities of the NCRA, and determine the most appropriate way to dissolve the agency. This includes an assessment on prioritizing the transfer of the southern section of the rail assets to the Sonoma Marin Area Rail Transit District (SMART). In addition, the bill authorizes SMART to negotiate with the freight operator on the purchase of all rights and equipment. Legislation will be introduced to implement the findings of the audit.

## **Innovative Clean Transit Rule Summary**

*Large Transit Agency* – Any operator with a fleet size of 100 or more active buses

*Small Transit Agency* – Any operator with fewer than 100 active buses.

*Bus* – A bus is any rubber tired vehicle designed to transport passengers with gross vehicle weight rating of 14,000 pounds or more.

*Active Bus* – Any bus in a fleet that is available for revenue service, including a spare bus or a bus undergoing routine maintenance or repairs. This does not include emergency contingency vehicles, a bus in storage, or bus out of service for an extended period.

*Cutaway and other specific buses* –Cutaways, double-decker, over-the-road, and articulated buses are exempt from the purchase requirements until January 1, 2026, if the vehicle has passed the testing procedure and obtained a Bus Testing Report, i.e. Altoona Tested. The language only requires that a single model be available for any of these buses for the 2026 purchase requirement to apply.

*Rollout Plan* – Each operator must adopt and submit to CARB a plan, as specified in the language, on how the operator will transition to a zero emission fleet. A large transit agency must submit this plan to the Executive Officer at CARB by July 1, 2020, and a small transit agency must submit this plan by July 1, 2023.

*Purchase Requirements* – The regulation would impose the following purchase requirements:

*Large Transit Agency:*

- Starting January 1, 2023, 25% of the total number of new bus purchases must be zero emission buses.
- Starting on January 1 2026, 50% of the total number of new bus purchases must be zero emission buses.
- Starting on January 1, 2029, 100% of the total number of new bus purchases must be zero emission buses.

*Small Transit Agency:*

- Starting on January 1 2026, 25% of the total number of new bus purchases must be zero emission buses.
- Starting on January 1, 2029, 100% of the total number of new bus purchases must be zero emission buses.

*Bus Bonus Credits* – The regulations award credits for zero emission buses already purchased. These bonus credits can be used in any year to meet the purchase requirements.

- *Fuel Cell Buses* – For fuel cell electric buses purchased before December 31, 2017, and remained in the fleet as of January 1, 2018, may receive 2 bonus credits. For fuel cell

buses placed in service between January 1, 2018 and December 31, 2022 receive 1 credit.

- *Battery electric buses* – For each battery electric bus purchased before January 1, 2017 and remains in service as of January 1, 2018 receives 1 credit.

- 

*Joint Zero Emission Bus Groups* – The regulations allow for two or more operators to create a Joint Zero Emission Bus Group, which allows them to submit a single rollout plan. However, any joint group must inform the Executive Officer at CARB at least one year prior to the joint group taking effect. The members of a joint group must be within the same regional planning area or within the same air district or basin. The purchase requirements would be based on the largest operator in the group.

*Extensions & Exemptions* – The regulations authorize the Executive Officer to grant one year extensions for the following circumstances:

- Delay in bus delivery caused by the bus manufacturer.
- Delay in bus delivery caused by construction delays.
- When available zero emission buses are at the end of battery or fuel cell stack warranty period and cannot meet the transit agencies mileage needs.
- When a required zero emission bus type is unavailable for purchase.
- When a required zero emission bus type cannot be purchased due to financial hardship.

*Low NOx Engines* – When purchasing conventional engines, the regulations require operators to purchase only low NOx engines starting on January 1, 2020.

*Renewable Fuels* – Starting on January 1, 2020, a large transit agency is required to only purchase renewable diesel or renewable natural gas. This requirement kicks-in when renewing purchase or delivery contracts after January 1, 2020.



August 31, 2018

## Existing Positions

Bills	Subject	Status	Client - Position
<b><u>AB 1</u></b> <b>(Frazier D)</b> Transportation funding.	AB 1 was Assemblyman Frazier's renewed effort to address the funding shortfall facing our transportation infrastructure. With the passage of SB1, this bill be will likely be used for another issue if it is moved forward.	ASSEMBLY TRANS  DEAD	SUPPORT
<b><u>AB 399</u></b> <b>(Grayson D)</b> Autonomous vehicles: Contra Costa Transportation Authority: pilot project.	Last year, legislation was enacted to authorize the Contra Costa Transportation Authority to conduct a pilot project testing the use of autonomous vehicles on streets that are open to the public, but located within a private business park.  AB 399 extends the sunset date on the authority for the pilot project to operate according to existing law, prior to the requirement to then comply with regulations being developed by the DMV. Currently, this pilot program must comply with the DMV regulations within 180 days of the operative date of the regulations. AB 399 extends this "phase-in" period to 12 months.	ASSEMBLY 2 YEAR  DEAD	SUPPORT
<b><u>AB 1454</u></b> <b>(Bloom D)</b> Transportation projects: lease agreements.	AB 1454 was amended to remove the language that deletes the sunset date on the authority for Caltrans and regional transportation agencies to enter into public private partnerships. As amended, the bill merely states that it is the intent of the Legislature to reestablish the public-private partnership process.  AB 1454 has also not been set for hearing, and will not be moving forward.	ASSEMBLY RULES COMMITTEE -- DEAD	SUPPORT

<b><u>AB 1759</u></b> <b>(McCarty D)</b> Public trust lands: City of Sacramento.	<p>AB 1759 has been gutted and amended to deal with a state tides land issue in the City of Sacramento.</p> <p>As introduced the bill would withhold a city's or county's share of local street and road maintenance funds if that city or county fails to meet its minimum housing production goals as certified by the Department of Housing and Community Development.</p>	Governor's Desk	WATCH (prior version)
<b><u>AB 1866</u></b> <b>(Fong R)</b> Transportation funding.	<p>This new measure makes numerous changes to transportation funding programs. These changes largely reflect the transportation funding proposal pushed by the Assembly Republican Caucus last year.</p>	ASSEMBLY TRANS  DEAD	WATCH
<b><u>AB 1901</u></b> <b>(Obernalte R)</b> California Environmental Quality Act: exemption: roadway projects.	<p>This bill would extend to January 1, 2023, an existing CEQA exemption for counties or cities with a population of less than 100,000. The existing program provides a limited exemption from CEQA for maintenance projects within the existing right-of-way if specified conditions are met.</p>	SENATE EQ  DEAD	SUPPORT
<b><u>AB 2851</u></b> <b>(Grayson D)</b> Regional transportation plans: traffic signal optimization plans.	<p>AB 2851 was gutted and amended this week. As amended the bill aimed to address the need to reach a compromise on abating lead paint in older homes. An agreement was not reached, and this bill is now considered dead.</p> <p>Previously, the bill would authorize each city within the jurisdiction of the Metropolitan Transportation Commission (MTC) to develop and implement a traffic signal optimization plan. <i>In addition, the bill directed Caltrans to ensure its traffic signals within these cities are adjusted and maintained in accordance with the plan.</i></p>	SENATE FLOOR  DEAD	Support & Seek Amendments (prior version)

<p><b><u>AB 3124</u></b>  <b>(Bloom D)</b>  Vehicles:  length  limitations:  buses: bicycle  transportation  devices.</p>	<p>AB 3124 makes a small change with a big impact. This measure amends existing to authorizes an operator to equip a 60-foot articulated transit bus or trolley with a front-mounted bicycle rack that extends up to 40 inches from the front body of the bus when fully deployed and limits the handlebars of a bicycle that is being transported on such a rack from extending more than 46 inches from the front of the bus.</p>	<p>Signed Into law  Chapter 22, Statutes  of 2018</p>	<p>SUPPORT</p>
<p><b><u>AB 3201</u></b>  <b>(Daly D)</b>  California  Clean Truck,  Bus, and Off-  Road Vehicle  and Equipment  Technology  Program.</p>	<p>The California Transit Association (CTA) is sponsoring AB 3201 in an effort to secure a funding stream to transition to zero emission transit buses.</p> <p>AB 3201 as currently drafted would amend the California Clean Truck, Bus, and Off-Road Vehicle and Equipment Technology Program (Program) to require CARB to establish a funding program for large-scale deployments that meet current and future regulatory obligations. The bill would also clarify that infrastructure needs are also an eligible expense. While the content of AB 3201 will evolve, the intent of this bill is to create a dedicated funding stream to assist transit operators in transitioning to zero emission fleets.</p>	<p>ASSEMBLY APPR  Held on Suspense --  DEAD</p>	<p>SUPPORT</p>
<p><b><u>ACA 4</u></b>  <b>(Aguiar-Curry D)</b>  Local  government  financing:  affordable  housing and  public  infrastructure:  voter approval.</p>	<p>ACA 4 would generally lower the voter threshold to 55% for imposing the following taxes or issuing debt:</p> <ul style="list-style-type: none"> <li>• Creates an additional exception to the 1% limit that would authorize a city or county, to levy an ad valorem tax to service bonded indebtedness incurred to fund the construction, reconstruction, rehabilitation, or replacement of public infrastructure or affordable housing.</li> <li>• Authorizes a local government to impose, extend, or increase a</li> </ul>	<p>ASSEMBLY L. GOV  DEAD</p>	<p>SUPPORT</p>



<b><u>ACA 4</u></b> <b>(Aguiar-Curry D)</b> <b>(cont.)</b>	special tax for the purposes of funding the construction, rehabilitation or replacement of public infrastructure or affordable housing.		
<b>Regional Measure 3/Senate Bill 595 (Beall)</b>	SB 595 authored by Senator Jim Beall was passed by the Legislature and signed into law by Governor brown in the fall of 2017. The bill authorizes the Bay Area Toll Authority to place Regional Measure 3 on the ballot. At its February 27th meeting, the County Board of Supervisors approved adding Regional Measure 3 to the June 5, 2018 ballot. If approved Regional Measure 3 will allow the Bay Area Toll Authority to increase tolls on the seven (7) state owned bridges, as follows: \$1 January 1, 2019, \$1 January 1, 2022, and \$1 January 1, 2025. Revenues raised will fund transportation projects on the expenditure plan to relieve congestion in the bridge corridors.	June 5, 2018 Statewide Primary Election – Approved by Voters	SUPPORT
<b><u>SB 760</u></b> <b>(Wiener D)</b> Bikeways: design guides.	SB 760 was gutted and amended on June 4 <sup>th</sup> .  As amended the bill would prohibit Caltrans from denying a permit solely based on the work being performed pursuant to local plans and specifications if a project is adjacent or near a state highway and does not affect the operation of the state highway.	ASSEMBLY TRANS  DEAD	WATCH
<b><u>SB 827</u></b> <b>(Wiener D)</b> Planning and zoning: transit-rich housing bonus	SB 827 would authorize a “transit-rich housing project” to be eligible for a “transit-rich housing bonus.” A transit-rich housing project is a housing project that is located within ½ mile of a “major transit stop” or ¼ mile from a “high-quality transit corridor.” If the housing project meets these requirements then it would be exempt from local controls on residential density or floor area ratio, parking restrictions, and some height restrictions.	SENATE T. & H. – FAILED PASSAGE -- DEAD	WATCH

<b><u>SB 1434</u></b> <b><u>(Leyva D)</u></b> Transportation electrification: electricity rate design.	The CTA is sponsoring SB 1434 (Leyva). This bill aims to address the volatility with electricity rates when charging battery electric buses. Specifically, SB 1434 directs the CPUC to initiate a new rate making proceeding for the cost of electricity that is used as a fuel. The fluctuation of electricity rates is a key obstacle in scaling up the use battery electric buses.	ASSEMBLY APPR  Held on Suspense DEAD	SUPPORT
<b><u>SCA 2</u></b> <b><u>(Newman D)</u></b> Motor vehicle fees and taxes: restriction on expenditures.	With the passage of ACA 5, SCA 2 was placed on the Inactive File. SCA 2 and ACA 5 are identical and would prospectively prohibit the use of truck weight fees to pay for transportation bonds approved after January 1, 2017. The bill would also expand the protections for Public Transportation Account revenues to also include the 1.75% increase to the diesel fuel sales tax that was enacted as part of the gas tax swap. The ban on borrowing fees and taxes would also apply to any vehicle fees or taxes dedicated to transportation accounts.	SENATE INACTIVE FILE  DEAD	SUPPORT
<b><u>SCA 6</u></b> <b><u>(Wiener D)</u></b> Local transportation measures: special taxes: voter approval.	SCA 6 would allow a local government to impose any special tax with a 55% approval of the voters if the special tax dedicates 100% of the revenues, not including collection and administrative expenses, to transportation programs and projects.	SENATE APPR – SUSPENSE FILE  DEAD	SUPPORT



## Memorandum

**To:** NVTAG Board Members and Staff

**From:** Randy Riddle  
Renne Sloan Holtzman Sakai LLP

**Date:** December 14, 2017

**Re:** Rules Governing the Use of Public Resources in Connection  
with Ballot Measures

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This memorandum provides a summary of the laws governing the use of public resources related to state and local ballot measures. While this memorandum includes a list of what is clearly allowed and prohibited, the law governing this area is complex, as is reflected by the cases and statutes discussed below.

Three overriding principles should always be kept in mind.

First, because in most cases a small change in the facts regarding a particular use of public resources can alter whether that use is lawful, you should also involve your attorney when determining whether to use public resources in connection with a ballot measure.

Second, because the line between permissible and impermissible uses can often be very blurry – and close cases can invite litigation challenging a particular use of government resources – prudence dictates that public resources not be used where a particular use may be questionable.

Third, this memorandum addresses the legal limitations on the use of public resources related to ballot measures. Even if a particular use of public resources is lawful, agencies must keep in mind public perception – and media reports – regarding the use, and its potential effect on public confidence in the agency, and possible effects on the ballot measure itself.

Memo to: NVTB Board Members and Staff

December 14, 2017

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As used in this memorandum, “public resources” include, but are not limited to, agency funds, equipment and materials, office space, and staff time.

As a threshold matter and before discussing in detail the law governing this area, it is important to note that of the application of the law to unpaid board members on the one hand, and agency employees on the other, differs in certain respects. First, as explained below, case law allows an agency board, in its official capacity, to endorse (or oppose) proposed ballot measures; the same is not true for employees. Second, an agency board may submit a ballot argument in support of, or in opposition to, an agency ballot measure. Third, because staff members are paid, much closer attention will be focused on whether employees are engaging in advocacy activities related to ballot measures in their agency or private capacity. Finally, if an agency board member is an elected official (or candidate) with a campaign committee, the committee generally is permitted to contribute campaign funds to a committee formed to support or oppose a ballot measure; however, the official should consult with their private campaign counsel about the implications of such contributions.

### **Rules of the Road for Using Public Resources in Connection with Ballot Measures**

Based on the cases and statutes discussed above, the following rules can be used to guide a public agency’s use of public resources in connection with a ballot measure.

#### **1. Before a Ballot Measure Qualifies for the Ballot**

An agency may use public resources to draft a measure for the ballot. As noted, courts have concluded that, prior to and including the drafting stage of a proposed ballot measure, the activities do not involve attempting to either persuade the voters or otherwise influencing the vote.

Although no court has specifically addressed this, the Attorney General has concluded that public agencies may conduct public opinion polls to determine the potential support and opposition to the measure, the public’s awareness of the district’s financial needs, and the overall feasibility of developing a bond measure



that could win voter approval. (88 Ops. Cal. Atty Gen. 46 (2005).) The Attorney General did note, however, that donating or providing this information to a political campaign may give rise to campaign reporting under the Political Reform Act.

In addition, at least to the extent that an agency employs a public relations professional as part of its normal operations to communicate its activities on behalf of the public, the agency may use public resources to hire a communications consultant to advise the agency on an effort to place a matter on the ballot. Consistency with the agency's normal practices is one of the factors the courts look for in assessing whether a particular use of public resources with respect to ballot measure communications is okay.

If, however, such activities are not normally part of the agency's communications practices, then using public resources for these purposes can impose significant risk. Moreover, if the communications consultant used by the agency is later hired by the ballot measure campaign, the previous activities of the consultant for the agency may be more carefully scrutinized.

## **2. After a Measure Has Qualified for the Ballot**

Permissible activities include:

- An agency board taking a position on a ballot measure in an open and public meeting where all views are allowed to be heard.
- An agency board submitting a ballot pamphlet argument for or against a local ballot measure.
- Preparing staff memorandums and other analyses to assist decision-makers in determining the impact of the measure and what position to take.
- Responding to questions about ballot measures in ways that ensure a fair presentation of the facts about the measure and the agency's view of the merits of a ballot measure.



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- Accepting invitations to present the agency's views before organizations interested in the ballot measure's effects.
- Expressing the agency's views about the measure, provided that such expressions do not cross the line into advocacy for or against the measure. This use of resources, however, is riskier than the other described above, and may invite litigation against the agency.
- Including links on the agency's website to analyses prepared by nonpartisan organizations such as the League of Women Voters.
- Bringing a court action to challenge the validity of a proposed measure on the agency's ballot.

Impermissible activities include:

- Preparation of campaign materials such as bumper stickers, posters, advertising "floats," television and radio spots, and billboards.
- Distribution of advocacy materials prepared by others, including through the agency's email system and on agency letterhead.
- Including links on the agency's website to campaign websites.
- Use of agency funds to pay for a ticket to a campaign fundraiser or other event.
- Engaging in political activities while in uniform.

Any use of public resources that does not clearly fall into one of these two categories must be evaluated by a "style, tenor and timing" standard, which is an intensely factual inquiry, and again may invite litigation against the agency. Key factors with respect to such uses of public resources is the extent that the information is distributed through regular agency communications channels, and whether the information focuses on facts rather than the use of inflammatory or

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argumentative language, and whether the style and layout of the materials is consistent with other agency communications.

As one example of an activity falling into the “gray area,” it may be permissible for the agency to sponsor a debate regarding a proposed ballot measure. In doing so, however, the agency must exercise significant caution to ensure that the debate is conducted in a fair and impartial manner.

### **3. Personal Activities.**

Under the First Amendment and Government Code section 3203, public officials and employees may engage in campaign activities on their own time, using their own resources. Such personal activities include making personal appearances regarding a ballot measure and working on the campaign during their personal time (e.g. vacation days), and making a contribution to a ballot measure campaign committee using personal funds. Officials and employees should take reasonable efforts to document that such activities are, in fact, done during their personal time using their personal resources.

In some situations, soliciting a contribution from a person may limit a public official’s ability to later make decisions – such as land use decisions – regarding the person solicited. (Gov. Code §84308.) Also, California law forbids elected officials and employees from soliciting campaign funds from employees, unless it is part of a broader solicitation to a significant segment of the public. (Cal. Gov. Code §3205(c).)

Please feel free to contact me if you have further questions about this matter.

### **Development of the Law Regarding Misuse of Public Resources for Election Activity**

It is a fundamental principle of California law that public funds must be expended for public purposes. Several cases over the past 40 years have discussed how this principle applies to the use of government resources in connection with ballot measures.

More recently, the Legislature has enacted statutes that, for all practical purposes, codify the principles established in these cases. In addition, those statutes specify the penalties that may be imposed when the statutes are violated. Moreover, where public resources have been used improperly for campaign activities, the California Political Reform Act may require that the government entity publicly report those expenditures.

## 1. Case Law

### a. *Stanson*

*Stanson v. Mott* (1976) 17 Cal.3d 206 was the Supreme Court case that established the California rules and standards discussed in this memorandum. In *Stanson*, the Court examined the expenditure of public funds by the State Department of Parks and Recreation to promote the passage of a statewide bond measure.

The Supreme Court held that “in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign.” (*Id.* at pp. 209-10.) Reviewing cases from other jurisdictions, the Court noted a “uniform judicial reluctance to sanction the use of public funds for election campaigns [resting on] an implicit recognition that such expenditures raise potential serious constitutional questions.” (*Id.* at p. 218.) A public official who authorizes the improper expenditure of public funds for campaign purposes may be sued and held personally liable to repay such funds if he failed to exercise due care in permitting the expenditure. (*Id.* at p. 217.)

A number of court decisions following *Stanson* applied its holding to other factual situations. Some of the more significant and relevant opinions are discussed here.

### b. *League of Women Voters*

In *League of Women Voters of Cal. v. Countywide Crim. Justice Coordination Com.* (1988) 203 Cal.App.3d 529, the Court rejected a legal challenge to public expenditures made to assist in the drafting of a statewide initiative measure. The Court held that “the development and drafting of a proposed initiative was not akin to partisan campaign activity, but was more closely akin to the proper exercise of legislative authority.” (*Id.* at p. 550.) The Court explained:



Prior to and through the drafting stage of a proposed initiative, the action is not taken to attempt to influence voters either to qualify or to pass an initiative measure; there is as yet nothing to proceed to either of those stages. The audience at which these activities are directed is not the electorate per se, but only potentially interested private citizens; there is no attempt to persuade or influence any vote. It follows those activities cannot reasonably be construed as partisan campaigning.

(*Id.* at pp. 555-56.) Finally, the Court held that the board of supervisors did not unlawfully expend public funds by holding a hearing at which it officially recorded its support for the qualification of the proposed initiative. (*Id.* at p. 560.)

**c. *Santa Barbara County Coalition***

In *Santa Barbara County Coalition Against Automobile Subsidies v. Santa Barbara County Association of Governments* (2008) 167 Cal.App.4th 1229, a nonprofit organization alleged that a county transportation agency (SBCAG) had unlawfully advocated and spent public funds for passage of a ballot measure to extend a one-half percent sales tax to fund transportation projects. The challenged activities occurred before the sales tax measure qualified for the ballot. The court of appeal ruled in favor of SBCAG.

First, the Court distinguished *Stanson* regarding the authority of a transportation agency to “formulate and sponsor” a sales tax measure, noting the special procedure it must follow to have a sales tax measure placed on the ballot, and concluding that the challenged actions were taken to comply with that process. (167 Cal.App.4th at pp. 1239-40.) The Court focused on the timing of challenged actions, noting that they occurred before the measure was placed on the ballot, contrasting the expenditure of funds to comply with the process for placing the measure on the ballot from later campaign activities in support of the qualified measure. (167 Cal.App.4th at p. 1240.) Accordingly, the Court concluded, “[n]othing in *Stanson* suggests that the formulation and drafting of a proposed ballot measure before its qualification for the ballot constitutes partisan campaigning for the ballot measure.” (*Id.*)



d. ***Vargas***

More recently, the California Supreme Court decided *Vargas v. City of Salinas* (2009) 46 Cal.4th 1 (*Vargas*), in which it reaffirmed and clarified the *Stanson* rule that government entities generally may not use public funds to pay for campaign activities, but may use such funds to make available informational materials relating to a ballot measure election. (46 Cal.4th at pp. 24-25, 33-34.)

In *Vargas*, the Court considered expenditures by the City of Salinas for communications about a local ballot initiative (Measure O) that would have repealed the city's utility tax, and about significant cuts in services the city planned to implement if Measure O passed. That tax provided the city with approximately \$8 million in annual revenue, representing about 13 percent of the city's general fund budget. (*Id.* at pp. 7, 12-13, 35.)

The communications included information posted on the city's website, a document made available at the city clerk's office and at public libraries, and articles in the city's newsletter. In addition, over the course of several public hearings, the city manager and the city's department heads presented fiscal impact memorandums to the city council about the consequences of the measure's passage. (*Id.* at p. 35.)

The Supreme Court explained that the mere circumstance that a public entity may be understood to have an opinion or position regarding the merits of a ballot measure is not improper. Rather, the threat to the fairness of the electoral process arises when a public entity devotes funds to campaign activities favoring or opposing such a measure.

The Court then explained that under the *Stanson* standard, certain government actions constitute *per se* improper campaign activity, including "the use of public funds to purchase such items as bumper stickers, posters, advertising 'floats,' or television and radio 'spots,'" and "the dissemination, at public expense, of campaign literature prepared by private proponents or opponents of a ballot measure." (*Id.* at p. 24.) On the other hand, a public agency acts in a proper informational role when it provides a "fair presentation of the facts" in response to a "citizen's request for information," or authorizes an agency employee to present

the department's view of a ballot proposal at a meeting of a public or private organization upon that organization's request. (*Id.* at pp. 24-25.)

The Court then explained that when an activity does not fall clearly into either category, a different analysis is required. The court must consider “such factors as the style, tenor and timing of the publication; no hard and fast rule governs every case.” (*Id.* at p. 25, fn. omitted.)

The *Vargas* Court concluded the city's challenged communications “as a matter of law do not constitute improper campaign materials or activities under the standard set forth in *Stanson*.” (*Vargas, supra*, 46 Cal.4th at pp. 8–9.) The *Vargas* Court explained that the “statement [in *Stanson*] that the government ‘may not “take sides” in election contests’ [citation] properly must be understood as singling out a public entity's ‘use of the public treasury to mount an election campaign’ [citation] as the potentially constitutionally suspect conduct, rather than as precluding a public entity from analytically evaluating a proposed ballot measure and publicly expressing an opinion as to its merits.” (*Vargas, supra*, 46 Cal.4th at p. 36.)

The *Vargas* Court held the city did not engage in campaign activity by making information about potential service cuts resulting from Measure O available on the city's website and at the city clerk's office and public libraries. (*Vargas, supra*, 46 Cal.4th at pp. 37–38.) The Court then considered articles in the city's fall 2002 newsletter about the proposed service reductions that the city council had voted to implement if Measure O passed. (*Id.* at pp. 38–39.)

Despite the presence of numerous statements about the dire effects of a repeal of the utility users tax – and the fact that the newsletters were mailed to city residents – the Court concluded the newsletter was proper informational material. The Court found it significant that the newsletter was a regular edition of the city's quarterly newsletter, “rather than a special edition created and sent to would-be voters, specifically because of the upcoming election regarding Measure O.” (*Vargas, supra*, 46 Cal.4th at p. 38.)

Summarizing its conclusion, the *Vargas* Court explained:

[A] variety of factors contributed to the conclusion that the city's challenged actions were "more properly characterized as providing information than as campaigning: (1) the information conveyed generally involved past and present facts, such as how the original [utility tax] was enacted, what proportion of the budget was produced by the tax, and how the city council had voted to modify the budget in the event Measure O were to pass; (2) the communications avoided argumentative or inflammatory rhetoric and did not urge voters to vote in a particular manner or to take other actions in support of or in opposition to the measure; and (3) the information provided and the manner in which it was disseminated were consistent with established practice regarding use of the Web site and regular circulation of the city's official newsletter."

(*Vargas, supra*, 46 Cal.4th at p. 40, 92 Cal.Rptr.3d 286, 205 P.3d 207.)

e. ***Peninsula Guardians***

*Peninsula Guardians, Inc. v. Peninsula Health Care Dist.* (2011) 200 Cal.App.4th 1108, 1121-23 involved a health care district ("District") that owned an acute care hospital leased to Mills-Peninsula Health Service. In 2005, the District entered into an agreement with Mills-Peninsula Health Services to construct a new hospital in the District. (*Id.* at p. 1113.)

The ballot measure at issue – which the District supported – was designated as Measure V and set for a special, all-mail election on August 29, 2006. (*Id.* at p. 1115.) In July and August 2006, the District mailed a newsletter and three postcards about Measure V to the District's voters. (*Id.* at p. 1116.) The last mailing was sent as late as August 17. (*Id.* at p. 1117.)

Unlike the situation in *Vargas*, the District had neither a website nor a regular newsletter. (*Id.* at pp. 1113-14.) It retained a "communications consultant" to create the website and newsletter. (*Id.* at p. 1114.) It used the newsletter to publicize and memorandum on a series of community meetings. (*Id.* at pp. 1114-15.) It used direct mail notices of meetings as well. (*Id.*) As a result of the meetings, changes were made in the agreements with MPHS. (*Id.* at p. 1115.)

Following the adoption of the resolution calling for the mail-in election, the Board discussed a “public information campaign,” including a newsletter and postcards. (*Id.*) After the measure passed, Peninsula Guardians, Inc. sued the District, arguing that these communications constituted an illegal expenditure of public funds. (*Id.* at p. 1118.)

Applying *Vargas*, the appellate court evaluated the materials and concluded that the communications were “primarily factual and informative,” and they generally involved “past and present facts,” including details on the proposed construction timeline, services the new hospital would provide and information on what would happen if the measure were approved. (*Id.* at pp. 1126-28.) The court explained that the District’s newsletter did not include “emotional or inflammatory warnings about the negative consequences for District residents if the hospital is not approved.” (*Id.* at p. 1127.) The court noted that “the limited positive characterizations in District’s mailers, such as stating District is “proud” of the agreement, which is a “fair deal” and includes the “best possible terms,” are moderate in tone . . . .” (*Id.* at pp. 1126-28.)

Second, the court looked at the “visual style” of the communications. (*Id.* at p. 1128.) It noted that the District’s prior newsletters, issued before the ballot measure, included colored graphics, photographs, and bullet-pointed text. (*Id.*) The court concluded that making a publication attractive is consistent with the legitimate dissemination of informational materials by the District. (*Id.*)

The court also examined to the “verbal style and tenor” of the communications. (*Id.* at pp. 1128-31.) The court concluded that the District’s use of the pronouns “we” and “you” – rather than employing a third person journalistic style – did not prove the publications were part of a political campaign. (*Id.*) The court noted that the approach was consistent with District’s normal style of communicating with the public. (*Id.*)

Similarly, the court did not accept the argument that the pieces were improper because they “include express value judgments and opinions,” such as the statement that the District had “negotiated the best possible agreement for the District,” that it is a “fair deal” that contains the “best possible terms to build the new community hospital on District land with no new taxes,” and that the Board

was “proud of the final terms of the agreement.” (*Id.*) Moreover, the court rejected the challenger argument that the content of the communications were “relentlessly one-sided,” informing the public about the need for a new hospital and the anticipated benefits but failing to highlight potential drawbacks of approving the agreement. (*Id.* at p. 1130.) The court explained that the dissemination of opposition views is not required, and that the failure to do so does not render a communication improper. (*Id.*)

## **2. Applicable Statutes**

In addition to case law, the Legislature has enacted statutes related to the use of public resources generally, related to ballot measures more specifically.

### **a. Government Code section 54964**

Government Code section 54964 expressly prohibits the expenditure of local agency funds “to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters.” (Gov. Code § 54964(a).) The statute prohibits an officer, employee, or consultant of a local agency expending any of the funds of the local agency to support or oppose the approval or rejection of a ballot measure, or the election or defeat of a candidate, by the voters.

Under this statute, “expenditure” means a payment of local agency funds that is used for communications that expressly advocate the approval or rejection of a clearly identified ballot measure, or the election or defeat of a clearly identified candidate, by the voters. This section does not prohibit the expenditure of local agency funds to provide information to the public about the possible effects of a ballot measure on the activities, operations, or policies of the local agency, if both of the following conditions are met: (1) The informational activities are not otherwise prohibited by the Constitution or laws of this state. (2) The information provided constitutes an accurate, fair, and impartial presentation of relevant facts to aid the voters in reaching an informed judgment regarding the ballot measure.

The penalties for violating this section are severe: “Any person who intentionally or negligently violates this section is liable for a civil penalty not to exceed one



thousand dollars (\$1,000) for each day on which a violation occurs, plus three times the value of the unlawful use of public resources.”

In addition, improper use of public resources is a crime. Penalties include state prison and permanent disqualification from public office. (Cal. Penal Code §§ 72.5(b) and 424.)

**b. Government Code section 8314**

Government Code section 8314 prohibits the use of public resources for “a campaign activity, or personal or other purposes which are not authorized by law.” This provision defines “campaign activity” to mean an activity constituting a contribution as defined in Section 82015 or an expenditure as defined in Section 82025.” It states that “campaign activity” does not include “the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.” The penalties for violating this section are the same as those imposed by section 54964, and the criminal statutes cited above.

**c. Government Code section 89001**

This statute provides that “[n]o newsletter or other mass mailing shall be sent at public expense.” Under FPPC regulations, mass mailing limitations apply to 200 or more substantially similar pieces of mail. Items are “substantially similar” if they both expressly advocate or unambiguously urge the passage or defeat of the same ballot measure.

**d. The Political Reform Act and Government Code section 89001**

In 1974, California voters enacted Proposition 9, known as the Political Reform Act (“PRA”). The PRA created an independent state agency, the Fair Political Practices Commission. The Commission is responsible for interpreting the PRA, and shares enforcement responsibilities with state and county prosecutors. Timely disclosure of contributions and expenditures is the primary focus of the PRA with regard to ballot measures.



The Commission has adopted a regulation making clear that government agencies that misuse public funds to advocate for or against a ballot measure are subject to these reporting requirements. (2 Cal. Code of Regs. §18225(b)(2).) The factors the Commission uses to make this determination are very similar to those discussed in the cases and statutes discussed above.

In addition, the Commission has adopted regulations that operate to expand the general law prohibiting mass mailings made at public expense, which provides that “[n]o newsletter or other mass mailing shall be sent at public expense.” (Gov. Code section 89001.) Under Commission regulations, mass mailing limitations apply to 200 or more substantially similar pieces of mail. Items are “substantially similar” if they both expressly advocate or unambiguously urge the passage or defeat of the same ballot measure. (2 Cal. Code of Regs. §18901.1(d).)

Violation of the PRA can result in criminal, civil and administrative penalties. (Gov. Code §§ 91001(b), 91000(a), 91001.5, 91002, 91004, 91005 and 91012.)

**e. Government Code section 3203**

Finally, subject to certain prohibited activities not at issue here, Government Code section 3203 provides broad protection for public officials and employees to engage in political activity, provided they do so on their own time, and without using the public funds or resources. Government Code section 3206, however, expressly prohibits engaging in political activities while in uniform.