



## Legislation Text

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**File #:** 21-0353, **Version:** 1

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Department of Transportation recommending the Board approve and authorize the Chair to sign Amendment 2 to Agreement 461-S1711 with Bender Rosenthal, Inc. for as-needed right of way services to extend the term from May 8, 2021 to May 8, 2022 and increase the not-to-exceed amount by \$100,000, for a total not-to-exceed amount of \$450,000, with no changes to the scope of work or rates.

**FUNDING:** For various Capital Improvement Program and Environmental Improvement Program projects, funding will be provided by associated Federal, State, and Local funding sources. Local funding sources may include any combination of the following: Traffic Impact Fee (TIF) Program, Missouri Flat Area Master Circulation and Financing Plan (MC&FP), Road Fund, Tribe Funds, Accumulative Capital Outlay (ACO), Developer Advanced Funds, Sacramento Municipal Utility District (SMUD), and/or General Fund.

### **DISCUSSION / BACKGROUND**

In October 2016, County Procurement and Contracts conducted a Request for Qualifications process for the Community Development Agency. Statements of Qualifications were evaluated and ranked and a list of acceptable right of way service vendors was established. For real property appraisals, acquisition services, and relocation services, Bender Rosenthal, Inc. (Bender) was ranked number two in a field of nine participants. In addition, the Department of Transportation (Transportation) has as needed contracts with the company that was ranked first.

On May 9, 2017 (Item 25, #17-0155), the Board approved Agreement 462-S1711 (Agreement) with Bender, and on May 5, 2020 (Item 12, #20-0588) the Board approved Amendment 1 to the Agreement, extending the term by one year from May 8, 2020, to May 8, 2021.

Transportation is required to use outside consultant appraisers for right of way valuations to ensure independent and unbiased findings, and where with such property acquisitions, the possibility of eminent domain proceedings exist. The use of independent appraisers is mandated by regulations associated with the requirements imposed by the use of federal and state funding on virtually all of Transportation's construction projects. In the event that an acquisition becomes the subject of an eminent domain proceeding, the testimony of the independent appraiser, as well as the documented parcel diaries of the contacts while negotiating with the property owners, are essential to the successful outcome of the acquisition.

For real property acquisitions on projects utilizing federal dollars and federally assisted programs, Transportation's processes are governed by the Federal and State Relocation Assistance and Real Property Acquisition Policies Act, as set forth in the California Department of Transportation (Caltrans) Right of Way Manual. Caltrans requires that there be a separation of acquisition and appraisal functions (§7.05.00 of the Caltrans Right of Way Manual). Government Code §7267 and the Code of Civil Procedure §1263.010 also dictate procedures to be followed in order to acquire right of way for various projects. All of these regulations require professionally trained and experienced right of way professionals to maintain standards of ethics and impartiality in negotiations

for the acquisition of real property for public project purposes.

Under current regulations, Transportation can and has been preparing valuations for easement acquisitions. In acquisitions that require both fee title and easements, however, Transportation has been utilizing the services of outside contractors, as it is more fiscally efficient to have the same entity performing both.

Transportation staff provides contract negotiation and administration oversight, prepares and reviews waiver valuations for easement acquisitions, negotiates acquisitions based on consultant-provided valuations and works with the title company to close escrows and transfer title. Transportation reviewed its right of way acquisitions based on the approved Capital Improvement Program and Environmental Improvement Program, and determined that it does not currently have sufficient staff to handle all of the projected right of way needs for the programs. Consultant services will be required to cover fluctuations in future workload, which may include waiver valuations for easement acquisitions.

This amendment is needed to maintain continuity of service and to avoid delays in project delivery. A full Request for Qualifications process for right of way services is underway, and the results will be used to generate a new list of qualified firms leading to new consultant contracts in 2022. In the interim, Transportation is requesting an increase in the Agreement's not-to-exceed amount to allow for continued use of the existing contract, which has limited available funds remaining.

#### **ALTERNATIVES**

1) An alternative would be to not approve this Amendment. If the Amendment is not approved, delays would be expected in project delivery. Additionally, right of way for many projects is ultimately transferred to Caltrans. Without outside contractors, projects may not meet Caltrans requirements, in which case, Caltrans would not accept those projects at their completion.

2) Transportation could attempt to hire staff with the specialty skills required for a short period of time (part time, limited term). This is likely not feasible since someone with this expertise would likely not be willing to work part time in a limited term capacity, resulting in possible project delays as current staff would be required to complete the work. This would not eliminate the need for independent real property services when required by outside agencies.

#### **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

County Procurement and Contracts

County Counsel, HR, and Risk Management have approved this proposed amendment.

#### **CAO RECOMMENDATION**

Approve as recommended.

#### **FINANCIAL IMPACT**

Funding for the Agreement will be provided by various Capital and Environmental Improvement Program project budgets, including federal, state, and local funding sources. Local funding sources may include any combination of the following: Traffic Impact Fee (TIF) Program, Missouri Flat Area Master Circulation and Financing Plan (MC&FP), Road Fund, Tribe Funds, Accumulative Capital Outlay (ACO), Developer Advanced Funds, Sacramento Municipal Utility District (SMUD), and/or General Fund.

There is no change to Net County Cost.

**CLERK OF THE BOARD FOLLOW UP ACTIONS**

- 1) The Clerk of the Board will obtain the Chair's signature on two (2) originals of the Amendment.
- 2) The Clerk of the Board will forward one (1) fully executed Amendment to Chief Administrative Office, Procurement and Contracts Division, attention Tyler Prince, for further processing.

**STRATEGIC PLAN COMPONENT**

Infrastructure

**CONTACT**

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