

Napa Valley Transportation Authority

625 Burnell Street
Napa, CA 94559



Agenda

**Wednesday, August 18, 2021
1:00 PM**

*****Special Meeting*****

JoAnn Busenbark Board Room

NVTA Board of Directors

*****COVID-19 SPECIAL NOTICE*****

PUBLIC MEETING GUIDELINES FOR PARTICIPATING VIA PHONE/VIDEO CONFERENCING

Consistent with Governor's Executive Orders No. N-25-20 and N-29-20 from the State of California and Napa County's workplace restrictions, the NVTA Board of Directors meeting will be held virtually. To maximize public safety while still maintaining transparency, members of the public are invited to participate at the noticed meeting time via the methods below, barring technical difficulties:

- 1) To join the meeting via Zoom video conference from your PC, Mac, iPad, iPhone or Android: go to <https://zoom.us/join> and enter meeting ID 997 5007 2830
- 2) To join the Zoom meeting by phone: dial 1-669-900-6833, enter meeting ID: 997 5007 2830 If asked for the participant ID or code, press #.
- 3) Watch live on YouTube: <https://www.youtube.com/channel/UCrpiLcW9uRmA0EE6w-eKZyw?app=desktop>

Public Comments: Members of the public may comment on matters within the subject matter of the Board's jurisdiction that are not on the meeting agenda during the general public comment item at the beginning of the meeting. Comments related to a specific item on the agenda must be reserved until the time the agenda item is considered and the Chair invites public comment. (Members of the public are welcome to address the Board, however, under the Brown Act Board members may not deliberate or take action on items not on the agenda, and generally may only listen.)

Instructions for submitting a Public Comment are on the next page.

Members of the public may submit a public comment in writing by emailing info@nvta.ca.gov by 10:00 a.m. on the day of the meeting with PUBLIC COMMENT as the subject line (for comments related to an agenda item, please include the item number). All written comments should be 350 words or less, which corresponds to approximately 3 minutes or less of speaking time. Public comments emailed to info@nvta.ca.gov after 10 a.m. the day of the meeting will be entered into the record but not read out loud. If authors of the written correspondence would like to speak, they are free to do so and should raise their hand and the Chair will call upon them at the appropriate time.

1. To comment during a virtual meeting (Zoom), click the "Raise Your Hand" button (click on the "Participants" tab) to request to speak when Public Comment is being taken on the Agenda item. You must unmute yourself when it is your turn to make your comment for up to 3 minutes. After the allotted time, you will then be re-muted. Instructions for how to "Raise Your Hand" is available at <https://support.zoom.us/hc/en-us/articles/205566129-Raise-Hand-In-Webinar>.

2. To comment by phone, press "*9" to request to speak when Public Comment is being taken on the Agenda item. You must unmute yourself by pressing "*6" when it is your turn to make your comment, for up to 3 minutes. After the allotted time, you will be re-muted.

Instructions on how to join a video conference are available at: <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

Instructions on how to join a meeting by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663-Joining-a-meeting-by-phone>

Note: The methods of observing, listening, or providing public comment to the meeting may be altered due to technical difficulties or the meeting may be cancelled, if needed.

All materials relating to an agenda item for an open session of a regular meeting of the NVTA Board of Directors are posted on the NVTA website 72 hours prior to the meeting at: <https://nctpa.legistar.com/Calendar.aspx> or by emailing info@nvta.ca.gov to request a copy of the agenda.

Materials distributed to the members of the Board present at the meeting will be available for public inspection after the meeting. Availability of materials related to agenda items for public inspection does not include materials which are exempt from public disclosure under Government Code sections 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, or 6254.22.

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

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

Acceso y el Título VI: La NVTA puede proveer asistencia/facilitar la comunicación a las personas discapacitadas y los individuos con conocimiento limitado del inglés quienes quieran dirigirse a la Autoridad. Para solicitar asistencia, por favor llame al número (707) 259-8633. Requerimos que solicite asistencia con tres días hábiles de anticipación para poderle proveer asistencia.

Ang Accessibility at Title VI: Ang NVTA ay nagkakaloob ng mga serbisyo/akomodasyon kung hilingin ang mga ito, ng mga taong may kapansanan at mga indibiduwal na may limitadong kaalaman sa wikang Ingles, na nais na matugunan ang mga bagay-bagay na may kinalaman sa NVTA Board. Para sa mga tulong sa akomodasyon o pagsasalin-wika, mangyari lang tumawag sa (707) 259-8633. Kakailanganin namin ng paunang abiso na tatlong araw na may pasok sa trabaho para matugunan ang inyong kahilingan.

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

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

8. CONSENT AGENDA ITEMS (8.1 - 8.2)

8.1 Meeting Minutes of July 21, 2021 (Laura Sanderlin) (Pages 6-10)

Recommendation: Board action will approve the July 21, 2021 meeting minutes.

Estimated Time: 1:15 p.m.

Attachments: [Draft minutes](#)

8.2 Active Transportation Advisory Committee (ATAC) Member Appointments (Diana Meehan) (Pages 11-19)

Recommendation: Board action will approve the appointment of representative for the City of St. Helena and County of Napa.

Estimated Time: 1:15 p.m.

Attachments: [Staff Report](#)

9. REGULAR AGENDA ITEMS

9.1 State Route 29 (SR 29)/Imola Avenue Park and Ride - Award of Construction (Alberto Esqueda) (Pages 20-36)

Recommendation: Board action will authorize the Executive Director to enter into and make minor modifications to Construction Agreement No. 21-19 with O.C. Jones & Sons, Inc. for the construction of the Imola Park and Ride improvements in an amount not to exceed \$2,549,007.

Estimated Time: 1:15 p.m.

Attachments: [Staff Report](#)

9.2 Construction Manager, Biologist and Archeologist and Material Testing Services (Sanjay Mishra) (Pages 37-82)

Recommendation: Board action will authorize the Executive Director to enter into and make minor modifications to Agreement Numbers 21-20, 21-21, and 21-22 for on-call contract services with three (3) proposers: Kleinfelder Construction Services (construction management and material testing services), Park Engineering, Inc. (construction management and material testing services) and Sequoia Ecological Consulting (biological monitoring and archeological services) for an amount not to exceed \$1,700,000.

Estimated Time: 1:30 p.m.

Attachments: [Staff Report](#)

9.3 Generator for the Soscol Gateway Transit Center (Rebecca Schenck) (Pages 83-99)

Recommendation: Board action will authorize the Executive Director to execute and make minor modifications to Construction Agreement No. 21-18 with Mel Electric Inc. to purchase and install a backup generator for the Soscol Gateway Transit Center in an amount not to exceed \$218,214.

Estimated Time: 1:45 p.m.

Attachments: [Staff Report](#)

9.4 Vine Transit Update (Rebecca Schenck) (Pages 100-106)

Recommendation: Information only. This report will provide an update on the operational performance for Vine Transit services covering the fourth quarter (Q4) of Fiscal Year (FY) 2020-21. The report will also provide an update on operational and service changes related to the pandemic.

Estimated Time: 2:00 p.m.

Attachments: [Staff Report](#)

10. FUTURE AGENDA ITEMS**11. CLOSED SESSION****11.1 PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Government Code Section 54957(B)(1))**

Title: Executive Director

Estimated Time: 2:15 p.m.

12. ADJOURNMENT**12.1 Approval of Next Regular Meeting, Rescheduled to the Date of Monday, September 13, 2021 and Adjournment.**

Estimated Time: 2:45 p.m.

I hereby certify that the agenda for the above stated meeting was posted at a location freely accessible to members of the public at the NVTA Offices, 625 Burnell Street, Napa, CA by 5:00 p.m. by Friday, August 13, 2021.

Karalyn E. Sanderlin (e-sign) August 11, 2021

Karalyn E. Sanderlin, Acting NVTA Board Secretary

Napa Valley Transportation Authority

625 Burnell Street
Napa, CA 94559

August 18, 2021

NVTA Agenda Item 8.1

Continued From: New

Action Requested: APPROVE

Meeting Minutes NVTA Board of Directors

Wednesday, July 21, 2021

1:00 PM

REFER TO COVID-19 SPECIAL NOTICE

1. Call to Order

Chair Pedroza called the meeting to order at 1:26 p.m.

2. Roll Call

Leon Garcia
Chris Canning
Alfredo Pedroza
Paul Dohring
Mark Joseph
Kerri Dorman
Belia Ramos
Liz Alessio
Gary Kraus
Scott Sedgley
Anna Chouteau
Doug Weir
John F. Dunbar

3. Adoption of the Agenda

Motion MOVED by JOSEPH, SECONDED by ALESSIO to APPROVE adoption of the agenda.

Motion carried by the following roll call vote:

Aye: 23 - Garcia, Canning, Pedroza, Dohring, Joseph, Dorman, Ramos, Alessio, Kraus, Sedgley, and Chouteau

Absent: 1 - Dunbar

4. Public Comment

None

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

ABAG Update

Leon Garcia provided an update of recent ABAG activities.

MTC Commissioner's Update

Alfredo Pedroza provided an update of recent MTC activities.

6. Director's Update

Kate Miller, Executive Director

- Announced that NVTA and Transdev staff attended the VTA Memorial event celebrating the lives of the 9 VTA transit workers who tragically lost their lives during the mass shooting event at VTA on May 26th. A Vine bus was part of a procession of VTA and Transit Operators buses from around the Bay Area, Sacramento, Monterey and Santa Cruz Counties.
- Announced that on July 2nd, Transdev, NVTA's service provider, was one of several hundred companies that downloaded the Kaseya software upgrade only to find out it that it was ransomware. This resulted in Vine phones, dispatch and ADA scheduling software being down for over 24 hours. Staff immediately sent out rider alerts, announcements on social media, and 511 and redirected riders to call the ticket office at the Soscot Gateway Transit Center to arrange rides. Transdev was able to restore services the next day, prioritizing NVTA because so much of the Vine service is on-demand and relies on the phone system for rider services.
- Announced that on July 16, the Invitation to bid or IFB for the Imola Park and Ride was listed on the NVTA website. Bids are due on August 4th and we hope to request the Board's approval to award at the Special NVTA Meeting in August.
- Announced that Kelly Hirschberg, Caltrans Project Manager, will be retiring in August. Kelly has had a long and distinguished career at Caltrans. She has been essential at moving a number of projects in Napa forward, including, Jameson Canyon Widening, Soscot Junction and hundreds of SHOPP projects. Most recently she has been the Caltrans' project manager on the SR 37 project coordinating with all four North Bay counties and MTC. Kelly has been a good friend to NVTA and we will miss her greatly. NVTA staff will miss Kelly's affable personality, her tenacity – even when problems seem insurmountable, her creative approach to her work, and her commitment to the communities she serves.

7. Caltrans' Update

8. CONSENT AGENDA ITEMS

8.1 Meeting Minutes of June 16, 2021 (Laura Sanderlin) (Pages 8-10)

Attachments: [Draft Minutes](#)

Motion MOVED by KRAUS, SECONDED by ALESSIO, with CHOUTEAU ABSTAINING, the meeting minutes of June 16, 2021. Motion carried by the following roll call vote:

Aye: 22 - Garcia, Canning, Pedroza, Dohring, Joseph, Dorman, Ramos, Alessio, Kraus, and Sedgley

Absent: 1 - Dunbar

Abstain: 1 - Chouteau

8.2 Resolution No. 21-18 Approving the Amended and Restated Grant of Easement and Easement Agreement and Authorization to Transfer an Easement Interest in Real Property Identified as Assessor Parcel Number 035-110-028 by Quitclaim Deed to the City of Napa (Kate Miller) (Pages 11-46)

Attachments: [Staff Report](#)

Motion MOVED by KRAUS, SECONDED by ALESSIO to APPROVE as AMENDED Consent Item 8.2. Motion carried by the following roll call vote:

- 8.3** Amendment #4 to Project Work Order No. E-13 to NVTA Agreement No. 18-23 with RSA+, Inc. for Professional Engineering Design, Environmental & Construction Document Services for the Napa Valley Vine Trail-Calistoga to St. Helena Project (Sanjay Mishra) (Pages 47-54)

Attachments: [Staff Report](#)

Motion MOVED by KRAUS, SECONDED by ALESSIO to APPROVE Consent Item 8.3. Motion carried by the following roll call vote:

Aye: 23 - Garcia, Canning, Pedroza, Dohring, Joseph, Dorman, Ramos, Alessio, Kraus, Sedgley, and Chouteau

Absent: 1 - Dunbar

9. REGULAR AGENDA ITEMS

- 9.1** Transportation Development Act Article 3 (TDA-3) Countywide Claim and Three-Year Program of Projects (Diana Meehan) (Pages 55-63)

Attachments: [Staff Report](#)

Board action approved the TDA-3 countywide claim and Three-year program of projects.

Motion MOVED by GARCIA, SECONDED by JOSEPH to APPROVE 1) Resolution No. 21-19 requesting the Fiscal Year (FY) 2021-22 Transportation Development Act Article 3 (TDA-3) allocation for Pedestrian/Bicycle project funds in the amount of \$209,745 to the Metropolitan Transportation Commission (MTC) as part of the annual Countywide Claim and (2) adopt the FY 2021-22 through FY 2023-24 Three-Year program of projects. Motion carried by the following roll call vote:

Aye: 23 - Garcia, Canning, Pedroza, Dohring, Joseph, Dorman, Ramos, Alessio, Kraus, Sedgley, and Chouteau

Absent: 1 - Dunbar

9.2 Financing Approvals for the Vine Bus Maintenance Facility Project (Antonio Onorato)
(Pages 64-370)

Attachments: [Staff Report](#)

Board action approved financing for the Vine Bus Maintenance Facility project.

Motion MOVED by GARCIA, SECONDED by ALESSIO to APPROVE:

- 1) Resolution No. 21-20 approving the following actions to provide financing for construction of the Vine Bus Maintenance Facility project, and
- 2) Authorize the Executive Director to negotiate, finalize, execute and deliver a TIFIA Loan Agreement in the amount not to exceed \$19,917,401, or 49% of the total eligible project cost, whichever is greater, and
- 3) Authorize the Executive Director to negotiate, finalize, execute and deliver a Collateral Accounts and Security Agreement (CASA) with US Bank, and
- 4) Adopt NVTA's Debt Management Policy, and
- 5) Authorize the Executive Director to negotiate, finalize, execute and deliver a loan agreement with the Bank of Marin in an amount not to exceed \$5,000,000, and
- 6) Authorize the Executive Director to execute and deliver an Irrevocable Direction regarding Deposit of Local Transportation Funds between NVTA and the County of Napa with Metropolitan Transportation Commission (MTC) concurrence in support of the financing arrangement, and
- 7) Authorize the Executive Director to execute and deliver an Irrevocable Direction regarding Deposit of Farebox Revenues between NVTA and the County of Napa in support of the financing arrangement.

Motion carried by the following roll call vote:

Aye: 23 - Garcia, Canning, Pedroza, Dohring, Joseph, Dorman, Ramos, Alessio, Kraus, Sedgley, and Chouteau

Absent: 1 - Dunbar

9.3 Transit Operations Services Agreement No. 21-12 with Transdev Services Inc. (Antonio Onorato) (Pages 371-490)

Attachments: [Staff Report](#)

Board action approve the transit operations services agreement with Transdev Services, Inc.

Motion MOVED by GARCIA, SECONDED by ALESSIO to APPROVE Resolution No. 21-21 authorizing the Executive Director to make minor modifications to and execute Agreement No. 21-12 with Transdev Service, Inc. for transit operation services, pending the California Department of Transportation (Caltrans) approval. The proposed award is a five (5) year base contract from January 1, 2022 to December 31, 2026 and two (2) one-year options through 2028 for a total contract amount of \$81,355,292. Motion carried by the following roll call vote:

Aye: 22 - Garcia, Canning, Pedroza, Dohring, Joseph, Dorman, Ramos, Alessio, Kraus, and Sedgley

Absent: 2 - Dunbar, and Chouteau

9.4 Fiscal Year (FY) 2021-22 Salary Ranges for Napa Valley Transportation Authority (NVTA) Job Classifications (Laura Sanderlin) (Pages 491-502)

Attachments: [Staff Report](#)

Board action approved the NVTA job classification salary ranges for fiscal year 2021-22.

Motion MOVED by GARCIA, SECONDED by RAMOS to APPROVE Resolution No. 21-22 approving the Fiscal Year (FY) 2021-22 Salary Ranges for NVTA Job Classifications based upon a compensation study of comparable transportation agencies and Bay Area Consumer Price Index (CPI). Motion carried by the following roll call vote:

Aye: 16 - Garcia, Canning, Pedroza, Dohring, Joseph, Dorman, Ramos, and Alessio

Nay: 5 - Sedgley

Absent: 3 - Dunbar, Kraus, and Chouteau

9.5 Federal and State Legislative Update (Kate Miller) (Pages 503-515)

Attachments: [Staff Report](#)

Information Only / No Action Taken

The Board received the Federal and State Legislative update.

10. FUTURE AGENDA ITEMS

None

11. ADJOURNMENT

11.1 Approval of Special Meeting Date of August 18, 2021 and Adjournment

The next meeting is scheduled for Wednesday, August 18, 2021.

Chair Pedroza adjourned the meeting at 3:19 p.m.

Karalyn E. Sanderlin, Acting NVTA Board Secretary



NAPA VALLEY TRANSPORTATION AUTHORITY COVER MEMO

SUBJECT

Active Transportation Advisory Committee (ATAC) Member Appointments

STAFF RECOMMENDATION

That the Napa Valley Transportation Authority (NVTA) Board approve the appointment of members to the Active Transportation Advisory Committee including Jeff Davis, for a three-year term representing the County of Napa, and Lee Philipson for a three-year term representing the City of St. Helena.

EXECUTIVE SUMMARY

The ATAC is made up of eleven members with representation that mirrors the voting structure of the NVTA Board. Committee structure consists of four members representing the City of Napa, two members representing the County of Napa, two members representing the City of American Canyon, one member representing the Town of Yountville, one member representing the City of St. Helena, and one member representing the City of Calistoga.

These appointments would fill vacant ATAC positions representing the County of Napa and the City of St. Helena for three-year terms.

FISCAL IMPACT

None



August 18, 2021
NVTA Agenda Item 8.2
Continued From: New

Action Requested: APPROVE

NAPA VALLEY TRANSPORTATION AUTHORITY

Board Agenda Memo

TO: NVTA Board of Directors
FROM: Kate Miller, Executive Director
REPORT BY: Diana Meehan, Senior Planner
(707) 259-8327 / Email: dmeehan@nvta.ca.gov
SUBJECT: Active Transportation Advisory Committee Member Appointments

RECOMMENDATION

That the Napa Valley Transportation Authority (NVTA) Board approve the appointment of members to the Active Transportation Advisory Committee including Jeff Davis, for a three-year term representing the County of Napa, and Lee Philipson for a three-year term representing the City of St. Helena.

COMMITTEE RECOMMENDATION

None

BACKGROUND

The County of Napa has two representatives on the NVTA Active Transportation Advisory Committee (ATAC). Both positions have been vacant since 2019, and an active recruitment has been ongoing by NVTA and the County of Napa seeking a representative. The County received an application for the position on July 16, 2021. The Board of Supervisors approved the appointment of Jeff Davis at their August 10, 2021 meeting to serve as a representative on the ATAC for a three-year term.

The City of St. Helena has one representative on the NVTA ATAC. The City of St. Helena position has also been vacant for over two years with active recruitment open. The City received an application on June 7, 2021. The St. Helena City Council approved the appointment of Lee Philipson at their July 27, 2021 meeting to serve as representative on the ATAC for a three-year term.

Mr. Davis is long-time resident of Napa, and served as a program manager for the Federal Transit Administration for many years and is interested in serving on the ATAC to support NVTA's goals, plans and programs. Mr. Davis's application is included as Attachment 1.

Mr. Philipson is a 36-year resident of the City of St. Helena. As a retired attorney with the Napa County District Attorney's office and an avid cyclist, Mr. Philipson has first-hand knowledge of local active transportation conditions and is interested in working with the ATAC to improve them. Mr. Philipson's application is included as Attachment 2.

ATAC still has two (2) additional openings including members representing the Town of Yountville (1), and the County of Napa (1). NVTA staff is actively recruiting to fill these openings.

ALTERNATIVES

The Board could decide not to approve these appointments, which would leave additional vacancies on the ATAC.

STRATEGIC GOALS MET BY THIS PROPOSAL

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

The NVTA ATAC committee advises the Board on matters pertaining to the active transportation needs of the community and supports efforts towards sustainable transportation goals in the Valley.

ATTACHMENTS

- (1) Jeff Davis Application (redacted)
- (2) Lee Philipson Application (redacted)

Application for Appointment to Board, Commission, Committee, Task Force or Position

Applicants appointed by the Board of Supervisors will be required to take an oath of office. All applications will be kept on file for one year from the date of application.

Public Records Act

Applications are public records that are subject to disclosure under the California Public Records Act. Information provided by the applicant is not regarded as confidential except for the addresses and phone numbers of references and the applicant's personal information including home and work addresses, phone numbers and email address.

Form 700 Conflict of Interest Code

[California Fair Political Practices Website](#)

Please note that appointees may be required by state law and county conflict of interest code to file financial disclosure statements.

Which Boards would you like to apply for?

Napa Valley Transportation Authority (NVRTA) Active Transportation Advisory Committee (ATAC):

Category of Membership for Which You Are Applying

Napa County

Profile

Jeffrey

First Name

S

Middle Initial

Davis

Last Name

Email Address

Home Address

State or Zip

Napa

City

CA

State

94558

Postal Code

Which supervisorial district do you reside in? *

☒ District 1

To find your supervisorial district go to <https://www.countyofnapa.org/2051/Find-my-supervisor-and-district> and enter your address.

Home: _____

Primary Phone

Education/Experience

Ex Federal Transit Administration program manager (16 years) • Knows many of the people in FTA Region 9 and has many contacts throughout the country including in Washington DC • Has worked with most of the bay area transit agencies, as well as MTC San Francisco. • NEPA knowledge • Grants writing and management experience • Projects experiences – small to huge • Contracts experience • Transit Asset Management knowledge and experiences • Familiar with FTA's Financial TAM Rule and its impacts on MPOs to manage transit assets, grants, and forecasts. APRIL 2000 CERTIFICATE IN MARKETING, UC BERKELEY JUNE 1992 M.S. TELECOMMUNICATIONS MANAGEMENT, GOLDEN GATE UNIVERSITY JUNE 1980 B.S. OCEAN ENGINEERING, FLORIDA ATLANTIC UNIVERSITY

Name and occupation of spouse within the last 12 months, if married. (For conflict of Interest purposes)

Munkhsaruu Davs

Resume

[Resume Project Manager R1.docx](#)

Upload a Resume

Letter Recommendation or Supplemental Achievements

Professional or occupational license, date of issue, and expiration including status

Engineering Intern Exam, 12/14/79

References: Provide names and phone numbers of 3 individuals who are familiar with your background.

Ms. Kate Miller, NVTA Executive Director, kmiller@nvta.ca.gov (707) 259-8634 Mr. Antonio Onorato Director of Administration, Finance, & Policy aonorato@nvta.ca.gov (707) 259-8779 Mr. Leslie Rogers, Former Regional Administrator, Federal Transit Administration, (415) 385-9847

Community Participation

Please explain your reasons for wishing to serve and, in your opinion, how you feel you could contribute.

As a strong advocate and believer in public transportation I am motivated to support NVTA, my local transportation agency. With my work experiences related to the funding, construction, community issues, and NEPA challenges many agencies face I can better support NVTA with its goals, plans and projects implementation.

Nature of activity and community location

Federal participation with the ribbon cutting ceremonies of: the North Napa transit hub on Redwood Road, and the NVTA Operations Center on Soscol Ave.

Other County Board/Commission/Committee on Which You Serve/Have Served

NA

Public Actions that may impact Credit Rating (List all court or other public administration actions impacting your credit rating within the past ten (10) years)

NA

Electronic Signature Agreement

I declare under penalty of perjury that the foregoing is true and correct.

☒ Yes ☐ No

Please Agree with the Following Statement

By checking the "I agree" box below, you agree and acknowledge that 1) your application will not be signed in the sense of a traditional paper document, 2) by signing in this alternate manner, you authorize your electronic signature to be valid and binding upon you to the same force and effect as a handwritten signature, and 3) you may still be required to provide a traditional signature at a later date.

☒ I Agree

Electronic Signature (First M. Last)

Jeffrey S. Davis

Date

07/12/2021

JEFFREY DAVIS

Napa, California · Phone [REDACTED]
Email [REDACTED] · LinkedIn Profile

Project management of transportation construction, and telecommunication projects.

EXPERIENCE

5/2002 – 8/2018

PROGRAM MANAGER, FEDERAL TRANSIT ADMINISTRATION

Budget, Schedule, and Fiscal oversight of different transportation agency procurements, and construction projects. Supported engineering and construction services of facilities construction, repairs and maintenance, involved with value engineering and constructability reviews, and risk assessments. Responsible for contractor interactions, company performance reviews, and funding.

EDUCATION

APRIL 2000

CERTIFICATE IN MARKETING, UC BERKELEY

JUNE 1992

M.S. TELECOMMUNICATIONS MANAGEMENT,
GOLDEN GATE UNIVERSITY

JUNE 1980

B.S. OCEAN ENGINEERING, FLORIDA ATLANTIC UNIVERSITY

SKILLS

- Change Management Certification
- Contract Administration
- Schedule Analysis
- Cost and Budget Analysis
- Risk Analysis



City of St. Helena

COMMISSION/COMMITTEE APPLICATION

Received Date: June 7, 2021

Application Type: ATAC to NVTA

NAME: Lee Philipson
ADDRESS: [REDACTED], Saint Helena, California, 94574
PHONE: [REDACTED]
ALTERNATIVE PHONE: [REDACTED]
EMAIL ADDRESS: [REDACTED]
LENGTH OF RESIDENCY: 36 years
EMPLOYMENT STATUS: Retired
REASON FOR APPLYING: Desire to contribute to improving this community.
EDUCATIONAL BACKGROUND: Pacific High School 1968; UCLA, 1972, B.A. History; Juris Doctor, California Western School of Law, 1975; California State Bar license, 1976, Attorney in San Bernardino District Attorneys Office, Orange County Public Defenders Office, Private Civil Practice in Napa and Orange Counties; Napa County District Attorneys Office 1984-1986, 1991-2013, Assistant District Attorney in charge of day to day operations (retired 2013); Sonoma County District Attorneys Office, 2014-2016, Chief Deputy District Attorney; Farella, Braun and Martel, Civil Practice (land use) 2017-2019.

REFERENCE 1: Name: Lester Hardy
[REDACTED]
[REDACTED]
[REDACTED]

REFERENCE 2: Name: Katherine Philippakis
[REDACTED]
Phone Number(s): [REDACTED]
Email: [REDACTED]

REFERENCE 3: Name: Allison Haley
Address: [REDACTED]
Phone Number(s): [REDACTED]
Email: [REDACTED]

GENERAL QUESTIONS:

Have you ever attended a meeting of the Commission to which you are applying?

Napa County Planning, Solano County Planning

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

Review land use applications.

What would be your goal(s) as a Commissioner?

Contribute to sensible use of our lands within the city to help balance the need for controlled growth with financial viability of our city.

I agree that all of the information contained in my responses to the questions on this application are true and accurate to the best of my knowledge. I further agree that, by checking the box below and submitting this application, online or otherwise, I am affixing my digital signature to this form as of the date submitted. I also agree that if appointed, I will serve on the Commission/Committee for which I have submitted this application.

☒ I AGREE

Lee Bruce Philipson



August 18, 2021
NVRTA Agenda Item 9.1

Continued From: New
Action Requested: APPROVE

NAPA VALLEY TRANSPORTATION AUTHORITY COVER MEMO

SUBJECT

State Route 29 (SR 29)/ Imola Avenue Park and Ride – Award of Construction Contract

STAFF RECOMMENDATION

That the Napa Valley Transportation Authority (NVRTA) Board authorize the Executive Director to enter into and make minor modifications to Construction Agreement No. 21-19 with O.C. Jones & Sons, Inc. for the construction of the Imola Park and Ride improvements in an amount not to exceed \$2,549,007.

EXECUTIVE SUMMARY

The NVRTA Board awarded Kimley-Horn Associates (KHA) a work order for the design of the improvements at SR 29 and Imola Avenue Park Ride on March 20, 2019. This project includes the construction of bus stops on the southbound SR 29 on-ramp and northbound SR 29 off-ramp at Imola Avenue for more efficient boarding and alighting on NVRTA's Express Bus service, including Route 29. The Caltrans-owned park and ride lot will be rehabilitated and connections for pedestrians and cyclists between the bus shelters and the park and ride lot will be added. One hundred percent design was achieved in July 2021 and an Invitation for Bids (IFB) for the construction of the improvements was released on July 21, 2021. Bids were due on August 4, 2021 and five (5) bids were received. O.C. Jones and Sons, Inc. was the lowest responsive bidder. NVRTA will award the contract contingent on Caltrans' final approval of the Right of Way certification and the resolution of any protests from the bidding firms.

FISCAL IMPACT

Yes, the cost of constructing the improvements is \$2,174,698.40 plus a \$374,309.60 contingency (17%) for a total of \$2,549,007. The project is grant-funded through the following sources:

- \$236,000 Transportation For Clean Air (TFCA)
- \$807,094 Regional Surface Transportation Program
- \$453,811 from the Lifeline Cycle 5 program
- \$1,052,102 from the Low Carbon Transit Operations Program (LCTOP)



NAPA VALLEY TRANSPORTATION AUTHORITY

Board Agenda Memo

TO: NVRTA Board of Directors
FROM: Kate Miller, Executive Director
REPORT BY: Alberto Esqueda, Senior Planner
(707) 259-5976 / Email: aesqueda@nvta.ca.gov
SUBJECT: State Route 29 (SR 29)/ Imola Avenue Park and Ride – Award of Construction Agreement

RECOMMENDATION

That the Napa Valley Transportation Authority (NVRTA) Board authorize the Executive Director to enter into and make minor modifications to Construction Agreement No. 21-19 with O.C. Jones & Sons, Inc. (Attachment 1) for the construction of the Imola Park and Ride improvements in an amount not to exceed \$2,549,007.

COMMITTEE RECOMMENDATION

None

BACKGROUND

In December 2017, NVRTA completed the Vine Transit Express Bus Corridor Study. The goal of the Express Bus Corridor Study was to evaluate existing Vine Transit express bus service and make operational and capital improvement recommendations to enhance system performance. The study analyzed elements such as on-time performance, average bus speed, and ridership to develop potential improvements, increase ridership and reduce travel times. The study found that installing a northbound and southbound bus stop on the highway ramps at the park and ride lot on SR 29/Imola Avenue would result in major timesaving for the express bus system. The improvements would result in significantly reduced travel times to and from El Cerrito Del Norte BART station by avoiding deviating through the City of Napa to access the Sossol Gateway Transit Center. The study also showed that NVRTA could save an estimated \$31,000 in annual operating costs by instituting this change.

The proposed park and ride is owned by the California Department of Transportation (Caltrans) and is located within the City of Napa on Imola Avenue with auto access from Golden Gate Drive. Currently the park and ride lot is underutilized due to its derelict condition and lack of transit services. NVTa formerly served the park and ride, but access to the lot was difficult for both users and buses. Improvements to the SR 29 ramps at Imola Avenue and direct pedestrian access to the ramps will make it both accessible to users of the Vine Express Bus and easier for Vine buses to board and alight passengers. The project will include upgrades to the lot including repaving, lighting, landscaping, amenities for cyclists and electric vehicle charging stations.

On March 20, 2019, the NVTa Board awarded Project Work Order No. E-10 to Kimley-Horn and Associates, Inc. (KHA) for the Imola Avenue Park and Ride Environmental Design in an amount not to exceed \$441,100. Since then, NVTa staff has been working with KHA and Caltrans to advance the design phase of the project; 100% design was achieved in July.

NVTa released the Invitation for Bids (IFB) on July 21, 2021. The IFB was advertised on the NVTa website, put on Public Purchase and other regional platforms. Bids were due on August 4, 2021.

A total of five (5) bids were received and O.C. Jones & sons provided the lowest responsible bid. NVTa staff is recommending O.C. Jones be awarded the contract pending Caltrans final approval of the Right of Way certification.

ALTERNATIVES

Alternative 1: Forego making the improvements at the SR 29/ Imola Park and Ride and leave it in its current condition.

Alternative 2: Decide not to award the contract to O.C. Jones & Sons, Inc. and rebid the project.

STRATEGIC GOALS MET BY THIS PROPOSAL

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

The project will greatly improve express bus operations and therefore enhance transportation for all members of the community.

Goal 5: Minimize the energy and other resources required to move people and goods.

The addition of bus stops on the on/off ramps will reduce mobile emissions.

Goal 6: Prioritize the maintenance and rehabilitation of the existing system.

Constructing the improvements at the Imola Park and Ride rehabilitates and maintains the existing transportation system in a state of good repair.

ATTACHMENT

(1) Construction Agreement No. 21-19

CONSTRUCTION AGREEMENT NVTA No. 21-19

THIS AGREEMENT, dated for identification as of _____, 2021, is between the **NAPA VALLEY TRANSPORTATION AUTHORITY (NVTA)**, a California joint powers authority, (hereinafter called "NVTA" or "Agency"), and O.C. Jones & Sons, Inc. (hereinafter called "Contractor").

The parties hereto mutually agree to the terms and condition set forth herein.

1. CONTRACT DOCUMENTS

A. The Contract Documents referred to herein are incorporated herein by reference as if set forth in full in this Agreement. Work called for in any one Contract Document and not mentioned in another is to be performed and executed as if mentioned in all Contract Documents.

B. The Contract Documents shall include the Notice Inviting Bids, Instructions to Bidders, Bid Forms (including the Bid, Bid Schedule(s), Information Required of Bidder, Bid Bond, and all required certificates, affidavits and other documentation), this Agreement, Performance Bond, Labor and Materials Bond, Maintenance Bond, General Conditions, any Supplementary General Conditions, Special Provisions, Specifications, Drawings, all Addenda, and Change Orders executed pursuant to the provisions of the Contract Documents. The General Conditions shall mean and refer to the current General Conditions of NVTA which are incorporated herein by this reference as if set forth herein.

C. This Agreement, and the Contract Documents, includes the exhibits to this Agreement, including Exhibit A Insurance, and Exhibit B Required Federal-Aid Contract Language (For Local Assistance Construction Projects) (Includes Form FHWA-1273 from Bid Documents), and Exhibit C Minimum Wage Rates (Federal and State Prevailing Wage Rates from Bid Documents.)

2. AGREEMENT CONTROLS

In the event of a conflict between the terms and conditions as set forth in this Agreement and the terms and conditions set forth in other Contract Documents, the terms and conditions set forth in this Agreement shall prevail. Unless otherwise specifically provided herein, all works and phrases defined in the General Conditions shall have the same meaning and intent in this Agreement.

3. SCOPE OF CONTRACT

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor and material and transportation necessary to perform and complete in a good and workman like manner to the satisfaction of NVTA, all the work called for, and in the manner designated in, and in strict conformity with the Project entitled:

Project Name : *Imola Ave and SR-29 Express Bus Improvements*
Project No. : *2021-01*
Federal Project No. : *CA-2019-024*

4. CONTRACT AMOUNT AND PAYMENTS

NVTA agrees to pay and Contractor agrees to accept, in full payment for the above work, **TWO MILLION ONE HUNDRED SEVENTY FOUR THOUSAND SIX HUNDRED NINETY EIGHT DOLLARS AND FORTY CENTS (\$2,174,698.40)** as the stipulated sum price which Contractor bid in its Bid Form, subject to additions and deductions by Change Order(s) as provided in the General Conditions.

5. PROGRESS AND FINAL PAYMENTS

Progress and final payments shall be in accordance with the General Conditions.

6. RETENTION OF SUMS CHARGED AGAINST CONTRACTOR

When, under the provisions of this Contract, NVTA is authorized to charge any sum of money against Contractor, NVTA may deduct and retain the amount of such charge from the amount of the next succeeding progress estimate, or from any other moneys due or that may become due to the Contractor from NVTA. If, on completion or termination of the Contract, sums due contractor are insufficient to pay NVTA's charges against Contractor, NVTA shall have the right to recover the balance from Contractor or his sureties.

7. TIME OF COMPLETION

A. The entire work shall be completed to the satisfaction of NVTA within _____ working days, commencing on the date of issuance of the Notice to Proceed.

B. Failure to complete the entire work by the completion date and in the manner provided for by the Contract Documents shall subject Contractor to liquidated damages as hereinafter provided in this Agreement. Time is of the essence in these Contract Documents.

8. INSURANCE

Contractor shall maintain in full force and effect at all times during the term of the Agreement, at its sole expense, policies of insurance in accordance with the General Conditions, including, but not limited to, Exhibit A, attached hereto and incorporated herein by reference.

9. NO WAIVER OF REMEDIES

A. Neither the inspection by NVTA or its agents, nor any order or certificate for the payment of money, nor any payment for, nor acceptance of the whole or any part of the work by NVTA, nor any extensions of time, nor any position taken by NVTA or its agents shall operate as a waiver of any provision of this Agreement or of any power herein reserved to NVTA or any right to damages herein provided, nor shall any waiver of any breach of the Agreement be held to be a waiver of any other or subsequent breach.

B. All remedies provided in this Agreement shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, and NVTA shall have any and all equitable and legal remedies which it would in any case have.

10. DETERMINATION OF DAMAGES

A. The actual fact of the occurrences of damages and the actual amount of the damages which NVTA would suffer if the work were not completed within the specified times set forth are dependent upon many circumstances and conditions and, it is impracticable and extremely difficult to fix the actual damages. Damages which NVTA would suffer in the event of delay include loss of the use of the project, and, in addition, expenses of prolonged employment of an architectural and engineering staff; costs of administration, inspection, and supervision; and the loss suffered by the public within the County of Napa by reasons of the delay in the completion of the project to serve the public at the earliest possible time.

B. Accordingly, the parties hereto agree, and by execution of this Agreement, Contractor acknowledges that he understands, has ascertained and agrees, that the amounts set forth herein as liquidated damages shall be presumed to be that amount of damages sustained by the failure of Contractor to complete the entire work within the times specified.

11. LIQUIDATED DAMAGES

- A. The amount of the liquidated damages to be paid by Contractor to NVTa for failure to complete the entire work in the specified number of Working or Calendar Days (as extended, if applicable) will be **THREE HUNDRED DOLLARS(\$300)** for each **Calendar Day**, continuing to the time at which the work is completed.
- B. Such amount is the actual cash value agreed upon as the loss to NVTa resulting from Contractor's delay.

12. TERMINATION AFTER ALLOTTED WORKING OR CALENDAR DAYS

- A. In addition to any rights it may have, NVTa may terminate this Contract at any time after the allotted number of Working or Calendar Days as adjusted by any extensions of time for excusable delays that may have been granted.
- B. Upon such termination, Contractor shall not be entitled to receive any compensation for services rendered by him before or after such termination, and he shall be liable to NVTa for liquidated damages for all periods of time beyond such termination date until the work is completed.

13. CONTRACTOR BANKRUPT

- A. If Contractor should commence any proceeding under the Bankruptcy Act, or if Contractor be adjudged a bankrupt, or if Contractor should make any assignment for the benefit of creditors, or if a receiver should be appointed on account of Contractor's insolvency, then the NVTa Board may, without prejudice to any other right or remedy, terminate the Contract and complete the work by giving notice to Contractor and his surety according to the provisions of Section 1-15 of the General Conditions.
- B. NVTa shall have the right to complete, or cause completion of the work, all as specified in the General Provisions of the Standard Specifications.

14. PERFORMANCE AND PAYMENT BONDS

- A. The Contractor shall, before beginning said work, file two bonds with NVTa, each made payable to NVTa. These bonds shall be issued by a Surety Company authorized to do business in the State of California, and shall be maintained during the entire life of the Contract at the expense of the Contractor.
1. One bond shall be in the amount of one hundred percent (100%) of the Contract and shall guarantee the Faithful Performance of the Contract.
 2. The second bond shall be the Payment Bond required by Part 4, Title 15, Chapter 7, Division Three of the Civil Code of the State of California and shall be in the amount of one hundred percent (100%) of the Contract.
- B. Any alteration or alterations made in any provision of this Contract shall not operate to release any surety from liability on any bond required hereunder and the consent to make such alterations is hereby given, and any surety on said bonds hereby waives the provisions of Section 2819 of the Civil Code.
- C. Bonds shall only be accepted from an *"Admitted surety insurer,"* which means an insurer to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state. **Contractor must submit** the original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws or other instrument entitling or authorizing the person who executed the bond to do so.
- D. All bonds submitted shall include the following:
1. Full name and address of the Contractor Surety, and NVTa;
 2. Contract Date;
 3. Exact Contract Sum;
 4. Project Name and Address;

5. Signature of the Contractor
6. Corporate Seal, if applicable;
7. Signature of Authorized Surety Representative;
8. Notarization of the Contractor and Surety;
9. Power of Attorney; and
10. Local contact for surety, with name, phone number, and address to which legal notices may be sent

15. SUBSTITUTION OF SECURITIES OF MONEY WITHHELD

- A. At any time prior to final payment, Contractor may request substitution of securities for any money withheld by NVTa to ensure performance of the Contract.
- B. At the expense of the Contractor, securities equivalent to the money withheld may be deposited with NVTa or with an approved financial institution as escrow agent according to a separate Security Agreement.
- C. Securities eligible for substitution shall include those listed in Section 16430 of the Government Code or bank or savings and loan certificates of deposit. A fee set by NVTa's Board shall be charged for such substitution.

16. LABOR CODE COMPLIANCE

- A. NVTa affirmatively identifies this project as a "public work" as that term is defined by Labor Code section 1720, and the project is, therefore, subject to prevailing wages under Labor Code section 1771.
- B. Contractor and its subcontractors shall fully comply with all the provision of the California Labor Code governing the performance of public works contracts including, but not limited to, payment of prevailing wages, limitations on time worked, compliance with apprentice requirements, maintenance of payroll records, posting of wages at job site and prohibitions against discrimination.

17. UNFAIR COMPETITION

The following provision is included in this agreement pursuant to California Public Contract Code §7103.5.

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assigning to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties."

18. GENERAL LIABILITY OF CONTRACTOR

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, light, heat, utilities, transportation and other facilities and services necessary for the execution and completion of the Work in accordance with the Contract Documents and any applicable code or statute, whether or not specifically described herein, as long as same is reasonably inferable therefrom as being necessary to produce the intended results, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work. The mention of any specific duty or liability of Contractor and, any reference to any specific duty or liability shall be construed to be for the purpose of explanation.

19. AUTHORITY OF NVT

- A. NVT will decide all questions regarding the quality and acceptability of materials furnished, work performed, and rate of progress of the Work. NVT will decide all questions regarding the interpretation and fulfillment of the Contract on the part of the Contractor, and all questions as to the rights of different prime contractors involved with the Work. NVT will determine the amount and quality of the Work performed and materials furnished for which payment is to be made under the Contract.
- B. NVT will administer its authority through a duly designated representative identified at the pre-construction conference. The Contractor and NVT's designated representative (the Owner's Representative) shall make good faith attempts to resolve disputes that arise during the performance of the Work.
- C. Any order given by NVT not otherwise required by the Contract to be in writing shall be given or confirmed by NVT in writing at the Contractor's request. Such request shall state the specific subject of the decision, order, instruction, or notice and, if it has been given orally, its date, time, place, author and recipient.
- D. Any plan or method suggested to the Contractor by the ENGINEER, or any of the Owner's Representative, but not specified or required in writing, if adopted or followed in whole or in part by the Contractor, shall be used at the risk and responsibility of the Contractor. NVT assumes no responsibility.

20. Responsibility of the Contractor

- A. The Work shall be under the Contractor's responsible care and charge until completion and final acceptance, and the Contractor shall bear the entire risk of injury, loss, or damage to any part by any cause. The Contractor shall rebuild, repair, restore, and make good all injuries, losses or damage to any portion of the Work or the materials occasioned by any cause, and shall bear the entire expense.
- B. The mention herein of any specific duty or responsibility imposed upon the Contractor shall not be construed as a limitation or restriction of any other responsibility or duty imposed upon the Contractor by the Contract, said reference being made herein merely for the purpose of explaining the specific duty or responsibility.
- C. The Contractor shall do all of the work and furnish all labor, materials, tools, equipment, and appliances, except as otherwise herein expressly stipulated, necessary or proper for performing and completing the Work herein required, including any change order work or disputed work directed by NVT in conformity with the true meaning and intent of the Contract Documents, within the time specified.

21. INDEMNIFICATION

- A. To the fullest extent permitted by law, the Contractor shall indemnify, defend with counsel acceptable to NVT, and hold harmless NVT, its officers, officials, employees, agents, and volunteers from and against any and all losses, claims, demands, damages, costs, expenses, attorney's fees, or liability of every nature arising out of or in any way connected with the performance or attempted performance of the provisions of this Contract, caused in whole or in part by any negligent or willful act or omission of the Contractor, its officers, employees, or agents, or anyone directly or indirectly acting on behalf of the Contractor, regardless of whether caused in part by a party indemnified hereunder. Nothing contained in the foregoing indemnity provisions shall be construed to require the Contractor to indemnify the indemnified party in contravention of Section 2782 of the Civil Code for the active or sole negligence or willful misconduct of that indemnified party

B. To the fullest extent permitted by law, the Contractor's duty to defend shall extend, without limitation, to any suit or action founded upon any losses, claims, demands, damages, costs, expenses, attorney's fees, or liability of every nature arising out of or in any way connected with the performance or attempted performance of the provisions hereof, or in any way arising out of or connected with this Contract.

C. The defense and indemnity obligations expressly extend to and include any and all claims, demands, damages, costs, expenses, or liability occasioned as a result of damages to adjacent property caused by the conduct of the Work.

D. The defense and indemnity obligations expressly extend to and include any and all claims, demands, damages, costs, expenses, or liability occasioned as a result of the violation by the Contractor, the Contractor's agents, employees, or independent contractors, Subcontractors or suppliers of any provisions of federal, State or local law, including applicable administrative regulations.

E. The defense and indemnity obligations also expressly extend to and include any claims, demands, damages, costs, expenses, or liability occasioned by injury to or death of any person, or any property damage to property owned by any person while on or about the site or as a result of the Work, whether such persons are on or about the site by right or not, whenever the Work is alleged to have been a contributing cause in any degree whatsoever.

F. In claims against any person or entity herein indemnified that are made by an employee of the Contractor or an employee of any of the Contractor's agents, independent contractors, Subcontractors or suppliers, a person indirectly employed by the Contractor or by any of the Contractor's agents, independent contractors, Subcontractors or suppliers, or anyone for whose acts the Contractor or any of the Contractor's agents, independent contractors, Subcontractors or suppliers may be liable, the defense and/or indemnification obligation herein shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or the Contractor's agents, independent contractors, Subcontractors or suppliers under workers' compensation acts, disability acts, or other employee benefit acts.

G. The indemnification obligations herein shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

H. The indemnities set forth herein shall not be limited by the insurance requirements set forth in the Contract Documents.

I. The indemnification requirements herein set forth shall extend to claims occurring after this Contract is terminated as well as while it is in force.

J. In the event the Contractor enters into any agreement with the owners of any adjacent property to enter upon or adjacent to such property for the purpose of performing this Contract, the Contractor shall fully indemnify, defend and save harmless such person, firm, or corporation, State or other governmental agency which owns or has any interest in the adjacent property. The form and content of the indemnification agreement shall be approved by NVTA prior to commencement of any work on or about such property. The Contractor also shall indemnify NVTA and other indemnities identified in this Section as provided in the Contract. These provisions shall be in addition to any other requirements of the owners of adjacent property.

22. ASSIGNMENT

Neither this Agreement nor any rights herein of Contractor shall be assigned without the written consent of NVTA first obtained.

23. AMENDMENTS

Any modification or amendment of any provision of this agreement shall be in writing and must be executed by both parties hereto.

24. INCIDENTAL BENEFICIARIES

It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to NVTa and Contractor. Nothing contained in the Agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of NVTa and Contractor that any such person or entity, other than NVTa and Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary.

25. MISCELLANEOUS PROVISIONS

A. **Attorneys' Fees:** In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees according to law.

B. This Agreement shall be deemed to be made in, and the rights and liabilities of the parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a state court in the County of Sacramento, State of California.

C. **Enforceability:** If any term or provision of this Agreement is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this Agreement shall remain binding.

D. **Time:** All times stated herein or in any other contract documents are of the essence.

E. **Binding:** This Agreement shall bind and inure to the heirs, devisees, assignees and successors in interest of Contractor and to the successors in interest of NVTa in the same manner as if such parties had been expressly named herein.

F. **Survivorship:** Any responsibility of Contractor for warranties, insurance, indemnity, record keeping or compliance with laws with respect to this Agreement shall not be invalidated due to the expiration, termination or cancellation of this Agreement.

G. **Waiver:** In the event that either NVTa or Contractor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

26. ENTIRE AGREEMENT

This instrument and any attachments hereto constitute the entire Agreement between NVTa and Contractor concerning the subject matter hereof and supersedes any and all prior oral and written communications between the parties regarding the subject matter hereof.

27. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

28. COUNTERPARTS

This agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all of the signatories hereto have signed a counterpart of this Agreement. All counterparts so executed shall constitute one Agreement binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the same counterpart.

SIGNATURE PAGE IMMEDIATELY FOLLOWS

IN WITNESS WHEREOF, the parties hereto have signed the Agreement on the date set forth opposite their names.

CONTRACTOR:

(Must be signed by two officers of the corporation in compliance with Corporations Code section 313.)

Date

Tax I.D. Number

Signature

Signature

Print Name

Print Name

Title

Title

NVTA, A California Joint Powers Agency:

Date

Kate Miller, Executive Director

ATTEST:

Clerk

APPROVED AS TO FORM:

Sloan Sakai Yeung & Wong, LLP, General Counsel

EXHIBIT A

INSURANCE

NOTE: The word "Contractor" in this Exhibit refers to either "Contractor" or "Contractor" as the term is used in the Agreement/Contract to which this Exhibit is attached.

B. During the term of this Agreement, Contractor shall maintain in full force and effect at all times during the term of the contract, at its sole cost and expense, policies of insurance as set forth herein:

1. General Liability:

General liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.

- a. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- b. Claims-made coverage is not acceptable.
- c. The limits of liability shall not be less than:

Each occurrence:	One Million Dollars (\$1,000,000)
Products & Completed Operations:	One Million Dollars (\$1,000,000)
Personal & Advertising Injury:	One Million Dollars (\$1,000,000)
- d. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the contract.
- e. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.
- f. If the Contractor maintains higher limits than the minimums shown above, NVTA requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to NVTA.

2. Automobile Liability:

Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.

1. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbol 1 (any auto).
2. The limits of liability per accident shall not be less than:

Combined Single Limit	One Million Dollars (\$1,000,000)
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If Automobile Liability coverage, as required above, is provided by the Commercial General Liability form, the General Liability policy shall include an endorsement providing automobile liability as required above.

3. Workers' Compensation

- a. Workers' Compensation Insurance, with coverage as required by the State of California (unless the Contractor is a qualified self-insurer with the State of California), and Employer's Liability coverage.
- b. Employer's Liability Coverage with a limit not less than \$1,000,000 per accident for bodily injury and disease.
- c. Contractor shall sign and file with NVTA department responsible for this Agreement/Contract the Worker's Compensation Certificate contained in the Project Manual.

4. Insurance Required in the Supplementary Conditions

Contractor shall be required to comply with all conditions as stipulated in the Standard Construction Specifications, any supplementary conditions and any special provisions as applicable.

5. Professional Liability Insurance

If required errors and omissions, malpractice or professional liability insurance with coverage of not less than \$1,000,000 per claim.

6. Other Insurance Provisions

- a. The Contractor's General Liability and Automobile Liability policies shall contain, or be endorsed to contain, the following provisions:
NVTA, its officials, employees, agents and volunteers shall be covered and specifically named as additional insureds on a separate endorsement as respects liability arising out of activities performed by or on behalf of the Contractor, products and completed operations of the Contractor, premises owned, occupied, or used by the Contractor, or automobiles owned, leased, hired, or borrowed by the Contractor in a form acceptable to NVTA's Attorney.
- b. The Endorsement requirement may be satisfied with express provisions in the insurance policy(ies) which identifies any person or entity required to be included as an insured under the policy. A copy of the declarations page identifying the policy number, and pertinent provisions in the policy providing additional insured coverage shall be provided to NVTA.
- c. The policy shall contain no special limitations on the scope of coverage afforded to NVTA, its officials, employees, agents or volunteers.
- d. For any claims related to the project, the Contractor's General Liability and Automobile insurance coverage shall be primary insurance in their coverage of NVTA and its officers, officials, employees, agents, or volunteers, and any insurance or self-insurance maintained by NVTA, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- e. Any failure to comply with reporting or other provisions of the policies on the part of the Contractor, including breaches of warranties, shall not affect coverage provided to NVTA, its officers, officials, employees, agents or volunteers.
- f. The Contractor's Workers Compensation and Employer's Liability policies shall contain an endorsement that waives any rights of subrogation against NVTA, its officers, officials, employees, agents, and volunteers.
- g. Each insurance policy shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, non-renewed, or materially changed except after 30 days prior written notice by certified mail has been given to NVTA. Ten days prior written notice by certified mail shall be given to NVTA in the event of cancellation due to nonpayment of premium.

7. Acceptability of Insurers

- a. Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
- b. The Contractor shall furnish NVTa with Certificates of Insurance and endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this section, the Standard Specifications, Special Provisions and/or any Supplementary Conditions. The Contractor shall furnish complete, certified copies of all required insurance policies, including original endorsements specifically required hereunder if requested.
- c. The Contractor shall report, by telephone to the Project Manager within 24 hours, and also report in writing to NVTa within 48 hours, after Contractor or any Subcontractors or agents have knowledge of, any accident or occurrence involving death of or serious injury to any person or persons, or damage in excess of Ten Thousand Dollars (\$10,000) to property of NVTa or others, arising out of any work done by or on behalf of the Contractor as part of the contract.

Such report shall contain:

- i. the date and time of the occurrence,
 - ii. the names and addresses of all persons involved, and
 - iii. a description of the accident or occurrence and the nature and extent of the injury or damage.
- d. NVTa, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.
- e. If the Contractor fails to procure or maintain insurance as required by this section, the Standard Specifications, and any Supplementary Conditions, or fails to furnish NVTa with proof of such insurance, NVTa, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by NVTa shall be deducted and retained from any sums due the Contractor under the contract.
- f. Failure of NVTa to obtain such insurance shall in no way relieve the Contractor from any of its responsibilities under the contract.
- g. The making of progress payments to the Contractor shall not be construed as relieving the Contractor or its Subcontractors of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by NVTa.
- h. The failure of NVTa to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
- i. In the event Contractor carries Excess Liability Coverage, the Excess Liability Coverage shall apply to any and all claims related to the project on a primary and non-contributory basis, and NVTa's insurance or self-insurance coverage shall be excess to the Contractor's Excess Liability Coverage.

EXHIBIT B

Required Federal-Aid Contract Language
(For Local Assistance Construction Projects)
(Includes Form FHWA-1273 from Bid Documents)

EXHIBIT C

Minimum Wage Rates

(Federal and State Prevailing Wage Rates from Bid Documents)



NAPA VALLEY TRANSPORTATION AUTHORITY COVER MEMO

SUBJECT

Construction Management, Biologist and Archeologist, and Material Testing Services

STAFF RECOMMENDATION

That the Napa Valley Transportation Authority (NVTA) Board authorize the Executive Director to execute and make minor modifications to Agreement Numbers 21-20, 21-21, and 21-22 for on-call contract services with three (3) proposers; Kleinfelder Construction Services (construction management and material testing services), Park Engineering, Inc. (construction management and material testing services) and Sequoia Ecological Consulting (biologist and archeologist services) in an amount not to exceed \$1,700,000.

EXECUTIVE SUMMARY

NVTA staff anticipates that three capital projects, the Imola Park and Ride, the Vine Transit Maintenance Facility, and the Calistoga to St. Helena Vine Trail project, with a total construction cost of approximately \$40 million, will be under construction concurrently in the coming two years. NVTA will manage and deliver these projects with in-house management staff but additional staffing and expertise is necessary for a period of approximately two years for assistance with field construction inspection, specialized services related to biological monitoring, archaeological services, and material testing.

FISCAL IMPACT

Yes. Based on the total contract amount of \$40 million, the estimated cost for these services is \$3,500,000. Current project funding will cover \$1,700,000. An additional \$1,800,000 will come from project funding or other sources to be determined for the total specialized services needed for the above projects.



NAPA VALLEY TRANSPORTATION AUTHORITY

Board Agenda Memo

TO: NVTA Board of Directors
FROM: Kate Miller, Executive Director
REPORT BY: Sanjay Mishra, Program Manager – Engineer and Projects
(707) 259-5951 / Email: smishra@nvta.ca.gov
SUBJECT: Construction Management, Biologist and Archeologist, and Material Testing Services

RECOMMENDATION

That the Napa Valley Transportation Authority (NVTA) Board authorize the Executive Director to execute and make minor modifications to Agreement Numbers 21-20 (Attachment 1), 21-21 (Attachment 2), and 21-22 (Attachment 3) for on-call contract services with three (3) proposers: Kleinfelder Construction Services (construction management and material testing services), Park Engineering, Inc. (construction management and material testing services) and Sequoia Ecological Consulting (biological monitoring and archeological services) for an amount not to exceed \$1,700,000.

COMMITTEE RECOMMENDATION

None

BACKGROUND

NVTA staff anticipates that the Imola Park and Ride, the Vine Transit Maintenance Facility, and the Calistoga to St. Helena Vine Trail Project with an estimated combined construction cost of \$40million will be in construction in the coming two years. As of the writing of this memorandum, two capital projects have been released for bids. The SR 29/ Imola Avenue Express Bus Improvement Invitation for Bid (IFB) was released to bid on July 16, 2021 and bids were opened on August 4, 2021. The Vine Bus Maintenance Facility was also released on July 21, 2021 with bids due on September 8, 2021. NVTA staff and consultants are working to release the IFB for Calistoga to St. Helena Vine Trail project this fall. These three projects will be in construction concurrently. NVTA will manage and deliver these projects with in-house management staff but additional staff

and staff expertise is required in the areas of field construction inspection, biological monitoring, archaeological services, and material testing. The consulting services is for the period of construction or approximately two years.

On June 14, 2021 NVTa released a Request for Proposals (RFP) No. 21-08 for construction management, biologist, archeologist and material testing services for capital projects. The RFP was advertised on the NVTa website, Public Purchase and other regional platforms. A total of seven (7) proposals were received. The proposals were evaluated based upon five criteria:

- Project Understanding
- Experience and Qualifications
- Project Team Organization
- Familiarity with State and federal procedures
- Financial Oversight

From the seven (7) proposals received, four (4) firms were selected for interviews.

NVTa staff is recommending entering into an on-call agreement with three of the four firms interviewed. Kleinfelder Construction Services (KCS) has put together a very qualified team of consultants and offers all services requested on the RFP. KCS is able to provide construction management/inspection, material testing services, biological monitoring services and archeological services as needed. KCS's proposed staff have significant and relevant experience in vertical construction of facilities similar to the Vine Bus Maintenance Facility and will be instrumental for the construction management and inspection services for the Bus maintenance facility.

Park Engineering, Inc. has proposed staff who has expertise in inspection of roads, multiuse paths and familiarity with Caltrans projects; this firm would supplement the NVTa team and assist with the construction management of the SR 29/Imola Park and Ride improvements as well as the field inspection of the Calistoga to St. Helena Vine Trail project.

Sequoia Ecological Consulting, Inc. is a Bay Area-headquartered Small, Disadvantaged, and Woman-owned Business Enterprise (SBE, DBE, WBE), which will support NVTa with biological and archeological tasks in all three capital projects.

ALTERNATIVES

Alternative 1: Defer the construction inspection, material testing biological monitoring and archeological services until a later date and risk not having sufficient staffing and staff expertise to manage the construction. This will result in risking non-compliance with the permit requirements for the all three capital projects, which could result in significant fines to the agency and poor construction outcomes.

STRATEGIC GOALS MET BY THIS PROPOSAL

Goal 5: Minimize the energy and other resources required to move people and goods.

The construction of the Bus Maintenance Facility, Imola Park and Ride and the Vine Trail Calistoga to St. Helena segment will reduce mobile emissions.

Goal 3: Use taxpayer dollars efficiently.

Hiring consultants for a short term with expertise in a variety of fields is more economically viable than hiring full time employees with the qualifications needed to manage the construction of all three capital projects.

ATTACHMENTS

- (1) Agreement No. 21-20 – Kleinfelder Construction Services Inc.
- (2) Agreement No. 21-21 – Park Engineering Inc.
- (3) Agreement No. 21-22 – Sequoia Ecological Consulting Inc.

DRAFT AGREEMENT

**NAPA VALLEY TRANSPORTATION AUTHORITY (NVTA)
AGREEMENT NO. 21-20**

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2018, 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 **Kleinfelder Construction Services Inc.**, whose mailing address is _____, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, NVTA wishes to obtain specialized services in order to provide NVTA with ON-CALL CONSTRUCTION MANAGEMENT/BIOLOGIST/ARCHEOLOGIST AND MATERIAL TESTING SERVICES for a period of three (3) years to ensure maximum and full and open competition on an ongoing basis for a variety of different projects to be undertaken by NVTA through the Term of this Master Agreement, the general scope of which services are as described in NVTA's Request for Proposal (RFP) No. 21-08, for Construction Management/Biologist/Archeologist and Material Testing Services dated June 14, 2021, attached hereto as EXHIBIT A; and

WHEREAS, NVTA has authorized the NVTA Executive Director to enter into a contract for services at its August 18, 2021 meeting; 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.

(a) The term of this Agreement shall commence on the date first above written and **shall expire on June 30, 2024**, 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)".

(b) The term of the Agreement shall be to the date shown above with an option for two (2) one (1) year terms subject to review and recommendation of NVTa, and the satisfactory negotiation of terms.

(c) CONTRACTOR shall begin work after receipt of a Project Work Order (EXHIBIT B) from NVTa. CONTRACTOR shall thereupon work diligently and continuously to provide all required services and activities described therein.

2. Scope of Services.

(a) CONTRACTOR shall provide NVTa with services as directed by NVTa in accordance with the RFQ or RFP and the terms and provisions of this Master Agreement.

(b) Under this Master Agreement, NVTa shall have the right, at its sole and absolute discretion, to issue project specific Project Work Orders to CONTRACTOR, in the form attached as EXHIBIT B, requesting project-specific services under the general terms and provisions of this Master Agreement, and including a specific scope of services for each such project. Each Project Work Order shall incorporate the terms and provisions of this Master Agreement and the RFQ or RFP, and in conjunction therewith shall be deemed a separate contract for services.

(c) In case of any conflict between the terms of these documents, the order of precedent and control shall be as follows: (i) this Master Agreement, (ii) executed Project Work Order with respect to the project to which it applies, and (iii) the RFQ or RFP.

(d) The parties agree that any provision contained in CONTRACTOR'S proposal(s) 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 C**, 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 cumulative payments under this Agreement shall be **determined by separate work authorization(s) as set forth in each Project Work Order (EXHIBIT B)** 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 who, after review and approval as to form and content, shall submit the invoice to the NVTA Manager of Finance 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 owned, 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.

(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 or pertaining to, or relating to the negligence, recklessness, or willful misconduct 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 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 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 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

[Name]
[Address]

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 June 18, 2015.

(b) NVTA Drug and Alcohol Policy adopted by resolution of the Board of Directors on July 25, 2015.

(c) Napa County Information Technology Use and Security Policy adopted by resolution of the Napa County Board of Supervisors on April 17, 2008. To this end, all employees and subcontractor's 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 July 25, 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) 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. 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.

(b) 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. Unless expressly agreed otherwise, NVTA does not agree to arbitration.

20. Compliance with Laws. CONTRACTOR shall observe and comply with all currently applicable Federal, State and local laws, ordinances, and codes, 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, and any applicable Federal provisions contained in Attachment 1 in all such subcontracts as obligations of the subcontractor.

(d) Federal Required Clauses. Notwithstanding anything to the contrary in this Agreement, pursuant to 29 C.F.R. 97.36(i), CONTRACTOR is hereby notified of, and shall comply with the requirements and regulations imposed by the Federal Transit Administration for federally funded contracts, to the extent they are applicable to the services to be provided under this Agreement, and as set forth in Attachment 1, attached hereto and incorporated herein by reference.

(e) Federal Changes - CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in RFQ No. 2017-07 and the Master Agreement between NVTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR's failure to so comply shall constitute a material breach of this contract.

(f) No Obligation by the Federal Government

1. NVTA and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the NVTA, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(g). Disadvantaged Business Enterprises

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs if CONTRACTOR intends to engage any subcontractors. The agency's overall goal for DBE participation is 2.8%. A separate contract goal has not been established for this procurement. If applicable, CONTRACTOR shall comply with the Disadvantaged Business Enterprise contract provisions/Caltrans Disadvantage Business Enterprise provisions contained in Appendix ATTACHMENT 2, Exhibit 10-O1, for RFP No. 21-08 incorporated herein.

(h). Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All relevant

contractual provisions required by DOT, as set forth in FTA Circular 4220.1F shall be compiled by the parties. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

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.

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.

“NVTA”

“CONTRACTOR”
[NAME OF CONTRACTOR]

By _____
KATE MILLER, Executive Director

By _____
NAME, Position

ATTEST:

By _____
Laura Sanderlin, Board Secretary

By _____
NAME, Position

Approved as to Form:

By _____
NVTA General Counsel

DRAFT AGREEMENT

**NAPA VALLEY TRANSPORTATION AUTHORITY (NVTA)
AGREEMENT NO. 21-21**

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2021, 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 **Park Engineering Inc.** whose mailing address is _____, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, NVTA wishes to obtain specialized services in order to provide NVTA with ON-CALL CONSTRUCTION MANAGEMENT/BIOLOGIST/ARCHEOLOGIST AND MATERIAL TESTING SERVICES for a period of three (3) years to ensure maximum and full and open competition on an ongoing basis for a variety of different projects to be undertaken by NVTA through the Term of this Master Agreement, the general scope of which services are as described in NVTA's Request for Proposal (RFP) No. 21-08, for Construction Management/Biologist/Archeologist and Material Testing Services dated June 14, 2021, attached hereto as EXHIBIT A; and

WHEREAS, NVTA has authorized the NVTA Executive Director to enter into a contract for services at its August 18, 2021 meeting; 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.

(a) The term of this Agreement shall commence on the date first above written and **shall expire on June 30, 2024**, 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)".

(b) The term of the Agreement shall be to the date shown above with an option for two (2) one (1) year terms subject to review and recommendation of NVTA, and the satisfactory negotiation of terms.

(c) CONTRACTOR shall begin work after receipt of a Project Work Order (EXHIBIT B) from NVTA. CONTRACTOR shall thereupon work diligently and continuously to provide all required services and activities described therein.

2. Scope of Services.

(a) CONTRACTOR shall provide NVTA with services as directed by NVTA in accordance with the RFQ or RFP and the terms and provisions of this Master Agreement.

(b) Under this Master Agreement, NVTA shall have the right, at its sole and absolute discretion, to issue project specific Project Work Orders to CONTRACTOR, in the form attached as EXHIBIT B, requesting project-specific services under the general terms and provisions of this Master Agreement, and including a specific scope of services for each such project. Each Project Work Order shall incorporate the terms and provisions of this Master Agreement and the RFQ or RFP, and in conjunction therewith shall be deemed a separate contract for services.

(c) In case of any conflict between the terms of these documents, the order of precedent and control shall be as follows: (i) this Master Agreement, (ii) executed Project Work Order with respect to the project to which it applies, and (iii) the RFQ or RFP.

(d) The parties agree that any provision contained in CONTRACTOR'S proposal(s) 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 C**, 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 cumulative payments under this Agreement shall be **determined by separate work authorization(s) as set forth in each Project Work Order (EXHIBIT B)** 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 who, after review and approval as to form and content, shall submit the

invoice to the NVTa Manager of Finance 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 owned, 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.

(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 or pertaining to, or relating to the negligence, recklessness, or willful misconduct 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 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 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 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

[Name]
[Address]

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 June 18, 2015.

(b) NVTA Drug and Alcohol Policy adopted by resolution of the Board of Directors on July 25, 2015.

(c) Napa County Information Technology Use and Security Policy adopted by resolution of the Napa County Board of Supervisors on April 17, 2008. To this end, all employees and subcontractor's 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 July 25, 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) 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. 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.

(b) 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. Unless expressly agreed otherwise, NVTA does not agree to arbitration.

20. Compliance with Laws. CONTRACTOR shall observe and comply with all currently applicable Federal, State and local laws, ordinances, and codes, 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, and any applicable Federal provisions contained in Attachment 1 in all such subcontracts as obligations of the subcontractor.

(d) Federal Required Clauses. Notwithstanding anything to the contrary in this Agreement, pursuant to 29 C.F.R. 97.36(i), CONTRACTOR is hereby notified of, and shall comply with the requirements and regulations imposed by the Federal Transit Administration for federally funded contracts, to the extent they are applicable to the services to be provided under this Agreement, and as set forth in Attachment 1, attached hereto and incorporated herein by reference.

(e) Federal Changes - CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in RFQ No. 2017-07 and the Master Agreement between NVTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR's failure to so comply shall constitute a material breach of this contract.

(f) No Obligation by the Federal Government

1. NVTA and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the NVTA, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(g). Disadvantaged Business Enterprises

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs if CONTRACTOR intends to engage any subcontractors. The agency's overall goal for DBE participation is 2.8%. A separate contract goal has not been established for this procurement. If applicable, CONTRACTOR shall comply with the Disadvantaged Business Enterprise contract provisions/Caltrans Disadvantage Business Enterprise provisions contained in Appendix ATTACHMENT 2, Exhibit 10-O1, for RFP No. 21-08 incorporated herein.

(h). Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All relevant

contractual provisions required by DOT, as set forth in FTA Circular 4220.1F shall be compiled by the parties. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

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.

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.

“NVTA”

“CONTRACTOR”
[NAME OF CONTRACTOR]

By _____
KATE MILLER, Executive Director

By _____
NAME, Position

ATTEST:

By _____
Laura Sanderlin, Board Secretary

By _____
NAME, Position

Approved as to Form:

By _____
NVTA General Counsel

DRAFT AGREEMENT

**NAPA VALLEY TRANSPORTATION AUTHORITY (NVTA)
AGREEMENT NO. 21-22**

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2018, 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 **Sequoia Ecological Consulting Inc.**, whose mailing address is _____, hereinafter referred to as “CONTRACTOR”;

RECITALS

WHEREAS, NVTA wishes to obtain specialized services in order to provide NVTA with ON-CALL CONSTRUCTION MANAGEMENT/BIOLOGIST/ARCHEOLOGIST AND MATERIAL TESTING SERVICES for a period of three (3) years to ensure maximum and full and open competition on an ongoing basis for a variety of different projects to be undertaken by NVTA through the Term of this Master Agreement, the general scope of which services are as described in NVTA’s Request for Proposal (RFP) No. 21-08, for Construction Management/Biologist/Archeologist and Material Testing Services dated June 14, 2021, attached hereto as EXHIBIT A; and

WHEREAS, NVTA has authorized the NVTA Executive Director to enter into a contract for services at its August 18, 2021 meeting; 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.

(a) The term of this Agreement shall commence on the date first above written and **shall expire on June 30, 2024**, 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”).

(b) The term of the Agreement shall be to the date shown above with an option for two (2) one (1) year terms subject to review and recommendation of NVTa, and the satisfactory negotiation of terms.

(c) CONTRACTOR shall begin work after receipt of a Project Work Order (EXHIBIT B) from NVTa. CONTRACTOR shall thereupon work diligently and continuously to provide all required services and activities described therein.

2. Scope of Services.

(a) CONTRACTOR shall provide NVTa with services as directed by NVTa in accordance with the RFQ or RFP and the terms and provisions of this Master Agreement.

(b) Under this Master Agreement, NVTa shall have the right, at its sole and absolute discretion, to issue project specific Project Work Orders to CONTRACTOR, in the form attached as EXHIBIT B, requesting project-specific services under the general terms and provisions of this Master Agreement, and including a specific scope of services for each such project. Each Project Work Order shall incorporate the terms and provisions of this Master Agreement and the RFQ or RFP, and in conjunction therewith shall be deemed a separate contract for services.

(c) In case of any conflict between the terms of these documents, the order of precedent and control shall be as follows: (i) this Master Agreement, (ii) executed Project Work Order with respect to the project to which it applies, and (iii) the RFQ or RFP.

(d) The parties agree that any provision contained in CONTRACTOR'S proposal(s) 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 C**, 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 cumulative payments under this Agreement shall be **determined by separate work authorization(s) as set forth in each Project Work Order (EXHIBIT B)** 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 who, after review and approval as to form and content, shall submit the invoice to the NVTA Manager of Finance 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 owned, 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.

(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 or pertaining to, or relating to the negligence, recklessness, or willful misconduct 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 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 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 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

[Name]
[Address]

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 June 18, 2015.

(b) NVTA Drug and Alcohol Policy adopted by resolution of the Board of Directors on July 25, 2015.

(c) Napa County Information Technology Use and Security Policy adopted by resolution of the Napa County Board of Supervisors on April 17, 2008. To this end, all employees and subcontractor's 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 July 25, 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) 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. 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.

(b) 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. Unless expressly agreed otherwise, NVTA does not agree to arbitration.

20. Compliance with Laws. CONTRACTOR shall observe and comply with all currently applicable Federal, State and local laws, ordinances, and codes, 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, and any applicable Federal provisions contained in Attachment 1 in all such subcontracts as obligations of the subcontractor.

(d) Federal Required Clauses. Notwithstanding anything to the contrary in this Agreement, pursuant to 29 C.F.R. 97.36(i), CONTRACTOR is hereby notified of, and shall comply with the requirements and regulations imposed by the Federal Transit Administration for federally funded contracts, to the extent they are applicable to the services to be provided under this Agreement, and as set forth in Attachment 1, attached hereto and incorporated herein by reference.

(e) Federal Changes - CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in RFQ No. 2017-07 and the Master Agreement between NVTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR's failure to so comply shall constitute a material breach of this contract.

(f) No Obligation by the Federal Government

1. NVTA and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the NVTA, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(g). Disadvantaged Business Enterprises

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs if CONTRACTOR intends to engage any subcontractors. The agency's overall goal for DBE participation is 2.8%. A separate contract goal has not been established for this procurement. If applicable, CONTRACTOR shall comply with the Disadvantaged Business Enterprise contract provisions/Caltrans Disadvantage Business Enterprise provisions contained in Appendix ATTACHMENT 2, Exhibit 10-O1, for RFP No. 21-08 incorporated herein.

(h). Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All relevant

contractual provisions required by DOT, as set forth in FTA Circular 4220.1F shall be compiled by the parties. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

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.

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.

“NVTA”

“CONTRACTOR”
[NAME OF CONTRACTOR]

By _____
KATE MILLER, Executive Director

By _____
NAME, Position

ATTEST:

By _____
Laura Sanderlin, Board Secretary

By _____
NAME, Position

Approved as to Form:

By _____
NVTA General Counsel



NAPA VALLEY TRANSPORTATION AUTHORITY COVER MEMO

SUBJECT

Generator for the Soscot Gateway Transit Center

STAFF RECOMMENDATION

That the Napa Valley Transportation Authority (NVTA) Board authorize the Executive Director to execute and make minor modifications to Construction Agreement No. 21-18 with Mel Electric Inc. to purchase and install a backup generator for the Soscot Gateway Transit Center in an amount not to exceed \$218,214.

EXECUTIVE SUMMARY

The Soscot Gateway Transit Center (SGTC) houses all of the NVTA administrative staff, Customer Service Office and is the hub of the Vine transit system. The SGTC has lost power as a result of the Tubbs Fire (2017), Kincade (2019) and Glass Fire (2020) and has been subject to prolonged power outages as part of Public Safety Power Shutoffs. Without power, NVTA staff cannot operate or provide service for Vine customers effectively. NVTA staff is proposing to purchase a backup generator to remedy this problem.

FISCAL IMPACT

Is there a fiscal impact? Yes, funding will come from Transportation Development Act Funds

Generator Parts and Labor:	\$198,376.47
Contingency (10%):	<u>\$ 19,837.53</u>
Total Amount:	\$218,214.00



NAPA VALLEY TRANSPORTATION AUTHORITY Board Agenda Memo

TO: Board of Directors
FROM: Kate Miller, Executive Director
REPORT BY: Rebecca Schenck, Program Manager – Public Transit
(707) 259-8636 / Email: rschenck@nvta.ca.gov
SUBJECT: Generator for the Soscol Gateway Transit Center

RECOMMENDATION

That the Napa Valley Transportation Authority (NVTA) Board authorize the Executive Director to execute and make minor modifications to Construction Agreement No. 21-18 (Attachment 1) with Mel Electric Inc. to purchase and install a backup generator for the Soscol Gateway Transit Center in an amount not to exceed \$218,214.

COMMITTEE RECOMMENDATION

None

EXECUTIVE SUMMARY

The Soscol Gateway Transit Center (SGTC) houses all of the NVTA administrative staff, Customer Service Office and is the hub of the Vine transit system. The SGTC has lost power as a result of the Tubbs Fire (2017), Kincade (2019) and Glass Fire (2020) and has been subject to prolonged power outages as part of Public Safety Power Shutoffs (PSPS). Without power, NVTA staff cannot maintain operations or serve Vine customers effectively. NVTA staff is proposing to purchase a backup generator to remedy this problem.

BACKGROUND AND DISCUSSION

When the Soscol Gateway Transit Center building was completed in 2013, fires were not seen as an annual threat, and Pacific Gas & Electric's Public Service Power Shutoffs (PSPS) were not a regular occurrence in suburban areas. The number of prolonged power outages have limited the ability of NVTA staff to complete their work both on-site at the SGTC and remotely since when the power goes out the NVTA servers are also impacted.

To prepare for potential 2021 power outages, NVTa staff researched generator options for the SGTC and with the help of TransDev staff did site tours and requested three quotes for a generator to be installed. Quotes were received from Schafer Electric, Mel Electric Inc. and Napa Electric. The lowest quote was Mel Electric Inc. at a total cost of \$198,376.47. A breakdown of the costs and features is outlined below

	Schafer	Napa Electric	MEL Electric
Total Price	\$426,141.00	\$283,500.00	\$198,376.47
Parts	\$142,141.00	\$140,000.00	\$107,518.68
Labor	\$284,000.00	\$143,500.00	\$139,612.79
Building Permit	Not included	Not included	\$3,000.00
BAAQM Fees	Not included	Not included	\$3,245.00
PG&E Fees	Not included	Not included	Not included
Type of Generator	Generac - Diesel 275 kW	Diesel 125kW	Generac - Diesel 130 kW
Comments	10% Deposit	Fuel Excluded	Fuel Excluded, generator payment required upfront

The 130kW diesel generator proposed by Mel Electric at full power (9.6 gallons burned per hour) would last 52 hours before it would need to be refilled. Running it at lesser load would result in extended time period. The generator can be refilled and the necessary diesel can be stored at 720 Jackson Street where fueling permits are already in place. When NVTa moves to a new facility, new arrangements will need to be made for diesel storage nearby. The larger generator proposed by Schafer exceeded the necessary capacity of what NVTa required and they did not submit an updated quote for the 130kW generator when NVTa requested one.

ALTERNATIVES

Alternative 1: Forego purchasing the backup generator and allow the SGTC to remain without power during fire, earthquakes and PSPS events.

Alternative 2: Request that staff continue to explore other options besides a diesel generator. NVTa staff has already looked into the option for a hybrid diesel/natural gas since there is already a natural gas pipeline leading to the SGTC, but this product does not currently exist on the market. While there are propane/natural gas generators, they require a trench from the natural gas line to the generator site, which is a significant added expense. Finally, NVTa staff did explore connecting the generator to the existing solar array, but that is infeasible because the solar array is currently connected to the grid. The solar array feeds energy back into the grid and whenever the power is shut off, the solar array is also disabled by PG&E as a fire prevention measure. An entirely new solar array and battery not connected to the grid would need to be installed to fuel a generator and the SGTC is out of roof space.

STRATEGIC GOALS MET BY THIS PROPOSAL

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

A well-functioning system is essential for adequately providing transportation for individuals with mobility challenges, community members who have limited financial resources, or members of the community who choose to take transit. To provide transit service, NVTa needs to have power to run the lights, servers, and computers.

ATTACHMENT

(1) Construction Agreement No. 21-18

CONSTRUCTION AGREEMENT
NVTA No. 21-18

THIS AGREEMENT, dated for identification as of _____, 2021, is between the **NAPA VALLEY TRANSPORTATION AUTHORITY (NVTA)**, a California joint powers authority, (hereinafter called "NVTA" or "Agency"), and MEL Electric Inc., (hereinafter called "Contractor").

The parties hereto mutually agree to the terms and condition set forth herein.

1. CONTRACT DOCUMENTS

A. The Contract Documents referred to herein are incorporated herein by reference as if set forth in full in this Agreement. Work called for in any one Contract Document and not mentioned in another is to be performed and executed as if mentioned in all Contract Documents.

B. The Contract Documents shall include the Notice Inviting Bids, Instructions to Bidders, Bid Forms (including the Bid, Bid Schedule(s), Information Required of Bidder, Bid Bond, and all required certificates, affidavits and other documentation), this Agreement, Performance Bond, Labor and Materials Bond, Maintenance Bond, General Conditions, any Supplementary General Conditions, Special Provisions, Specifications, Drawings, all Addenda, and Change Orders executed pursuant to the provisions of the Contract Documents. The General Conditions shall mean and refer to the current General Conditions of NVTA which are incorporated herein by this reference as if set forth herein.

C. This Agreement, and the Contract Documents, includes the exhibits to this Agreement, including Exhibit A Insurance, and Exhibit B Required Federal-Aid Contract Language (For Local Assistance Construction Projects) (Includes Form FHWA-1273 from Bid Documents), and Exhibit C Minimum Wage Rates (Federal and State Prevailing Wage Rates from Bid Documents.)

2. AGREEMENT CONTROLS

In the event of a conflict between the terms and conditions as set forth in this Agreement and the terms and conditions set forth in other Contract Documents, the terms and conditions set forth in this Agreement shall prevail. Unless otherwise specifically provided herein, all works and phrases defined in the General Conditions shall have the same meaning and intent in this Agreement.

3. SCOPE OF CONTRACT

Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor and material and transportation necessary to perform and complete in a good and workman like manner to the satisfaction of NVTA, all the work called for, and in the manner designated in, and in strict conformity with the Project entitled:

Project Name : *Soscol Gateway Transit Center Generator and Installation*
Project No. : 21-18
Federal Project No. : N/A

4. CONTRACT AMOUNT AND PAYMENTS

NVTA agrees to pay and Contractor agrees to accept, in full payment for the above work, **ONE HUNDRED NINETY EIGHT THOUSAND THREE HUNDRED SEVENTY SIX THOUSAND DOLLARS AND FORTY SEVEN CENTS (\$198,376.47)** as the stipulated sum price which Contractor bid in its Bid Form, subject to additions and deductions by Change Order(s) as provided in the General Conditions.

5. PROGRESS AND FINAL PAYMENTS

Progress and final payments shall be in accordance with the General Conditions.

6. RETENTION OF SUMS CHARGED AGAINST CONTRACTOR

When, under the provisions of this Contract, NVTA is authorized to charge any sum of money against Contractor, NVTA may deduct and retain the amount of such charge from the amount of the next succeeding progress estimate, or from any other moneys due or that may become due to the Contractor from NVTA. If, on completion or termination of the Contract, sums due contractor are insufficient to pay NVTA's charges against Contractor, NVTA shall have the right to recover the balance from Contractor or his sureties.

7. TIME OF COMPLETION

A. The entire work shall be completed to the satisfaction of NVTA within _____ working days, commencing on the date of issuance of the Notice to Proceed.

B. Failure to complete the entire work by the completion date and in the manner provided for by the Contract Documents shall subject Contractor to liquidated damages as hereinafter provided in this Agreement. Time is of the essence in these Contract Documents.

8. INSURANCE

Contractor shall maintain in full force and effect at all times during the term of the Agreement, at its sole expense, policies of insurance in accordance with the General Conditions, including, but not limited to, Exhibit A, attached hereto and incorporated herein by reference.

9. NO WAIVER OF REMEDIES

A. Neither the inspection by NVTA or its agents, nor any order or certificate for the payment of money, nor any payment for, nor acceptance of the whole or any part of the work by NVTA, nor any extensions of time, nor any position taken by NVTA or its agents shall operate as a waiver of any provision of this Agreement or of any power herein reserved to NVTA or any right to damages herein provided, nor shall any waiver of any breach of the Agreement be held to be a waiver of any other or subsequent breach.

B. All remedies provided in this Agreement shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, and NVTA shall have any and all equitable and legal remedies which it would in any case have.

10. DETERMINATION OF DAMAGES

A. The actual fact of the occurrences of damages and the actual amount of the damages which NVTA would suffer if the work were not completed within the specified times set forth are dependent upon many circumstances and conditions and, it is impracticable and extremely difficult to fix the actual damages. Damages which NVTA would suffer in the event of delay include loss of the use of the project, and, in addition, expenses of prolonged employment of an architectural and engineering staff; costs of administration, inspection, and supervision; and the loss suffered by the public within the County of Napa by reasons of the delay in the completion of the project to serve the public at the earliest possible time.

B. Accordingly, the parties hereto agree, and by execution of this Agreement, Contractor acknowledges that he understands, has ascertained and agrees, that the amounts set forth herein as liquidated damages shall be presumed to be that amount of damages sustained by the failure of Contractor to complete the entire work within the times specified.

11. LIQUIDATED DAMAGES

- A. The amount of the liquidated damages to be paid by Contractor to NVTa for failure to complete the entire work in the specified number of Working or Calendar Days (as extended, if applicable) will be **THREE HUNDRED DOLLARS(\$300)** for each **Calendar Day**, continuing to the time at which the work is completed.
- B. Such amount is the actual cash value agreed upon as the loss to NVTa resulting from Contractor's delay.

12. TERMINATION AFTER ALLOTTED WORKING OR CALENDAR DAYS

- A. In addition to any rights it may have, NVTa may terminate this Contract at any time after the allotted number of Working or Calendar Days as adjusted by any extensions of time for excusable delays that may have been granted.
- B. Upon such termination, Contractor shall not be entitled to receive any compensation for services rendered by him before or after such termination, and he shall be liable to NVTa for liquidated damages for all periods of time beyond such termination date until the work is completed.

13. CONTRACTOR BANKRUPT

- A. If Contractor should commence any proceeding under the Bankruptcy Act, or if Contractor be adjudged a bankrupt, or if Contractor should make any assignment for the benefit of creditors, or if a receiver should be appointed on account of Contractor's insolvency, then the NVTa Board may, without prejudice to any other right or remedy, terminate the Contract and complete the work by giving notice to Contractor and his surety according to the provisions of Section 1-15 of the General Conditions.
- B. NVTa shall have the right to complete, or cause completion of the work, all as specified in the General Provisions of the Standard Specifications.

14. PERFORMANCE AND PAYMENT BONDS

- A. The Contractor shall, before beginning said work, file two bonds with NVTa, each made payable to NVTa. These bonds shall be issued by a Surety Company authorized to do business in the State of California, and shall be maintained during the entire life of the Contract at the expense of the Contractor.
1. One bond shall be in the amount of one hundred percent (100%) of the Contract and shall guarantee the Faithful Performance of the Contract.
 2. The second bond shall be the Payment Bond required by Part 4, Title 15, Chapter 7, Division Three of the Civil Code of the State of California and shall be in the amount of one hundred percent (100%) of the Contract.
- B. Any alteration or alterations made in any provision of this Contract shall not operate to release any surety from liability on any bond required hereunder and the consent to make such alterations is hereby given, and any surety on said bonds hereby waives the provisions of Section 2819 of the Civil Code.
- C. Bonds shall only be accepted from an *"Admitted surety insurer,"* which means an insurer to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state. **Contractor must submit** the original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws or other instrument entitling or authorizing the person who executed the bond to do so.
- D. All bonds submitted shall include the following:
1. Full name and address of the Contractor Surety, and NVTa;
 2. Contract Date;
 3. Exact Contract Sum;
 4. Project Name and Address;

5. Signature of the Contractor
6. Corporate Seal, if applicable;
7. Signature of Authorized Surety Representative;
8. Notarization of the Contractor and Surety;
9. Power of Attorney; and
10. Local contact for surety, with name, phone number, and address to which legal notices may be sent

15. SUBSTITUTION OF SECURITIES OF MONEY WITHHELD

- A. At any time prior to final payment, Contractor may request substitution of securities for any money withheld by NVTa to ensure performance of the Contract.
- B. At the expense of the Contractor, securities equivalent to the money withheld may be deposited with NVTa or with an approved financial institution as escrow agent according to a separate Security Agreement.
- C. Securities eligible for substitution shall include those listed in Section 16430 of the Government Code or bank or savings and loan certificates of deposit. A fee set by NVTa's Board shall be charged for such substitution.

16. LABOR CODE COMPLIANCE

- A. NVTa affirmatively identifies this project as a "public work" as that term is defined by Labor Code section 1720, and the project is, therefore, subject to prevailing wages under Labor Code section 1771.
- B. Contractor and its subcontractors shall fully comply with all the provision of the California Labor Code governing the performance of public works contracts including, but not limited to, payment of prevailing wages, limitations on time worked, compliance with apprentice requirements, maintenance of payroll records, posting of wages at job site and prohibitions against discrimination.

17. UNFAIR COMPETITION

The following provision is included in this agreement pursuant to California Public Contract Code §7103.5.

"In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assigning to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties."

18. GENERAL LIABILITY OF CONTRACTOR

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, light, heat, utilities, transportation and other facilities and services necessary for the execution and completion of the Work in accordance with the Contract Documents and any applicable code or statute, whether or not specifically described herein, as long as same is reasonably inferable therefrom as being necessary to produce the intended results, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work. The mention of any specific duty or liability of Contractor and, any reference to any specific duty or liability shall be construed to be for the purpose of explanation.

19. AUTHORITY OF NVT

- A. NVT will decide all questions regarding the quality and acceptability of materials furnished, work performed, and rate of progress of the Work. NVT will decide all questions regarding the interpretation and fulfillment of the Contract on the part of the Contractor, and all questions as to the rights of different prime contractors involved with the Work. NVT will determine the amount and quality of the Work performed and materials furnished for which payment is to be made under the Contract.
- B. NVT will administer its authority through a duly designated representative identified at the pre-construction conference. The Contractor and NVT's designated representative (the Owner's Representative) shall make good faith attempts to resolve disputes that arise during the performance of the Work.
- C. Any order given by NVT not otherwise required by the Contract to be in writing shall be given or confirmed by NVT in writing at the Contractor's request. Such request shall state the specific subject of the decision, order, instruction, or notice and, if it has been given orally, its date, time, place, author and recipient.
- D. Any plan or method suggested to the Contractor by the ENGINEER, or any of the Owner's Representative, but not specified or required in writing, if adopted or followed in whole or in part by the Contractor, shall be used at the risk and responsibility of the Contractor. NVT assumes no responsibility.

20. Responsibility of the Contractor

- A. The Work shall be under the Contractor's responsible care and charge until completion and final acceptance, and the Contractor shall bear the entire risk of injury, loss, or damage to any part by any cause. The Contractor shall rebuild, repair, restore, and make good all injuries, losses or damage to any portion of the Work or the materials occasioned by any cause, and shall bear the entire expense.
- B. The mention herein of any specific duty or responsibility imposed upon the Contractor shall not be construed as a limitation or restriction of any other responsibility or duty imposed upon the Contractor by the Contract, said reference being made herein merely for the purpose of explaining the specific duty or responsibility.
- C. The Contractor shall do all of the work and furnish all labor, materials, tools, equipment, and appliances, except as otherwise herein expressly stipulated, necessary or proper for performing and completing the Work herein required, including any change order work or disputed work directed by NVT in conformity with the true meaning and intent of the Contract Documents, within the time specified.

21. INDEMNIFICATION

- A. To the fullest extent permitted by law, the Contractor shall indemnify, defend with counsel acceptable to NVT, and hold harmless NVT, its officers, officials, employees, agents, and volunteers from and against any and all losses, claims, demands, damages, costs, expenses, attorney's fees, or liability of every nature arising out of or in any way connected with the performance or attempted performance of the provisions of this Contract, caused in whole or in part by any negligent or willful act or omission of the Contractor, its officers, employees, or agents, or anyone directly or indirectly acting on behalf of the Contractor, regardless of whether caused in part by a party indemnified hereunder. Nothing contained in the foregoing indemnity provisions shall be construed to require the Contractor to indemnify the indemnified party in contravention of Section 2782 of the Civil Code for the active or sole negligence or willful misconduct of that indemnified party

B. To the fullest extent permitted by law, the Contractor's duty to defend shall extend, without limitation, to any suit or action founded upon any losses, claims, demands, damages, costs, expenses, attorney's fees, or liability of every nature arising out of or in any way connected with the performance or attempted performance of the provisions hereof, or in any way arising out of or connected with this Contract.

C. The defense and indemnity obligations expressly extend to and include any and all claims, demands, damages, costs, expenses, or liability occasioned as a result of damages to adjacent property caused by the conduct of the Work.

D. The defense and indemnity obligations expressly extend to and include any and all claims, demands, damages, costs, expenses, or liability occasioned as a result of the violation by the Contractor, the Contractor's agents, employees, or independent contractors, Subcontractors or suppliers of any provisions of federal, State or local law, including applicable administrative regulations.

E. The defense and indemnity obligations also expressly extend to and include any claims, demands, damages, costs, expenses, or liability occasioned by injury to or death of any person, or any property damage to property owned by any person while on or about the site or as a result of the Work, whether such persons are on or about the site by right or not, whenever the Work is alleged to have been a contributing cause in any degree whatsoever.

F. In claims against any person or entity herein indemnified that are made by an employee of the Contractor or an employee of any of the Contractor's agents, independent contractors, Subcontractors or suppliers, a person indirectly employed by the Contractor or by any of the Contractor's agents, independent contractors, Subcontractors or suppliers, or anyone for whose acts the Contractor or any of the Contractor's agents, independent contractors, Subcontractors or suppliers may be liable, the defense and/or indemnification obligation herein shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or the Contractor's agents, independent contractors, Subcontractors or suppliers under workers' compensation acts, disability acts, or other employee benefit acts.

G. The indemnification obligations herein shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

H. The indemnities set forth herein shall not be limited by the insurance requirements set forth in the Contract Documents.

I. The indemnification requirements herein set forth shall extend to claims occurring after this Contract is terminated as well as while it is in force.

J. In the event the Contractor enters into any agreement with the owners of any adjacent property to enter upon or adjacent to such property for the purpose of performing this Contract, the Contractor shall fully indemnify, defend and save harmless such person, firm, or corporation, State or other governmental agency which owns or has any interest in the adjacent property. The form and content of the indemnification agreement shall be approved by NVTA prior to commencement of any work on or about such property. The Contractor also shall indemnify NVTA and other indemnities identified in this Section as provided in the Contract. These provisions shall be in addition to any other requirements of the owners of adjacent property.

22. ASSIGNMENT

Neither this Agreement nor any rights herein of Contractor shall be assigned without the written consent of NVTA first obtained.

23. AMENDMENTS

Any modification or amendment of any provision of this agreement shall be in writing and must be executed by both parties hereto.

24. INCIDENTAL BENEFICIARIES

It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to NVTa and Contractor. Nothing contained in the Agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of NVTa and Contractor that any such person or entity, other than NVTa and Contractor, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary.

25. MISCELLANEOUS PROVISIONS

A. **Attorneys' Fees:** In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees according to law.

B. This Agreement shall be deemed to be made in, and the rights and liabilities of the parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a state court in the County of Sacramento, State of California.

C. **Enforceability:** If any term or provision of this Agreement is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this Agreement shall remain binding.

D. **Time:** All times stated herein or in any other contract documents are of the essence.

E. **Binding:** This Agreement shall bind and inure to the heirs, devisees, assignees and successors in interest of Contractor and to the successors in interest of NVTa in the same manner as if such parties had been expressly named herein.

F. **Survivorship:** Any responsibility of Contractor for warranties, insurance, indemnity, record keeping or compliance with laws with respect to this Agreement shall not be invalidated due to the expiration, termination or cancellation of this Agreement.

G. **Waiver:** In the event that either NVTa or Contractor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

26. ENTIRE AGREEMENT

This instrument and any attachments hereto constitute the entire Agreement between NVTa and Contractor concerning the subject matter hereof and supersedes any and all prior oral and written communications between the parties regarding the subject matter hereof.

27. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

28. COUNTERPARTS

This agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all of the signatories hereto have signed a counterpart of this Agreement. All counterparts so executed shall constitute one Agreement binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the same counterpart.

SIGNATURE PAGE IMMEDIATELY FOLLOWS

IN WITNESS WHEREOF, the parties hereto have signed the Agreement on the date set forth opposite their names.

CONTRACTOR:

(Must be signed by two officers of the corporation in compliance with Corporations Code section 313.)

Date

Tax I.D. Number

Signature

Signature

Print Name

Print Name

Title

Title

NVTA, A California Joint Powers Agency:

Date

Kate Miller, Executive Director

ATTEST:

Clerk

APPROVED AS TO FORM:

Sloan Sakai Yeung & Wong, LLP, General Counsel

EXHIBIT A

INSURANCE

NOTE: The word "Contractor" in this Exhibit refers to either "Contractor" or "Contractor" as the term is used in the Agreement/Contract to which this Exhibit is attached.

B. During the term of this Agreement, Contractor shall maintain in full force and effect at all times during the term of the contract, at its sole cost and expense, policies of insurance as set forth herein:

1. General Liability:

General liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.

- a. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- b. Claims-made coverage is not acceptable.
- c. The limits of liability shall not be less than:

Each occurrence:	One Million Dollars (\$1,000,000)
Products & Completed Operations:	One Million Dollars (\$1,000,000)
Personal & Advertising Injury:	One Million Dollars (\$1,000,000)
- d. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the contract.
- e. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.
- f. If the Contractor maintains higher limits than the minimums shown above, NVTA requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to NVTA.

2. Automobile Liability:

Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.

1. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbol 1 (any auto).
2. The limits of liability per accident shall not be less than:

Combined Single Limit	One Million Dollars (\$1,000,000)
-----------------------	-----------------------------------

If Automobile Liability coverage, as required above, is provided by the Commercial General Liability form, the General Liability policy shall include an endorsement providing automobile liability as required above.

3. Workers' Compensation

- a. Workers' Compensation Insurance, with coverage as required by the State of California (unless the Contractor is a qualified self-insurer with the State of California), and Employer's Liability coverage.
- b. Employer's Liability Coverage with a limit not less than \$1,000,000 per accident for bodily injury and disease.
- c. Contractor shall sign and file with NVTA department responsible for this Agreement/Contract the Worker's Compensation Certificate contained in the Project Manual.

4. Insurance Required in the Supplementary Conditions

Contractor shall be required to comply with all conditions as stipulated in the Standard Construction Specifications, any supplementary conditions and any special provisions as applicable.

5. Professional Liability Insurance

If required errors and omissions, malpractice or professional liability insurance with coverage of not less than \$1,000,000 per claim.

6. Other Insurance Provisions

- a. The Contractor's General Liability and Automobile Liability policies shall contain, or be endorsed to contain, the following provisions:
NVTA, its officials, employees, agents and volunteers shall be covered and specifically named as additional insureds on a separate endorsement as respects liability arising out of activities performed by or on behalf of the Contractor, products and completed operations of the Contractor, premises owned, occupied, or used by the Contractor, or automobiles owned, leased, hired, or borrowed by the Contractor in a form acceptable to NVTA's Attorney.
- b. The Endorsement requirement may be satisfied with express provisions in the insurance policy(ies) which identifies any person or entity required to be included as an insured under the policy. A copy of the declarations page identifying the policy number, and pertinent provisions in the policy providing additional insured coverage shall be provided to NVTA.
- c. The policy shall contain no special limitations on the scope of coverage afforded to NVTA, its officials, employees, agents or volunteers.
- d. For any claims related to the project, the Contractor's General Liability and Automobile insurance coverage shall be primary insurance in their coverage of NVTA and its officers, officials, employees, agents, or volunteers, and any insurance or self-insurance maintained by NVTA, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- e. Any failure to comply with reporting or other provisions of the policies on the part of the Contractor, including breaches of warranties, shall not affect coverage provided to NVTA, its officers, officials, employees, agents or volunteers.
- f. The Contractor's Workers Compensation and Employer's Liability policies shall contain an endorsement that waives any rights of subrogation against NVTA, its officers, officials, employees, agents, and volunteers.
- g. Each insurance policy shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, non-renewed, or materially changed except after 30 days prior written notice by certified mail has been given to NVTA. Ten days prior written notice by certified mail shall be given to NVTA in the event of cancellation due to nonpayment of premium.

7. Acceptability of Insurers

- a. Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
- b. The Contractor shall furnish NVTa with Certificates of Insurance and endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this section, the Standard Specifications, Special Provisions and/or any Supplementary Conditions. The Contractor shall furnish complete, certified copies of all required insurance policies, including original endorsements specifically required hereunder if requested.
- c. The Contractor shall report, by telephone to the Project Manager within 24 hours, and also report in writing to NVTa within 48 hours, after Contractor or any Subcontractors or agents have knowledge of, any accident or occurrence involving death of or serious injury to any person or persons, or damage in excess of Ten Thousand Dollars (\$10,000) to property of NVTa or others, arising out of any work done by or on behalf of the Contractor as part of the contract.

Such report shall contain:

- i. the date and time of the occurrence,
 - ii. the names and addresses of all persons involved, and
 - iii. a description of the accident or occurrence and the nature and extent of the injury or damage.
- d. NVTa, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.
- e. If the Contractor fails to procure or maintain insurance as required by this section, the Standard Specifications, and any Supplementary Conditions, or fails to furnish NVTa with proof of such insurance, NVTa, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by NVTa shall be deducted and retained from any sums due the Contractor under the contract.
- f. Failure of NVTa to obtain such insurance shall in no way relieve the Contractor from any of its responsibilities under the contract.
- g. The making of progress payments to the Contractor shall not be construed as relieving the Contractor or its Subcontractors of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by NVTa.
- h. The failure of NVTa to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.
- i. In the event Contractor carries Excess Liability Coverage, the Excess Liability Coverage shall apply to any and all claims related to the project on a primary and non-contributory basis, and NVTa's insurance or self-insurance coverage shall be excess to the Contractor's Excess Liability Coverage.

EXHIBIT B

Required Federal-Aid Contract Language
(For Local Assistance Construction Projects)
(Includes Form FHWA-1273 from Bid Documents)

EXHIBIT C

Minimum Wage Rates

(Federal and State Prevailing Wage Rates from Bid Documents)



NAPA VALLEY TRANSPORTATION AUTHORITY COVER MEMO

SUBJECT

Vine Transit Update

STAFF RECOMMENDATION

Information only. This report will provide an update on the operational performance for Vine Transit services covering the fourth quarter of Fiscal Year (FY) 2020-21. The report will also provide an update on operational and service changes related to the pandemic.

EXECUTIVE SUMMARY

This report summarizes the Vine's operational performance during the fourth quarter for Fiscal Year (FY) 2020-21, covering the period of April 1 to June 30, 2021, and provides an update on service changes in response to growing ridership trends. The board memo compares the fourth quarter of FY 2021 (April – June) to both the fourth quarter of FY 2020 and to the previous quarter (Jan - Mar) to highlight the differences between the same time period last year and to recent months of the COVID-19 pandemic.

FISCAL IMPACT

None



NAPA VALLEY TRANSPORTATION AUTHORITY

Board Agenda Letter

TO: NVTA Board of Directors
FROM: Kate Miller, Executive Director
REPORT BY: Rebecca Schenck, Program Manager- Public Transit
(707) 259-8636 / Email: rschenck@nvta.ca.gov
SUBJECT: Vine Transit Update

RECOMMENDATION

Information only. This report will provide an update on the operational performance for Vine Transit services covering the fourth quarter of Fiscal Year (FY) 2020-21. The report will also provide an update on operational and service changes related to the pandemic.

COMMITTEE RECOMMENDATION

None

BACKGROUND & DISCUSSION

Summary of Pandemic-related Operational Changes

In March 2020, NVTA made a number of service changes in response to reduced ridership demand associated with the coronavirus pandemic and public health orders issued by the State and County of Napa. Specifically, service hours were reduced, fare payment was suspended, seat spacing was introduced, and buses began using rear door only boarding whenever feasible to ensure the safety of riders and drivers.

In mid-March, weekday service hours on Routes 10 and 11 were reduced to a Saturday schedule. Routes 10X and 11X were suspended – after already showing mixed ridership performance in the months preceding the pandemic. On April 27th 2020, local fixed route services in the City of Napa (A-H) were suspended and transitioned to Stop to Stop On-Demand service for local trips. On May 13th 2020, following the County of Napa's revised Shelter at Home order, NVTA posted notices requiring the use of face coverings by passengers and staff. All of these service changes remained in effect during Q4 of FY21.

Napa On-Demand riders pay the same local \$1.60 full fare, \$1.10 student fare, and \$0.80 reduced fare for elderly and disabled riders that were previously established for local routes; 20-ride, and 31-day fare passes are also accepted. The Clipper fare card is encouraged and NVTA, in partnership with MTC and other transit operators, rolled out a full Clipper marketing campaign to introduce the new Clipper-START program, which launched in January 2021 and provides subsidized fares for eligible low-income adults. Staff continues to coordinate with MTC on the next generation of Clipper (Clipper 2.0) and as a first stop on the long road to Clipper 2.0, a new Clipper Mobile app was released in April 2021.

Throughout Q4 FY 2020-21, NVTA continued to support auxiliary Emergency Operation Center (EOC) functions that include meal delivery to residents in isolation and quarantine sites, food bank distribution while centers are closed to the public, and related transportation. These operations will cease in August of 2021 as NVTA returns to higher level of service and Napa County EOC operations slow down.

On April 7, 2021, the State of California moved Napa County from Substantial Risk Level (Red Tier) to the less restrictive Orange Tier. Then on June 15, 2021, the State of California reopened and nearly all of the restrictions were lifted. As a result of reopening of the California economy and increased ridership in the fourth quarter of FY 2020-21, NVTA added additional service on May 9, 2021 and on August 15, 2021.

On May 9, 2021, the Vine returned to a weekday schedule on the Routes 10 and 11 (had been running on Saturday schedules since March 2020); implement a fixed-route/on-demand hybrid which introduced two new fixed routes (Routes N and S) and maintained the existing on-demand service in the City of Napa; and extended hours on Friday and Saturday nights in Yountville and Calistoga by two additional hours.

Finally, on August 15th the Vine reintroduced the Route 11X in response to the Vallejo Ferry new service in July; added the Routes E and Route W in the City of Napa; added a second shuttle in Calistoga and American Canyon and reinstituted the fixed route school tripper in St Helena and American Canyon. Operational data on the August changes are not yet available.

Vine Transit Performance

The first four tables compare ridership across different services in the fourth quarter of FY 2020-21 (April to June) to the same period in the prior fiscal year. Table 1 shows a 5.9% decrease in ridership from 18,740 to 17,628 in the City of Napa during the fourth quarter of FY 2019-20 to the current fiscal year.

Table 1: City of Napa – Comparing Q4 of FY20 & FY21

	FY 19/20	FY 20/21	% Difference	Numerical Difference
Total	18,740	17,628	-5.9%	-1,112

Table 2 indicates an increase in ridership on the regional and express routes (10, 11, 21 and 29) in contrast to the local routes. The increase in the fourth quarter between fiscal years 2019-20 and 2020-21 was 18.75% percent. Routes 10 showed the largest percentage increase in ridership (37.92%) of all of the regional and express routes.

Table 2: Routes 10, 11, 21 and 29 Ridership – Comparing Q4 of FY20 & FY21

	FY 19/20	FY 20/21	% Difference	Numerical Difference
Route 10	20,432	28,180	37.92%	7,748
Route 11	22,525	24,040	6.73%	1,515
Route 21	4,189	4,845	15.66%	656
Route 29	7,718	8,087	4.78%	369
Total	54,864	65,152	18.75%	10,288

Part of the reason for the decrease in the City of Napa ridership compared to the significant increase in Regional ridership is that the number of revenue hours across these four regional routes returned to pre-COVID levels in the middle of Q4 on May 9, 2021. Meanwhile, the revenue hours on the local routes remained well below pre pandemic levels and will only return to comparable levels on August 15, 2021.

Table 3 shows the ridership patterns on the four community shuttles. The combined ridership is up 112% compared to the same quarter in the prior fiscal year. Ridership increased across all the community shuttles in the fourth quarter of the current fiscal year.

Table 3: Community Shuttles– Comparing Q4 of FY20 & FY21

	FY 19/20	FY 20/21	% Difference	Numerical Difference
Calistoga Shuttle	1,308	2,923	123%	1,615
St. Helena Shuttle	665	1,121	69%	456
Yountville Trolley	290	1,553	436%	1,263
American Canyon Transit	1,292	1,932	50%	640
Total	3,555	7,529	112%	3,974

VineGo ridership is also starting to rebound (42.88%) compared to the same time last year as shown in Table 4. NVTa still has a reduced number of vehicles serving VineGo as ridership remains well below pre-COVID. Many of the customers who use VineGo

travel for programs that remain suspended during the pandemic such as Collabria Day Program, Napa Senior Center events, and Clinic Olé classes.

Table 4: VineGo Ridership – Comparing Q4 of FY20 & FY21

	FY 19/20	FY 20/21	% Difference	Numerical Difference
VineGo	723	1,033	42.88%	310

Tables 5, 6 and 7, compare the third quarter of FY 2020-21 to the fourth quarter of FY 2020-21 to provide additional context on ridership during the COVID-19 pandemic. Table 5 shows a solid increase in ridership in the City of Napa between the last two quarters. This is most likely caused by the movement of Napa County from the Substantial Risk Level (Red Tier) to the Moderate Risk Level (Orange Tier) on April 7, 2021, along with the overall reopening of the State of California on June 15, 2021. The less restrictive Orange Tier meant that most activities reopened in the County with various modifications, resulting in an overall increase in ridership.

Table 5 City of Napa Ridership – Comparing Q3 of FY21 & Q4 of FY21

	Q3 FY 21	Q4 FY 21	% Difference	Numerical Difference
Napa Local On-Demand	13,361	13,294	-0.50%	-67
Route N (started May 9th)	N/A	2,995	N/A	N/A
Route S (started May 9th)	N/A	1,339	N/A	N/A
Total	13,361	17,628	31.9%	4,267

Ridership increased over the prior quarter on the regional routes by 27.64% as seen in Table 6. This is most likely caused by Napa moving into the Orange Tier and then fully reopening causing some commuters to return to the office.

Table 6: Routes 10, 11, 21 & 29 Ridership – Comparing Q3 of FY21 & Q4 of FY21

	Q3 FY 21	Q4 FY 21	% Difference	Numerical Difference
Route 10	20,225	28,180	39.33%	7,955
Route 11	19,876	24,040	20.95%	4,164
Route 21	4,014	4,845	20.69%	831
Route 29	6,928	8,087	16.73%	1,159
Total	51,044	65,152	27.64%	14,108

For the community shuttles, ridership increased on all services compared to the third quarter of the current fiscal year as seen in Table 7 as tourists began to return to Napa Valley and locals began to take more trips.

Table 7: Community Shuttles– Comparing Q3 of FY21 & Q4 of FY21

	Q3 FY 21	Q4 FY 21	% Difference	Numerical Difference
Calistoga Shuttle	1,541	2,923	89.68%	1,382
St. Helena Shuttle	1,060	1,121	5.75%	61
Yountville Trolley	1,154	1,553	34.58%	399
American Canyon Transit	1,679	1,932	15.07%	253
Total	5,434	7,529	38.55%	2,095

VineGo ridership increased by 328 passengers when compared to the third quarter of the current fiscal year as seen in Table 8. NVRTA has also seen an uptick in VineGo applications and renewals so VineGo ridership should continue to rise and more people become eligible.

Table 8: VineGo Ridership – Comparing Q3 of FY21 & Q4 of FY21

	Q3 FY 21	Q4 FY 21	% Difference	Numerical Difference
VineGo	705	1,033	46.52%	328

The final table (Table 9) shows the on-time performance for the six fixed route services that NVRTA is currently operating. The N and S Routes in the City of Napa are showing an acceptable level of on-time performance at 87.90%, but the Route 21 remains a problem. Changes were made to Route 21 schedule on May 9, 2021 to trying an improve on-time performance, but it barely changed. This is something that will be a top priority with the installation of the new CAD/AVL system in the second quarter of FY 2021-22. The new CAD/AVL system will be increasingly accurate and allow NVRTA and dispatchers to pinpoint specific trips and driver actions that may cause the poor on-time performance

Table 9: On-Time Performance for June 2021

	On-Time	Late	Early
Route N	88.00%	8.60%	3.40%
Route S	87.80%	9.60%	2.60%
Route 10 N	57.20%	18.60%	24.20%
Route 10 S	66.70%	24.30%	9.10%
Route 11 N	51.90%	26.50%	21.60%
Route 11 S	58.90%	16.50%	24.70%
Route 21 N	42.60%	10.90%	46.50%
Route 21 S	60.20%	18.40%	21.40%

Route 29 N	79.40%	20.60%	0.00%
Route S	61.40%	23.10%	15.50%
Average	73.84%	14.48%	11.69%

August Service Changes to Accommodate Anticipated Ridership Increases

In response to increased ridership and the start of the school year, the Napa Valley Transportation Authority (NVRTA) will implement two new fixed-route services in the City of Napa, expand local service hours and provide express service for commuters to the Vallejo Ferry Terminal beginning on August 15, 2021.

NVRTA will operate longer hours on the Routes N, S, and Vine on-demand service. In addition, two new City of Napa routes, Route E and Route W, will serve the Shurtleff and Westwood neighborhoods. The new local routes offer a convenient option for riders in the high-demand areas and allow Vine Transit to continue to offer on-demand service in areas with lower demand.

NVRTA continues to follow recommended health and sanitation requirements. As mandated by the Transportation Security Administration, face masks are required on Vine vehicles, at bus stops, and all facilities.

STRATEGIC GOALS MET BY THIS PROPOSAL

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

Goal 2: Improve system safety in order to support all modes and serve all users

Transit service continue to provide essential transportation for access to services and employment. Additional steps are being taken to improve safety for passengers and staff.

ATTACHMENT(S)

None