ITEM FOR COUNCIL CONSIDERATION

Amendment No. 2 to Agreement with Price, Postel & Parma LLP for Carpinteria Avenue Bridge Replacement Project Legal Condemnation Services.

STAFF RECOMMENDATION

Action Item _x_; Non-Action Item __

Authorize the City Manager to execute Amendment No. 2 to the agreement with Price, Postel & Parma LLP for Carpinteria Avenue Bridge Replacement Project legal condemnation services for a total amended amount not-to-exceed $150,765.

Sample Motion: I move to authorize the City Manager to execute Amendment No. 2 to the agreement with Price, Postel & Parma LLP for Carpinteria Avenue bridge replacement project legal condemnation services for a total amended amount not-to-exceed $150,765.

This motion requires a roll call vote.

BACKGROUND

In 2010, the City secured federal funding through the Highway Bridge Program to replace the 1937 Carpinteria Avenue Bridge over Carpinteria Creek. Since the obligation of the federal funds, the City worked closely with Caltrans District 5 Local Assistance on proceeding with the Preliminary Engineering (PE) Phase and Right-of-Way (ROW) Phase of the project. The PE phase includes all conceptual design, environmental review, permitting, and final engineering design work. The ROW phase includes the acquisition of all right-of-way required to construct the project.

The footprint of the new Carpinteria Avenue Bridge design is within existing City right-of-way. However, temporary construction easements are required from seven different properties located immediately adjacent to the bridge. Temporary construction easements are required for construction access and/or riparian restoration work.
In 2017, the City completed appraisals for all required easement acquisitions, and offers were made to the property owners. Since the initial offers, the City successfully negotiated acquisition of the required temporary construction easements from five of the seven properties. On June 11, 2018, the City Council adopted a Resolution of Necessity to authorize eminent domain proceedings on the remaining two properties due to an inability to secure settlement on two properties and in order to keep the project schedule moving.

To direct the eminent domain proceedings, the City solicited proposals from legal condemnation services firms. On May 18, 2018, the City Manager executed an agreement with Price, Postel & Parma LLP in the amount of $29,984. This original budget covered the basic eminent domain services. On February 11, 2019, the City Council approved Amendment No. 1 in the amount of $49,999 for additional legal services related to the condemnation process.

The purpose of this agenda matter is for the City Council to authorize the City Manager to execute Amendment No. 2 to the agreement with Price, Postel & Parma LLP for an amount not-to-exceed $150,765, to provide continued legal condemnation services pertaining to the Carpinteria Avenue Bridge Replacement Project.

DISCUSSION

In September 2018, Price, Postel & Parma LLP successfully obtained orders of possession for two properties under the eminent domain process. This allows the City to proceed with project construction. The case involving one of the properties was fully resolved, and the other is proceeding to trial. Price, Postel & Parma LLP requests an amended budget to include an additional $70,782 in fees anticipated for the trial process.

POLICY CONSISTENCY

The Carpinteria Avenue Bridge Replacement Project is included in the City's Capital Improvement Program / Development Impact Fee Program, and it addresses many of the goals and policy statements in the City's General Plan and Local Coastal Plan including the following implementing policies:

- The purpose of the Circulation Element is to designate an efficient system of streets and highways that will provide adequate linkages between land uses in the City. This Element complements the Land Use Element by contributing to the achievement of the economic, physical, and social goals of the community.

- Circulation and infrastructure needs are typically granted high priority in municipal capital budgets.
• C-lb. The City shall strive to improve vehicular and pedestrian over crossings of the freeway and the various creeks while respecting their habitat value and sensitivity.

• OSC-6a. Support the preservation of creeks and their corridors as open space, and maintain and restore riparian habitat to protect the community's water quality, wildlife diversity, aesthetic values, and recreation opportunities.

• OSC-6b. Protect and restore degraded creeks on City-owned land where protection and restoration does not interfere with good flood control practices

• Creeks Preservation Program Implementation Policy 2.10, Implementation Measure 2.10.2. The City will specifically promote, through both public and private efforts, the aquatic and riparian habitats of Carpinteria Creek for restoration. (This policy includes several more elements that can be found on Pages 3-34 to 3-36).

FINANCIAL CONSIDERATIONS

The City Council previously authorized the City Manager to enter into an agreement with Price, Postel & Parma to provide legal counsel related to eminent domain for an amount of $29,984 and Amendment No. 1 in the amount of $49,999 for continued legal condemnation services pertaining to the Carpinteria Avenue Bridge Replacement Project. Price, Postel & Parma LLP is requesting an additional $70,782 for legal services related to one of the eminent domain matters that is expected to go to trial. These additional costs will be reimbursed through the Highway Bridge Program at a rate of 88.53%. The 11.47% balance will be covered by the City's Highways and Bridges Development Impact Fee Fund.

The right-of-way acquisition costs associated with all of the properties were approved by the City Council and are also reimbursable through the Highway Bridge Program at a rate of 88.53%.

LEGAL AND RISK MANAGEMENT CONSIDERATIONS

There are no additional legal or risk management considerations presented with this report.

OPTIONS

The City Council could choose not to approve Amendment No. 2 to the agreement with Price, Postel & Parma LLP and direct staff as determined appropriate. However, not proceeding with the eminent domain process could ultimately have ramifications on project delivery and cost.
PRINCIPAL PARTIES EXPECTED AT MEETING

The principal parties may appear at the meeting.

ATTACHMENTS

Attachment A: Amendment No. 2 to Agreement with Price, Postel & Parma LLP for Carpinteria Avenue Bridge Replacement Project Legal Condemnation Services.

Staff contact:
Brian C. Barrett
Assistant to the Public Works Director
(805) 755-4446; brianb@ci.carpinteria.ca.us

Reviewed by:
John L. Ilasim, Public Works Director
(805) 880-3402; johni@ci.carpinteria.ca.us

Reviewed by: Dave Durflinger, City Manager
(805) 755-4400; daved@ci.carpinteria.ca.us
Attachment A

Amendment No. 2 to Agreement with Price, Postel & Parma LLP for Carpinteria Avenue Bridge Replacement Project Legal Condemnation Services.
Amendment No. 2
To Consultant Services Agreement between City of Carpinteria and Price, Postel & Parma LLP for Carpinteria Avenue Bridge Replacement Project Legal Condemnation Services

This Amendment No. 2 ("Amendment") is made this 24th day of June, 2019 to an agreement for Consultant Services between the CITY OF CARPINTERIA ("City") and Price, Postel & Parma LLC ("Consultant") for Carpinteria Avenue Bridge Replacement Project legal condemnation services dated the 18th day of May, 2018 ("Agreement").

RECITALS

WHEREAS, the Agreement between City and Consultant currently provides under Section 1 SERVICES Subsection 1.2 Additional Services, the ability for City to authorize Consultant to perform Additional Services that are within the expertise of Consultant; and

WHEREAS, the City wishes to modify the Additional Services as described in “Exhibit A.2”; and

WHEREAS, the Agreement between City and Consultant currently provides under Section 4 COMPENSATION, Subsection 4.2 Additional Services, the ability for City to provide compensation for Additional Services; and

WHEREAS, the City wishes to also modify the term of the Agreement.

WHEREAS, the City Council, on this 24th day of June, 2019, approves this Contract Amendment and authorizes the City Manager to execute this Contract Amendment.

Now therefore City and Consultant agree as follows that Agreement be, and hereby is, amended as follows:

1. Section 1 SERVICES Subsection 1.1 Basic Services of Agreement is amended as follows:

   **1.1 Basic Services.** CITY hereby retains CONSULTANT to perform the services described and set forth in the attached Exhibit A ("Basic Services") and Exhibit A.2 ("Additional Services"), which is incorporated by this reference as though set forth in full. CONSULTANT hereby agrees to perform said services within the designated time frames and accepts this retention. CONSULTANT shall complete the Basic Services and Additional Services according to a schedule of performance which is also set forth in Exhibit A.2.

2. This Agreement is amended to delete Exhibit A in its entirety and replace it with Exhibit A.2 attached hereto and incorporated herein.

3. Section 4 COMPENSATION Subsection 4.1 Basic Services.

   **4.1 Basic Services.** For Basic Services, CITY shall pay CONSULTANT a time and materials, not to exceed amount of One Hundred Fifty Thousand Seven Hundred Sixty Five Dollars
($150,765.00), as full compensation for all labor, materials, equipment, tools, transportation, and services. This compensation shall be paid in accordance with the payment rates and schedule as set forth in Exhibit B.2, attached hereto and incorporated herein by this reference as though set forth in full, based on the actual time spent on the tasks.

4. This Agreement is amended to delete Exhibit B in its entirety and replace it with Exhibit B.2 attached hereto and incorporated herein.

5. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 3 at the place and as of the date first written above.

"CITY"
City of Carpinteria

"CONSULTANT"
Price, Postel & Parma LLC

By: ___________________________________  By: ___________________________________
David Durflinger, City Manager             Todd A. Amspoker, Partner
June 12, 2019

VIA E-MAIL ONLY

John Ilasin
Gerald Comati
City of Carpinteria Public Works
5775 Carpinteria Avenue
Carpinteria, CA 93013
Johnl@ci.carpinteria.ca.us
Gerald@com3consulting.com

Re: Carpinteria Avenue Bridge Project Contract Second Amended Budget

Dear Mr. Ilasin and Mr. Comati:

We write in response to your request to submit an updated budget proposal for the Carpinteria Avenue Bridge Project eminent domain case. As discussed below, we believe that an estimated total litigation budget of $150,765 is warranted.
Proposal for Amended Budget

In our Agreement for Consultant Services, executed on May 18, 2018, we estimated that fees for the Carpinteria Avenue Bridge Project would total $29,984, which included only an initial litigation budget. Our invoices from May 2018 through December 2018 totaled $33,106.75. On January 18, 2019, we submitted an Amended Budget increasing the litigation budget to $79,983. This Amended Budget was prepared before we obtained any information regarding the claim. Due to the increased complexity of this case, including the need to hire expert witnesses, we respectfully request that the City Council approve a Second Amended Budget, which is attached to this letter.

In the Second Amended Budget, we request an additional litigation budget of $70,782, for a total budget of $150,765. This request includes total estimated expert fees of $25,000, as well as an increased trial budget. We look forward to zealously advocating for the City and obtaining a favorable result in this case. We truly appreciate the opportunity to work with the City.

Please let us know if you have any questions.

Very truly yours,

Todd A. Amspoker
for PRICE, POSTEL & PARMA LLP

Attachment

cc: Dave Durflinger, City Manager
## Second Amended Fee Schedule - Price, Postel & Parma LLC

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### Client: City of Carpinteria
### Date: 12-Jun-19

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| Total Proposal Cost           | $150,765 |

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Total Proposal Cost: $150,765