



Staff Report

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**File #:** 21-0665

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**REQUEST FOR CITY COUNCIL ACTION**

**DATE:** 07/21/2021

**TO:** Honorable Mayor and City Council Members

**FROM:** Public Works Department

**SUBJECT:**

First Amendment to the Professional Services Agreement with Mark Thomas and Company, Inc., for the McKinley Street Grade Separation, Project No. 2012-12.

**EXECUTIVE SUMMARY:**

City Council consideration for the approval of a First Amendment to the Professional Services Agreement with Mark Thomas and Company, Inc., to provide additional project management, procurement, eminent domain/right-of-way support, public outreach support, utility agreements/coordination, and Cooperative Agreement Development Services for the McKinley Street Grade Separation Project, No. 2012-12 that will increase the overall approved contract value from \$2,675,129 to \$3,330,505 for a total increase of \$655,376.

**RECOMMENDED ACTION:**

**That the City Council:**

- a. Approve the First Amendment to Professional Services Agreement with Mark Thomas and Company, Inc., to increase the total compensation by \$655,376 to provide additional project management, procurement, eminent domain/right of way support, public outreach support, utility agreements/coordination, and Cooperative Agreement Development Services for the McKinley Street Grade Separation, Project No. 2012-12.
- b. Authorize the City Manager, or his designee, to execute the First Amendment to the Professional Services Agreement with Mark Thomas and Company, Inc. for a total contract amount of \$3,330,505.
- c. Authorize the Purchasing Manager to issue Change Order No. 1 to Purchase Order P21407 to Mark Thomas and Company, Inc., in the amount of \$655,376, which represents a cumulative

total design cost increase of 24.50 percent.

- d. Authorize the City Manager, or his designee, to approve the appropriate change order necessary for the execution of the work, in accordance with [Corona Municipal Code Section 3.08.070\(I\)](#) up to \$100,000.

## **BACKGROUND & HISTORY:**

### Original Agreement

On June 19, 2019, the City Council authorized the City Manager to execute a Professional Services Agreement with Mark Thomas and Company ("Mark Thomas") to provide project management services for the McKinley Street Grade Separation Project ("Project"). The total compensation included in the initial contract was \$2,675,129. The project management services generally included:

- 1) Preparation of grant applications for Trade Corridor Enhancement Program ("TCEP"), Local Partnership Program ("LPP"), and California Public Utilities Commission ("CPUC") Section 190 Program, which includes all supportive exhibits, narratives, and benefit-cost analyses to help obtain additional project funding.
- 2) Coordination with the California Public Utilities Commission (CPUC), Caltrans, and California Transportation Commission ("CTC") staff to enhance the grant funding applications.
- 3) Review of the design, right-of-way, and utility submittals as an independent reviewer to ensure the Project meets current standards.
- 4) Twenty-four (24) bi-monthly team focus meetings to review the right-of-way and utility relocation delivery schedules, constraints, potential delays, action items, and adjustments to the work plan to maintain the schedule.
- 5) Four (4) Notices to Owner of utilities relocations;
- 6) Four (4) Resolution of Necessity presentations and documentation submittals
- 7) Sixteen (16) City Council Agenda and Administrative Reports;
- 8) Attendance of the monthly Project Development Team ("PDT") meetings to monitor action items and schedule to ensure milestones are being met.
- 9) Review of the 35 percent, 65 percent, 90 percent, and final submittals of the plans, specifications, and project task estimates submitted from Biggs Cardosa Associates, Inc. ("BCA"). The project manager will manage the design phase and construction phase of the project.
- 10) General oversight of the Construction Management firm Falcon Engineering Services, Inc. ("Falcon"), BCA, and the Real Estate consultant Paragon Partners, L.L.P. ("Paragon").
- 11) Submittal of all required documentation to Riverside County Transportation Commission ("RCTC").

### Services Included Within the Proposed Amendment

#### Project Management Services:

From the commencement of the contract, Mark Thomas has conducted the following:

- Focus Meetings (R/W): 40

- Stakeholder/Property Owner/Utility Owner Meetings: 65
- City Council Meetings: 22

Many of the additional meetings were required due to the following:

- Utility owners were non-responsive early in the project development and required significantly more bi-monthly meetings to coordinate their relocation efforts.
- Paragon required assistance in communicating Project design issues and impacts to property and business owners without Mark Thomas to outline the design and construction elements.
- With the right-of-way schedule staggered throughout the beginning, it required more meetings to establish just compensation, discuss administrative settlements and litigation issues.
- Unanticipated rise in miscellaneous materials costs and the limited availability of steel has required additional workshops with the City and Falcon to identify risk mitigation plans.

An additional four (4) Focus Meetings, sixty (60) Stakeholder/Property Owner/Utility Owner Meetings, and twenty (20) City Council Meetings are anticipated to complete the Project through 2023.

#### Procurement Services:

The City requested Mark Thomas develop Requests for Proposals ("RFP"), Requests for Qualifications ("RFQs"), or Notice of Inviting Bids ("NIB") to solicit miscellaneous services necessary for the Project:

- Construction Management: Between December 2020 and March 2021, Mark Thomas developed the RFP, supported the City's Purchasing Division to administer the bid through Planet Bids, developed the advertisement notice, provided responses to questions and clarification requests (3 total) during the bidding, and evaluated the six (6) proposals submitted in response to the RFP. Additionally, Mark Thomas conducted the reference evaluations, led interviews with the City and RCTC for the three (3) shortlisted firms, and developed documentation to justify the selection of Falcon.
- Construction Contractor Prequalification: Between November 2020 and April 2021, Mark Thomas developed the RFQ to establish a qualified list of contractors, contractor's project managers, and steel fabrication/erection sub-consultants authorized to submit a response to the future Notice Inviting Bids ("NIB") for the Project construction. Mark Thomas also led the bid administration services, including developing the advertisement notice, providing responses to questions and clarification requests (4 total) during the bidding, and evaluation of twelve (12) qualification packages submitted in response to the RFQ. Additionally, Mark Thomas conducted the reference interviews (48 total) and developed documentation to justify the prequalified list recommendation.
- Demolition Services: Between February 2021 and April 2021, Mark Thomas developed the NIB to solicit bids for demolition services to remove the Denny's and Outback buildings, including preparation of the advertisement notice, providing responses to questions and clarification requests during the bidding (2 total), and evaluation of two (2) bids submitted in response to the RFP.

#### Right-of-Way Acquisition Support Services:

Due to the Project's accelerated schedule and the overall restrictions and complexities to maintain a typical negotiations process to acquire property, the City required thirteen (13) Resolutions of Necessity Hearings between June 2020 and December 2020 to commence with pleadings to acquire property interests through the use of eminent domain. To date, the City has executed agreements for full settlements on three (3) of the properties and is confident that four (4) more are close to a settlement agreement. Of the remaining six (6) potential cases, one (1) is property owned by a defunct development corporation, and support to the City's eminent domain counsel to acquire the property through a final order of condemnation is not required. Between November 2020 through the current date, Mark Thomas provided supporting information and exhibits for declarations, stipulations, and pleadings and will continue to provide these services through settlements or Final Orders of Condemnation. Additionally, it will participate in depositions and interviews related to remaining Possession and Final Orders of Condemnation Hearings. Mark Thomas will also provide general oversight to any technical experts necessary to support these efforts.

Due to Caltrans involvement and requirements of the TCEP funding grant, a Right-of-Way Certification Submittal per the Caltrans Right-of-Way Manual requirements is necessary for the Project. This was originally included in Paragon's scope of work with a fee of \$25,700; however, due to multidisciplinary information including pertinent utilities coordination, railroad, demolition, and litigation information necessary to be included in the Right-of-Way Certification Submittal, the City identified it was more efficient to have Mark Thomas perform this service with their routine interactions with BCA and the City's eminent domain counsel. Mark Thomas has included this service for \$19,751, so if approved, this task will not be authorized for Paragon to complete. Mark Thomas will prepare the Caltrans Right-of-Way Certification Submittal and coordinate through Caltrans District 8 for approvals and conduct and set up, as necessary, meetings with the District Utilities, Right-of-Way, and Railroad Leads for clarifications and supplemental information.

#### Public Outreach Support Services:

To initiate community and business outreach efforts, Mark Thomas developed presentations with corresponding scripts, conducted rehearsals with pertinent City staff and team members from BCA, reviewed documentation/flyers/exhibits/brochures with the public outreach consultant, and developed responses to questions from the public for the following meetings:

- November 17, 2020, Public Outreach Meeting to the Community
- November 3 - 12, 2020, Business Outreach 1 on 1s (5 Total)
- May 4, 2021, Public Outreach Meeting to the Community

With Falcon engaged in the Project, the City will utilize Falcon to coordinate with City staff and the public outreach consultant for remaining public outreach services throughout the construction of the Project.

#### Utility Agreements/Amendments:

Riverside Public Utilities ("RPU") has superior rights to the City's ownership of McKinley Street Right-of-Way as they have water rights dating back to the late 1800s. As a result, the City is responsible for all costs associated with the relocation of their facilities due to the impacts from the Project. RPU opted to prepare standalone plans, specifications, and contract documents and administer the

construction of all relocation prior to the construction of the Project. Western Municipal Water District ("WMWD") is located within McKinley Street right-of-way per statutory Franchise Agreement rights under the laws defined in the California Public Utilities Code. As a result, WMWD is responsible for all costs associated with the relocation of its facilities due to impacts from the Project. WMWD opted to have the City administer the construction and relocation of their facilities with the construction of the Project. Southern California Edison ("SCE") owns electrical service line and transformer facilities within the Food 4 Less shopping center that will be impacted by the Project located within existing private easements owned by SCE. As a result, the City is responsible for all costs to relocate the service line and transformer facilities as impacted by the Project.

All three relocation efforts listed above involve reimbursement from either the utility purveyor to the City or the City to the utility purveyor. Additionally, the utility purveyors and the City will require responsibilities and covenants each shall be responsible during the relocation of each utility facility. Consistent with Caltrans Right-of-Way Manual and the City of Corona policies, each relocation will require a Cooperative Agreement between the City and utility purveyor that defines reimbursement, payment, responsibilities and covenants, rights allowed after construction, right-of-way acquisition, and other pertinent terms necessary to facilitate the relocation. Between October 2020 and June 2021, Mark Thomas prepared the agreements for RPU and WMWD and performed all coordination for approvals. Currently, the RPU Agreement has been fully executed, and WMWD is expected to have full execution by the end of July 2021. Mark Thomas will prepare one (1) additional Utility Cooperative Agreement between Southern California Edison and the City. Additionally, Mark Tomas will review all bids, receipts, change orders, invoices, and construction cost/administrative information for each of the three (3) utility owners with agreements to establish true final reimbursement/compensation amounts. Mark Thomas will also prepare up to three (3) Utility Agreement Amendments to close out all utility relocation tasks associated with the original Cooperative/Reimbursement Agreements.

#### Cooperative Agreements

To enact Eminent Domain and Utility Franchise Rights Agreements for areas outside of the City's jurisdiction, the City entered into a Cooperative Agreement with Riverside County pursuant to California Code of Civil Procedure section 1240.140. Mark Thomas led the development of the Cooperative Agreement in November 2019 and coordinated with the City and Riverside County through the City Council/Board of Supervisor's approvals to have the agreement executed by each agency.

#### **ANALYSIS:**

These services mentioned above were not included within the requested scope of work from RFP 19-026CA, soliciting Project Management Services from professional consultants for the following reasons:

- 1) Meetings - The initial number of meetings proposed was reasonable for the Project's needs. However, as the Project progressed and stakeholders were initially contacted, additional meetings were required to maintain the Project schedule.
- 2) Procurement - The City intended to prepare the Construction Management RFP using City Staff; however, there were limited resources available from the City to utilize based on other

projects' workloads and key staff retirements. Typically, the City does not prequalify contractors; however, as the design progressed and based on counsel from RCTC, the County of Riverside, and the consultant team, the City felt it prudent to establish a prequalified bench to ensure contractors had adequate financials, management structure, and qualifications to build this project in lieu of the lowest responsible bid without the need to demonstrate these elements. Initially, the City intended for building demolition to be included with the construction contract; however, this changed when the City received possession of both buildings months earlier than anticipated. To minimize risk by accelerating the demolition schedule, the City felt it prudent to have a separate procurement for building demolition from the construction of the Project.

- 3) Right-of-Way Acquisition Support - The initial RFP for Project Management Services was prepared prior to any property owner negotiations commencing, and right-of-way requirements were very preliminary. The City opted not to include these services in the initial RFP, given a high likelihood for scope change as the design progresses.
- 4) Public Outreach Support Services - The City did not include these services in the RFP as it was unclear at the time if the project management consultant would lead these efforts or City staff would work directly with the public outreach consultant.
- 5) Utility Agreements - Typically, investigations for prior/franchise rights does not occur until after conflicts are identified, and utility owners noticed, generally at the 65% design. This had not occurred at the time the RFP was released, and the City opted not to include these services, given a high likelihood for scope change as the design progresses.
- 6) Cooperative Agreement - The City did not anticipate this requirement.

To preserve the Project schedule, Mark Thomas completed the following:

- 1) The additional Focus, Stakeholder, and City Council meetings listed above.
- 2) All of the Procurement services.
- 3) Right-of-Way Acquisition Support services through the initial Possession Hearings.
- 4) All of the Public Outreach Support services.
- 5) Development of the WMWD and RPU Utility Agreements.
- 6) All of the Cooperative Agreements.

The above items represent approximately \$330,000 in services. Through May 2021, Mark Thomas has \$1,069,546 remaining in their budget from the original \$2,675,129, having completed approximately 23 months of their term, leaving approximately 24 to 30 months remaining to complete the necessary services in the contract. The majority of the work associated with its initial contract was to occur prior to commencement of construction (approximately 50% of tasks 1.1 through 1.6 and 2.4, and all of tasks 1.7, 2.1 through 2.3, and 2.5 totaling \$1.45 million, leaving \$1.23 million - see Exhibit A of attached contract) as there were more tasks associated with obtaining miscellaneous approvals, right-of-way acquisition, utility coordination, funding and design oversight anticipated than tasks anticipated through construction. Even with the additional services completed, Mark Thomas has expended \$1,605,583 of their original contract and has completed all anticipated tasks listed above, meaning they are slightly ahead of completion of tasks and anticipated progress compared to the expected expenses less the amount for the additional services.

Should City Council not approve this amendment, Mark Thomas can continue to provide project management services; however, remaining services per their original contract may need to be amended. Additionally, the City would need to provide an alternative source of work through one of the other consultants (BCA or Falcon) or through City staff to support the City's eminent domain consultant as these services will generally require familiarity with the Project history, property negotiations, and impacts to each property. City staff believes Mark Thomas will provide the most efficient solution as they have closely managed the design, right-of-way, and eminent domain consultants from 35% plan sets through final design.

City staff recommends approving this amendment for Mark Thomas to complete all services as originally proposed and the additional services included with the amendment through construction.

**FINANCIAL IMPACT:**

The total for fees associated with the additional service request as attached to this report and as proposed in the First Amendment to the Professional Services Agreement with Mark Thomas is as follows:

- 1) Additional Project Management: \$202,688
- 2) Procurement: \$94,604
- 3) Eminent Domain & Right-of-Way Acquisition Support: \$244,482
- 4) Public Outreach Support: \$29,408
- 5) Utility Agreements/Coordination: \$60,016
- 6) Riverside County Cooperative Agreement: \$24,178
- Total: \$655,376

Available funding for the Project is as follows:

<b>Project Funding</b>	
<b>Funding Source</b>	<b>Amount</b>
State Senate Bill 132	\$84,450,000
Gas Tax	\$229,724
Transportation Development Act	\$2,000,000
Transportation Uniform Mitigation Fees	\$1,630,114
Riverside County Transportation Commission Measure A	\$2,000,000
BNSF Railway Company Contributions	\$3,810,000*
CTC – Trade Corridor Enhancement Program (TCEP)	\$10,300,000
CPUC Section 190	\$5,000,000
CTC – Highway Railroad Crossing Safety Account (HRCSA)	\$2,876,000
Western Municipal Water District Contributions	\$1,400,000
<b>Total</b>	<b>\$113,695,838</b>

\* Denotes the City has concluded the negotiations with BNSF for their share of contributions and are currently in the process of executing the Overpass Agreement as authorized per the City Council on May 19, 2021. The total BNSF contribution is \$3,810,000 and is no longer estimated.

The City has identified the following costs as part of the current Project budget:



Project Expenditures	
Expenditure Source	Amount
Design	\$12,023,838
Project Management	\$3,330,505
Construction Management and Inspection Services	\$11,000,000
Estimated BNSF Railway Company Fees/Costs	\$1,718,858
Demolition of Structures Located at 151 and 165 N. McKinley St	\$206,283
Construction, Right of Way, and Utility Relocation	\$85,416,354
<b>Total</b>	<b>\$113,695,838</b>

\*\* Denotes this item includes Amendment Number 1 fees per the attached additional services request.

\*\*\* Denotes this item is based upon the estimated costs as identified by BNSF in the Overpass Agreement to be executed between the City and BNSF as authorized by the City Council on May 19, 2021.

#### **ENVIRONMENTAL ANALYSIS:**

Per Public Resources Code Section 21080.13, all railroad grade separations projects which eliminates an existing at grade crossing is exempt from the laws for the California Environmental Quality Act (CEQA). As a grade separation project, this Project is statutorily exempt under the California Environmental Quality Act.

**PREPARED BY:** PETER RAMEY, P.E., ENGINEERING CONSULTANT

**REVIEWED BY:** SAVAT KHAMPHOU, PUBLIC WORKS DIRECTOR

#### **Attachments:**

1. Exhibit 1 - First Amendment to the Professional Services Agreement
2. Exhibit 2 - Mark Thomas Additional Services Request
3. Exhibit 3 - Professional Services Agreement Mark Thomas