

**CITY OF CORONA  
PROFESSIONAL SERVICES AGREEMENT  
WITH MARK THOMAS, INC.  
MCKINLEY STREET GRADE SEPARATION  
PROJECT MANAGEMENT SERVICES  
CITY OF CORONA PROJECT NO. 2012-12**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this **19th** day of **June, 2019** (“Effective Date”) by and between the City of Corona, a municipal corporation organized under the laws of the State of California with its principal place of business at 400 South Vicentia Avenue, Corona, California 92882 (“City”) and **Mark Thomas, Inc.**, a California Corporation with its principal place of business at 3400 Inland Empire Boulevard, Suite 101, Ontario, CA 91764 (“Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

**2. RECITALS.**

**2.1 Consultant.**

Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing **Project Management Services** to public clients, is licensed in the State of California, and is familiar with the plans of City.

**2.2 Project.**

City desires to engage Consultant to render such services for the **McKinley Street Grade Separation Project Management Services, City of Corona Project No. 2012-12, RFP No. 19-026CA** (“Project”) as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional services for the **McKinley Street Grade Separation Project Management Services, City of Corona Project No. 2012-12, RFP No. 19-026CA** consulting services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules, and regulations.

3.1.2 Term. The term of this Agreement shall be from **June 19, 2019 to June 30, 2023** ("Term"), unless earlier terminated as provided herein. Consultant shall complete the Services within the Term of this Agreement and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the Term of this Agreement one or more times by executing a written amendment pursuant to Section 3.6.8 below (each a "Renewal Term"). The terms "Term" and "Renewal Term" may sometimes be generally and collectively referred to as "Term" in this Agreement.

### **3.2 Responsibilities of Consultant.**

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the Term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services within the Term of this Agreement, in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference, and in accordance with any other completion schedule or milestones which may be separately agreed upon in writing by the Parties. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All Services performed by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **Darin Johnson, PE**.

3.2.5 City's Representative. The City hereby designates **Nelson D. Nelson, PE, Public Works Director**, or his designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **Darin Johnson, PE**, or his designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, Consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant agrees that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the Term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-Consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations; Employee/Labor Certifications. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work or Services knowing them to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers,

employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.9.1 Employment Eligibility; Consultant. By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Consultant. Consultant also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement and shall not violate any such law at any time during the Term of the Agreement. Consultant shall avoid any violation of any such law during the Term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Consultant shall maintain records of each such verification and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Consultant's compliance with the requirements provided for in Section 3.2.9 or any of its sub-sections.

3.2.9.2 Employment Eligibility; Subcontractors, Consultants, Sub-subcontractors and Subconsultants. To the same extent and under the same conditions as Consultant, Consultant shall require all of its subcontractors, Consultants, sub-subcontractors and subconsultants performing any work or Services relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.9.1.

3.2.9.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Consultant verifies that they are a duly authorized officer of Consultant, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Consultant or its subcontractors, Consultants, sub-subcontractors or subconsultants to meet any of the requirements provided for in Sections 3.2.9.1 or 3.2.9.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Consultant under Section 3.2.9.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.9.4 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code and agrees to comply with such provisions before commencing the performance of the Services.

3.2.9.5 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.9.6 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Consultant shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its subconsultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

### 3.2.10 Insurance.

3.2.10.1 Time for Compliance. Promptly following the Effective Date of this Agreement, but in no event before Consultant commences any Services under this Agreement, Consultant shall provide evidence satisfactory to the City that it has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Agreement for cause.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: **\$1,000,000** per occurrence for bodily injury, personal injury, advertising injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: **\$1,000,000** per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of **\$1,000,000** per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-Consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than **\$1,000,000** per claim or occurrence, **\$2,000,000** aggregate minimum.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain or be endorsed (amended) to include the following provisions:

(A) General Liability. The general liability policy shall state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to liability arising out of work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection therewith and Products and Completed Operations hazards (the endorsement form shall be at least as broad as ISO Form CG 20 10 11 85 or both CG 20 37 and one of the following: CG 20 10, CG 20 26, CG 20 33 or CG 20 38); and (2) the insurance coverage shall be primary insurance coverage as respects the City, its directors, officials, officers, employees, agents, and volunteers (the endorsement form shall be at least as broad as ISO CG 20 01 04 13). Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Waiver of Subrogation – Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work or Services performed by the Consultant.

(C) All Coverages. If Consultant maintains broader coverage and/or higher limits than the minimums shown above, the City is entitled to the broader coverage and/or higher limits maintained by Consultant. Thus, any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

3.2.10.5 Other Provisions; Endorsements Preferred. Consultant shall endeavor to provide endorsements regarding the following provisions, but nonetheless understands, acknowledges and agrees that the following provisions shall apply and that failure to comply shall be considered to be a breach of this Agreement by Consultant:

(A) Waiver of Subrogation – All Other Policies. Consultant hereby waives all rights of subrogation any insurer of Consultant's may acquire against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of any insurance policy which arise from work or Services performed by the Consultant. Consultant understands, acknowledges and agrees that this provision is in full force and effect even if the City does not receive a waiver of subrogation endorsement from the insurer.

(B) Notice. Consultant shall either: (1) require its insurer to provide thirty (30) days prior written notice to the City before coverage is suspended, voided, or canceled; or (2) notify City in writing that such notice is not available and forward any notice of such actions to the City within two (2) business days from date of receipt by Consultant. Consultant understands, acknowledges and agrees that this provision is in full force and effect even if the City does not receive a waiver of subrogation endorsement from the insurer.

3.2.10.6 Claims Made Policies. The following provisions shall apply to all policies that provide coverage on a claims-made basis: (A) the retroactive date must be shown and must be before the date on which any Services under this Agreement commence; (B) the insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Project; and (C) if coverage is canceled or not renewed and is not replaced with another claims-made policy with a retroactive date prior to the date on which any Services under this Agreement commence, Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Project.

3.2.10.7 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Consultant to provide proof of ability to pay losses and related investigation, claims administration and defense expenses within the deductible or self-insured retention. The deductible or self-insured retention may be satisfied by either the named insured or the City.

3.2.10.8 Acceptability of Insurers. Unless under the circumstances a different rating is otherwise acceptable to the City in its sole and absolute discretion, insurance is to be placed with insurers which are satisfactory to the City and which meet either of the following criteria : (1) an insurer with a current A.M. Best's rating no less than A-:VII and licensed as an admitted insurance carrier in California; or (2) an insurer with a current A.M. Best's rating no less than A-:X and authorized to issue the required policies in California.

3.2.10.9 Verification of Coverage. Consultant shall furnish City with original certificates of insurance, as well as amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement. All documents must be received and approved by the City before any Services commence; provided, however, that failure to obtain the required documents prior to the commencement of Services shall not waive Consultant's

obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.10.10 Reporting of Claims. Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.10.11 Sub-Consultants. All sub-Consultants shall comply with each and every insurance provision of this Section 3.2.10. Consultant shall therefore not allow any sub-Consultant to commence work on any subcontract to perform any part of the Services until it has provided evidence satisfactory to the City that the sub-Consultant has secured all insurance required under this Agreement.

3.2.10.12 Special Risk or Circumstances. The City reserves the right, in its sole and absolute discretion, to modify the requirements of this Section 3.2.10, including limits, based on any of the following: (A) the nature of the risk of the Services; (B) the prior experience of the insured; (C) the rating or other quality or characteristic of the insurer; (D) any special or unique coverage issues; and (E) any other special or unique circumstances.

3.2.11 Safety. Consultant shall execute and maintain its work and Services so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Services and the conditions under which the Services are to be performed.

3.2.12 Payment Bond. The California Department of Industrial Relations ("DIR") has communicated to the City that there is a possibility that a payment bond may be required for certain services provided in connection with a public works project. Since such a requirement is currently contrary to the industry standard for the services provided by Consultant under this Agreement and since there is no direct legal authority for this position, the City is not requiring Consultant to provide a payment bond at this time. However, the City hereby reserves the right to require the Consultant to obtain and provide a payment bond for some or all of the Services provided by the Consultant under this Agreement.

If the City determines that a payment bond is required for the Services pursuant to Civil Code Section 9550 or any other applicable law, rule or regulation, Consultant shall execute and provide to City a payment bond in an amount required by the City and in a form provided or approved by the City. In the event a payment bond is required, the City agrees to compensate Consultant for all documented direct costs incurred by Consultant for such payment bond. The Parties shall memorialize the terms of such additional compensation and any other terms and conditions associated with the payment bond in an amendment to this Agreement.

3.2.13 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created



pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

### **3.3 Fees and Payments.**

3.3.1 Rates & Total Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation, including authorized reimbursements, shall not exceed **Two Million Six Hundred Seventy-Five Thousand One Hundred Twenty-Nine Dollars (\$2,675,129)** ("Total Compensation"), without written approval of City's Representative. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 30 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the Term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of Chapter 1 (beginning at Section 1720 et seq.) of Part 7 of Division 2 of the California Labor Code, as well as Title 8, Section 16000 et seq. of the California Code of Regulations ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Consultant and its Subconsultants shall also be responsible for any and all violations and fines imposed on them pursuant to the Prevailing Wage Laws. Pursuant to SB 854, which amended the Prevailing Wage Laws, this Agreement would also be subject to compliance monitoring and enforcement by the California Department of Industrial Relations ("DIR"). Beginning April 1, 2015, no Consultant or subconsultant may be awarded this Agreement unless registered with the DIR pursuant to Labor Code Section 1725.5. The City will report all necessary agreements to the DIR as required by the Prevailing Wage Laws. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request and shall post copies at the Consultant's principal place of business and at the Project site. It is most efficient

for the Consultant to obtain a copy of the prevailing wages in effect at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the DIR located at [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/). In the alternative, Consultant may obtain a copy of the prevailing wages from the City's Project Manager. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.6 Apprenticeable Crafts. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Consultant shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works when Consultant employs workmen in an apprenticeable craft or trade. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Consultant.

### **3.4 Termination of Agreement.**

3.4.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, as well as any authorized reimbursable expenses, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

### **3.5 Ownership of Materials and Confidentiality.**

3.5.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically, electronically or otherwise recorded or stored, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide

to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of five (5) years following completion of the Project and shall make copies available to City upon the payment of actual reasonable duplication costs. In addition, before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.5.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.5.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or reuse of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.5.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.5.5 Confidentiality. All Documents & Data, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Documents & Data shall not, without the prior written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Consultant

shall not disclose, cause or facilitate the disclosure of the Documents & Data to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant that is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

### **3.6 General Provisions.**

3.6.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

**Consultant:**

Mark Thomas  
3400 Inland Empire Blvd, Suite 101  
Ontario, CA 91764  
Attn: Darin Johnson, PE

**City:**

City of Corona  
400 South Vicentia Avenue  
Corona, CA 92882  
Attn: Nelson D. Nelson, PE, Public Works Director  
Public Works Department

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.2 Indemnification. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of, pertaining to, or incident to any alleged willful misconduct or negligent acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, Consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all settlement amounts, expert witness fees and attorney's fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligation to indemnify shall survive

expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials' officers, employees, agents, or volunteers.

3.6.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code Sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.6.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.5 City's Right to Employ Other Consultants. City reserves right to employ other Consultants in connection with this Project.

3.6.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.6.6.1 Subconsultants; Assignment or Transfer. Consultant shall not subcontract any portion of the Services required under this Agreement, except as expressly authorized herein, without the prior written approval of the City. Subcontracts, if any, shall include a provision making them subject to all provisions of this Agreement. Consultant shall also not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to subcontract or take any other action not authorized herein shall be null and void, and any subconsultants, assignees, hypothecates or transferees shall acquire no right or interest by reason of such action.

3.6.7 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.6.8 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.6.10 No Third-Party Beneficiaries. Except to the extent expressly provided for in Section 3.6.6, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

3.6.11 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.12 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the Term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.13 Cooperation; Further Acts. The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.14 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

3.6.15 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.17 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations,

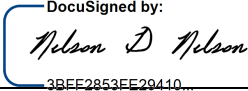
understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

**[SIGNATURES ON NEXT 2 PAGES]**

**CITY'S SIGNATURE PAGE FOR**  
**CITY OF CORONA**  
**PROFESSIONAL SERVICES AGREEMENT**  
**WITH MARK THOMAS, INC.**  
**MCKINLEY STREET GRADE SEPARATION**  
**PROJECT MANAGEMENT SERVICES**  
**CITY OF CORONA PROJECT NO. 2012-12**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

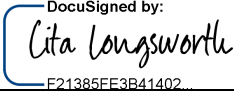
**CITY OF CORONA**

By:   
3BFE2853EE29410...  
Nelson D. Nelson, PE  
Public Works Director

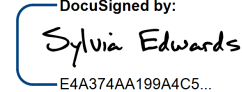
Reviewed By:

  
13ACFA25CB6D49E...  
Tom Koper, PE  
Assistant Public Works Director/City Engineer

Reviewed By:

  
F21385FE3B41402...  
Cita Longworth  
Purchasing Manager

Attest:

  
E4A374AA199A4C5...  
Sylvia Edwards, City Clerk  
City of Corona, California

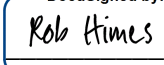


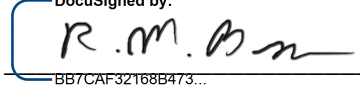
**CONSULTANT'S SIGNATURE PAGE FOR**  
**CITY OF CORONA**  
**PROFESSIONAL SERVICES AGREEMENT**  
**WITH MARK THOMAS, INC.**  
**MCKINLEY STREET GRADE SEPARATION**  
**PROJECT MANAGEMENT SERVICES**  
**CITY OF CORONA PROJECT NO. 2012-12**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

**MARK THOMAS, INC.**

a California Corporation

By:   
58A744FE3538345A  
Rob Himes, PE  
President

By:   
BB7CAF32168B473...  
Matt Brogan  
Secretary

## **EXHIBIT “A” SCOPE OF SERVICES**

### **PROGRAM MANAGEMENT**

Consultant will pursue and secure additional funding sources; attend Project Development Team (PDT) meetings and utility coordination meetings; monitor the schedule to ensure milestones are being met and track progress with action items; monitor and review project submittals; and control contract budgets to ensure that services are consistent with the Design Consultant’s proposal.

Consultant will meet with the City, Biggs Cardosa Associates (BCA) and Paragon Partners to establish bi-monthly Right of Way and Utility Focus Meetings through anticipated completion of Right of Way Certification/Completion of Utility Relocation to review parcel acquisition/utility coordination/tenant relocation status and critical issues. Additionally, Consultant will provide direction to the project team upon its initial mobilization to establish the framework for a detailed schedule and estimate of right of way/utility capital expenditures format, including update/distribution schedules, to use as the basis of tracking delivery/progress in the focus meetings. As negotiations progress with property owners, tenants, and utility purveyors, Consultant will attend on-site meetings/conduct separate meetings as the City’s representative as necessary with project stakeholders/municipal agencies to facilitate progress/remove constraints. Lastly, Consultant will operate as an extension of staff reviewing right of way/ utility submittals, preparing administrative reports and agendas for City Council/Commission Hearings, and present relevant information to the City/Public as necessary.

The following scope items are anticipated for this task:

#### **1.1 Program Management**

- Tracking/managing all budgetary-related aspects and sub-consultants associated with Consultant’s scope of work.
- Assisting with the development of administrative policies, procedures, and forms necessary to carry out the initial program.
- Provide ongoing general consultation and project coordination with the City, project stakeholders, and team members.

#### **1.2 Data Collection/Management**

- Secure and review data and reports from the City and the BCA Team that have already been completed. Examples include 35% Plans, Specifications and Estimates and any supporting data.
- Secure initial Right of Way Acquisition/Tenant Relocation Case Files from Paragon Partners and establish file transfer protocol between Consultant and Paragon Partners as acquisition/relocation milestones are completed for up to twelve (12) properties and fifteen (15) displacements.
- Secure initial Utility Relocation Case Files from Paragon Partners or BCA and establish file transfer protocol between Consultant and Paragon Partners/BCA as utility relocations milestones are completed for up to nine (9) utility owners and forty (40) conflicts.
- Secure Project Improvement Plans, Specifications and Estimates from BCA at the 65%, 90% and Final submittals.

#### **1.3 Meetings**

- Attend Monthly Project Development Team (PDT) Meetings. Monitor action items and

schedule to ensure milestones are being met and track progress of the action items.

- Attend weekly Project Focused meeting – by phone or in person as necessary. It is assumed these weekly meetings will occur during the first two years of the project to keep the project moving and on-track.
- Conduct Bi-Monthly Right of Way Focus Meetings commencing July 2019 through September 2020 including preparation of Agendas and distribution of Meeting Minutes/Action Items.
- Conduct Bi-Monthly Utility Focus Meetings commencing July 2019 through September 2020 including preparation of Agendas and distribution of Meeting Minutes/Action Items.
- Attendance of up to twenty-four (24) meetings with property owners, tenants, BNSF, utility owners, Caltrans and other jurisdictional approval/oversight agencies as necessary.
- Secure City templates for all Resolutions of Necessity, Administrative Reports, Council Agendas for as necessary updates/document preparation to support the City.
- Attendance of up to sixteen (16) City Council Meetings/Commission Hearings including preparation of Administrative Report supporting data or presentation materials. Conduct as necessary presentations for up to four (4) Resolution of Necessity Hearings as necessary.

#### **1.4 Submittal Review and Processing**

- Provide review of 65%, 90%, and 100% submittals. Review Plans Issued for Bid and the Conformed Plans and Specs issued for Construction.
- Provide up to one (1) review for industry accepted practice/regulatory compliance of each the following submittals/documentation and provide Submittal Approvals/Comments:
- Right of Way Acquisition (12 cases): Right of Way Requirements, Deeds/Legal Descriptions/Plat Maps, Curative Studies/Plans, Fee/Review Appraisals, F&E/Goodwill Appraisals, Phase I/II ESAs / HMDDs, Offers/ Just Compensation, Purchase & Sales Agreements, Administrative Settlements, Orders of Possession/Final Orders of Condemnation, right of way Certification Forms, Construction Obligations.
- Relocation (15 cases): General Information Notice, Relocation Interview Notes, Notice of Eligibility, 90 Day Advisory Notice, 30 Day Relocation Notice, Relocation Claims/Backup Receipts and Documentation.
- Utility Coordination (9 Owners, 40 Conflicts): Introductory Notice, As-Built Information, Utility Pothole Plans, Report of Investigation, Relocation Claim Letter, Utility Agreements, Relocation Plans/Schedule, Utility Portion of Right of Way Certification.
- Review of the updated Right of Way Data Sheet prepared by Paragon Partners as necessary to support the Caltrans Right of Way Certification submittal requirement.

#### **1.5 Document Preparation**

- Preparation of up to forty (40) Notices to Owner to relocate utility facilities including distribution to each Utility Owner using either Caltrans or City accepted formats.

#### **1.6 Project Controls/Financials**

- Obtain and review contracts, amendments, invoices, progress reports, and other financial documents from the BCA team to determine contract spending to date and forecasts for future spending.
- Review monthly invoices and progress reports from BCA and their subconsultants.
- Secure Right of Way/Utility Relocation Capital Expenditures Estimate to provide initial direction to BCA/ Paragon Partners on suggested format revisions to better accommodate updates for actuals based on the following completed milestones
  - Right of Way: Just Compensation Determination, Completion of Goodwill Appraisals, Purchase/Sale Agreement/Order of Possession, Final Order of Condemnation.

- Relocation: Completion of Relocation Interviews, Submittal of Claim Receipts/Invoices for Relocation/ moving/Re-establishment.
- Utilities: Execution of Utility Agreements, Utility Owner Supplied Cost Estimates/Final Invoices, and Completion of Estimates/Bid Award for Project constructed facilities.
- Provide monthly audits of the Right of Way and Utility Capital Expenditures Estimates noting recommended updates based on completed milestones, and distribution of a Summary Report on noted trends of increasing/decreasing estimated costs through September 2020.
- Secure Right of Way/Utility Relocation Delivery Schedules to provide initial direction to BCA/Paragon Partners on suggested format revisions to better accommodate updates for completed milestones and accountability.
- Provide monthly audits of the Right of Way and Utility Relocation Delivery Schedules noting recommended updates based on completed milestones.

### **1.7 Obtain Additional Funding Sources**

- Consultant will prepare grant applications for Trade Corridor Enhancement Program (TCEP) and Section 190 program, including supportive exhibits, narratives, and benefit cost analyses.
- Consultant will coordinate with CPUC, Caltrans, and CTC staff to enhance grant funding applications.

### **DELIVERABLES:**

- Attendance at Monthly PDT Meetings – monthly for the 4-year duration of the project
- Attendance at weekly conference calls – weekly for the first two years of the project
- Right of Way Focus Meeting Agendas/Meeting Minutes (Two per Month from July 2019 through September 2020).
- Utility Coordination Focus Meeting Agendas/Meeting Minutes (Two per Month from July 2019 through September 2020).
- Resolution of Necessity Presentations/Documentation (Up to 4).
- City Council Agenda/Administrative Report Preparation (Up to 16).
- Notice to Owner to Relocate Utilities (Up to 40).
- Right of Way/Relocation/Utility Submittal Approvals/Comments for twelve (12) property acquisition cases, fifteen (15) commercial displacements, and nine (9) utility owners (1 Review per Document).
- Monthly Distribution of Cost Estimate Summary Report (One Update per Month from July 2019 through September 2020).
- Grant Funding Applications and Supportive Materials (Up to 4).

### **Assumptions/Clarifications:**

- Preparation of all right of way acquisition, relocation and utility coordination submittals other than the preparation of the Notice to Owner to Relocate Utilities will be performed by either BCA or Paragon Partners and made available upon request.
- Updates to project schedule and capital expenditures will be performed by either BCA or Paragon Partners, our scope is limited to review/audits and suggested revisions/additions based upon supplied submittals/ completed milestones.
- September 2020 is listed as the termination date of many activities as it is assumed Right of Way Certification and Utility Relocation (other than those to be performed by the Project Contractor awarded by the City) will be completed as identified in the Project Schedule.
- Consultant's Utility Coordination scope does not include the inspection of relocated utilities, it is assumed this will be performed by others.

- Consultant has secured Monument to assist in review of Right of Way Acquisition/Relocation documents for expediting review processing time as necessary.

## OPTIONAL SERVICES

### **Risk Management/Impact Assessment**

Consultant will conduct parcel specific focus meetings with the City and their respective eminent domain council, BCA, Paragon Partners and assigned fee appraisal subconsultants. Prior to the meeting Consultant will provide a comprehensive agenda for each parcel illustrating known impacts, items with potential for unforeseen/indirect impacts, initial assessments of curative work versus construction contract work (i.e. Project Contractor), and draft analysis of restrictions/reservations of rights to minimize potential damages/loss of good will. Upon completion of meetings, Consultant will provide a summary report to the project team illustrating the recommended course of action for acquisition approach, project contractor construction items, and risk management strategies such as parallel paths/parcel mitigation planning identified in each meeting. Additionally, Consultant has secured STK Architects, Inc. to provide direction on potential building modification impacts/ strategies as necessary.

Additionally, Consultant will contact Utility Owners prior to issuance of the Notice to Owner to Relocate to review project and their utility impacts and request suggestions on potential replacement areas/means and methods of construction of their utility in consideration of our right of way planning efforts.

The following scope items are anticipated for this task:

1. Preparation of Impact Assessment Meeting Agendas for up to twelve (12) larger parcel impacts including initial questions/analysis/risk associated with the following:
  - a. Lease/business operational impacts that could lead to full acquisition/relocation.
  - b. Potential for unforeseen significant loss of business goodwill claims.
  - c. City land use/zoning/setback conflicts/fire code required access conflicts.
  - d. Impacted parcels not included within the Area of Potential Effect (APE) requiring NEPA/CEQA re- validation.
  - e. Treatment Control BMP requirements for potential additional fee acquisition.
  - f. Sound wall requirements, including temporary construction access and long-term maintenance access for potential footing/maintenance easements.
  - g. ADA compliancy issues for width and obstructions at sidewalks and driveways for potential additional fee acquisition.
  - h. Sign/Light/Signal Pole foundation and equipment conflicts for potential additional fee acquisition/ easements.
  - i. Side slope requirements per local agency/Caltrans requirements.
  - j. Additional landscape/slope repair areas adjacent to improvements.
  - k. Temporary work areas and construction easements for accessibility and constructability needs, including areas where restricting usage of the temporary easements could have substantial acquisition cost savings.
  - l. Utility service relocation/clearance issues for potential easements.
  - m. Potential areas for replacement rights for known utility conflicts.
  - n. Identified impacts that cannot be acquired under the threat of eminent domain.
2. Strategize with project team in identifying opportunities to optimize the right of way footprint that will result in avoiding and/or minimizing impacts along the corridor.

3. Identification of post construction and potential cost to cure mitigation solutions, including:
  - a. Driveway and access vertical and horizontal replacement existing/proposed sections
  - b. Loss of parking replacement
  - c. Horizontal/vertical layout alternatives to avoid long lead/high cost parcels
  - d. Building/structural modification opportunities to avoid full acquisition/relocation
4. Strategize with the team on potential for operating both voluntary approaches more favorable to property owners (i.e. land swap considerations, temporary leasing of adjacent parking lots during construction to offset lost parking, alternative access from private properties, etc.) enticing them to sign sooner, or less costly to the City, to implement parallel to acquisition approach as identified in the Impact Assessment meetings using an eminent domain approach. Development of a Risk Management Matrix illustrating suggested alternative approaches/risk management items per parcel and distribution to the Project Team, includes up to six (6) monthly edits based upon completion of Impact Assessment, planning meetings with Utility Owners, and commencing initial property owner offer submittals.
5. Conduct up to nine (9) planning meetings with Utility Owners to review project plans/develop strategies to stream line the identification of replacement rights/construction schedule prior to receiving final relocation plans/schedules (estimated in October 2019).

### **DELIVERABLES:**

- Impact Assessment Focus Meeting Agendas/Meeting Minutes (up to 12).
- Risk Management Matrix (Initial development with up to 6 revisions).
- Utility Owner Planning Meeting Correspondence Summary Memorandums (up to 9).

### **Assumptions/Clarifications:**

- Consultant cannot guarantee the cooperation of the impacted utilities, nor the accuracy of the provided information from the planning meetings. These are tool to receive a better direction/understanding to implement cost/schedule saving strategies with provided Utility Owner input prior to the completion of 65% plans and fee appraisals.

### **Parcel Mitigation Planning**

Consultant has identified the following properties with significant impacts resulting in potential costly severance damages and high potential for loss of business goodwill claims/unnecessary occupant relocation that could have substantial cost savings with preparation of preliminary site/building modification plans to support the appraiser and right of way staff's determination of fair market value, estimated loss of good will potential, and relocation assistance costs.



Parcel Mitigation Planning Properties			
Parcel ID	APN/Address	Owner (Tenant/Occupancy)	Impacts to Mitigate
2	APN: 115-300-050 3848 N. McKinley St	BPL (Misc. Commercial Retail/Fast Food)	Lost parking and realignment of the drive through exit.
3	APN: 172-050-001, 002, 003, & 005 115/123/125/131 N. McKinley St	DD & EC & E, LLC (Dollar Tree and Misc. Commercial Retail/Fast Food)	Lost parking, significant realignment to internal parking circulation, parking lot repair for utility trenchwork, and building modifications to accommodate relocated utility mains.
4	APN: 172-050-006 No Address	Carsten Company; RHI WWW (Food 4 Less)	Lost parking, significant realignment to internal parking circulation, and parking lot repair for utility trenchwork.
10	APN: 115-290-034 2199 Sampson Ave	Goodell Properties, LLC (Carl's Jr)	Lost parking, significant realignment to internal parking circulation, and parking lot repair for utility trenchwork.
11	APN: 172-420-003 through 005 151/161 N. McKinley St / 2275 Sampson Ave	CPI Properties (Outback / Denny's / Miscellaneous Commercial Retail)	Substantial amount of lost parking, and significant realignment to internal parking circulation and site configuration.

Based upon preliminary discussions with the City and review of available record information, it appears site curative configurations may have been developed by BCA or Paragon Partners, however it was assumed the design configurations were preliminary in nature and were not designed using City municipal code/land use/ setback/land development design guidelines, nor circulated through the City's miscellaneous permitting departments. Should this assumption be incorrect, Consultant will utilize them as part of our Parcel Mitigation Planning analysis.

Consultant will provide a Mitigation Summary Report illustrating preliminary curative design plans, corresponding estimate of probable costs for all improvements associated with proposed curative plan (including permits/plan check fees and administrative/design costs), and summary of pertinent findings (i.e. zoning issues, pre/post parking conditions, property owner discussions, etc.) based upon meetings with the property owner and project team. Prior to finalizing the report, Consultant will meet with the City Engineering's/Planning/Building and Safety Departments for a courtesy review and direction on non-conforming land use issues (substandard parking lot dimensions, less than current parking/building setbacks) constructed under previous municipal code requirements magnified by the project impacts.

The following scope of services is included as part development of a Mitigation Summary Report:

1. Attendance of pre-appraisal on-site meeting and up to two (2) follow up meetings with project team and appraisal staff as necessary to complete conceptual curative design plan.
2. Preparation of conceptual curative design plan depicting proposed project improvements and right of way needs, proposed site/building modifications, utility/service line impacts, drainage design improvements/elevations/slopes, parking/building square foot pre/post mitigation summary, parcel lines, topography, and zoning setback requirements.
3. Up to one (1) submittal of conceptual curative design plan to City Departments for courtesy review/approval (as necessary on non-standard issues).
4. Preparation of a comprehensive estimate of probable costs identifying administrative, professional services, City/County permit and development fees, demolition, construction, and appropriate contingencies for appraisal severance damage valuation/negotiation purposes.
5. Preparation of Mitigation Summary Report including compilation of the curative site plan/estimated costs, written summary of assumptions, constraints and conflicts, summary of site/building modifications, estimated durations, and curative elements to be borne by the project/paid to the property owner.
6. Provide QA/QC of final work product, submit to client and other Project Team members, and respond to inquiries.

## **DELIVERABLES:**

- Mitigation Summary Reports – (Up to 5)

### **Assumptions/Clarifications:**

It is understood the purpose of this report is to support the fee appraiser's recommendation of fair market value and negotiation efforts and will not be utilized for construction/securing permits from the local jurisdiction. Consultant has secured STK Architecture, Inc. who will provide all Architectural analysis involved with Building modifications necessary to support the project.

### **Construction Obligations**

Consultant will secure pertinent acquisition documentation/agreements and prepare a Construction Obligation Binder with summary table with all critical Contractor/Property Owner performance items/relevant acquisition duration/use items associated with each acquired interest to be included within BCA's development of the project specifications/bid documents. Consultant will perform weekly field inspections of Contractor's work within acquired rights of way/easements to ensure compliance with terms in the agreement/order of possession. Inspections are anticipated to occur twice per week through Construction Closeout estimated in December 2020. Final inspection documentation and notes will be provided to the City upon completion of all work.

Consultant will provide the following services as part of Construction Obligations/Developer Monitoring:

1. Compile all orders of possession, deeds, right of way requirements maps/acquisition documents, executed agreements and any other pertinent information and develop a Construction Obligation Binder including a parcel summary table, key documentation per each parcel, pre-construction photographs, and curative site improvement plans/estimates. Distribute Construction Obligation Binder to the City/BCA for their use and incorporation in the project bid documents.



2. Institute a notification plan for means/methods of acquired property requests from the Project Contractor to the City.
3. Upon receiving written notification of dates anticipated to occupy/use acquired property interests, notify property owner in advance of requested date per the previously agreed upon advanced notice duration in the order of possession/right of way agreement.
4. Perform up to two (2) weekly property inspections during construction and compile inspection reports illustrating work performed in R/W and any non-compliance or non-conformance related issues per terms in the order of possession/right of way agreement. Provide summary reports to the City on a monthly basis for all non-compliance or non-conformance related issues.
5. Coordinate with the City's Construction Manager to issue stop notices/correctional notices as necessary to the Project Contractor when performed work in a non-compliant manner with respect to the signed property owner agreements/final orders of condemnation.
6. Conduct on-site meetings as part of inspection efforts with Developer as necessary to develop action plan for additional interests or necessary change in conditions from previously secured agreements with property owner. Review action plan with the City for resolution.

### **DELIVERABLES:**

- Construction Obligation Binder (Up to 1 including 12 parcels).
- On-Site Property Inspections (Weekly commencing in May 2021 through December 2022).

### **Assumptions/Clarifications:**


- Inspections noted herein are not intended to inspect materials/performance of work and are only limited to the Contractor's use of City acquired property interests with respect to City's obligations for removals/ improvements/terms of use made to the property owner as part of the negotiation efforts.
- Inspections are anticipated to be no more than eight (8) hours per each day and two (2) days per week throughout construction.

**EXHIBIT “B”  
SCHEDULE OF SERVICES**

Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines by City’s Representative.

## EXHIBIT “C” COMPENSATION

Total Compensation shall not exceed two million six hundred seventy-five thousand one hundred twenty-nine dollars (\$2,675,129.00) without prior written authorization of City’s Representative.

<div></div>	Mark Thomas															Subconsultants			TOTAL COST
	Sr. Principal	Project Manager	Engineering Manager	Sr. Technical Lead	Technical Lead	Design Engineer II	Technician	Sr. R/W Engineering Manager	Sr. Utility Coordinator	Sr. R/W Coordinator	Sr. LAUD Division Manager	Sr. Funding Specialist	Sr. Graphic Designer	Total Hours	Total MT Cost	GPA	MONUMENT (R/W)	STK, INC. (R/W)	
\$463	\$362	\$310	\$259	\$213	\$140	\$99	\$245	\$182	\$182	\$268	\$169	\$128							
1.0 PROJECT MANAGEMENT AND COORDINATION																			
1.1 Program Management		600			140			500						1240	\$369,510	-	-	-	\$369,510
1.2 Data Collection/Management					32	32			32	32				128	\$22,916	-	-	-	\$22,916
1.3 Meetings (PDT, R/W, Utility, City Council)		42	480	54	54	240		182	132	164				1348	\$373,412	34,440	-	-	\$407,852
1.4 Submittal Review and Processing		224	500	500	500	224		192	242	548	424			3354	\$921,392	58,119	15,000	-	\$994,511
1.5 Document Preparation								20	72					92	\$18,011	-	-	-	\$18,011
1.6 Project Controls / Financials		88				132		72	132	132				556	\$115,976	-	-	-	\$115,976
1.7 Obtain Additional Funding Sources												88	16	104	\$16,908	-	-	-	\$16,908
Subtotal Phase 1	266	1668	554	554	636	164	0	966	610	876	424	88	16	6822	\$1,838,126	\$92,559	\$15,000	\$0	\$1,945,685
TOTAL HOURS	266	1668	554	554	636	164	0	966	610	876	424	88	16	6822					
Anticipated Salry Increases															\$0	\$0	\$0	\$0	\$0
OTHER DIRECT COSTS															\$0	\$0	\$0	\$0	\$0
TOTAL COST	\$123,225	\$603,616	\$171,496	\$143,719	\$135,182	\$22,881	\$0	\$236,912	\$111,038	\$159,458	\$113,691	\$14,868	\$2,040		\$1,838,126	\$92,559	\$15,000	\$0	\$1,945,685
OPTIONAL TASKS - VALUE ENGINEERING SERVICES																			
1.1 Impact Assessment Coordination/Planning		40						108	60	140				348	\$77,368	-	-	5,000	\$82,368
1.2 Risk Management Strategies		24						128	60	180				392	\$83,764	-	-	-	\$83,764
1.3 Parcel Mitigation Planning		16				160	400	80						656	\$87,409	-	-	5,000	\$92,409
1.4 Construction Obligation Preparation/Coordination		40						408		1320				1768	\$354,817	-	-	-	\$354,817
1.5 Environmental Commitments Review and Compliance														0	\$0	26,487	-	-	\$26,487
1.6 Six-month close out extension		120				120		120						360	\$89,598	-	-	-	\$89,598
Subtotal Optional Tasks	0	240	0	0	0	280	400	844	120	1640	0	0	0	3524	\$692,957	\$26,487	\$0	\$10,000	\$729,444
TOTAL HOURS - OPTIONAL	0	240	0	0	0	280	400	844	120	1640	0	0	0	3524					
Anticipated Salry Increases															\$0	\$0	\$0	\$0	\$0
OTHER DIRECT COSTS - OPTIONAL															\$0	\$0	\$0	\$0	\$0

Expires June 30, 2023\*

**HOURLY CHARGE RATES****Engineering Services**

Sr. Principal	\$463
Project Manager	\$362
Sr. Engineering Manager	\$332
Engineering Manager	\$310
Practice Area Leader	\$284
Sr. Project Manager	\$238
Sr. Technical Lead	\$259
Technical Lead	\$213
Sr. Project Engineer	\$167
Sr. Technical Engineer	\$167
Project Engineer	\$146
Design Engineer II	\$140
Design Engineer I	\$103
Sr. Technician	\$123
Technician	\$99
Intern	\$60

**Survey Services**

Sr. Survey Manager	\$225
Survey Manager	\$210
Sr. Project Surveyor	\$190
Project Surveyor	\$160
Sr. Surveyor	\$145
Surveyor	\$125
Lead Survey Technician	\$150
Sr. Survey Technician	\$125
Survey Technician	\$110
Survey Intern	\$75
Single Chief	\$150
Single Chainman	\$125
Apprentice	\$80
1 Person Field Crew	\$175
2 Person Field Crew	\$275
3 Person Field Crew	\$375

**Urban Planning/Landscape Architecture Services**

Sr. LAUD Division Manager	\$268
LAUD Division Manager	\$230
Sr. LAUD Project Manager	\$200
LAUD Project Manager	\$178
Landscape Architect II	\$145
Landscape Architect I	\$107
Landscape Designer II	\$98
Landscape Designer I	\$72
Intern	\$60

**Project Support/Coordination Services**

Sr. Project Accountant	\$130
Project Accountant	\$103
Sr. Project Coordinator	\$124
Project Coordinator	\$98
Sr. Project Assistant	\$94
Project Assistant	\$66
Sr. Technical Writer	\$107
Technical Writer	\$68
Sr. Graphic Designer	\$128
Graphic Designer	\$83

**District Management Services**

Deputy District Manager	\$247
Sr. Inspector	\$124
Inspector	\$90

**ROW/Utilities Services**

Sr. ROW Engineering Manager	\$245
Sr. Utility Coordinator	\$182
Sr. ROW Coordinator	\$182

**Construction Management Services**

Resident Engineer	\$236
Construction Inspector	\$159

**Funding/Grant Writing Services**

Sr. Funding Specialist	\$169
Funding Specialist	\$125

**Special Services**

Expert Witness	\$405
Strategic Consulting	\$405

**OTHER DIRECT COSTS****Reimbursables including, but not limited to:**

Reproductions, Filing Fees and Field Expenses	Cost Plus 5%
Mileage	Per IRS Rate
Outside Consultant Fees	Cost Plus 5%

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