

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Public Works *mbd*

BOARD AGENDA # *C-5

Urgent Routine

AGENDA DATE December 15, 2015

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of Amendment No. 2 to the Legal Services Agreement with Meyers Nave for Eminent Domain Litigation Services for the Claribel Road Widening Project

STAFF RECOMMENDATIONS:

1. Approve Amendment No. 2 to the Legal Services Agreement with Meyers Nave for Eminent Domain Litigation Services for the Claribel Road Widening Project.
2. Authorize the Purchasing Agent to execute Amendment No. 2 with Meyers Nave and to take all appropriate actions necessary to carry out the purpose and intent of these recommendations.

FISCAL IMPACT:

The Legal Services Agreement Amendment No. 2 with Meyers Nave is in an amount not to exceed \$100,000, for a total not to exceed contract of \$320,000. The costs associated with eminent domain litigation for the Claribel Road Widening Project are funded by the Regional Transportation Impact Fee (RTIF) funds and are budgeted within the current year Public Works Road Projects Budget.

BOARD ACTION AS FOLLOWS:

No. 2015-639

On motion of Supervisor Chiesa, Seconded by Supervisor Monteith
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Withrow

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1) X Approved as recommended
- 2) _____ Denied
- 3) _____ Approved as amended
- 4) _____ Other:

MOTION:

ATTEST: Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of Amendment No. 2 to the Legal Services Agreement with Meyers Nave for Eminent Domain Litigation Services for the Claribel Road Widening Project

DISCUSSION:

The Claribel Road Widening project proposes to widen Claribel Road from two lanes to four lanes from McHenry Avenue to Oakdale Road, construct a Class I bikeway, replace the Modesto Irrigation District (MID) Lateral No. 6 bridge with concrete pipe culverts, and signalize the intersection of Coffee Road at Claribel Road.

The County needed to acquire 3.21 acres of the property located on the northern side of Claribel Road extending approximately one-half mile east of the intersection of Claribel Road and Oakdale Road, (hereby referred to as the "subject property"), to accomplish the proposed improvements. The owner of the subject property is D. Lowell and Rosalie McGrane, Trustees of the McGrane Living Trust, and Angie Bosio of the Bosio 2003 Family L.P., a California limited partnership, (hereby referred to as the "owner").

The subject property is zoned General Agriculture District A-2-40, and the entire parcel contains 57.65 acres. The subject property is currently being used as a rural home site and for the production of irrigated field crops. Building improvements on the property consist of an older single-family residence, a barn, and other various outbuildings. These improvements are not affected by the project.

On January 16, 2013, the County offered the owners of the subject property the sum of \$132,100, which an appraiser hired by the County determined to be the fair market value for the subject property, pursuant to section 7267.2 of the Government Code.

The subject property currently has access from Oakdale Road with agricultural access from Claribel Road and is zoned General Agriculture. The owner has left a portion of the subject property for the operation of a produce stand with access restricted to Oakdale Road. The project will not affect this operation. The highest and best use of the property and the remnant property, after acquisition of the right of way (ROW) needed for the project, is General Agriculture, as reported in the County appraisal completed on December 15, 2012.

The County and the owner had been in correspondence since April 2012 to discuss the project. On September 5, 2012, the County sent an offer to the property owner to purchase a portion of their land. In October 2012, the County design was modified. As a result, the ROW needed at the subject property was reduced, and a new offer was made to the owner on January 16, 2013. At this time, the owner requested an independent appraisal pursuant to Code of Civil Procedure section 1263.025, for which the County will compensate the owner the reasonable cost for the independent appraisal, not to exceed \$5,000.

On May 6, 2013, the County met with the owner's representative, Browman Development Company, Inc., to discuss the proposed project and access issues, and then with the owner's representative and the City of Riverbank on May 23, 2013. The owner's representative informed the County that the owner would not accept the County's offer for acquisition of a portion of the subject property unless access onto Claribel Road is guaranteed in the agreement for the purchase of the ROW. The nearest, existing access point on the northern side of Claribel Road is

Approval of Amendment No. 2 to the Legal Services Agreement with Meyers Nave for Eminent Domain Litigation Services for the Claribel Road Widening Project

located approximately one-half mile east of Oakdale Road at a residence, with the next access point one mile east at Coffee Road.

On June 11, 2013, County Counsel entered into a Legal Services Agreement with Meyers Nave not to exceed \$100,000 for ROW acquisition services for the Claribel Road Widening Project.

On July 16, 2013, the Board held a public hearing and adopted a Resolution of Necessity as required by section 1245.220 of the Code of Civil Procedure and held a public hearing on the matter.

On November 5, 2013, the County received court ordered possession of subject property for the purposes of constructing the Claribel Road Widening Project and the trial date was set for February 18, 2015.

On February 10, 2015, the Board approved Amendment No. 1 to the Legal Services Agreement with Meyers Nave to Acquire Real Property or Interest in Real Property by Eminent Domain for the Claribel Road Widening Project in an amount not to exceed \$120,000, for a total not to exceed contract of \$220,000 to continue litigation through trial if necessary.

The eminent domain proceedings for the owner went to jury trial on February 18, 2015 and concluded on March 5, 2015. The owner sought \$3,923,800 as compensation for the acquisition. At the conclusion of the trial, the jury determined that \$288,900 was just compensation for right of way needed for the Claribel Road Widening Project.

Additional services are needed, in an amount not to exceed \$100,000, for a total not to exceed contract of \$320,000 to pay for unanticipated costs during trial and legal services to close out the eminent domain process.

POLICY ISSUES:

The recommended actions are consistent with the Board's priorities of providing A Safe Community, A Healthy Community, and A Well Planned Infrastructure System by improving traffic safety and reducing traffic congestion on the County road system.

STAFFING IMPACT:

There is no staffing impact associated with this item.

CONTACT PERSON:

Matt Machado, Public Works Director. Telephone: (209) 525-4153.
Colt Esenwein, Public Works Deputy Director. Telephone: (209) 525-4184.

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ATTACHMENT:

Amendment No. 2 to the Legal Services Agreement with Meyers Nave

CE:djd

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**AMENDMENT NO. 2
TO
LEGAL SERVICES AGREEMENT**

**MEYERS NAVE
(Claribel Road Widening Project)**

This Amendment No. 2 to the Legal Services Agreement ("Amendment No. 2") by and between the County of Stanislaus, a political subdivision of the State of California, hereinafter referred to as "County" and Meyers Nave, a professional law corporation ("Attorney") is made and entered into on _____, 2015.

Whereas, the County and Attorney entered into a Legal Services Agreement, dated June 11, 2013, ("the Agreement"), and

Whereas, Paragraph 2.2 of the Agreement states that the maximum amount to be paid under the Agreement shall not exceed \$100,000, including costs of consultants and experts; and

Whereas, the Board of Supervisors authorized Amendment No. 1, increasing the amount stated in paragraph 2.2 by \$120,000 for a total not to exceed amount of \$220,000; and

Whereas, Attorney has informed the County that the anticipated cost of legal services required to pay for unanticipated costs during litigation and eminent domain process closeout and are expected to exceed the amended amount stated in paragraph 2.2 by approximately \$100,000; and

Whereas, Paragraph 17 of the Agreement provides that the Agreement may only be amended by a written Amendment executed by both parties; and

Whereas, the County has a need to increase the Agreement's not to exceed amount by \$120,000 for a total of \$320,000 to compensate Attorney for the additional legal services; and

Whereas this amendment is for the mutual benefit of County and Consultant;

Now, therefore, the County and Consultant agree as follows:

1. Section 2.2 - Compensation is amended as follows:

"The parties hereto acknowledge the maximum amount to be paid by the Client for services provided shall not exceed \$320,000 including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained pursuant to Paragraph 1.3 of the agreement, unless fees and compensation exceeding \$320,000 are approved by the Client's Board of Supervisors."

2. Except as stated herein, all other terms and conditions of the Agreement remain unchanged.

In witness whereof, the parties have executed this Amendment on the date written above.

COUNTY OF STANISLAUS

By: _____

Keith D. Boggs
GSA Director/Purchasing Agent

MEYERS NAVE

By: _____

David Skinner
Principal

12/1/15

APPROVED AS TO FORM:

John P. Doering
County Counsel

By: _____

Amanda M. De-lart
Deputy County Counsel