

CONSENT CALENDAR

SUBJECT: AWARD OF CONTRACT FOR THE OAK AVENUE MURAL PROJECT

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: At the March 5, 2013, City Council meeting staff presented the recommendation from the Arts Commission regarding the Short-Term Work Plan. In addition to developing the Arts Commission policy and bylaws, the Short-Term Work Plan requested the authorization to mail Request for Proposals to artists for the Oak Avenue Mural Project. The mural is a component of the Oak Avenue Transportation Enhancement Project, which includes a red brick stamped concrete sidewalk pattern, street trees, benches, trash receptacles and nostalgic street lighting which matches the Main Street downtown theme. The site proposed for the mural is 134 North Main Street, along the Oak Avenue façade (Subway building).

The recommended theme of Hot Air Balloons with a patriotic flair was approved by City Council. One proposal has been received from Omni Graphics. Although only one response was received, the qualifications identified in the proposal provided confirms Omni Graphics' eligibility, and staff requests that they be awarded the contract.

The mural will be funded through the Transportation Enhancement (TE) Grant, which the City's Public Works Department received to improve the pedestrian corridor along Oak Avenue between the new courthouse and Main Street. The proposal amount is \$4,334.64.

Negotiations of a façade easement are underway with the property owner.

RECOMMENDATION: That the City Council:

1. Award the contract for the Oak Avenue Mural Project to Omni Graphics;
2. Authorize the Mayor to sign contract documents; and
3. Authorize staff to make payments up to 100% upon satisfactory completion of tasks.

ATTACHMENT: Omni Graphics Service Agreement

DD JB APPROPRIATED/FUNDED CM J ITEM NO. 5

PROFESSIONAL SERVICES AGREEMENT
Graphic Design Services for
Oak Avenue Mural Project

DATE: October 21, 2014

PARTIES: City of Porterville, a California municipal corporation, hereinafter referred to as "CITY"; and Omni Graphics, hereinafter referred to as "CONTRACTOR".

RECITALS: CITY has undertaken a project on which it is seeking assistance from CONTRACTOR. Said project which will hereinafter be referred to as "project" is described as follows:

Project Name: Lead the effort and be assisted by City staff for the timely completion of mural to be installed on the Oak Avenue façade of the Subway building located at 134 N. Main Street, Porterville, CA.

Description of Project: Design mural with a "Hot Air Balloon" theme with a patriotic flair.

AGREEMENTS:

IN CONSIDERATION OF MUTUAL COVENANTS AND AGREEMENTS HEREINAFTER set forth the parties hereto do contract and agree as follows:

SECTION 1. CONTRACT SERVICES: CONTRACTOR hereby agrees to provide services and materials as defined in task orders approved through the term of this contract, based on qualifications defined in Exhibit A.

SECTION 2. CONTRACT SERVICES: In consideration for said services and materials, CITY shall pay CONTRACTOR the fee stipulated in the proposal documents.

TIME OF PAYMENT: CONTRACTOR shall receive payment within 30 days of the date of project completion. (Exhibit B)

SECTION 3. COMPLETION DATE: The services to be performed by CONTRACTOR will be commenced upon execution of a given task order and all work directives shall be completed in a timely manner. This contract will be in effect for three (3) months from October 21, 2014. This contract can be extended after the expiration date, upon mutual agreement by both parties.

CONTRACTOR shall not be responsible for delays which are due to causes beyond the CONTRACTOR'S reasonable control. In the case of any such delay, the time of completion shall be extended accordingly in writing signed by both parties.

ATTACHMENT
ITEM NO. |

SECTION 4. FAMILIARITY WITH PROJECT: CONTRACTOR agrees that it will rely on its own findings and research to perform the services required under this agreement and will not rely solely upon opinions or representations of CITY unless CITY is the only available source of said information. CONTRACTOR shall become familiar enough with project details to independently perform its services in conformance with the normal standard of care for such projects.

SECTION 5. INDEPENDENT CONTRACTOR: It is expressly understood that CONTRACTOR is entering into this contract and will provide all services and materials required hereunder as an independent contractor and not as an employee of CITY. CONTRACTOR specifically warrants that it will have in full force and effect, valid insurance covering:

- (i) Full liability under workers' compensation laws of the State of California; and
- (ii) Bodily injury and property damage insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence; and
- (iii) Automotive liability in an amount not less than One Million Dollars (\$1,000,000) per occurrence; fully protecting CITY, its elected and appointed officers, employees, agents and assigns, against all claims arising from the negligence of CONTRACTOR and any injuries to third parties, including employees of CITY and CONTRACTOR. CONTRACTOR agrees to indemnify, defend (at CITY'S election), and hold harmless the CITY against any claims, actions or demands against CITY, and against any damages, liabilities for personal injury or death or for loss or damage to property, or any of them arising out of negligence of CONTRACTOR or any of its employees or agents.
- (iv) Errors and Omissions insurance of One Million Dollars (\$1,000,000) minimum per claim and aggregate. If deductible for Errors and Omissions insurance is Fifty Thousand Dollars (\$50,000) or more, the City may require a Surety Bond for the deductible.

As an independent contractor, the consultant will obtain and maintain an active City business license.

SECTION 6. WORKMANSHIP AND MATERIALS: Every part of the work herein described shall be executed in a professional manner with competent, experienced personnel. Finished or unfinished material prepared under the agreement, prepared by CONTRACTOR, shall become property of CITY.

Documents, including drawings and specifications, prepared by CONTRACTOR pursuant to this agreement, are not intended or represented to be suitable for reuse by CITY or others on extensions of projects or on any other project. Any use of the completed documents for other projects and any use of incomplete documents without the specific written authorization from CONTRACTOR will be at CITY'S sole risk and without liability to CONTRACTOR. Further, any and all liability arising out of changes made to CONTRACTOR'S deliverables under this Agreement by CITY or persons other than CONTRACTOR is waived as against CONTRACTOR, and the CITY assumes full responsibility for such changes made by the CITY or its agents unless the CITY has

given CONTRACTOR prior notice and has received from CONTRACTOR written consent for such changes.

CONTRACTOR hereby warrants that any materials prepared under this agreement shall be fit for the intended use contemplated by the parties.

SECTION 7. ASSIGNMENT OF CONTRACT: It is acknowledged by the parties that CITY has entered into this contract with the express understanding that all work will be performed by CONTRACTOR or CITY approved sub-consultant. CONTRACTOR shall not, without the written consent of CITY, assign, transfer or sublet any portion or part of this work, nor assign any payments to others. Further, the principals involved and identified in the proposal are integral to the performance of the scope of services and shall not change or be replaced without first obtaining prior written approval from the City of a replacement(s) in the completion of the work effort. All sub-consultants shall be approved by the City, prior to commencement of work on any project.

SECTION 8. AFFIRMATIVE ACTION. CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, gender, marital status, or national origin.

SECTION 9. CONFLICT OF INTEREST CODE: CONTRACTOR agrees to comply with the regulations of CITY'S Conflict of Interest Code. Said code is in accordance with the requirements of the Political Reform Act of 1974. The CONTRACTOR shall sign and file a City of Porterville Consultant Conflict of Interest Questionnaire with the City Clerk.

CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of service required hereunder. The term "conflict" shall include, as a minimum, the definition of a "conflict of interest" under the California Fair Political Practices Act and the City of Porterville Conflict of Interest Code, as that term is applied to consultants.

SECTION 10. TERMINATION: This contract may be terminated by either party for just cause by giving thirty (30) days written notice by either party except that City may cancel contract upon five (5) days written notice in the event of nonperformance by Contractor. Nonperformance by the contractor or repeated lack of response or attention to responsibilities and/or directions and requests of City shall be considered adequate cause for termination of contract and/or withholding of funds to contractor which City must pay to third party or parties to correct deficiencies due to lack of performance as determined by City. Upon termination by CITY, CITY shall be relieved of any obligation to pay for work not completed. CONTRACTOR may be entitled to just and equitable compensation for satisfactory work completed.

SECTION 11. ENTIRE CONTRACT: It is understood and agreed that this Service Agreement represents the entire Agreement between the parties. Should it be necessary to institute legal proceedings to enforce any and all of the covenants and conditions of this Agreement, the prevailing party shall be entitled to recover attorney's fees and costs.

SECTION 12. DISPUTES; VENUE: If either party initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that the venue thereof shall be the County of Tulare, State of California. CONTRACTOR hereby waives any rights it might have to remove any such action pursuant to California Code of Civil Procedure Section 394.

In an effort to resolve any conflicts that arise during or following completion of the Contract, the CITY and the CONTRACTOR agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

IN WITNESS WHEREOF, the parties have executed this Service Agreement on the date and year first above written.

CITY OF PORTERVILLE

CONTRACTOR

Omni Graphics
260 W. Douglas Avenue
El Cajon, CA 92020
(619) 792-1350

By _____
Milt Stowe, Mayor

By _____
Rick Sweeney

Date _____

Date _____

Attachments:
Exhibit "A": Scope of Work
Exhibit "B": Project Fees

EXHIBIT A
SCOPE OF WORK

Fabricate one 10.5' x 18' digitally printed mural comprised as eight (8) pieces of 3 mil aluminum composite DiBond. All panels will be mechanically fastened to wall surface at desired elevation, using a boom lift to reach accessible area.

EXHIBIT B

PROJECT FEES

Oak Avenue Mural Cost Analysis:

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|------------------|------------------|
| Design | \$ 450.00 |
| Fabrication | \$1,488.00 |
| Per Diem/Travel | \$ 650.00 |
| Installation | \$ 950.00 |
| Equipment Rental | <u>\$ 595.00</u> |
| SUB TOTAL | \$4,133.00 |
| | |
| CA SALES TAX | <u>\$ 202.64</u> |
| | |
| PROJECT TOTAL | \$4,335.64 |

Fee shall be received within thirty (30) days of project completion.