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

DEPT: Public Works

BOARD AGENDA # \*C-1

Urgent  Routine

AGENDA DATE February 10, 2015

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of Amendment No. 1 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. 1 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 the amendment with Meyers Nave and sign the necessary documents.

FISCAL IMPACT:

The Legal Services Agreement with Meyers Nave is in an amount not to exceed \$120,000, for a total not to exceed contract of \$220,000. 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. 2015-54

On motion of Supervisor Chiesa, Seconded by Supervisor O'Brien  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, De Martini, 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. 1 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.

On May 22, 2012, the Board of Supervisors adopted the Mitigated Negative Declaration for the project. County Public Works staff is currently in the process of acquiring the Right of Way (ROW) necessary to complete the project.

The County needs 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 property is zoned General Agriculture District A-2-40, and the entire parcel contains 57.65 acres. The 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 were 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 let 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 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

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

On June 11, 2013, the County Attorney entered into a Legal Services Agreement with Meyers Nave not to exceed \$100,000 for right of way 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 is set for February 18, 2015. Additional legal services are needed to continue litigation through trial if necessary.

**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) 525-4130.

**ATTACHMENTS:**

Amendment No. 1 to the Legal Services Agreement with Myers Nave

CE/aa

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**AMENDMENT NO. 1**

**TO**

**LEGAL SERVICES AGREEMENT**

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

This Amendment No. 1 to the Legal Services Agreement ("Amendment No. 1") 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 \_\_\_\_\_, 2014.

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, Attorney has informed the County that the anticipated cost of legal services required to prepare the case for trial are expected to exceed the amount stated in paragraph 2.2 by approximately \$120,000; 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 \$220,000 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 \$220,000 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 \$220,000 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

1/29/15

APPROVED AS TO FORM:

John P. Doering  
County Counsel

By: \_\_\_\_\_

Thomas E. Boze  
Deputy County Counsel