

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



STAFF REPORT

MEETING DATE: 1/8/2025

Staff Report No. 25-117

TO: AC Transit Board of Directors
FROM: Aimee L. Steele, General Counsel/Chief Legal Officer
SUBJECT: Contract Amendment for Outside Legal Counsel

ACTION ITEM

AGENDA PLANNING REQUEST:

RECOMMENDED ACTION(S):

Consider authorizing the Interim General Manager to execute an amendment to Contract 2022-10480 with Herrig & Vogt, LLP, adding \$250,000 to the contract and extending the term to December 31, 2025, for legal services related to disputes arising out of the construction of the East Bay Bus Rapid Transit (BRT) Project.

Staff Contact:
Aimee L. Steele, General Counsel/Chief Legal Officer

STRATEGIC IMPORTANCE:

Goal - Financial Stability and Resiliency
Initiative - Financial Efficiency and Revenue Maximization

The BRT Project has been operational as the Tempo line since August 2020. The District has been engaged in potential litigation and litigation pertaining to delays of completion of the Project. Outside counsel was procured in November 2021 to assist in the handling of litigation and potential litigation. In August 2023 the Board approved settlement with the prime contractor O.C. Jones & Son, Inc. (O.C. Jones) to resolve delay claims alleged against the District. The District continues to seek recovery from third parties for delays not attributed to the District. This litigation and potential litigation continue to date.

BUDGETARY/FISCAL IMPACT:

Approving the contract amendment will increase the available funds to pay legal fees and /costs expenses by \$250,000. To date approximately \$1.78 million have been spent on fees and costs/ expenses. Approximately \$400,000 remain on the current purchase order. The District expects to offset some of the costs / expenses through third party claims and litigation.

BACKGROUND/RATIONALE:

The BRT project was implemented in three construction bid packages. The first two construction bid packages were successfully completed and closed out without any claims. The third construction bid package with a \$108 million initial contract award went into construction in the first quarter of 2017 and after multiple extensions, began operations in August 2020. O.C. Jones and its primary subsidiary, Mike Brown Electric

(MBE), asserted damages related to project delays. In August 2023, following two rounds of mediation, the Board approved a settlement with O.C. Jones, which resolved the contract delay claims of both O.C. Jones and MBE. The District has asserted multiple delays in the project are attributed to various third-party entities and, with the assistance of outside counsel, is seeking to recover those amounts.

ADVANTAGES/DISADVANTAGES:

The advantage to authorizing the General Manager to execute an amendment extending the Herrig & Vogt contract to December 31, 2025, and adding \$250,000 to the contract amount is that the legal and expert fees will ensure the District can seek maximum recovery for project delays that are attributed to other parties. The disadvantage is the high cost of representation.

ALTERNATIVES ANALYSIS:

The Board could choose not to extend the contract with outside counsel and effectively end the District's attempts to recover from third parties. This is not recommended as significant time and expense has been invested to date to attempt to recover from third parties.

PRIOR RELEVANT BOARD ACTION/POLICIES:

SR 23-256

Board Policy 465 - Procurement Policy

ATTACHMENTS:

None.

Prepared by:

Aimee Steele, General Counsel/Chief Legal Officer

Approved/Reviewed by:

Ramakrishna Pochiraju, Executive Director of Planning & Engineering

Chris Andrichak, Chief Financial Officer

Aimee L. Steele, General Counsel/Chief Legal Officer

Kathleen Kelly, Interim General Manager/Chief Executive Officer