

AGREEMENT TO FURNISH CONSULTING SERVICES TO PROVIDE RIGHT-OF-WAY
ACQUISITION SERVICES FOR SAN BERNARDINO AVENUE WIDENING PROJECT –
MOUNTAINVIEW POWER COMPANY

This agreement for consulting services (“Agreement”) is made and entered into this 17th day of October, 2006 (“Effective Date”), by and between the City of Redlands, a municipal corporation (“City”) and Paragon Partners Ltd. (“Consultant”) who are sometimes individually referred to herein as a “Party” and, together, as the “Parties.”

In consideration of the mutual promises contained herein, City and Consultant agree as follows:

ARTICLE 1 – SERVICES OF CONSULTANT

- 1.1 City hereby engages Consultant to provide right-of-way acquisition services for City’s San Bernardino Avenue Widening Project (the “Services”). The Services are more particularly described in Exhibit “A,” attached hereto and incorporated herein by this reference.
- 1.2 The Services shall be performed by Consultant in a professional manner, and Consultant represents that it has the skill and the professional expertise necessary to provide the Services to City at a level of competency presently maintained by other practicing professional consultants in the industry providing like and similar types of Services.
- 1.3 Consultant shall comply with all applicable Federal, State and local laws and regulations in the performance of the Services including, but not limited to, the Americans with Disabilities Act, the Fair Employment and Housing Act and non-discrimination laws including the American’s with Disabilities Act.

ARTICLE 2 - RESPONSIBILITIES OF CITY

- 2.1 City shall make available to Consultant information in its possession that may assist Consultant in performing the Services.
- 2.2 City will make reasonable provision for Consultant to enter upon City-owned property, as required by Consultant, to perform the Services.
- 2.3 City designates Tom T. Fujiwara as City’s representative with respect to performance of the Services, and such person shall have the authority to transmit instructions, receive information, interpret and define City’s policies and decisions with respect to performance of the Services.

ARTICLE 3 - PERFORMANCE OF SERVICES

- 3.1 Consultant shall perform the Services in a prompt and diligent manner and in accordance with the schedule set forth in Exhibit "B," entitled "Project Schedule," which is attached hereto and incorporated herein by this reference. The Services may commence on October 18, 2006 and shall end by October 17, 2007, unless a written extension is approved by City.
- 3.2 At any time during the term of this Agreement, City may request that Consultant perform Extra Services. As used herein, "Extra Services" means any work which is determined necessary by City for the proper completion of the project or work for which the Services are being performed, but which the Parties did not reasonably anticipate would be necessary at the time of execution of this Agreement. Provided the Extra Work does not exceed twenty percent (20%) of the compensation to be paid by City to Consultant for the Services, such Extra Work may be agreed to by the Parties, by written amendment to this Agreement, executed by City's City Manager. Consultant shall not perform, nor be compensated for, Extra Work without such written authorization from City.

ARTICLE 4 - PAYMENTS TO CONSULTANT

- 4.1 The total compensation for Consultant's performance of the Services shall not exceed the amount of Eleven Thousand Three Hundred Dollars (\$11,300). City shall pay Consultant on a time and materials basis up to the not to exceed amount, in accordance with the rates and estimates contained in Exhibit "C," which is attached hereto and incorporated herein by reference.
- 4.2 Consultant shall submit monthly invoices to City describing the work performed during the preceding month. Consultant's invoices shall include a brief description of the Services performed, the dates the Services were performed, the number of hours spent and by whom, and a description of reimbursable expenses, if any. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice, provided the Services reflected in the invoice were performed to the reasonable satisfaction of City in accordance with the terms of this Agreement, provided that the number of hours of Services set forth in the invoice reflect the amount of time ordinarily expended for such Services by members of the profession currently practicing in the same locality under similar conditions, and provided further that all expenses, rates and other information set forth in the invoice are consistent with the terms and conditions of the Agreement.
- 4.3 All notices shall be given in writing by personal delivery or by mail. Notices sent by mail should be addressed as follows:

City

Tom T. Fujiwara
City of Redlands
Public Works Department
PO Box 3005
Redlands, CA 92373

Consultant

Charles W. Wadell, Jr.
Paragon Partners, Ltd.
5762 Bolsa Avenue, Suite 201
Huntington Beach, CA 92649

When so addressed, such notices shall be deemed given upon deposit in the United States Mail. Changes may be made in the names and addresses of the person to who notices and payments are to be given by giving notice pursuant to this section 4.3.

ARTICLE 5 - INSURANCE AND INDEMNIFICATION

- 5.1 All insurance required by this Agreement shall be maintained by Consultant for the duration of its performance of the Services. Consultant shall not perform any Services unless and until all required insurance listed below is obtained by Consultant. Consultant shall provide City with certificates of insurance and endorsements evidencing such insurance prior to commencement of the Services. All insurance policies shall include a provision prohibiting cancellation or modification of the policy except upon thirty (30) days prior written notice to City.
- 5.2 Workers' Compensation and Employer's Liability.
- A. Consultant shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout the duration of this Agreement in accordance with the laws of the State of California, with an insurance carrier acceptable to City.
- B. Consultant expressly waives all rights to subrogation against City, its elected officials, officers and employees for losses arising from work performed by Consultant for City by expressly waiving Consultant's immunity for injuries to Consultant's employees and agrees that the obligation to indemnify, defend and hold harmless provided for in this Agreement extends to any claim brought by or on behalf of any employee of Consultant. This waiver shall not apply to any damage resulting from the sole negligence of City, its employees or agents. To the extent any of the damages referenced herein were caused by or resulted from the concurrent negligence of City, its agents or employees, the obligations provided herein to indemnify, defend and hold harmless are valid and enforceable only to the extent of the negligence of Consultant, its officers, agents and employees.
- 5.3 Hold Harmless and Indemnification. Consultant shall defend, indemnify and hold harmless City and its elected officials, employees and agents from and against any and all claims, losses or liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by Consultant's and its officers', employees' and agents' sole negligent or intentionally wrongful acts or omissions in performing the Services.
- 5.4 Assignment. Consultant is expressly prohibited from assigning any of the Services without the express prior written consent of City. In the event of agreement by the Parties to assign a portion of the Services, Consultant shall add the assignee as an additional insured and provide City with the insurance endorsements required by this Agreement prior to the performance of any Services by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided for in this Agreement.

- 5.5 Comprehensive General Liability Insurance. Consultant shall secure and maintain in force throughout the term of this Agreement comprehensive general liability insurance with carriers acceptable to City. Minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required. City shall be named as an additional insured. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
- 5.6 Professional Liability Insurance. Consultant shall secure and maintain professional liability insurance throughout the term of this Agreement in the amount of One Million Dollars (\$1,000,000) per claim made.
- 5.7 Business Auto Liability Insurance. Consultant shall have business auto liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all Consultant owned vehicles used in connection with Consultant's provision of the Services, hired and non-owned vehicles, and employee non-ownership vehicles. Such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City. City shall be named as an additional insured.

ARTICLE 6 - CONFLICTS OF INTEREST

- 6.1 Consultant covenants and represents that it does not have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the geographical area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's Services. Consultant further covenants and represents that in the performance of its duties hereunder, no person having any such interest shall perform any Services under this Agreement.
- 6.2 Consultant agrees it is not a designated employee within the meaning of the Political Reform Act because Consultant:
- A. Does not make or participate in:
- (i) the making or any governmental decisions regarding approval of a rate, rule or regulation, or the adoption or enforcement of laws;
 - (ii) the issuance, denial, suspension or revocation of permits, licenses, applications, certifications, approvals, orders or similar authorizations or entitlements;
 - (iii) authorizing City to enter into, modify or renew a contract;

- (iv) granting City approval to a contract that requires City approval and to which City is a party, or to the specifications for such a contract;
- (v) granting City approval to a plan, design, report, study or similar item;
- (vi) Adopting, or granting City approval of, policies, standards or guidelines for City or for any subdivision thereof.

B. Does not serve in a staff capacity with City and in that capacity participate in making a governmental decision or otherwise perform the same or substantially all the same duties for City that would otherwise be performed by an individual holding a position specified in City's Conflict of Interest Code under Government Code section 87302.

- 6.3 In the event City officially determines that Consultant must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Consultant shall file the subject Form 700 with the City Clerk's office pursuant to the written instructions provided by the Office of the City Clerk.

ARTICLE 7 - GENERAL CONSIDERATIONS

- 7.1 Attorneys' Fees. In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for the use of in-house counsel of the Parties.
- 7.2 Prohibition Against Assignment. Consultant shall not assign any of the Services, except with the prior written approval of City and in strict compliance with the terms, and conditions of this Agreement.
- 7.3 Documents and Records. All documents, records, drawings, designs, cost estimates, electronic data files, databases and other documents developed by Consultant in connection with its performance of the Services, and any copyright interest in such documents, shall become the property of City and shall be delivered to City upon completion of the Services, or upon the request of City. Any reuse of such documents, and any use of incomplete documents, shall be at City's sole risk.
- 7.4 Independent Contractor Status. Consultant is for all purposes under this Agreement an independent contractor and should perform the Services as an independent contractor. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as herein set forth. Consultant shall supply all tools and instrumentalities required to perform the Services. All personnel employed by Consultant are for its account only, and in no event shall Consultant or any personnel retained by it be deemed to have been employed by City or engaged by City for the account of, or on behalf of City. Consultant shall have no authority, express or implied,

to act on behalf of City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind City to any obligation.

7.5 Termination.

A. Unless earlier terminated, as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City.

B. This Agreement may be terminated by either Party by providing ten (10) business days prior written notice to the other Party (delivered by certified mail, return receipt requested).

C. If this Agreement is terminated by either Party, an adjustment to Consultant's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed services, and (2) any payment due Consultant at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Consultant.

D. Upon receipt of a termination notice, Consultant shall immediately discontinue its provisions of the Services and, within five (5) days of the date of the termination notice, deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of any data, design calculations, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Consultant in performing the Services. Consultant shall be compensated on a pro-rata basis for Services completed up to the date of termination.

7.6 Books and Records. Consultant shall maintain any and all books, ledgers, invoices, accounts and all other records and documents evidencing costs and expenses related to the Services for a period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement. Such books shall be available at all reasonable times for examination by City at the office of Consultant.

7.7 Entire Agreement/Amendment. This Agreement, including the Exhibits incorporated herein by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein, and any prior negotiations, written proposals or verbal agreements relating to such matters are superseded by this Agreement. Any amendment to this Agreement shall be in writing, approved by City and signed by City and Consultant.

7.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

7.9 Severability. If one or more of the sentences, clauses, paragraphs or sections contained in this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or

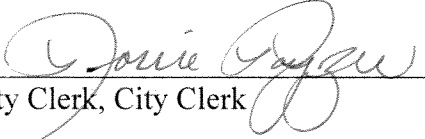
invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein, unless to do so would deprive a Party of a material benefit of its bargain under this Agreement.

IN WITNESS WHEREOF, duly authorized representatives of the City and Consultant have signed in confirmation of this Agreement.

CITY OF REDLANDS

By: 
Jon Harrison, Mayor

Attest:


City Clerk, City Clerk

PARAGON PARTNERS LTD.

By: 
Neilia A. La Valle

EXHIBIT “A”

SERVICES

EXHIBIT A SCOPE OF SERVICES

Paragon's acquisition services and procedures for the project are presented below. These procedures assure that property and interests in real property are acquired in accordance with applicable State and/or Federal guidelines and City policies.

1. Paragon will review title reports and appraisal reports in sufficient detail to prepare for negotiations with property owners and other parties to acquire interests in the real property to be acquired.
2. A complete and separate file for each parcel will be prepared and maintained. It will include a Parcel Diary of all pertinent information and contacts made relative to the acquisition negotiations.
3. Paragon acquisition agents will set appointments with the appropriate parties for presentation of the formal written offers.
4. The acquisition agents will contact and negotiate in "good faith" with each property owner, their agent or representative, tenants or lessees (as required and appropriate) at appointment times convenient for them to present offers and explain the acquisition process. Negotiations with out of state or out of area property owners will be conducted only via mail, telephone or e-mail.
5. Receipted copies of offer letters and appraisal summary statements or the agents certification of the tender of said offer will be promptly delivered to the City.
6. The Project Manager will coordinate and manage the acquisition process with the City, legal counsel, the escrow company, the City's engineer and the appraiser.
7. The Project Manager will coordinate and manage the acquisition process with the acquisition agents, the property owners and the City; and maintain project status and progress tracking reports.
8. The Project Manager will promptly transmit all executed documents (acquisition agreements, etc.) to the City for acceptance and processing. A report summarizing the pertinent data relative to the transaction will be included.
9. The Project Manager will prepare and deliver a written semi-monthly progress report of the status of the acquisition of each parcel; and verbally communicate regularly with the City.
10. The Project Manager will monitor and report progress of the Project.
11. The Project Manager will recommend condemnation action when negotiations have reached an impasse. The required justification will be submitted in writing to the City. Assistance to the City's legal counsel will be provided as necessary. However, Paragon's primary goal will be to reach a successful acceptance of the offer with each property owner. The Project Manager will work with the City and its legal counsel in recommending solutions to achieve acceptance of the offer.
12. Paragon will provide condemnation support as directed. At such time that negotiations reach an impasse and eminent domain proceedings have commenced, we will provide coordination and assistance necessary to aid the condemnation counsel on a time and material basis.

13. Oral and written bi-lingual (Spanish) services will be provided as needed.
14. The Project Manager will deliver completed original acquisition files with all pertinent information including the Parcel Diary and all notes to the City at the conclusion of the Project.

Escrow Coordination

1. The Project Manager will coordinate opening of all escrow's, monitor same, assist the escrow company in obtaining additional documentation as necessary, supervise the closing of all escrow's and review all closing statements for completeness and accuracy.
2. The Project Manager will serve as liaison between the title company, escrow holder and the City.
3. The Project Manager will prepare and deliver a written monthly progress report of the status of the escrow of each parcel; and verbally communicate regularly with the City.

Assumptions

Paragon's anticipated level of effort and associated cost estimate is based on the following assumptions:

- This Project involves two (2) parcels.
- Paragon will obtain a Preliminary Title Report for each parcel.
- The Project involves partial takes.
- The City's appraiser will provide an Appraisal Summary Statement on a timely basis.
- There is no relocation associated with this Project.
- There are no cut and cure issues.
- Paragon will initiate services immediately upon Notification to Proceed.
- The estimated timeframe for delivery is approximately 12 months.
- Escrow fees will be paid by the City.

EXHIBIT "B"

PROJECT SCHEDULE

With the Notice to Proceed issued no later than October 18, 2006, the project completion date is October 17, 2007.

EXHIBIT "C"

TOTAL COMPENSATION

The compensation is based on Time and Materials not to exceed Eleven Thousand Three Hundred Dollars (\$11,300) at the fee schedule attached.

Schedule of Professional Fees – Right of Way Services

Paragon proposes to invoice monthly for its services on a time and materials basis not to exceed the aggregate per parcel/per case cost presented above in accordance with the following schedule of professional fees:

CLASSIFICATION	HOURLY RATE
Principal	\$135.00
Corporate Broker	\$125.00
Project Manager	\$125.00
Senior Acquisition Agent/ Senior Relocation Specialist	\$ 95.00
Senior Staff Appraiser/Review Appraiser	\$125.00
Senior Title Specialist	\$ 95.00
Acquisition Agent/Relocation Specialist	\$ 75.00
Title Specialist	\$ 75.00
Escrow Coordination	\$ 75.00
Right of Way Technician	\$ 60.00
Depositions and Court Testimony	\$175.00

TECHNICAL SUPPORT SERVICES

Database Specialist	\$ 55.00
Technical Secretary	\$ 45.00
Office Clerk	\$ 40.00

DIRECT CHARGES

Copies (Xerox) @ \$ 0.15 each	Pagers/Cellular @ Cost
Engineering Copies @ \$ 5.00 each	Air Travel & Lodging @ Cost
Experian/Win2 Data @ Cost	Mileage @ \$ 0.445 per mile*
Telephone/Fax @ Cost	Sub-Consultants @ Cost + 10%
Postage/FedEx @ Cost	Other Expenses @ Cost + 10%

* Or current IRS allowable.

TERMS OF PAYMENT: Net 30 days - Invoices will be submitted monthly. All rates are effective as of July 2, 2006. Rates may be revised July 2, 2007 with client concurrence to reflect current business conditions. Overtime for applicable labor classifications will be charged at 1.5 times the hourly rate in accordance with California law.