

**Mayor**  
Lois Wynne  
**Mayor Pro Tem**  
Willard Rodarmel  
**Council Members**  
Ray Madrigal  
Eddie Neal  
William Siegel



**Public Works/  
Planning Department**

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## Staff Report

ITEM NO. 2-6

**To:** Lemoore City Council

**From:** David Wlaschin, Public Works/Planning Director 

**Date:** January 30, 2015 **Meeting Date:** February 3, 2015

**Subject:** Agreement between the City of Lemoore and Paragon Partners for Consultant Services on 19 ½ Avenue Right-of-Way

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### **Discussion:**

The City is working with the developer of The Grove Apartments on North 19 ½ Avenue for sidewalk on the west side from West Bush Street to West Cinnamon Drive. The City has been successful in acquiring a grant for the acquisition of property and construction of the walkway.

The grant requires that an independent appraiser submit a request for qualifications (RFQ) and those submittals be reviewed for qualification. Staff reviewed the RFQ's and found Paragon Partners to be the most qualified. The attached contract agreement was negotiated.

The contract amount is \$8,000 and requires the contractor to perform the appraisal and acquisition of four parcels north of the apartment complex. The costs are reimbursable from the State as part of the grant secured by Administrative Analyst Lauren Apone.

### **Budget Impact:**

\$8,000 for right-of-way appraisal acquisition reimbursable by State grant.

### **Recommendation:**

That the City Council, by motion, approve the contract agreement with Paragon Partners, LTD for the appraisal and acquisition of property north of The Grove Apartments on 19 ½ Avenue for \$8,000 and authorize the City Manager to sign.

**AGREEMENT NO. \_\_\_\_\_**  
**CONTRACT FOR CONSULTANT SERVICES**  
**BETWEEN THE CITY OF LEMOORE AND PARAGON**

**THIS CONTRACT FOR CONSULTANT SERVICES** ("Contract" herein) is made and entered into this day of \_\_\_\_\_, 2015 by and between the City of Lemoore a public body corporate and politic, (hereinafter called "CITY") and **PARAGON PARTNERS LTD.** a corporation of the State of California (hereinafter called "CONSULTANT").

**R E C I T A L S**

**WHEREAS**, City desires to engage CONSULTANT to provide certain consultant services; and

**WHEREAS**, CONSULTANT represents that CONSULTANT has the expertise and is qualified to perform the services described in this Contract. And, if required, is duly registered under the laws of the State of California; and

**WHEREAS**, CONSULTANT desires to accept such engagement.

**NOW, THEREFORE**, the parties agree as follows:

**1. DESCRIPTION OF WORK**

- 1.1 The City hereby engages CONSULTANT, and CONSULTANT accepts such engagement, to provide the services set forth in the "**Scope of Services**" attached hereto as Exhibit "A" and incorporated herein by reference. CONSULTANT shall perform and complete all such work and services in a manner satisfactory to CITY.
- 1.2 Project deliverables shall be reviewed and approved by CITY to determine acceptable completion. CITY shall have the right to review and inspect the work during the course of its performance at such times as may be specified by CITY.
- 1.3 CONSULTANT shall not accept any change of scope, or change in contract provisions, unless issued in writing, as a contract change order or amendment and signed by CITY. Any extensions of time must be mutually agreed upon in writing and executed by both parties.
- 1.4 CITY shall provide to CONSULTANT, without charge, all data, program information, including reports, records, maps and other information, now in CITY's possession, which may facilitate the timely performance of the work.

**2. CITY PROJECT MANAGER**

To provide the services required by this Contract, CONSULTANT shall act under the authority and approval of a Project Manager appointed by CITY. The City Project Manager will oversee the work under this Contract, assist CONSULTANT with any necessary information, audit billings, and approve payments. CONSULTANT shall channel reports, deliverables and special requests through the City Project Manager.

**3. CONSULTANT'S KEY PERSONNEL**

CONSULTANT's Team and Key Personnel are set forth in Exhibit C which is attached hereto and incorporated herein by reference. This Consultant Services Contract has been awarded to CONSULTANT based on its representation that those

personnel submitted as part of its Statement of Qualifications and listed in Exhibit C attached hereto and incorporated herein by reference will perform the portions of the work listed on said Exhibit C. CONSULTANT shall not deviate nor substitute any of these team members without prior written approval by CITY.

#### **4. COMMENCEMENT AND COMPLETION OF WORK**

The execution of this Contract by the parties does not constitute an authorization to proceed. The services of CONSULTANT shall commence when CITY, acting by and through its Project Manager, has issued an Authorization to Proceed. CONSULTANT shall complete all the work described in Exhibit "A" and submit final deliverables within 180 (One Hundred Eighty) calendar days following CONSULTANT's receipt of Authorization to Proceed. CONSULTANT shall have no claim for compensation for any services or work, which has not been authorized by CITY's Authorization to Proceed.

#### **5. TAXES**

- 5.1 CONSULTANT shall pay all sales, consumer, use, and other similar taxes required to be paid by CONSULTANT in accordance with state and local laws.
- 5.2 CONSULTANT is an independent contractor and shall have no power or authority to incur any debt, obligation or liability on behalf of CITY. No person employed by CONSULTANT or acting on its behalf, in connection with this Contract shall be considered the Agent or employee of CITY.

#### **6. STANDARDS OF PERFORMANCE**

CONSULTANT shall be responsible for the completeness and accuracy of its services and work and documents resulting there from, and CITY shall not be responsible for discovering deficiencies therein. CONSULTANT shall correct any such deficiencies or errors without additional compensation and without cost to CITY, except to the extent any such deficiency is directly attributable to deficiencies in CITY-furnished information.

#### **7. CONSULTANT'S PERSONNEL**

- 7.1 All services required under this Contract shall be performed by CONSULTANT, or under CONSULTANTS direct supervision, and all personnel shall possess the qualifications, permits and licenses required by State and local law to perform such services.
- 7.2 CONSULTANT shall be solely responsible for the satisfactory work performance of all personnel engaged in performing services required by this Contract, and compliance with all reasonable performance standards established by CITY.
- 7.3 CONSULTANT shall be responsible for payment of all CONSULTANTS employees' and subcontractor's wages and benefits, and shall comply with all requirements pertaining to the employer's liability, workers' compensation, unemployment insurance, and Social Security.
- 7.4 CONSULTANT shall indemnify and hold harmless CITY, and its respective officers, agents and employees from and against all claims, demands, damages or costs arising from CONSULTANT's acts or omissions with respect to any liability, damages, claims, costs and expenses of any nature arising from alleged violations of personnel practices.

## 8. COMPENSATION

- 8.1 For all of work and services including the various phases of tasks as described in Exhibit A, Scope of Services, CITY shall pay to CONSULTANT an amount not to exceed the sum of Eight Thousand dollars (\$8,000), payable in accordance with the Fee Schedule attached hereto as Exhibit "B" and incorporated herein by reference. The Contract Price is CONSULTANT'S estimate of its charges for all of the services, including all labor, equipment, material, subcontractor and reimbursable costs, to be provided under this Agreement. Progress payments shall be made on a time and material basis, based on the Fee Schedule. Final payment shall be made upon completion of all services and City acceptance of all deliverables, not-to-exceed the Contract Price.
- 8.2 CONSULTANT shall perform no work in excess of the total contract price without prior written approval of CITY.
- 8.3 CONSULTANT shall maintain adequate records and shall permit inspection and audit by CITY of CONSULTANT's charges under this Contract. CONSULTANT shall make such records available to CITY during normal business hours upon reasonable notice. Nothing herein shall convert such records into public records, and they will be available only to CITY and any specified public agencies. Such records shall be maintained by CONSULTANT for one (1) year following completion of the work under this Contract unless a longer period of time is required by state or federal law, in which event CONSULTANT shall retain its records for the time required by such laws.
- 8.4 No payment made hereunder by CITY to CONSULTANT, shall be construed as an acceptance by CITY of any work or materials, nor as evidence of satisfactory performance by CONSULTANT of its obligations under this Contract.

## 9. INDEMNIFICATION

Consultant agrees to indemnify, defend and hold harmless CITY, its officers, agents and employees, from and against all claims, losses, obligations, or liability which arise out of, or are in any way related to, the CONSULTANT's acts, errors or omissions, or those of its employees or agents under Agreement.

## 10. INSURANCE

- 10.1 CONSULTANT, at its expense, shall maintain in effect at all times during the performance of work under this Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers listed "A" or better in the Best's Insurance Guide and authorized to do business in the State of California. **Proof of Insurance, as identified in Section 11.8, must be reviewed and accepted by the City Attorney.**

### 10.1.1 Workers' Compensation and Employer's Liability

-Workers' Compensation—coverage as required by the State of California

-Employer's Liability:

\$1,000,000.00 each accident

\$1,000,000.00 policy limit bodily injury

\$1,000,000.00 each employee bodily injury by disease

#### 10.1.2 Professional Liability Insurance

- \$1,000,000.00 limit on per occurrence basis
- \$2,000,000 general aggregate, with no deductible or comparable alternative as determined by the City Attorney; and
- Policy form on a claims-made basis

#### 10.1.3 Commercial General Liability

- \$1,000,000.00 limit on a per occurrence
- \$2,000,000.00 general

#### 10.1.4 Commercial Automobile Liability

- \$2,000,000.00 combined single limit including company-owned and hired automobile coverage

10.2 All of CONSULTANT's policies shall contain an endorsement providing that written notice shall be given to CITY at least thirty- (30) calendar days prior to termination, cancellation or reduction of coverage in the policy.

10.3 Promptly on execution of this Contract, and prior to commencement of any work, CONSULTANT shall deliver to CITY certificates of insurance and endorsements to all required policies demonstrating that CONSULTANT has the required coverage and showing the required named insureds. Within five (5) days of written request from CITY, CONSULTANT shall deliver to CITY full and complete copies of all insurance policies required by this the City.

10.4 The requirements as to the types and limits of insurance to be maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify CONSULTANT's liabilities and obligations under this Contract.

10.5 All insurance coverage must be maintained throughout the duration of this Contract.

10.6 Agents must confirm that policy endorsements have been ordered from the respective insurance companies. Upon issuance, policy endorsements listing all insurers must be submitted to the City Attorney.

### **11. DISPUTE RESOLUTION**

All claims, disputes and other matters in question between CITY and CONSULTANT arising out of, or relating to this Contract, or the breach thereof shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

### **12. OWNERSHIP OF DOCUMENTS**

All documents, including, but not limited to, research, field notes, investigations, analysis and studies which are prepared in the performance of this Contract are to be, and remain the property of CITY. CONSULTANT shall furnish CITY, upon its request, originals or reproducible or electronic copies of reports, studies and of all other documents listed above.

### **13. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY**

13.1 In performance of this Contract, CONSULTANT shall not discriminate against any employee, subcontractor or applicant for employment because of sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation or age. CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, color, race, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation or age. Affirmative action relating to employment shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

### **14. COMPLIANCE WITH LAW**

14.1 CONSULTANT shall comply with all state and federal laws, including but not limited to, the requirement to hire only those persons authorized by federal law to work in the United States. If CONSULTANT uses any subcontractors to complete this Contract, this same requirement shall be included in all subcontracts and strictly enforced by CONSULTANT.

14.2 The law of the state of California shall govern this Contract. The venue of any legal action, either formal or informal, shall be in Kings County.

### **15. TERMINATION.**

Either party may terminate this Agreement at any time by giving ten (10) days advance written notice to the other party; however the Parties may agree in writing to a shorter time period for the effectiveness of such termination. Notwithstanding the foregoing, City may terminate this Agreement at any time by giving written notice to Consultant if Consultant materially violates any of the terms of this Agreement, any act or omission by Consultant or the Consultant Parties exposes City to potential liability or may cause an increase in District's insurance premiums, Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency. Such termination shall be effective immediately upon Consultant's receipt of said notice.

### **16. NOTICES**

Any notice required under this Contract shall be in writing, addressed to the appropriate party at its address on the signature page and given personally or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

### **17. ENTIRE CONTRACT AND AMENDMENTS**

17.1 This Contract is the complete agreement between the parties and supersedes all prior proposals, agreements, and understandings between the parties and may not be modified or terminated orally.

17.2 No attempted waiver of any of the provisions hereof, nor any modification in the nature, extent or duration of the work to be performed by CONSULTANT hereunder, shall be binding unless in writing and signed by the party against whom the same is sought to be enforced.

17.3 The failure of any party to enforce against another party any provision of this Contract shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Contract.

**18. ATTORNEY'S FEES**

If any action at law or in equity is brought to enforce or interpret any provisions of this Contract, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

**In Witness Whereof**, the parties hereto have caused this Contract to be executed and attested by their respective officers thereunto duly authorized.

"CITY"

"CONSULTANT"

\_\_\_\_\_  
Jeff R. Laws, City Manager

\_\_\_\_\_  
Neilia A. LaValle, President

ATTEST:

APPROVED AS TO FORM

Name: Mary J. Venegas  
Title: City Clerk

Name \_\_\_\_\_  
Title (e.g. City Counsel)

\_\_\_\_\_

\_\_\_\_\_

## EXHIBIT A

### Scope of Work

Paragon understands that the City requires appraisal and acquisition services for one owner with four parcels of land to construct street improvements along 19½ Avenue. We also understand that the City has acquired preliminary title reports, which will be made available to the consultant. Our scope of work for this project follows:

#### ***Task 1. Appraisal - Waiver Valuation (under \$10,000 - non-complex with no eminent domain action)***

Paragon will perform Waiver Valuations in accordance with Cal Trans guidelines Section 7.02.12.00 Noncomplex Valuations of \$10,000 or less from the Cal Trans Right of Way Manual. These reports will be used to establish the fair market value and become the basis for the determination of Just Compensation set by the City.

#### ***Task 2. Acquisition and Negotiation***

Paragon will perform acquisition services in accordance with the Uniform Relocation and Real Property Acquisition Act (49 CFR Part 2-4), as amended; the California Relocation Assistance and Real Property Acquisition Guidelines (Title 25, California Code of Regulations); the Caltrans Right of Way Manual (as applicable); and the City's own policies and procedures. All of the services required for right of way acquisition will be directed by the project manager. Our agents will conduct the acquisition of the right of way for each property interest in a manner that assures all property owners, tenants and other stakeholders are treated with the utmost respect and dignity during the acquisition process. We will conduct negotiations with each owner in their native language as needed to guarantee they understand the process and the rights afforded to them by the laws and regulations that govern the process. They will also be advised of the City's right of way policies and procedures.

Offer packages will be prepared for each affected parcel to be acquired after a careful review of preliminary title reports. The acquisition agents will present and negotiate in good faith with each property owner, their agent or representative at appointed times convenient for them to present offers, explain the acquisition process and gather information to obtain the required executed documents. At the end of the process, if negotiations reach an impasse, the use of eminent domain, if approved by the City, will be recommended with the required justification submitted in writing to the City. However, our goal will be to reach a successful acceptance of the offer, or justifiable settlement, with each property owner. Our project manager will work closely with your staff in recommending solutions to achieve acceptable terms to settle each case. Upon approval of additional scope and fees by the City and its legal counsel, we may continue negotiations in an attempt to achieve resolution after the decision to condemn has been made and prior to filing the eminent domain action to prevent costly litigation and possible construction delays.

We will maintain a parcel diary of all pertinent information and contacts made with respect to the acquisition negotiations. The diary will be updated documenting every contact with each property owner, including a summary of the status of negotiations indicating the concerns of the owner and all relevant information about the status of negotiations. We will coordinate the acquisition process with the City, legal counsel and property owners. All executed documents (acquisition agreements, executed deeds, etc.) will be promptly transmitted to the City for acceptance and processing.

Paragon's approach to right of way acquisition is as follows:

- Review the City's project scope, schedule and deliverables and then prepare a right of way acquisition plan to ensure final delivery of all services.
- Review title reports, appraisal reports, engineering design and construction plans in sufficient detail to prepare for negotiations with property owners and other parties to acquire the appropriate interests in the real property to support the project.
- Prepare one offer package for the four parcels to be acquired. Documents will include: offer letter, appraisal summary statement (pursuant to Assembly Bill 237), purchase and sale agreement and escrow instructions, conveying instrument (grant deed, permanent and/or temporary construction easement, etc.), certificate of acceptance, plat maps and legal descriptions, and Title VI information. When it is appropriate or desirable, a permit to enter, right of entry, and/or consent to easement will also be prepared.
- Prepare and maintain a complete file. The file will include a parcel diary of all pertinent information and contacts made relative to the negotiations. The parcel diary will be updated documenting every contact with the property owner and include a summary negotiation status indicating the attitude of the owner, any problem areas and all of the relevant information about the status of negotiations.
- Prepare in accordance with applicable Federal, State and City procedures the offer letter, notices, appraisal summary statements, acquisition agreements, deeds and any other required real property acquisition documents.
- Present and negotiate personally in good faith with the property owner, his/her agent or representative, or lessees at appointed times convenient for them. Agents will explain the acquisition process, discuss the appraisal and valuation of the right of way and gather information in order to obtain the required documents. The project manager will immediately notify the City if facts are discovered that were not considered in the offer of just compensation.
- Acquire permits to enter or rights of entry as interim steps in the acquisition process, as necessary, to preserve the integrity project schedule.
- Acquire additional interests, as required, in order for the City to clear title for the properties acquired for the project.
- Coordinate and manage the acquisition process with the City, legal counsel, property owners and tenants along with the title company, engineers and appraisers to ensure effective cross-discipline communication.
- Promptly transmit all executed documents (acquisition agreements, executed deeds, statements of information, etc.) to the City for acceptance and processing. A report/transmittal summarizing the pertinent data relative to the transaction will be included.
- Assist the escrow company in obtaining additional documentation as necessary to provide clear title to the City, supervise and review the closing of escrow and review closing statement for completeness and accuracy.
- Prepare and deliver a written monthly progress report of the status of the acquisition and communicate regularly with the City verbally and/or through email.

- Recommend condemnation action when negotiations have reached an impasse. The required justification will be submitted in writing to the City. Our primary goal will be to reach an acceptance of the offer with each property owner. We will work with the City in recommending solutions to achieve acceptance of the offer.
- Provide condemnation support if required. We will coordinate with the City's legal counsel, as required, to support the condemnation activities until the resolution of necessity is adopted and possession is granted by the courts. Litigation support after the hearing for the resolution of necessity is generally provided on a time- and materials- basis on call.
- Tax cancellation letters may be prepared for City signature, as necessary, for fee interest acquisition, as required by the seller.
- Upon close of escrow, the original acquisition file will be reviewed for completeness, quality control and accuracy and then returned to the City for proper record retention based on their policies and procedures or funding source requirements.
- Be available to assist the City with any file audits.

## EXHIBIT B

### FEE SCHEDULE

Right of Way Acquisition Services	
Negotiation and Acquisition 1 ownership with 4 parcels @ \$5,000 for all parcels	\$ 5,000
Waiver valuations 4 parcels@ \$2,500 for all parcels	\$ 2,500
Other Direct Charges	\$ 500
<b>Total</b>	<b>\$ 8,000</b>

Direct Charges					
Copies (Xerox)	@	\$0.15 each	Pagers/Cellular	@	Cost
D & E Size Copies	@	\$5.00 each	Air Travel & Lodging	@	Cost
Real Estate Data Services	@	Cost + 15%	Mileage	@	\$0.56 per mile*
Telephone/Fax	@	Cost	Sub-Consultants	@	Cost + 15%
Postage/FedEx	@	Cost	Other Expenses	@	Cost + 15%
Preliminary Title Reports	@	Cost + 15%	Appraisals	@	Cost + 15%
Appraisal Review	@	Cost + 15%			

*\* Or current IRS allowable*

## Project Team

Paragon’s project team members, including subconsultants, are experts and highly experienced in the areas of appraisal and acquisition services. They consistently produce high quality, defensible, compliant, and complete work products. They are well versed in all applicable Federal, State, and Local regulations, policies, procedures, and standards, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended and Title 25 of the California Code of Regulations.

Key personnel will be available for the duration of the project and no person designated as key to the project will be removed or replaced without the prior written concurrence of the City. Full resumes are included in the Appendix.

