

**FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE TRI-VALLEY TRANSPORTATION COUNCIL AND MEYERS NAVE**

THIS FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT is made as 17 day of JULY 2017 by and between THE TRI-VALLEY TRANSPORTATION COUNCIL ("TVTC"), and MEYERS NAVE ("Contractor"), (sometimes referred together as the "Parties") who agree as follows:

RECITALS

WHEREAS, on September 17, 2014, TVTC and Contractor entered into that certain Professional Services Agreement ("Agreement") whereby Contractor agreed to provide professional legal services to TVTC, as further described in the Scope of Work contained in Exhibit A to the Agreement. A true and correct copy of the Agreement and its exhibits is attached hereto as Exhibit 1 hereto; and

WHEREAS, Section 3 of the Agreement provides that TVTC will pay Contractor \$22,500 for the services contemplated by the Agreement; and

WHEREAS, the initial term of the Agreement is set to expire on September 16, 2017; and

WHEREAS, Section 2 of the Agreement provides that TVTC has the option to request two one-year extensions; and

WHEREAS, TVTC and Contractor now desire to amend the Agreement to extend the expiration date and to increase the amount of compensation to provide for continued legal services.

NOW, THEREFORE, for and in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TVTC and Contractor hereby agree to amend the Agreement as follows:

1. All terms which are defined in the Agreement shall have the same meaning when used in this Amendment, unless specifically provided herein to the contrary.
2. Section 2 of the Agreement. The September 16, 2017 end date for the term of the Agreement identified in Section 2 is hereby replaced with June 30, 2020.
3. Section 3 of the Agreement is hereby amended to read as follows .

"COMPENSATION RATE: The hourly rate of compensation shall be as described in **Exhibit B**, attached hereto and by this reference made a part

hereof. The parties have agreed on a "Not to Exceed" Amount of Sixty-Eight Thousand dollars (\$68,000) for the general counsel services described in the Contractor's proposal dated August 8, 2014 and attached hereto as **Exhibit C**, with the understanding that Twenty Six Thousand dollars (\$26,000) has already been paid to Contractor. Amounts approved for any year beyond the first year of this Agreement are subject to the limits of Paragraph H, subpart 3 of the Tri-Valley Transportation Council bylaws."

Contractor agrees this is TVTC's total contribution for payment of costs under the Agreement unless additional payments are authorized in accordance with the terms of the Agreement and said terms of payment are mutually agreed to by and between the parties in writing.

4. Section 10 of the Agreement is amended to remove reference to the previous contractual "Not to Exceed" Amount of \$22,500 and annual "Not to Exceed" amount of \$7,500 and replace those references with the updated "Not to Exceed" Amount of \$68,000 as shown in Section 3 of this Amendment.
5. Exhibit B. Billing rates outlined in Exhibit B to the Agreement are hereby replaced with a new Exhibit B, attached as Exhibit 2 to this Amendment.

All other terms, conditions and provisions in the Agreement remain in full force and effect. If there is a conflict between the terms of this Amendment and the Agreement, the terms of the Agreement will control unless specifically modified by this Amendment.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed the effective date of this Agreement.

TRI-VALLEY TRANSPORTATION COUNCIL

DATED: 7/28/17



By: Steven Spedowski, TVTC Chair

**Meyers Nave
CONTRACTOR**

DATED: 7/17/17



By: Authorized Partner of Law Firm

EXHIBIT 1
PROFESSIONAL SERVICES AGREEMENT

LEGAL SERVICES RETAINER AGREEMENT

The Tri-Valley Transportation Council, a joint powers authority formed under the Joint Exercise of Powers Act (Gov. Code §§ 6500 *et seq.*) ("TVTC") and Meyers Nave Riback Silver & Wilson, a professional law corporation, ("Attorneys"), hereby agree as follows:

1. **SCOPE:** Attorneys will furnish general counsel legal services to TVTC in accord with Exhibit A, attached hereto and by this reference made a part hereof.

2. **TERM:** The term of this Agreement shall begin on September 17, 2014 and continues until September 16, 2017 as provided for in paragraphs 6 or 10 below. The parties may agree to two (2) one-year (1) extensions.

3. **COMPENSATION RATE:** The hourly rate of compensation shall be as described in **Exhibit B**, attached hereto and by this reference made a part hereof. The parties have agreed on a "Not to Exceed" Amount of Twenty-Two Thousand Five Hundred dollars (\$22,500), which is limited to annual not to exceed amounts of Seven Thousand Five Hundred dollars (\$7,500) for general counsel services as described in the Attorney's Proposal dated August 8, 2014 and attached hereto as **Exhibit C**. Amounts approved for any year beyond the first year of this Agreement are subject to the limits of Paragraph H, subpart 3 of the Tri-Valley Transportation Council Bylaws.

4. **PAYMENT:** Except for the compensation rate, stated above, all terms and conditions set forth in the **Exhibit A** shall dictate the terms and conditions under which services will be performed by Attorneys to County. All billing statements should be directed to the TVTC Administrator for review and approval. The billing statements should be provided on approximately a monthly basis (or as otherwise agreed to in writing by the Attorneys and the TVTC Administrator) detailing each person performing service and a brief description of the work performed. In addition to applicable approved hourly rates, Attorneys will be reimbursed for those out-of-pocket expenses, including travel expenses, copying expenses, word processing expenses, telephone expenses, postage expenses, and court reporter's costs as outlined in **Exhibit A**.

5. **DIRECTION:** Attorneys' work under this Agreement shall be under supervision of the TVTC Administrator.

6. **TERMINATION:** This Retainer Agreement for legal services may be terminated by the TVTC at any time, upon written notice by the TVTC.

7. **EXPERT CONSULTANTS:** The TVTC Administrator will review all requests for extraordinary expenses before the same are incurred by Attorneys. Attorneys will engage no expert consultants without having first received the consent of the TVTC Administrator both as to the identity and task of the consultants and the hourly amount to be paid for the consultant's work.

8. **PROFESSIONAL SKILL:** Attorneys are skilled in the professional calling necessary to perform the work agreed to be done under this Agreement, and TVTC relies upon the skill of Attorneys to do and perform the work in a professional and skillful manner, and Attorneys agree to perform the work in accordance with this standard.

9. INSURANCE:

a. During the term of this Agreement, Attorneys shall maintain comprehensive general liability coverage with aggregate limits in an amount not less than \$5 Million, and automobile coverage with combined single limits in an amount not less than \$1 Million. Upon TVTC's request, Attorneys shall provide TVTC a certificate evidencing this insurance. The TVTC shall be named as an additional insured on each liability and automobile policy providing such coverage. Attorneys' coverage shall be primary to any insurance maintained by TVTC. Unless the policy is simultaneously replaced with a new policy providing the same coverage, Attorneys shall immediately forward to TVTC any notice of the cancellation or non-renewal of any such coverages, or any other policy changes that materially affect coverage.

b. During the term of this Agreement, Attorneys also shall maintain professional liability insurance coverage with primary limits in an amount not less than \$1 Million per person and \$5 Million per incident. Such insurance shall insure Attorneys' work to be performed under this Agreement. Upon TVTC's request, Attorneys shall provide TVTC a certificate evidencing this insurance. Attorneys' professional liability coverage shall be primary to any insurance maintained by TVTC. Unless the policy is simultaneously replaced with a new policy providing the same or greater coverage and limits, Attorneys shall provide 30 days advanced written notice to the TVTC of the cancellation or non-renewal of Attorneys' professional liability coverage, or any other policy changes that materially affect such coverage.

c. During the term of this Agreement, Attorneys shall also maintain workers' compensation insurance as required by law. At TVTC's request, Attorneys shall provide TVTC a certificate evidencing this insurance. Attorneys' workers' compensation insurance shall be primary to any insurance maintained by TVTC. Unless the policy is simultaneously replaced with a new policy providing the same coverage, Attorneys shall provide 30 days advanced written notice to the TVTC of the cancellation or non-renewal of said Attorneys' workers' compensation insurance, or any other policy changes that materially affect such coverage.

10. MAXIMUM COMPENSATION: Notwithstanding anything in this Agreement to the contrary, the maximum amount of money which the TVTC shall be obligated to pay Attorneys under this Agreement shall not exceed the budgeted amount of Twenty-Two Thousand Five Hundred dollars (\$22,500), which is limited to annual not to exceed amounts of Seven Thousand Five Hundred dollars (\$7,500), as such budget may be modified from time to time. The parties agree to negotiate an amendment to this Agreement to provide for additional compensation and other terms, modifications or additions to this Agreement which are mutually acceptable to the parties. In the event the parties cannot agree on additional compensation or other terms, modifications or additions to this Agreement, this Agreement shall terminate.

11. EMPLOYER/EMPLOYEE RELATIONSHIP: No relationship of employer and employee is created by this Agreement, it being understood that Attorneys shall act hereunder as independent contractors; that Attorneys shall not have any claim under this Agreement or otherwise against TVTC for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, retirement benefits, Social Security, disability, Workers', Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind; that Attorneys shall be solely liable for and obligated to pay directly all applicable

taxes, including, but not limited to, federal and state income taxes, and in connection therewith Attorneys shall indemnify and hold TVTC harmless from any and all liability which TVTC may incur because of Attorneys' failure to pay such taxes; that Attorneys do, by this Agreement, agree to perform their said work and functions at all times in strict accordance with currently approved methods and practices in their field and that the sole interest of TVTC is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the agency concerned.

12. ASSIGNMENT OF CONTRACT: Nothing contained in this Agreement shall be construed to permit assignment or transfer by Attorneys of any rights under this Agreement and such assignment or transfer is expressly prohibited and void, unless expressly approved in writing in advance by TVTC.

13. DRUG-FREE WORKPLACE: Attorneys and Attorneys' employees shall maintain a drug-free workplace. Neither Attorneys nor Attorneys' employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U. S. Code Section 812, including marijuana, heroin, cocaine, and amphetamines, at any of TVTC's facilities or work sites. If any principal or employee of Attorneys is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at TVTC's facilities or work sites, Attorneys shall notify the TVTC Administrator within five days thereafter. Violation of this provision shall constitute a material breach of this Agreement.

14. CONFLICT OF INTEREST: No officer, member, or employee of TVTC and no member of their governing bodies shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. Neither of Attorneys shall serve on the TVTC Governing Council, committee, or hold any such position which either by rule, practice or action nominates, recommends, supervises Attorneys' operations, or authorizes funding to Attorneys.

15. RECORDS AND AUDITS: Attorneys will retain all records concerning this Agreement, or microfilm records of them, except original documents concerning telephone, copy, postage, telecopy and messenger charges, for a period of at least five years from the date of service.

Until the expiration of five years after the furnishing of any services pursuant to this Agreement, Attorneys shall make available, upon written request, to TVTC, any of its member cities or counties, or to the Federal/State government or any of their duly authorized representatives, this Agreement, and such books, documents, and records of Attorneys that are necessary to certify that the nature and extent of the reasonable cost of services to TVTC. If Attorneys enter into any Agreement with any related organization to provide services pursuant to this Agreement with a value or cost of \$10,000 or more over a twelve-month period, such Agreement shall contain a clause to the effect that until the expiration of five years after the furnishing of services pursuant to such subcontract, the related organization shall make available, upon written request, to the Federal/State government or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs. This paragraph shall be of no force and effect when and if it is not required by law.

16. INDEMNITY: Attorneys shall indemnify and hold and save TVTC harmless from any and all claims, expenses and damages arising from Attorneys' performance under this Agreement, including, but not limited to, third-party claims for

injury to persons or property damage, to the extent Attorneys negligently or intentionally failed to perform such services in accordance with the standard of care applicable to Attorneys.

17. BREACH: In the event that Attorneys fail to perform any of the services described in this Agreement or otherwise breach this Agreement, TVTC shall have the right to pursue all remedies provided by law or equity. Disputes relating to the performance of this Agreement shall not be subject to non-judicial arbitration.

18. MODIFICATION: No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

After having had the opportunity to review this Agreement and Exhibit A, and after having the language in form of this Agreement approved as containing the agreement between the parties, as shown below, and by signing this Agreement, the undersigned agrees to the terms of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written below.

DATED: 9/17/14

TRI-VALLEY TRANSPORTATION COUNCIL

By 

Candace Andersen
Chair

Tri-Valley Transportation Council

ATTORNEYS

Meyers Nave Riback Silver & Wilson

DATED: 9/17/14

By 

(Authorized Partner of Law Firm)

Exhibit A

I. ACRONYM AND TERM GLOSSARY

Unless otherwise noted, the terms below may be upper or lower case. Acronyms will always be uppercase.

Council	Shall refer to the Tri-Valley Transportation Governing Council
TVTC Administrator	TVTC Administrator, duly appointed by the Council in accordance with the Bylaws
TVTC	When capitalized, shall refer to the Tri-Valley Transportation Council
TAC	TVTC Technical Advisory Committee
RLF	Retained Law Firm or "Attorneys" as set forth in Legal Services Retainer Agreement.

II. STATEMENT OF WORK

A. INTENT

It is the intent of these terms and conditions to describe legal representation required by the TVTC.

B. SPECIFIC REQUIREMENTS

1. RLF shall designate a full partner who shall be available during regular business hours to meet with the TVTC, TVTC Administrator or TAC on general legal issues.
2. RLF shall agree that all work product including contract documents, legal research, opinion letters, etc., are the property of the client, the TVTC, and may be copied and provided by the TVTC to attorneys either employed or retained by the TVTC. This provision is not a waiver of the attorney/client privilege.
4. RLF, as requested, shall provide the TVTC Administrator copies of all information and correspondence relating to each matter. They shall include communications between RLF and any department, service company, and/or other parties' attorneys.
5. RLF shall not charge the TVTC for any client development costs.
6. Should either the RLF or the TVTC choose to terminate any retainer, RLF shall, at TVTC's discretion, continue to provide legal services as to any matter referred to them prior to the notice of termination and shall be compensated upon the same terms and conditions as herein set forth. RLF shall promptly return any files and work product related to matters withdrawn or transferred.

7. RLF shall disclose any malpractice claims incurred by any member of RLF in connection with services performed under this Agreement.

B. BILLING PRACTICES

1. RLF shall invoice TVTC only following the provision of legal services.
2. Payment will be generally made within thirty (30) days following receipt of invoice and upon satisfactory performance of services. The TVTC Administrator will identify any questions regarding fees or costs no later than ten (10) days after receiving RLF's invoice containing those fees and costs, and will use its best efforts to pay any undisputed amounts within 30 days following receipt of invoice.
3. Invoices shall include, but not be limited to:
 - a. Invoice date.
 - b. Project name and number.
 - c. Name of TVTC.
 - d. An individual entry for each legal task performed, and time billed for each individual task. "Block billing" for all tasks performed in one day, without designation of time for each task, will not be accepted by TVTC.
 - e. Date of each legal task and total time for each task performed.
 - f. Name, or acronym, for each attorney/paralegal performing the task and hourly rate of the person performing each legal task.
 - g. Time billed for each legal task must be charged in increments of a tenth of an hour increments.
 - h. Fees billed for each legal task must be listed under each attorney performing said tasks by the day, broken out as set forth in (g) above.
 - i. Individually itemized disbursements for costs must be illustrated on bill.
 - j. A summary of services, including the total time and fees per attorney/paralegal, per invoice.
 - k. A separate bill for each case must be provided. Bill should indicate, in addition to the foregoing, total fees and costs billed to date and credits paid by TVTC to date and a comparison to original estimate at outset of case.
 - l. On all fee bills or billing statements, actual time in units of one-tenth (1/10th) of an hour shall be charged instead of using minimum transaction times.
4. Expenses and Costs

RLF shall not bill for the following expense items at more than the specified guidelines:

- a. Photocopying: No more than actual cost, without mark-up, per page or the actual charge of a copy service. Large

copying jobs shall be sent to a capable but economical outside copy service.

- b. Telephone: Actual charges only for long distance calls.
- c. Fax Machines: No more than actual cost, without mark-up, only for outgoing facsimile transmission.
- d. Postage: Actual cost of postage for mailing.
- e. Computerized legal research: Is considered overhead costs of RLF and will not be paid by TVTC.
- f. Messenger and Delivery: For an outside messenger, the TVTC will pay actual costs without mark-up. For RLF's internal messenger service (between RLF's offices in other cities), charge no more than for an outside service.
- g. Travel: RLF shall describe in detail on the interim bill any travel expenses incurred by counsel. RLF need not attach supporting receipts. TVTC retains the right to audit travel expenses. RLF should retain receipts and other documentation for at least one (1) year following the conclusion of the case.

5. Billing – Miscellaneous

- a. RLF shall bill only at approved rates.
- b. RLF shall not charge for overhead items such as costs of seminars, books, association dues, etc.
- c. RLF shall send its final bill no more than thirty (30) days after completion of the assigned tasks, unless TVTC provide written authority to the contrary.

C. SPECIFIC BILLING REQUIREMENTS

- 1. Where correspondence or phone conversations are charged, the specific identify of the other party shall be included with the time entry. Likewise, if a conference is held, the bill shall identify all participants or attendees.
- 2. Charges for activities such as a file creation, or training of RLF's personnel are considered overhead items and shall not be billed to the file.
- 3. When standardized forms are used, actual time needed by an attorney or paralegal to prepare the pleadings or form for typing shall be billed, not the time originally used to draft the standardized documents or the time needed to type the form or pleading.
- 4. RLF shall not bill for bill preparation tasks, bill explanations, bill disputes and bill corrections.

5. RLF shall not bill for more than an occasional brief (an hour or less) conference between senior and junior attorneys. The TVTC will pay only for the senior attorney's time for such conferences. The conferences shall be demonstrably necessary, i.e., further the prompt performance of RLF's services. This restriction shall not apply to conferences or consultations among team members included in RLF's original proposal to the TVTC.
6. RLF shall not bill for word processing time. RLF shall bill only for the attorney's time not the secretarial or word processing time. RLF shall not bill for multiple redraft of memos, contracts, bid documents, etc. One redraft is occasionally allowed but this allowance is not justification for the redraft of every document prepared.
7. Legal research, when needed, must be carefully directed by partners or senior associates. RLF shall obtain prior approval for legal research exceeding four (4) hours. Routine legal issues shall not be the subject of legal research. A copy of RLF's research product must be maintained in the attorney's file and forwarded to TVTC, upon request, for future reference. Status reports shall indicate how the research on a substantive issue impacts the project.

D. POSITIONS (ATTORNEY/PARALEGAL) WITH THE RLF DESIGNATED FOR BILLING PURPOSES

If a person is designated as a paralegal, the TVTC retains the right to audit the work performed and determine whether such work was performed by a paralegal and doing paralegal activities, e.g., a paralegal should not customarily do clerical work which is overhead expense. The same rule will apply to partners versus associates. If a person's position is incorrectly designated (in the opinion of the TVTC's auditors), bills will be reduced accordingly.

E. AUDITING

1. The TVTC has the right to audit RLF's books and records related to any TVTC matter. The audit applies to all matters referred from or handled for or on behalf of the TVTC.
2. The TVTC reserves the right to seek reimbursement for services or costs for invoices inappropriately billed and paid.

Exhibit B

PROPOSED COMPENSATION

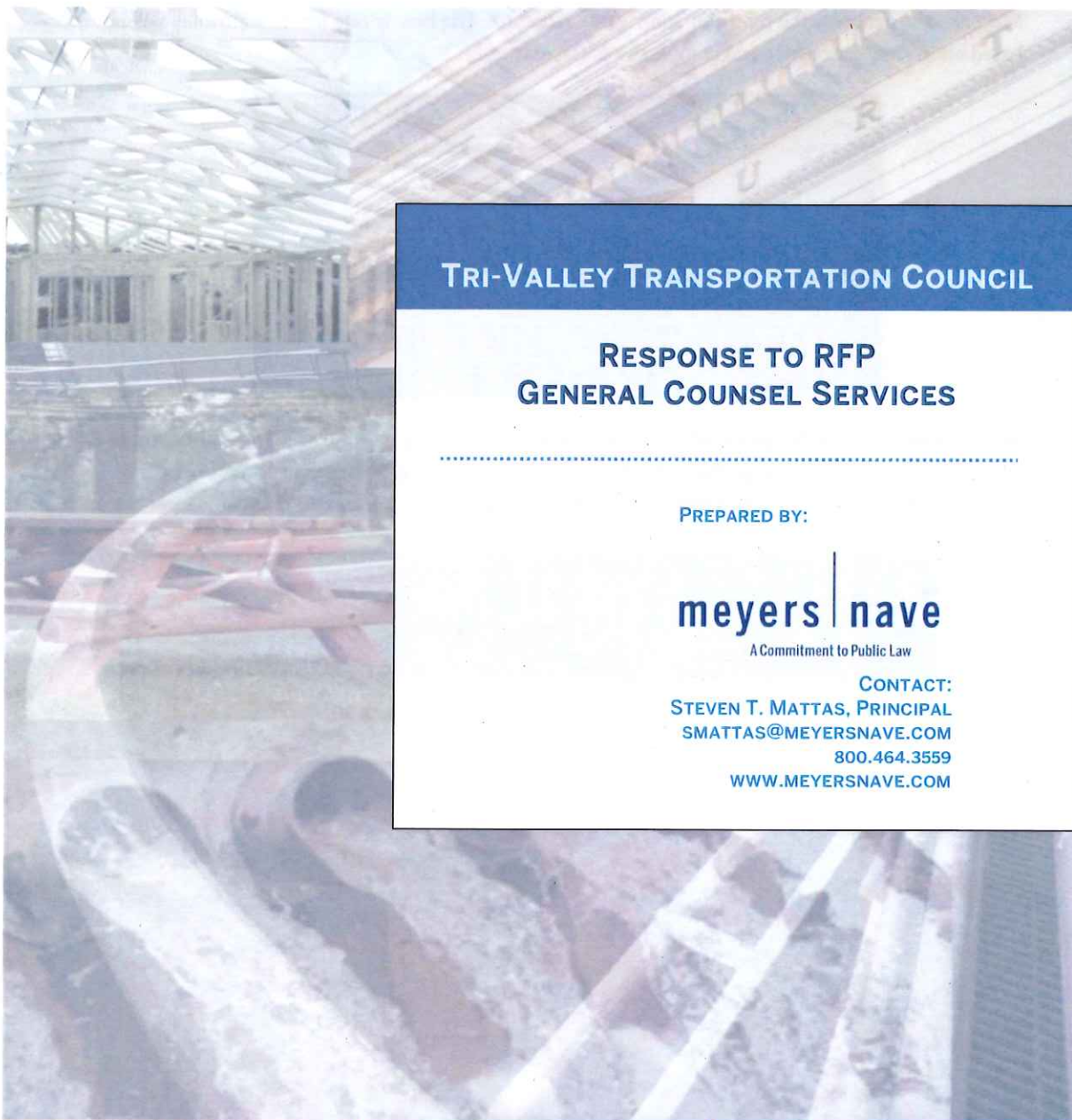
Meyers Nave proposes the following hourly rate structure. The hourly rate for each attorney will be based on his/her experience and complexity of the matter.

GENERAL COUNSEL	
PRINCIPAL STEVE MATTAS	\$310 PER HOUR
ASSOCIATE	\$275 PER HOUR
PARALEGAL	\$115 PER HOUR
SPECIAL COUNSEL	
PRINCIPAL/OF COUNSEL	\$275-\$395 PER HOUR
ASSOCIATE	\$215-\$295 PER HOUR
PARALEGAL	\$135 PER HOUR

Meyers Nave will not charge for office support services, including word processing and facsimile charges. We propose to charge the costs of mileage, photocopying, postage, and any third-party expenses, such as expert witness fees, deposition and court reporter fees, and electronic legal research.

MILEAGE	AT IRS RATES PER YEAR
PHOTOCOPY	\$0.25 PER PAGE
POSTAGE	USPS RATE (CURRENTLY \$0.49 PER OUNCE)
THIRD-PARTY EXPENSES	ACTUAL COSTS

Exhibit C



TRI-VALLEY TRANSPORTATION COUNCIL

RESPONSE TO RFP GENERAL COUNSEL SERVICES

PREPARED BY:

meyers | nave

A Commitment to Public Law

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575 MARKET ST., SUITE 2080
SAN FRANCISCO, CALIFORNIA 94105

8050 NO. PALM AVENUE, SUITE 300
FRESNO, CALIFORNIA 93711

555 FIFTH STREET, SUITE 320, SANTA
ROSA, CALIFORNIA 95401

EXHIBIT 2

Updated EXHIBIT B—Billing Rates

PROPOSED COMPENSATION

Meyers Nave proposes the following hourly rate structure. The hourly rate for each attorney will be based on his/her experience and complexity of the matter.

PRINCIPAL	\$325 PER HOUR
ASSOCIATE	\$290 PER HOUR
PARALEGAL	\$130 PER HOUR
SPECIAL COUNSEL	
PRINCIPAL/OF COUNSEL	\$300-\$410 PER HOUR
ASSOCIATE	\$230-\$310 PER HOUR
PARALEGAL	\$135 PER HOUR

MEYERS NAVE will not charge for office support services, including word processing and facsimile charges. We propose to charge the costs of mileage, photocopying, postage, and any third-party expenses, such as expert witness fees, deposition and court reporter fees, and electronic legal research.

MILEAGE	AT IRS RATES PER YEAR
PHOTOCOPY	\$0.25 PER PAGE
POSTAGE	USPS RATE (CURRENTLY \$0.49/ OUNCE)
THIRD PARTY EXPENSES	ACTUAL COSTS

