

**AMENDMENT NO. 1 TO THE "PROFESSIONAL SERVICES AGREEMENT"
BETWEEN THE SAN MATEO COUNTY TRANSPORTATION AUTHORITY
AND THE COUNTY OF SAN MATEO**

This Amendment No. 1 ("Amendment") to that certain "Professional Services Agreement" dated September 28, 1999, is entered into as of this _____ day of April 2002, by and between the San Mateo County Transportation Authority, a public agency (hereinafter referred to as "Agency") and the County of San Mateo, a political subdivision of the State of California (hereinafter referred to as "County").

R E C I T A L S :

WHEREAS, on September 29, 1999, Agency and County entered into an agreement entitled "Professional Services Agreement" ("Agreement") pertaining to the performance, by the County, of right-of-way appraisal, acquisition and relocation services (which are defined in the Agreement as the "Services") in support of Agency's transportation related projects ("Projects"); and

WHEREAS, a major consideration for the Agency to enter into the Agreement was the fact that the County has right-of-way staff certified by the State of California Department of Transportation ("Caltrans") to perform the Services, which certification is required for the use of certain funding; and

WHEREAS, the San Mateo County Transit District ("SamTrans"), which manages and administers all affairs of the Agency, has staff that has recently been certified by Caltrans to perform the Services; and

WHEREAS, based thereon Agency now plans to utilize the SamTrans staff to perform most of the Services for future Projects; and

WHEREAS, notwithstanding the planned assumption of responsibilities for performance of the Services by Agency's regular administrative staff, i.e., SamTrans, it may be necessary, from time to time, to call upon the County to supplement the activities of the Agency relative to some or all of the Services; and

WHEREAS, because Agency does not possess the power of eminent domain it may be necessary on occasion to call upon the County to invoke that power on behalf of Agency; and

WHEREAS, Caltrans has issued guidance requiring that certain policies with regard to right-of-way acquisitions be followed for projects involving the State Highway System, which is attached as Exhibit A to this Amendment; and

WHEREAS, County agrees to the revisions to the method of rendition of the Services described herein.

NOW, THEREFORE, IT IS AGREED, AS FOLLOWS:

1. AMENDMENT OF SECTION 19. A new Section 19 is hereby added to the Agreement by adding the following language:

Notwithstanding the foregoing, the allocation of responsibility for performance of the Services will be allocated in the following manner. Agency shall be the lead agency responsible for acquisition of the property by negotiated agreement. Agency's responsibilities shall include negotiation of the terms and conditions of sale, and preparation of all necessary purchase and closing documentation.

Agency shall be responsible for undertaking, at Agency's sole cost and expense, any and all relocations of tenants and/or owners of the property in compliance with Federal and California law. Agency may engage reasonably qualified contractors to undertake such relocations. Agency shall, at its own cost and expense, collect rent and manage any occupied property purchased for the Project. Agency shall be entitled to all rents collected.

Agency will request County to provide such assistance as may be required from time to time concerning the foregoing Services and, subject to the availability of personnel, County will assist Agency accordingly. For projects involving properties being acquired for the State Highway System, County will comply with applicable Caltrans policy for right-of-way acquisitions.

Any and all of the property that may need to be acquired by eminent domain shall be condemned by the County according to the following procedure.

- a) Agency shall undertake all acts necessary for the County Board of Supervisors ("Board") to consider and approve resolutions of necessity and related actions for any property to be condemned, including but not limited to, evaluation of alternatives, appraisal preparation and title investigation, approval of funding sources, and preparation of purchase offers, notices, Board packages, resolutions of necessity, etc. Agency will also obtain any approvals required from Caltrans with regard to properties being acquired for the State Highway System. County shall make reasonable efforts to consider these actions at the earliest opportunity consistent with the Board's standard information and calendaring requirements. Any action that the Board of Supervisors is requested to take shall be subject to the review and approval of the Office of County Counsel.
- b) Agency shall deposit the estimated purchase price for any property with the State of California Condemnation Deposit Fund as a condition to County's commencement of any condemnation action requesting possession of the property prior to final judgment.
- c) Subject to general oversight and approval of County Counsel, Agency staff and Agency counsel shall be primarily responsible for the strategic planning for, prosecution and management of, all eminent domain proceedings and for contracting for and managing all consultants necessary for prosecution of the eminent domain actions.

- d) Agency shall pay all judgments rendered in the eminent domain proceedings.
- e) County shall take title to any property acquired by eminent domain. Prior to initiating the action, County will consult with the Agency and agree upon the form of said title and upon which liens and encumbrances are to remain on title at the completion of the eminent domain action. County shall transfer title to such properties, in the exact same form of title acquired by the County, to Agency or its designee free and clear of all liens, claims and encumbrances, other than as agreed in advance as set forth above within approximately thirty (30) days after Agency pays the final judgment or judgments and a Final Order of Condemnation is issued.
- f) Agency shall pay one hundred percent (100%) of the "Acquisition Costs," as defined below, related to any eminent domain action undertaken by County pursuant to this Agreement. "Acquisition Costs" shall fall into three categories: "Property Costs", "Consultant Costs" and "Staff Costs". "Property Costs" shall mean the total of out-of-pocket costs incurred that directly relate to the purchase of the property, or any portion of it, by eminent domain proceedings, including but not limited to title insurance or litigation guarantee fees, escrow fees and purchase price for inventories, machinery and equipment. Consultant Costs shall refer to any out of pocket costs associated with hiring consultant contractors to help administering the eminent domain action including, but not limited, to appraisal fees, attorneys' fees, and expert witness fees. Staff Costs shall refer to any cost associated with County or Agency staff administering the eminent domain action.
- g) Payment for Acquisition Costs incurred by County shall be paid by Agency to County as prescribed in Section 8 (A) of the Agreement.
- h) Interest on funds deposited into the Condemnation Deposit Fund, if paid to County, shall be paid to Agency within 30 days of County's receipt of said funds from the State. County shall also forward copies of all accounting information sent with the interest payment.

2. AMENDMENT TO SECTION 11. Subsection 11 H. of the Agreement is amended to read as follows:

- H. Provide all appropriate legal services relative to the project in coordination with Agency's counsel.

3. AMENDMENT TO SECTION 14. Section 14 of the Agreement is amended in its entirety to read as follows:

The following individuals shall be primarily responsible for the day-to-day management and oversight of the performance of this Agreement:

For Agency: Real Estate Department Manager

For County: Real Property Agent
Real Property Services Manager

4. Effect of Amendment. All other provisions of the Agreement remain unchanged. To the extent that the Agreement and this Amendment are not consistent, this Amendment shall supersede the Agreement and shall be superior to the Agreement.

IN WITNESS WHEREOF, County and Agency have executed this Agreement the day and year first written above.

COUNTY OF SAN MATEO

**SAN MATEO COUNTY
TRANSPORTATION
AUTHORITY**

By _____

By _____

Title: President, Board of Supervisors


Title: Executive Director

ATTEST:

ATTEST:

APPROVAL AS TO FORM:

APPROVAL AS TO FORM:



Michael Murphy, Chief Deputy County Counsel

Legal Counsel