

**TRI-VALLEY TRANSPORTATION COUNCIL
RESOLUTION NO. 2024-04**

**A RESOLUTION APPROVING THE LEGAL SERVICES RETAINER AGREEMENT
BETWEEN THE TRI-VALLEY TRANSPORTATION COUNCIL AND
MEYERS NAVE FOR GENERAL COUNSEL SERVICES**

WHEREAS, in November 2023, the Tri-Valley Transportation Council (TVTC) released a Request for Proposals for General Counsel Services with a deadline to receive the proposals by December 1, 2023; and

WHEREAS, TVTC received four proposals from Aleshire and Wynder, Best Best and Krieger (BBK), Burke William and Sorensen and Meyers Nave; and

WHEREAS, Staff evaluated the proposals and determined Meyers Nave has extensive general counsel legal services experience, is the most qualified firm to meet TVTC's RFP requirements, and their proposal best meet the needs of TVTC; and

WHEREAS, TVTC staff now recommends that TVTC award a Professional Services Agreement ("Agreement") for General Counsel Services to Meyers Nave and approve the form of said Agreement attached hereto and incorporated herein as Attachment 1; and,

NOW THEREFORE BE IT RESOLVED THAT the Tri-Valley Transportation Council approves the LEGAL SERVICES RETAINER AGREEMENT and authorizes the TVTC Chair to execute the LEGAL SERVICES RETAINER AGREEMENT on behalf of the TVTC.

PASSED, APPROVED, AND ADOPTED at the meeting of January 29, 2024, by the following votes:

AYES: Josey, Morgan, Perkins, Testa, Haubert and Andersen

NOES:

ABSENT: Kiick

ABSTAIN:

DocuSigned by:

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Jean Josey, Chair
Tri-Valley Transportation Council

ATTEST:

DocuSigned by:

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Sai Midididdi, TVTC Administrative Staff

ATTACHMENT 1

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, a professional law corporation, (“Attorneys”), hereby agree as follows:

1. **Scope of Work: Attorneys will furnish general legal services to TVTC** in accordance with Exhibit A, attached hereto and by this reference made a part hereof.

2. **Term:** The term of this Agreement shall begin on July 1, 2024 and continues until June 30, 2026 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 for the initial term and any extension shall be as described in **Form B**, attached hereto and by this reference made a part hereof. The parties have agreed on a “Not to Exceed” Amount of Forty Thousand dollars (\$40,000), which is limited to annual not to exceed amounts of Twenty Thousand dollars (\$20,000). 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 this Agreement shall dictate the terms and conditions under which services will be performed by Attorneys. 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, and other expenses.

5. **DIRECTION:** Attorney’s work under this Agreement shall be under the 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 identify 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 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 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 Attorney's workers' compensation insurance, or any other policy changes that materially affect such coverage.

10. MAXIMUM COMPENSATION: Notwithstanding anything in this Agreement to the contrary and except as provided in Section 3, the maximum amount of money which the TVTC shall be obligated to pay Attorneys under this Agreement shall not exceed Forty thousand dollars (\$40,000) for general counsel services, which is limited to annual not to exceed amounts of Twenty Thousand dollars (\$20,000), as such budget may be modified from time to time. The parties agree to negotiate an amendment 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 sad 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 statue 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, 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/electronic 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, arid 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 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.

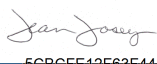
18. MODIFICATION: No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

After having had the opportunity to review this Agreement and 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.

TRI_VALLEY TRANSPORTATION COUNCIL

Dated: 2/23/2024

DocuSigned by:

By: _____
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Jean Josey, Chair

ATTORNEYS

Meyers Nave

Dated: 2/19/2024

DocuSigned by:

By: _____
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Authorized Partner of Law Firm

EXHIBIT A
SCOPE OF WORK

General Counsel shall have:

Knowledge of:

- Legal research.
- Principles and practice of constitutional, civil and administrative law and procedure.
- California statutory and constitutional law.
- Law in relation to authority, responsibilities and obligations of public officials, administrative boards and joint exercise of powers agencies.
- California civil and appellate procedures.
- Areas of law unique to public law practice: Brown Act, Public Records Act, Joint Exercise of Powers Act, etc.
- Federal and State law on the financing of transportation and transit projects.
- Land Use law, California Environmental Quality Act (CEQA).
- Trial and hearing procedures and rules of evidence.
- TVTC governing documents (Joint Exercise of Powers Agreement, Bylaws – both documents enclosed for reference).

Ability to:

- Direct legal preparation in difficult and complex matters.
- Perform legal research.
- Present oral and written statements of fact, law and argument in a clear and logical manner.
- Exercise good judgment; make sound decisions on legal casework and in dealing with people.
- Identify sensitive and political issues/considerations underlying requests for legal assistance from clients.
- Respond to various interpersonal reactions of clients, judges and attorneys in a sensitive and tactful manner.
- Frame oral and written comments or argument appropriately within a sensitive and political environment.

RESPONSIBILITIES OF GENERAL COUNSEL

1. Serve as General Counsel to TVTC and will have responsibility of overseeing the TVTC's legal affairs. General Counsel will report to the TVTC Staff Administrator ("Administrator") as an independent contractor and will advise the TVTC Governing Council ("Governing Council") and TVTC Technical Advisory Committee (TAC) as needed.
2. General Counsel will review and/or draft contracts, procurement documents, bidding procedures, and other documents arising in the ordinary course of business. General Counsel shall be familiar with the federal and state procurement laws and regulations as well as laws affecting the operation and financing of the Regional Transportation Development Fee. General Counsel will be responsible for executing Governing Council Resolutions and other documents requiring the signature of TVTC General Counsel.

3. General Counsel will be asked to attend Governing Council meetings. Meetings are held a minimum of 6 times a year, usually during late afternoon in various locations throughout the TVTC service area. General Counsel will also attend special meetings at the request of Administrator on TVTC specific matters as needed. These meetings may occur 4-6 times a month with 1-3 weeks' notice. General Counsel will also be required to be available for regular phone conferences as needed.
4. General Counsel will attend meetings of other government agencies or legal proceedings on behalf of TVTC.

Any legal matters requiring extraordinary amounts of time, e.g. litigation, shall not necessarily be covered by this agreement, but will be agreed to by the General Counsel and the Administrator on an ad hoc basis, and may be subject to a separate engagement with written approval of the Governing Council.

FORM B

Price Summary

Annual Cost Estimate	\$20,000
Hourly Rate	Senior Principal \$475 Of Counsel \$420 Associate \$350 Paralegal \$200
Optional First One-Year Extension	Senior Principal \$499 Of Counsel \$441 Associate \$368 Paralegal \$210
Optional Second One-Year Extension	Senior Principal \$524 Of Counsel \$464 Associate \$386 Paralegal \$222