



## NAPA VALLEY TRANSPORTATION AUTHORITY COVER MEMO

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### **SUBJECT**

First Amendment to Napa Valley Transportation Authority (NVTA) Agreement No. 20-18 with Nossaman, LLC for TIFIA Legal Services

### **STAFF RECOMMENDATION**

That the Napa Valley Transportation Authority (NVTA) Board authorize the Executive Director to execute, and make minor modifications to the First Amendment of NVTA Agreement No. 20-18 with Nossaman, LLC for additional legal advisory services for securing a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan and private sector financing for the construction of the new Vine Transit Maintenance Facility for a total amount not to exceed \$75,000.

### **EXECUTIVE SUMMARY**

Under delegated authority, the Executive Director executed Agreement 20-18 in September 2020 for legal assistance with Nossaman to secure a TIFIA loan through the Build America Bureau (BAB) to construct the Vine Maintenance Facility. The original scope of work was intended to assist NVTA with the application to the BAB and associated documents such as the Local Transportation Fund redirection agreement with the County of Napa and Metropolitan Transportation Commission, the Collateral Agent Services Agreement as well as responses to the BAB in the legalities of debt structure and servicing.

The Amendment will provide NVTA with continued legal assistance from Nossaman developing the financing structure and eventually, successful closing on the BAB loan.

### **FISCAL IMPACT**

Is there a fiscal impact? Yes \$30,000 for the additional scope of services not to exceed total contract amount of \$75,000. The fund source is Transportation Development Act and has been accounted for in the Bus Maintenance Facility budget.



## NAPA VALLEY TRANSPORTATION AUTHORITY Board Agenda Memo

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**TO:** Board of Directors  
**FROM:** Kate Miller, Executive Director  
**REPORT BY:** Antonio Onorato, Director of Administration, Finance and Policy  
(707) 259-8779 / Email: [aonorato@nvta.ca.gov](mailto:aonorato@nvta.ca.gov)  
**SUBJECT:** First Amendment to Napa Valley Transportation Authority (NVTA)  
Agreement No. 20-18 with Nossaman, LLC for TIFIA Legal Services

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### **RECOMMENDATION**

That the Napa Valley Transportation Authority (NVTA) Board authorize the Executive Director to execute, and make minor modifications to the First Amendment of NVTA Agreement No. 20-18 with Nossaman, LLC for additional legal advisory services for securing a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan and private sector financing for the construction of the new Vine Transit Maintenance Facility for a total amount not to exceed \$75,000.

### **COMMITTEE RECOMMENDATION**

None

### **BACKGROUND AND DISCUSSION**

It was the original intent to fund the new Maintenance Facility with a combination of Transportation Development Act (TDA), Federal Transit Administration (FTA), Regional Measure 3 (RM3) and TIFIA financing. Recent announcements that California Supreme Court has agreed to hear arguments in a lawsuit against Regional Measure 3, the \$3 toll increase on the Bay Area's State Owned Bridges passed by Bay Area voters in 2018. That has compelled staff to recommend to the NVTA board to replace RM3 funds with a private sector loan to satisfy the Build America Bureau's (BAB) requirements to have a complete funding package prior to the close of the TIFIA loan.

To address the funding gap, staff expanded KNN's scope of services to provide the agency with assistance to secure private bank loan. The work included support during the credit review process, help in negotiating a term sheet, and assistance with

resubmitting a new indicative debt rating request letter from Moody's Investment Services. All of these services required legal review and were not in the original scope with Nossaman. The additional services helped accelerate the TIFIA loan process mitigating further delays.

At the time, Nossaman's budget was adequate without the need for the adjustment. Staff is now shifting its focus on the legal due diligence portion with the recent changes in the financial structure.

### **FISCAL IMPACT**

Is there a fiscal impact? Yes. \$30,000 for the additional scope of services for a not to exceed amount of \$75,000. The fund source is Transportation Development Act and has been accounted for in the Bus Maintenance Facility budget.

### **ALTERNATIVES**

The agency could forgo the use of industry experts to negotiate and secure a secondary loan. However, staff does not have the technical knowledge nor expertise to pursue the type of financing arrangement that will result in a loan agreement. Seeking competitive grant funds could delay the project indefinitely and halt efforts to obtain a TIFIA loan, and delaying the project and incurring potential construction escalation of \$500,000 to \$1 million annually

### **STRATEGIC GOALS MET BY THIS PROPOSAL**

Goal 1: Serve the transportation needs of the entire community regardless of age, income or ability.

Constructing the facility is needed to ensure fueling facilities are ready for electric buses currently on order and to ensure public transit services are provided in a safe and effective way.

Goal 3: Use taxpayer dollars efficiently.

Support to secure additional financing from a private bank will allow NVTA to continue the financing process with the BAB and accelerate securing a TIFIA loan, advertise for the construction of the maintenance facility and start construction by the fall of 2021.

### **ATTACHMENTS**

- (1) Draft First Amendment to NVTA Agreement No. 20-18
- (2) Agreement 20-18 with Nossaman LLC.



**FIRST AMENDMENT TO  
NAPA VALLEY TRANSPORTATION AUTHORITY (“NVRTA”)  
AGREEMENT NO. 20-18**

THIS FIRST AMENDMENT (“AMENDMENT”) TO NAPA VALLEY TRANSPORTATION AUTHORITY AGREEMENT NO. 20-18 is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2021 between the NAPA VALLEY TRANSPORTATION AUTHORITY (“NVRTA”), and NOSSAMAN LLP (“CONTRACTOR”), whose mailing address is 777 South Figueroa Street, 34<sup>th</sup> Floor, Los Angeles, CA 90017.

**RECITALS**

**WHEREAS**, in September 2020 NVRTA contracted for specialized finance counsel services from the CONTRACTOR to assist in securing a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan under the Rural Projects Initiative Program (RPI) offered through the U.S. Department of Transportation (DOT) Build America Bureau (BAB) for the Vine Transit Maintenance Facility Project pursuant to the Agreement No. 20-18 (“Agreement”); and

**WHEREAS**, NVRTA wishes to amend the Agreement for continued counsel services as set forth in EXHIBIT A of the Agreement to further assist in securing the TIFIA loan for the Transit Maintenance Facility project; and

**WHEREAS**, CONTRACTOR can provide the continued counsel services at a cost to NVRTA in the amount not to exceed \$30,000.

**TERMS**

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

1. Section 3, Compensation of the Agreement, the maximum payment amount, together with the amendment, shall be a total of **\$75,000** 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.
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 Amendment was executed by the parties hereto as of the date first above written.

"NVTA"

"CONTRACTOR"  
Nossaman LLP

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

By \_\_\_\_\_  
BARNEY A. ALLISON  
Attorney at Law, Partner

ATTEST:

By \_\_\_\_\_  
LAURA SANDERLIN  
NVTA Board Secretary

APPROVED AS TO FORM:

By \_\_\_\_\_  
DEEANNE GILLICK  
Sloan Sakai Yeung & Wong  
NVTA General Counsel



625 Burnell Street • Napa, CA 94559-3420  
T: 707-259-8631  
F: 707-259-8638

September 30, 2020

Nossaman LLP  
Attn: Barney A. Allison, Attorney at Law  
777 Figuerora Street, 34<sup>th</sup> Floor  
Los Angeles, CA 90017

**RE: NVTA Agreement No. 20-18 – Finance Counsel Services – NOTICE TO PROCEED**

Dear Mr. Allison:

This is your Notice to Proceed for *FINANCE COUNSEL SERVICES* as described in NVTA Agreement No. 20-18 and attached hereto.

The Project Manager assigned to this Agreement is:

Antonio Onorato  
Director of Finance, Administration and Policy  
Napa Valley Transportation Authority  
625 Burnell Street, Napa, CA 94559  
T 707.259.8779 / E [aonorato@nvta.ca.gov](mailto:aonorato@nvta.ca.gov)

For any further assistance, please contact the Project Manager or Renée Kulick, Admin Tech, T 707.259.8780 or [rkulick@nvta.ca.gov](mailto:rkulick@nvta.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Kate Miller", is written over a horizontal line.

Kate Miller (Sep 30, 2020 15:40 PDT)

KATE MILLER  
Executive Director

cc: Antonio Onorato, NVTA



## NAPA VALLEY TRANSPORTATION AUTHORITY (NVTA)

### AGREEMENT NO. 20-18

THIS AGREEMENT is made and entered into as of this 30th day of September, 2020, by and between the Napa Valley Transportation Authority, a joint powers agency under the laws of the State of California, hereinafter referred to as "NVTA", and Nossaman LLP, whose mailing address is 777 South Figuerora Street, 34<sup>th</sup> Floor, Los Angeles, CA 90017, hereinafter referred to as "CONTRACTOR";

### RECITALS

**WHEREAS**, NVTA wishes to obtain special finance counsel services to assist in securing a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan under the Rural Projects Initiative Program (RPI) offered through the U.S. Department of Transportation (DOT) Build America Bureau (BAB); and

**WHEREAS**, CONTRACTOR is willing and has been determined to be qualified to provide such specialized services to NVTA under the terms and conditions set forth herein;

### TERMS

**NOW, THEREFORE**, NVTA hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve NVTA in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and **shall expire on June 30, 2021**, unless earlier terminated as provided herein, except that the obligations of the parties under "Insurance" and "Indemnification" shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to NVTA shall also continue after said expiration date or early termination in relation to the obligations prescribed by "Confidentiality," "Taxes," and "Access to Records/Retention)".
2. **Scope of Services.** CONTRACTOR shall provide NVTA those services set forth in CONTRACTOR's proposal (EXHIBIT A), attached hereto and incorporated by reference herein. EXHIBIT A is provided solely to describe the services to be provided. Any terms contained in EXHIBIT A that add to, vary or conflict with the terms of this Agreement are null and void.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, NVTA shall pay CONTRACTOR at the rate 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 NVTA.

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of **\$45,000** 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.

4. **Method of Payment.**

(a) Invoices. All payments for compensation shall be made only upon presentation by CONTRACTOR to NVTA of an itemized billing invoice in a form acceptable to the NVTA Manager of Finance which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. CONTRACTOR shall submit invoices not more often than every 30 days to NVTA Accounts Payable at 625 Burnell Street, Napa, CA 94559 or electronically to [ap@nvta.ca.gov](mailto:ap@nvta.ca.gov), who after review and approval as to form and content, shall submit the invoice to the NVTA Director Administration, Finance and Policy no later than fifteen (15) calendar days following receipt.

(b) Legal status. So that NVTA may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be maintained on file with the Secretary of NVTA's Board of Directors at all times during the term of this Agreement in a form satisfactory to the NVTA Manager of Finance. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, NVTA employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that NVTA may monitor the work performed by CONTRACTOR. NVTA shall



not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, NVTA, in addition to any other rights or remedies which NVTA may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation insurance. CONTRACTOR will provide workers' compensation insurance as required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of the CONTRACTOR's duties under this Agreement; including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide NVTA with certification of all such coverage's upon request by NVTA's Risk Manager.

(b) Liability insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverage's, issued by a company licensed (admitted) to transact business in the State of California and/or having a A.M. Best rating of A VII or better.

1. General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement.

2. Professional Liability/Errors and Omissions. Professional liability/errors and omissions insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim.

3. Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than

ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. In the event that CONTRACTOR becomes the owner of any vehicles used in conjunction with CONTRACTOR's business during the term of this Agreement, CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement comprehensive automobile liability insurance covering such owned vehicle or vehicles.

(c) Certificates. All insurance coverage's referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of NVTA's Risk Manager, demonstrated by other evidence of coverage acceptable to NVTA's Risk Manager, which shall be filed by CONTRACTOR with NVTA's Deputy Executive Director prior to commencement of performance of any of CONTRACTOR's duties; shall be kept current during the term of this Agreement; shall provide that NVTA shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. For the commercial general liability insurance coverage referenced in 7(b)(1) and, where the vehicles are covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming NVTA, its officers, employees, agents and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of NVTA shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to NVTA with respect to any insurance or self-insurance programs maintained by NVTA. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by NVTA's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, NVTA's Risk Manager, which approval shall not be denied unless the NVTA's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by NVTA's Risk Manager if it is determined that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions

as respects NVTa, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

8. **Hold Harmless/Defense/Indemnification.** To the fullest extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify NVTa and the officers, agents, employees and volunteers of NVTa from and against any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of NVTa or its officers, agents, employees, volunteers, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

9. **Employee Character and Fitness.** CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR, shall hold NVTa and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

10. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within twenty (20) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving ten (10) days written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). NVTa hereby authorizes the NVTa Executive Director to make all decisions and take all actions required under this Paragraph to terminate the Agreement on behalf of NVTa for cause.

11. **Termination for Convenience.** This Agreement may be terminated by NVTa for any reason and at any time by giving no less than thirty (30) days written notice of such termination and specifying the effective date thereof. NVTa hereby authorizes the NVTa Executive Director to make all decisions and take all actions required under this Paragraph to terminate the Agreement on behalf of NVTa.

12. **Disposition of, Title to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration of this Agreement or earlier termination of Agreement, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of NVTA, the property of and shall be promptly returned to NVTA, although CONTRACTOR may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only NVTA shall be entitled to claim or apply for the copyright or patent thereof.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to receipt of the notice of termination or commenced prior to receipt of the notice and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to NVTA for damages sustained by NVTA by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or was otherwise terminated, and NVTA may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to NVTA from CONTRACTOR is determined.

13. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

14. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

NVTA

Kate Miller  
Executive Director  
625 Burnell Street  
Napa, CA. 94559

CONTRACTOR

Barney A. Allison, Attorney at Law  
Nossaman LLP  
777 South Figuerora Street, 34<sup>th</sup> Floor  
Los Angeles, CA 90017

15. **Compliance with NVTA Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Board Secretary of NVTA and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required

under this Agreement, which would interfere with compliance or induce violation of these policies by NVTA employees or contractors.

(a) NVTA Policy for Maintaining a Harassment Free Work Environment effective November 18, 2015.

(b) NVTA Drug and Alcohol Policy adopted by resolution of the Board of Directors on November 18, 2015.

(c) Napa County Information Technology Use and Security Policy adopted by resolution of the Napa County Board of Supervisors on April 14, 2005. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the NVTA computer network shall sign and have on file with NVTA prior to receiving such access the certification attached to said Policy.

(d) NVTA System Safety Program Plan adopted by resolution of the Board of Directors on November 18, 2015.

16. **Confidentiality.** Confidential information is defined as all information disclosed to CONTRACTOR which relates to NVTA's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of NVTA, expressed through its Executive Director. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to NVTA all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by NVTA.

17. **No Assignments or Subcontracts.** A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of NVTA, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for NVTA to withhold its consent to assignment. For purposes of this subparagraph, the consent of NVTA may be given by its Executive Director.

(a) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

18. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing signed by both Parties. In particular, only NVTA, through its Board of Directors in the form of an amendment of this Agreement, may authorize extra and/or changed work beyond the scope of services prescribed by Exhibit "A". Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

19. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

20. **Compliance with Laws.** CONTRACTOR shall observe and comply with all currently applicable Federal, State and local laws, ordinances, and codes, including but not limited to the Federal laws contained in Attachment 1, and as amended from time to time. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractor's shall not deny the benefits thereof to any person on the basis of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), nor shall they discriminate unlawfully against any employee or applicant for employment because of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), or use of family care leave. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated there under (Title 2, California Code of Regulations, section

7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of NVTA by the State of California pursuant to Agreement between NVTA and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractor's shall give written notice of their obligations there under to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to NVTA for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party; CONTRACTOR shall include all of the provisions of this Section in all such subcontracts as obligations of the subcontractor.

21. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold NVTA harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that NVTA is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish NVTA with proof of payment of taxes or withholdings on those earnings.

22. **Access to Records/Retention.** NVTA, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after NVTA makes final payment for any other work authorized hereunder and all pending matters are closed, whichever is later.

23. **Authority to Contract.** CONTRACTOR and NVTa each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

24. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to NVTa and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as NVTa may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of NVTa relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, NVTa may terminate this Agreement immediately upon giving written notice without further obligation by NVTa to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that NVTa has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless the NVTa Executive Director has determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. CONTRACTOR agrees to timely comply with all filing obligations for a consultant under NVTa's Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

(c) Campaign Contribution Disclosure. CONTRACTOR has complied with the campaign contribution disclosure provisions of the California Levine Act (Government Code § 84308) and has completed the Levine Act Disclosure Statement attached hereto as Exhibit "C."

25. **Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude NVTa from publishing or otherwise distributing applications and information regarding NVTa job openings where such publication or distribution is directed to the general public.



26. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

27. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.


28. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

29. **Entirety of Contract.** This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.


30. **Extensions Authorized.** The Executive Director is delegated authority to execute amendments to extend the term of this Agreement, if needed from time to time.

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

"NVT A"

  
By Kate Miller (Sep 30, 2020 15:40 PDT)  
KATE MILLER, Executive Director

"CONTRACTOR"  
Nossaman LLP

  
By Barney A. Allison, Attorney at Law

Approved as to Form	
By:	<u>Deanna Hilliard</u>
	NVT A General Counsel
Date:	<u>September 28, 2020</u>

## EXHIBIT A

### SCOPE OF SERVICES

- I. **GENERAL.** CONTRACTOR shall perform special finance counsel services to assist NVTa in securing a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan under the Rural Projects Initiative Program (RPI) offered through the US Department of Transportation (DOT) Build America Bureau (BAB) to support the construction of its capital project (Bus Maintenance and Transit Yard).
- II. **SCOPE OF WORK.** Services to be provided by CONTRACTOR in support of the project, include but not limited to, are:
- CONTRACTOR shall assist with the response(s) to any follow up questions from BAB to the Letter of Interest (LOI).
  - CONTRACTOR shall review, provide comments and assist in finalizing the TIFIA loan term sheet.
  - CONTRACTOR shall review and provide comments to draft of the TIFIA loan agreement, collateral and accounts security agreement, and assist with negotiating final terms.
  - CONTRACTOR shall assist with drafting the formal loan application after BAB gives invitation to submit.
  - CONTRACTOR shall prepare and/or review loan closing documents.
  - CONTRACTOR shall prepare and deliver their opinion, if necessary.

Should there be additional actions required that have not been identified above, it is expected that the CONTRACTOR shall identify such and inform NVTa prior to performance.

- III. **COMPLIANCE WITH GOVERNMENT CODE SECTION 7550.** As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of NVTa pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written report.

## EXHIBIT B

### COMPENSATION RATES

Billing rates are charged in 1/10 hour increments.

TITLE / DESCRIPTION	HOURLY RATE
ATTORNEY <i>Barney A. Allison</i>	\$480
PARTNERS	\$650

#### ALLOWABLE OTHER / (IN) DIRECT COSTS

Postage/ Courier/Messenger Services/Overnight Delivery

Copies

Travel - *effective IRS rates apply at time of travel*

*CONTRACTOR may charge certain representation costs separately, as well as any disbursements made to 3<sup>rd</sup> parties made on NVTAs behalf. Such costs and disbursements include, i.e. travel, computer-assisted research, transcription, and mail delivery services.*

- Total amount shown under item 3 (c) of the Agreement shall not be construed as a guaranteed sum.*
- Subject to the Agreement under items 3 (a) and 4 (a), CONTRACTOR shall periodically invoice NVTAs at the hourly rate for time/material and actual services performed on the project.*
- Optional or outside of scope work to be performed by the CONTRACTOR and their associated costs must be approved by NVTAs prior to performance.*

## EXHIBIT C

### LEVINE ACT DISCLOSURE STATEMENT

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract. Please refer to the attachment for the complete statutory language.

Current members of the NVTB Board of Directors are:

Liz Alessio	Mark Joseph
Chris Canning	Beth Kahiga
Paul Dohring	Gary Kraus
Kerri Dorman	Alfredo Pedroza
John F. Dunbar	Belia Ramos
Geoff Ellswort	Jill Techel
Leon Garcia	

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any NVTB Director(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications?

☐ YES ☐ NO

If yes, please identify the Director(s): \_\_\_\_\_

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any NVTB Director(s) in the three months following the award of the contract?

☐ YES ☐ NO

If yes, please identify the Director(s): \_\_\_\_\_

Answering yes to either of the two questions above does not preclude NVTB from awarding a contract to your firm. It does, however, preclude the identified Director(s) from participating in the contract award process for this contract.

9/30/2020

DATE



(SIGNATURE OF AUTHORIZED OFFICIAL)

Barney A. Allison, Attorney at Law

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

Nossaman LLP

(TYPE OR WRITE NAME OF COMPANY)

## California Government Code Section 84308

- (a) The definitions set forth in this subdivision shall govern the interpretation of this section.
- (1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.
  - (2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.
  - (3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.
  - (4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.
  - (5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.
  - (6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.
- (b) No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.
- (c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7. If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.
- (d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.
- (e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.

For more information, contact the Fair Political Practices Commission, 1102 Q St #3000, Sacramento, CA 95811, (916) 322-5660.






# NVTA Agreement No. 20-18 & NTP for NOSSAMAN LLP - Finance Counsel Services - SIGNATURE REQUESTED

Final Audit Report

2020-09-30

Created:	2020-09-30
By:	RENEE KULICK (RKULICK@NVTA.CA.GOV)
Status:	Signed
Transaction ID:	CBJCHBCAABAAGRSKWP6XYGksK3K5-pRriUOGveC6zV2f

## "NVTA Agreement No. 20-18 & NTP for NOSSAMAN LLP - Finance Counsel Services - SIGNATURE REQUESTED" History

-  Document created by RENEE KULICK (RKULICK@NVTA.CA.GOV)  
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-  Document emailed to Kate Miller (kmiller@nvta.ca.gov) for signature  
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-  Document e-signed by Kate Miller (kmiller@nvta.ca.gov)  
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-  Agreement completed.  
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