

CONSULTING SERVICES AGREEMENT

(To be used only for Architectural, Engineering or Land Surveying Services.)

This consulting services agreement ("Agreement") is dated December 1, 2012, and is between the agency and the consultant identified below. The parties agree to each of the terms set forth below (the "Basic Terms") and to each of the terms set forth in the Attachments (as defined below).

1. Parties.

(a) Agency: *(check one)*

- ☒ Contra Costa County for its Department named below
- ☐ Contra Costa County Flood Control and Water Conservation District
- ☐ Contra Costa County Fire Protection District
- ☐ Housing Authority of the County of Contra Costa
- ☐ Contra Costa County Redevelopment Agency

(i) Department *(if applicable)*: Public Works

(ii) Department Head means the individual named below or his or her designee *(check one)*:

- ☐ Director of General Services
- ☒ Public Works Director/Chief Engineer
- ☐ Fire Chief
- ☐ Housing Authority Executive Director
- ☐ Director of Department of Conservation and Development

(iii) Agency Mailing Address: Contra Costa County Public Works Dept.
255 Glacier Drive
Martinez, CA 94553
Attn: Slava Gospodchikov

(b) Consultant's Name & Address: Mark Thomas & Company, Inc.
3000 Oak Road, Suite 650
Walnut Creek, CA 94597
Attn: Sasha Dansky

(i) Type of Business Entity: Corporation
(e.g., individual, corporation, sole proprietorship, partnership, limited liability company)

If corporation, add State of incorporation: CA

(ii) Federal Taxpayer I.D. or SSN: 94-1451490

(iii) License Number: 60220

2. Project Name, Number, & Location: On-Call Civil Engineering Consulting Services, various future projects and countywide locations.

3. Term. The effective date of this Agreement is December 1, 2012. It terminates on December 1, 2015 unless sooner terminated as provided herein.

4. Payment Limit. Payments under this Agreement cannot exceed: \$250,000.
5. Legal Authority. This Agreement is entered into under and subject to Government Code Section 4525 or Section 31000, or:
- ☐ Health and Safety Code Section 13861 (*Fire Protection District*)
☐ Health and Safety Code Section 34314 (*Housing Authority*)
☐ Health and Safety Code Section 33125 (*Redevelopment Agency*)
☐ Other (*Specify*)
6. Attachments. The following documents are attached to this Agreement (the "Attachments") and are incorporated herein by reference. This Agreement includes the Basic Terms, the signature pages, and all of the Attachments.
- ☒ General Conditions (*always attached*)
☒ Special Conditions (*optional*)
☒ Appendix A: Scope of Services (*always attached*)
☒ Appendix B: Payment Provisions, Project Personnel and Billing Rates (*always attached*)
7. Signatures. The signatures set forth below attest the parties' agreement hereto:

CONSULTANT

SIGNATURE A

Consultant's Name:

Mark Thomas & Company, Inc.,
a California corporation

By Michael J. Lohman
(Signature of individual or officer)
Michael J. Lohman, President
(Print name and title, if applicable)

SIGNATURE B

By Jimmy W. Sims
(Signature of individual or officer)
Jimmy W. Sims, Secretary
(Print name and title, if applicable)

Note to Consultant: If Consultant is a corporation, two officers must sign the Agreement. The first signature (Signature A) must be that of the chairman of the board, president, or vice-president; the second signature (Signature B) must be that of the secretary, assistant secretary, chief financial officer, or assistant treasurer. (Civil Code Section 1190 and Corporations Code Section 313.) The acknowledgment below must be signed by a Notary Public.

ACKNOWLEDGMENT

State of California)
County of Santa Clara)

On December 13, 2012, before me, Kacey Sunseri, Notary Public, personally appeared Michael J. Lohman, President (insert name(s) and title(s) of the officer(s) signing on behalf of the Consultant), who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

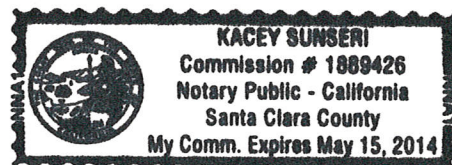
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

Kacey Sunseri
Signature

(Notary's Seal)

Basic Terms
(Page 2 of 3)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Clara

On December 17, 2012 before me, Kacey Sunseri, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Jimmy William Sims
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature: [Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Contra Costa County Consulting Services Agreement

Document Date: December 1, 2012 Number of Pages: 38

Signer(s) Other Than Named Above: Michael J. Lohman, President

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

☐ Corporate Officer — Title(s): _____ ☐ Corporate Officer — Title(s): _____

☐ Individual ☐ Individual

☐ Partner — ☐ Limited ☐ General ☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact ☐ Attorney in Fact

☐ Trustee ☐ Trustee

☐ Guardian or Conservator ☐ Guardian or Conservator

☐ Other: _____ ☐ Other: _____

Signer Is Representing: _____ Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

AGENCY

(a) If Agreement is approved by Agency governing body (required if Payment Limit exceeds \$100,000):

AGENCY,

ATTEST: Clerk of the Board of Supervisors

By _____
Board Chair/Designee

By _____
Deputy

(b) If Agreement is approved by County Purchasing Agent:

AGENCY,

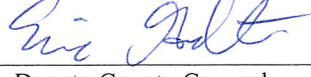
By _____
County Purchasing Agent or Designee

COUNTY APPROVALS

RECOMMENDED BY DEPARTMENT

By  _____
Designee

FORM APPROVED BY COUNTY COUNSEL

By  _____
Deputy County Counsel
Eric Gulston

APPROVED: COUNTY ADMINISTRATOR

By _____
Designee

GENERAL CONDITIONS
(Consulting Services Agreement)

8. Employment/Scope of Service. Agency hereby employs Consultant, and Consultant accepts such employment, to perform the professional services as described in Appendix A (Scope of Services), upon the terms and in consideration of the payments stated herein.
9. Report Disclosure Section. Pursuant to Government Code Section 7550, Consultant shall include in all documents or written reports completed and submitted to Agency in accordance with this Agreement, a separate section listing the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of each such document or written report. This section only applies if the Payment Limit of this Agreement exceeds \$5,000. If multiple documents or written reports are the subject or product of this Agreement, the disclosure section may also contain a statement indicating that the total Agreement amount represents compensation for multiple documents or written reports.
10. Insurance. Consultant may not commence work under this Agreement until it has furnished evidence of the insurance required herein to the Department Head, and the Department Head has approved it, and may not continue to perform any work under this Agreement if the insurance required herein is no longer in effect.
 - (a) Types and Amount of Insurance: Consultant, at no cost to Agency, shall obtain and maintain during the term hereof: (i) Workers' Compensation Insurance pursuant to state law, including, without limitation, California Labor Code section 3700; (ii) Professional Liability Insurance with a minimum coverage limit of \$1,000,000 for claims made in the aggregate annually and a maximum self-insured retention or self-insured retained limit of liability of \$25,000, for all damages or losses because of errors, omissions or malpractice arising out of the provision of professional services by Consultant and Consultant's subconsultants under this Agreement; and (iii) liability insurance with a minimum coverage limit of \$5,000,000 for claims made in the aggregate annually for all personal injury and property damage, to include liability assumed under this Agreement, the use of any licensed motor vehicle by Consultant or subconsultants, and naming Agency, its governing body, officers and employees as additional insureds. The policies will constitute primary insurance as to Agency and its governing body, officers and employees such that other insurance policies held by them or their self-insurance program(s) are not required to contribute to any loss covered under Consultant's insurance policy or policies.
 - (b) Certificate of Insurance: Prior to the effective date of this Agreement, Consultant shall furnish to the Department Head certificates of insurance evidencing the coverage required herein and requiring 30 days' written notice to Agency of policy lapse, cancellation or material change in coverage. If Consultant renews the insurance policy(ies) or acquires a new insurance policy(ies) or amends the coverage through an endorsement to the policy(ies) at any time during the term of this Agreement, then Consultant shall provide current certificate(s) to the Department Head.
 - (c) Warranty: Consultant represents and warrants that, as of the effective date of this Agreement, Consultant is not aware of any situation that has occurred that could reduce the limits of liability set forth above for claims made under this Agreement.
 - (d) Labor Code Section 1861 Certification: In executing this Agreement, Consultant certifies as follows: "I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract."
11. Payment. Agency shall pay Consultant for professional services performed as described in Appendix A at the rates shown in Appendix B, which include all overhead and incidental expenses, for which no additional compensation will be allowed. Notwithstanding the foregoing, Agency shall reimburse those incidental expenses specifically itemized in Appendix B, provided that Consultant submits copies of receipts and, if applicable, a detailed mileage log to the Department Head. In no event may the total amount paid to Consultant exceed the Payment Limit specified in Section 4, Payment Limit, without Agency's prior written approval.
 - (a) Billing Statements: Consultant shall submit billing statements in the manner and form prescribed by the Department Head detailing the work performed and listing, for each item of services, the employee categories, hours and rates. Except as otherwise provided in the Scope of Services, Consultant shall submit the billing statements no later than 30 days from the end of the month in which the services described in the billing statement were actually rendered. Except as provided in subsections (b)–(d) below, Agency will endeavor to pay Consultant within 30 days after receipt of each statement.

GENERAL CONDITIONS
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- (b) Documentation: Consultant shall furnish progress reports with each billing statement at no additional charge. Consultant shall include sufficient detail in each progress report, and shall furnish to the Department Head whatever additional information is necessary, to enable the Department Head to determine whether Consultant is performing all tasks described in the Scope of Services pursuant to the schedule set forth in the Scope of Services.
- (c) Penalty for Late Submission: If Agency is unable to obtain reimbursement from the state or federal government as a result of Consultant's failure to submit to Agency a timely billing statement as set forth above, Agency will not be obligated to pay Consultant for the services included in the late billing statement.
- (d) Right to Withhold: Agency may withhold payment to Consultant following written notice to Consultant that: (i) Consultant has failed to fully perform its obligations under this Agreement (including, without limitation, any failure to submit required deliverable items according to the schedule set forth in the Scope of Services); (ii) Consultant has neglected, failed, or refused to furnish information or cooperate with any inspection, review, or audit of its work or records; or (iii) Consultant has failed to sufficiently itemize or document its billing statement.
- (e) Audit Exceptions: Consultant accepts responsibility for receiving, replying to, and/or complying with any audit exceptions by appropriate county, state or federal audit agencies resulting from its performance of this Agreement. Within 30 days of demand, Consultant shall pay Agency the full amount of Agency's obligation to the state and/or federal government resulting from any audit exceptions that are attributable to Consultant's failure to properly perform any of its obligations under this Agreement.
- (f) Payment Retention: Agency may retain 10% of each billing statement as security for the fulfillment of this Agreement. After Consultant has completed all services as required under this Agreement, submitted final billing, and if the Department Head has determined that the services have been completed in accordance with this Agreement, Agency will release all withheld funds.
- (g) Penalties for False Claims: Any person who commits any of the following acts shall be liable to Agency for three times the amount of damages which Agency sustains because of the act of that person. A person who commits any of the following acts shall also be liable to Agency for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to Agency for a civil penalty of not less than \$5,000 and not more than \$10,000 for each false claim: (a) Knowingly presents or causes to be presented to an officer or employee of Agency a false claim for payment or approval. (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by Agency. (c) Conspires to defraud Agency by getting a false claim allowed or paid by Agency. (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to Agency. (e) Is a beneficiary of an inadvertent submission of a false claim to Agency, subsequently discovers the falsity of the claim, and fails to disclose the false claim to Agency within a reasonable time after discovery of the false claim. Liability under this section shall be joint and several for any act committed by two or more persons.
12. Extra Work. Any work or services in addition to the work or services described in the Scope of Services that Agency deems necessary to properly complete the work or services described in Scope of Services shall be performed by Consultant at the direction of Agency according to the rates or charges listed in Appendix B. In the event that no rate or charge is listed for a particular type of extra work, Consultant will be paid for the extra work at a rate to be mutually agreed on prior to the commencement of the extra work. In no event will Consultant be entitled to compensation for extra work unless, prior to commencement of the extra work, Agency has executed a written amendment describing the extra work and payment terms in accordance with Section 32, Amendments.
13. Time for Completion. Consultant shall complete all services covered by this Agreement no later than the end of the term as set forth above. Notwithstanding the foregoing, to the extent the Scope of Services provides for the phasing of services, Consultant shall complete all services for each phase of the project by the deadlines stated in the Scope of Services.
14. Termination by Agency. At its option, Agency may terminate this Agreement at any time by written notice to Consultant, whether or not Consultant is then in default. Upon such termination, Consultant shall, without delay, deliver to Agency all materials and records prepared or obtained in the performance of this Agreement, and Agency shall pay Consultant, without duplication, all amounts due for the services rendered up to the date of termination.

GENERAL CONDITIONS
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15. Abandonment by Consultant. If Consultant ceases performing services under this Agreement or otherwise abandons the project prior to completing all of the services described in this Agreement, Consultant shall deliver to Agency, without delay, all materials and records prepared or obtained in the performance of this Agreement. Agency shall pay Consultant the amount it determines to be the reasonable value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which Agency incurs as a result of such cessation or abandonment.
16. Ownership of Documents. All materials and records of a finished nature, such as final plans, specifications, reports, and maps, prepared or obtained in the performance of this Agreement, shall be delivered to and become the property of Agency. Consultant shall retain, and make available to Agency in accordance with Section 17, Record Retention and Auditing, all materials of a preliminary nature, such as survey notes, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this Agreement.
17. Record Retention and Auditing. Except for materials and records delivered to Agency, Consultant shall retain all materials and records prepared or obtained in the performance of this Agreement, including financial records, for a period of at least five years after Consultant's receipt of the final payment under this Agreement. Upon request by Agency, Consultant shall promptly make such materials and records available to Agency, or to authorized representatives of the state and federal governments, at a convenient location within Contra Costa County designated by the Department Head, at no additional charge and without restriction or limitation on their use.
18. Independent Contractor Status. The parties intend that Consultant, in performing the services specified herein, is acting as an independent contractor and that Consultant will control the work and the manner in which it is performed. This Agreement is not intended and may not be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture or association. Additionally, Consultant is not entitled to participate in any pension plan, workers' compensation plan, health plan, insurance, bonus or similar benefits Agency provides to its employees. In the event that Agency exercises its right to terminate the Agreement, Consultant expressly agrees that it will have no recourse or right of appeal under any rules, regulations, ordinances or laws applicable to employees.
19. Breach. If Consultant fails to perform any of the services described in this Agreement in the manner and timeframe set forth in the Scope of Services or otherwise breaches this Agreement, Agency may pursue all remedies provided by law or equity. Disputes relating to the performance of this Agreement are not subject to non-judicial arbitration.
20. Compliance with Laws. In performing this Agreement, Consultant shall comply with all applicable laws, statutes, ordinances, rules and regulations, whether federal, state, or local in origin, including, but not limited to, licensing and purchasing practices, and wages, hours and conditions of employment, including nondiscrimination and prevailing wage rates and their payment in accordance with California Labor Code Section 1775. If any federal or state regulations or laws touching upon the subject of this Agreement are adopted or revised during the term hereof, this Agreement will be deemed amended and Consultant will comply with such federal or state requirements.
21. Assignment. Consultant may not assign or transfer this Agreement, in whole or in part, whether voluntarily, by operation of law or otherwise; provided, however, Consultant may, subject to any required state or federal approval, enter into subcontracts for the portion of the services for which Consultant does not have the facilities to perform so long as Consultant obtains the Department Head's written consent to such subcontracting prior to execution of this Agreement. The Department Head may withhold consent to any proposed subcontract in his or her sole and absolute discretion. Any purported assignment, transfer or subcontract that does not comply with the terms hereof is void.
22. Endorsement on Plans. Consultant shall endorse all plans, specifications, estimates, reports and other items described in Scope of Services prior to delivering them to Agency, and, where appropriate, indicate his or her registration number.
23. Works Made for Hire; Confidentiality. All reports, original drawings, graphics, plans, studies, and other data and documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement are "works made for hire" (as defined in the Copyright Act, 17 U.S.C.A., Sections 101 *et seq.*, as amended) for Agency, and Consultant unconditionally and irrevocably transfers and assigns to Agency all right, title, and interest, including all copyrights and other intellectual property rights, in or to the works made for hire. If any of the works made for hire is subject to copyright protection, Agency reserves the right to copyright such works and Consultant agrees not to copyright such works. If any works made for hire are copyrighted, Agency reserves a royalty-free, irrevocable license to reproduce, publish, and

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use the works made for hire, in whole or in part, without restriction or limitation, and to authorize others to do so. Unless required by law, Consultant shall not publish, transfer, discuss, or disclose any of the above-described works made for hire, or any financial, statistical, personal, technical, or other data or information relative to Agency's operations, which are designated confidential by Agency and made available to Consultant in order to carry out Consultant's work under this Agreement, or any information gathered, discovered, or generated in any way through this Agreement, without Agency's prior express written consent. Permission to disclose information on one occasion or public hearing does not constitute authorization to further disclose such information on any other occasion.

24. **Indemnification.** Consistent with California Civil Code section 2782.8, Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless Agency, and its employees, officials, and agents, from any and all demands, losses, claims, costs, liabilities, and expenses for any damage, injury, or death, including any and all administrative fines, penalties or costs imposed as a result of an administrative proceeding, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control. If requested by Agency, Consultant shall defend any such suits at its sole cost and expense. If Agency elects to provide its own defense, Consultant shall reimburse Agency for any expenditures, including reasonable attorneys' fees and costs. Consultant's obligations under this section exist regardless of concurrent negligence or willful misconduct on the part of Agency or any other person; provided, however, that Consultant will not be required to indemnify, including the cost to defend, Agency for the proportion of liability a court determines does not arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control. This indemnification clause will survive the termination or expiration of this Agreement.
25. **Endorsements.** Consultant may not, in its capacity as a Consultant with Agency, (a) publicly endorse or oppose the use of any particular brand name or commercial product without the prior approval of Agency's governing body, (b) publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely accepted scientific basis for such claims or without the prior approval of Agency's governing body or (c) participate or appear in any commercially-produced advertisements designed to promote a particular brand name or commercial product, even if Consultant is not publicly endorsing a product, as long as Consultant's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of Agency. Notwithstanding the foregoing, Consultant may express its views on products to other consultants, to Agency's governing body or its officers, or to others who may be authorized by Agency's governing body or by law to receive such views.
26. **Project Personnel.** In performing the services authorized under this Agreement, Consultant shall use the personnel listed in Appendix B. Consultant may only make changes in project personnel and authorized subconsultants with the Department Head's prior written consent, and Consultant shall notify the Department Head in writing at least thirty (30) days in advance of any proposed change. Any person proposed as a replacement shall possess training, experience, and credentials comparable to those of the person being replaced.
27. **Inspection.** Authorized representatives of Agency, the State of California and the United States Government may monitor, inspect, review and audit Consultant's performance, place of business and records pertaining to this Agreement. Consultant shall make these items available for inspection upon request.
28. **Conflicts of Interest.** Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement, Consultant will employ no person having any such interest. If requested to do so by Agency, Consultant shall complete a "Statement of Economic Interest" form and deliver it to the Department Head and shall require any other person doing work under this Agreement to complete a "Statement of Economic Interest" form and deliver it to the Department Head. Consultant covenants that Consultant, its employees and officials, are not now employed by Agency and have not been so employed by Agency within 12 months immediately preceding this Agreement; or, if so employed, did not then and do not now occupy a position that would create a conflict of interest under Government Code Section 1090. In addition to any indemnity provided by Consultant in this Agreement, Consultant shall indemnify, defend and hold Agency harmless from any and all claims, investigations, liabilities or damages resulting from or related to any and all alleged conflicts interest.
29. **Nonrenewal.** Consultant understands and agrees that there is no representation, implication, or understanding that the services provided by Consultant under this Agreement will be purchased by Agency under a new contract following expiration or

GENERAL CONDITIONS
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termination of this Agreement, and Consultant waives all rights or claims to notice or hearing respecting any failure to continue purchasing all or any such services from Consultant.

30. Professional Competence; Licensure. Consultant represents and warrants that it is (i) professionally competent and able to provide the professional services described in this Agreement by reason of Consultant's personal knowledge and skill, and (ii) currently licensed by the State of California, and will remain licensed in good standing at all times during the term of this Agreement, as one or more of the following: (a) an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the California Business and Professions Code; (b) a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the California Business and Professions Code; (c) a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the California Business and Professions Code; or (d) a professional land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the California Business and Professions Code.
31. Notices. All notices under this Agreement must be in writing, and, except as otherwise provided in the Scope of Services, sent by personal delivery (including overnight courier service) or by certified United States Mail, postage prepaid, to the parties at the addresses designated above, unless changed by written notice to the other party. Consultant shall address all notices to Agency to the Department Head. The effective date of the notice is the date of deposit in the mail or of other delivery, except that the effective date of notice to Agency is the date of receipt by the Department Head.
32. Amendments. This Agreement may be amended only by written agreement signed by both of the parties.
33. Disputes. Disagreements between Agency and Consultant concerning the meaning, requirements or performance of this Agreement are subject to final written determination of the Department Head or in accordance with the applicable procedures (if any) required by state or federal government.
34. Choice of Law and Personal Jurisdiction. This Agreement is made in Contra Costa County and is governed by, and will be construed in accordance with, the laws of the State of California. The parties, to the fullest extent permitted by law, knowingly, intentionally, and voluntarily, with and upon the advice of competent counsel, submit to personal jurisdiction in the State of California over any suit, action or proceeding arising from or relating to the terms of this Agreement.
35. No Implied Waiver. No waiver of any provision of this Agreement by Agency is valid unless it is in writing and signed by Agency. Waiver by Agency at any time of any breach of this Agreement may not be deemed a waiver of or consent to a subsequent breach of the same or any other provision of this Agreement. If Consultant's action requires the consent or approval of Agency, that consent or approval on one occasion may not be deemed a consent to or approval of that action on any later occasion or a consent to or approval of any other action. Subject to Section 33, Disputes, inspections, approvals or statements by any officer, agent or employee of Agency indicating Consultant's performance or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of Consultant's performance, or payments therefor, or any combination of these acts, does not relieve Consultant of its obligation to fulfill this Agreement as prescribed or prevent Agency from bringing an action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Agreement.
36. Successors and Assigns. Subject to Section 21, Assignment, this Agreement binds Consultant's successors, assigns, heirs, executors and personal representatives.
37. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto, and no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction of any party in connection therewith.
38. Construction. The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement may not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply to the interpretation of this Agreement.
39. Severability. If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement will not be affected thereby.

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40. Entire Agreement. This Agreement, together with all of the attachments listed in Section 6, Attachments, contains all of the terms and conditions agreed upon by the parties regarding the subject matter of this Agreement, and supercedes all previous communications, representations, understandings and agreements, whether verbal, written, express or implied, between the parties.
41. Authorization. Consultant, or the representative(s) signing this Agreement on behalf of Consultant, represents and warrants that Consultant has full power and authority to enter into this Agreement and to perform the obligations set forth herein, and that the representatives signing this Agreement have the authority to execute this Agreement on behalf of Consultant and to bind Consultant to its contractual obligations hereunder.

The following provisions apply only to projects using US Department of Transportation funds.

42. Disadvantaged Business Enterprise (DBE) Requirements (Federal aid projects only). Consultant shall comply with all applicable provisions of 49 CFR, Parts 23 and 26, and the Contra Costa County's Disadvantaged Business Enterprise (DBE) Program, which are incorporated into this Agreement by reference. In addition, in performing services under this Agreement, Consultant shall utilize all DBEs listed in Consultant's written response to Agency's request for qualifications or request for proposal and shall pay to the listed DBEs the estimated amounts listed in Appendix B attached to this Agreement. Consultant shall not substitute a listed DBE at any time or decrease the amount to be paid to a listed DBE without the advance, written consent of Agency. If a listed DBE is proposed to be replaced, Consultant shall make a good faith effort to replace the original DBE with another DBE and shall submit to Agency written documentation of such effort.
43. Federal Cost Principles and Procedures (Federal aid projects only). Consultant shall comply with the following provisions, which are incorporated into this Agreement by reference: (a) the cost principles for allowability of individual items of costs set forth in 48 CFR, Chapter 1, Part 31; (b) the administrative procedures set forth in 49 CFR, Part 18; and (c) the administrative procedures for non-profit organizations set forth in OMB Circular A-110, if applicable to Consultant. In the event that payment is made to Consultant for any costs that are determined by subsequent audit to be unallowable under 48 CFR, Chapter 1, Part 31, Consultant shall refund the payment to Agency within 30 days of written request from Agency. Should Consultant fail to do so, and should Agency file legal action to recover the refund, Consultant shall reimburse Agency for all attorneys' fees, costs, and other expenses incurred by Agency in connection with such action.
44. Prohibition of Expending Local Agency State or Federal Funds for Lobbying (Federal aid in excess of \$100,000 only). In executing this Agreement, Consultant makes the following certification, which certification is a material representation of fact relied upon by Agency in entering into this Agreement:
- (a) Certification. To the best of Consultant's knowledge and belief:
- (i) No state, federal or local agency appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a member of the Legislature or Congress, in connection with the awarding of any state or federal contract, the making of any state or federal grant, the making of any state or federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
- (ii) If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with this federal contract, grant, loan, or cooperative agreement, Consultant shall complete and submit Form – LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (b) Penalty for Failure to File Disclosure Form. Submission of the disclosure form is a prerequisite for making or entering into this Agreement imposed by Title 31 U.S.C. Section 1352. Any person who fails to file the required disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (c) Applicability to Subconsultants. In executing this Agreement, Consultant also agrees to require that the language of this

GENERAL CONDITIONS
(Consulting Services Agreement)

Section 44 be included in all contracts with subconsultants that exceed \$100,000, and that all such subconsultants shall certify and disclose accordingly.

45. Compliance with American Recovery and Reinvestment Act ("Recovery Act"). Consultant shall comply with the following provisions, which are incorporated into this Agreement by reference: (a) the statutory provisions contained in Chapter 1 of Title 23 of the United States Code; and (b) the reporting requirements, terms and conditions set forth in Sections 1201 and 1512 of the Recovery Act, and as designated by the State of California. Consultant's failure to comply with these provisions will result in retentions from progress payments due and/or other sanctions.

Special Conditions (Consulting Services Agreement)

Consultant and Agency agree that the following Special Conditions are part of this Agreement.

1. As used in this Agreement, the terms "Consultant" and "Contractor" both mean Mark Thomas & Company, Inc. As used in this Agreement, the term "Contract" has the same meaning as Agreement (as defined in the first paragraph of this Agreement).
2. The method of payment for this Agreement is specified hourly rate not to exceed the Payment Limit specified in Section 4 (Payment Limit) of the Basic Terms without Agency's prior approval.
3. No payment will be made prior to Agency's approval of any work, nor will Consultant perform any work prior to Agency's approval of this Agreement.
4. Section 10(a)(ii) of the the General Conditions is hereby deleted in its entirety and replaced with the following:

"Professional Liability Insurance with a minimum coverage limit of \$2,000,000 for claims made in the aggregate annually and a maximum self-insured retention or self-insured retained limit of liability of \$100,000, for all damages or losses because of errors, omissions or malpractice arising out of the provision of professional services by Consultant and Consultant's subconsultants under this Agreement."

5. Section 10(b) (Certificate of Insurance) of the General Conditions is hereby deleted in its entirety and replaced with the following:

"Certificate of Insurance: Prior to the effective date of this Agreement, Consultant shall promptly furnish to the Contra Costa County Public Works Department (Department) certificates of insurance evidencing the coverage required herein. Additionally, no later than five days after Consultant's receipt of (i) a notice of cancellation or a notice of an intention to cancel any of Consultant's insurance coverage required by this Agreement, or (ii) a notice of a material change to Consultant's insurance coverage required by this Agreement, Consultant will provide Agency a copy of such notice of cancellation, or notice of intention to cancel, or notice of material change. Consultant's failure to provide Department the notice as required by the preceding sentence is a default under this Agreement. If Consultant renews any of the insurance policies or acquires any new insurance policies or amends the coverage through an endorsement to any policy at any time during the term of this Agreement, then Consultant shall provide current certificates to Department.

6. Section 11(f) (Payment Retention) of the General Conditions is hereby deleted in its entirety and replaced with the following: Payment Retention: Agency will not retain any funds.

7. Notwithstanding the provisions of Section 21 (Assignment) of the General Conditions , Agency hereby consents to Consultant subcontracting with its subcontractors: (i) GeoCADD Inc. and (ii) Radman Aerial Surveys, Inc. (each a "Subcontractor"); provided that no Subcontractor contract will include payment provisions greater than the amounts such Subcontractor is to be paid according to Attachment 1 to Appendix B of this Agreement.

8. Section 24 (Indemnification) of the General Conditions is hereby deleted in its entirety and replaced with the following:

"24. Indemnification. Consistent with California Civil Code section 2782.8, Consultant shall, to the

fullest extent permitted by law, indemnify, protect, defend and hold harmless Agency, and its employees, officials, and agents, from any and all demands, losses, claims, costs, liabilities, and expenses for any damage, injury, or death, including any and all administrative fines, penalties or costs imposed as a result of an administrative proceeding, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control. If requested by Agency, Consultant shall immediately defend any such suits at its sole cost and expense. If Agency elects to provide its own defense, Consultant shall reimburse Agency for any expenditures, including reasonable attorneys' fees and costs. Consultant's obligations under this section exist regardless of concurrent negligence or willful misconduct on the part of Agency or any other person; provided, however, that Consultant will not be required to indemnify Agency, or pay for the costs of defense, for the proportion of liability a court ultimately determines did not arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control. In the event Agency seeks to enforce its rights against Consultant under this indemnification clause, Consultant will pay for all costs and expenses, including without limitation attorneys' fees, incurred by Agency in enforcing, protecting, maintaining, and preserving its rights under this indemnification clause. This indemnification clause will survive the termination or expiration of this Agreement."

9. Sections 42-44 of the General Conditions (as modified by these Special Conditions) apply when a Task Order is partially or fully funded by US DOT funds. As each Task Order Form is executed, the Task Order as described and sample attached in Appendix A, Scope of Services, shall identify if a task is partially or fully funded by US DOT funds. If a Task Order is not funded by any US DOT funds, then Sections 42-44 are not applicable to that Task Order.

10. Section 43 of the General Conditions is hereby deleted in its entirety and replaced with the following: Federal Cost Principles and Procedures (Federal aid projects only). Consultant shall comply with the following provisions, which are incorporated into this Agreement by reference: (a) the cost principles for allowability of individual items of costs set forth in 48 CFR, Chapter 1, Part 31; (b) the administrative procedures set forth in 49 CFR, Part 18; and (c) the administrative procedures for non-profit organization set forth in OMB Circular A-110, if applicable to Consultant. In the event that payment is made to Consultant for any costs that are determined by subsequent audit to be unallowable under 48 CFR, Chapter 1, Part 31 or 49 CFR, Part 18, Consultant shall refund the payment to Agency within 30 days of written request from Agency. Should Consultant fail to do so, and should Agency file legal action to recover the refund, Consultant shall reimburse Agency for all attorneys' fees, costs, and other expenses incurred by Agency in connection with such action.

11. As each Task Order is executed, it will identify if a task has a Disadvantaged Business Enterprise (DBE) goal. Consultant must give consideration to DBE firms as specified in 23 CFR 172.5(b), 49 CFR, Part 26, and in Caltrans Local Assistance Procedure Manuals Exhibit 10-I "Notice to Proposers Disadvantaged Business Enterprise Information." If the services to be performed pursuant to the Task Order have a DBE goal, Consultant must meet the DBE goal by using DBEs as subconsultants or document a good faith effort to meet the goal. If a DBE subconsultant is unable to perform, Consultant will make a good faith effort to replace him/her with another DBE subconsultant if the goal is not otherwise met. Caltrans Local Assistance Procedure Manual Exhibits 10-I and 10-J are included in this Agreement.

12. Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the Consultant; to solicit or secure this Agreement; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this Agreement. For breach or violation of this warranty, the local agency shall have the right to annul this Agreement without liability, or at its discretion; to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

13. Prohibition of Expending Agency, State, or Federal Funds for lobbying:
a. Consultant certifies to the best of his or her knowledge and belief that:
i. No state, federal or Agency appropriated funds have been paid, or will be paid by or on behalf

of the Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency, a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract, the making of any state or federal grant; the making of any state or federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

ii. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

b. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

c. Consultant also agrees by executing this Agreement that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

14. Debarment and Suspension Certification:

a. Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certification, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the Agency.

b. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

15. The Cost Proposal is subject to an audit or Certified Public Accountant (CPA) Indirect Cost (Overhead) Audit/Workpaper Review. The Cost Proposal shall be adjusted by the Consultant and approved by the Local Agency Contract Manager to conform to the Workpaper Review recommendations or audit recommendations. The Consultant agrees that individual terms of cost identified in the audit report shall be incorporated into the Agreement by this reference if directed by the Local Agency at its sole discretion. Refusal by the Consultant to incorporate the Workpaper Review recommendations or audit recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement.

16. NON-DISCRIMINATION CLAUSE

During the performance of this Agreement, Consultant and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made

a part hereof as if set forth in full. Consultant and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

17. Exhibits 10-F "Certification of Consultant, Commissions & Fees" and 10-G, "Certification of Agency" are included as attachments to this Agreement and are incorporated herein.

Appendix A to Consulting Services Agreement Scope of Services (On Call Civil Engineering Services)

1. OVERVIEW AND GENERAL REQUIREMENTS

A. Agency is involved in the review, design, construction, and maintenance of various public works of improvement throughout Contra Costa County. Projects range from simple maintenance-related projects, such as slurry sealing existing road pavements, to more complex capital road, airport, and flood control channel improvement projects. In executing these projects, Agency, at times, requires additional temporary services from persons specially trained, experienced, expert and competent to perform design professional services, including civil engineering services. For that reason, Agency is entering into this Agreement with Consultant. Under this Agreement, Consultant will provide civil engineering services on an "on call" basis in support of a variety of road, airport and flood control projects throughout Contra Costa County. Examples of typical Agency projects and typical Consultant services covered by this Agreement are listed in Paragraphs 3 and 4 below.

B. As provided in Section 26 of this Agreement, Project Personnel, subconsultants retained by Consultant must be authorized in advance, in writing, by Agency's Department Head. Consultant shall direct the tasks and activities of its authorized subconsultants and ensure that the tasks, activities and/or products required by this Agreement are completed in a timely manner and in accordance with the applicable standard of care for the given subconsultant. Notwithstanding the authorization for work to be performed by a particular subconsultant, Consultant is solely responsible for the performance of all services and delivery of all products under this Agreement.

C. Work shown or specified in reports, drawings, and specifications must comply with all requirements of the Contra Costa County Ordinance Code, all applicable State and Federal codes and regulations, and all applicable requirements of the local fire district and utility companies or districts having jurisdiction over the project or area in which the project is located.

2. TASK ORDER PROCEDURES

A. TASK ORDERS

During the term of this Agreement, when Agency has a need for Consultant to provide civil engineering services, Agency will forward a proposed Task Order to Consultant. Within the timeframe requested by Agency, Consultant will provide Agency with a cost proposal for the services and deliverables specified in the Task Order, including a written estimate of the number of hours per staff person, any anticipated reimbursable expenses, and total dollar amount. Once Agency and Consultant agree to a cost breakdown and commencement date for the services and deliverables identified in the Task Order (with a payment limit for the Task Order that does not cause the total payments under this Agreement to exceed the Payment Limit set forth in Section 4 of this Agreement, Payment Limit), Consultant and Agency (through its Department Head) will execute the final version of the Task Order.

B. AUTHORIZED REPRESENTATIVES

During the term of this Agreement, the Department Head, on behalf of Agency, and the individuals listed below, on behalf of Consultant, are authorized to execute Task Orders under this Agreement. Consultant may change the individuals authorized to execute Task Orders upon thirty (30) days advance written notice to Agency.

FOR CONSULTANT: Sasha Dansky

Michael Loman

Note: A Task Order is of no force or effect until it is signed by the Department Head. Consultant shall not commence work, and no expenditures are authorized, until the Department Head has executed a Task Order for the particular task and products at issue. Notwithstanding anything to the contrary, the Department Head is not authorized to execute a Task Order that causes the total payments under this Agreement to exceed the Payment Limit set forth in Section 4. Payment Limit of this Agreement.

3. TYPICAL AGENCY PROJECTS

During the term of this Agreement, Agency may call upon Consultant to provide services under this Agreement for the types of projects listed below. The actual project on which Consultant will work will be specified in a separate Task Order.

- Slurry sealing or hot mix asphalt overlaying of existing road pavements
- Road intersection functional improvements, such as turn pockets, median islands, curb ramps for Americans with Disability Act (ADA) compliance, etc.
- Road widening for safety and capacity, including pavement widening and shoulders
- Reconstruction of failed road structural section (pavement and road base materials)
- Roadside drainage improvements, such as ditches, storm drain pipes, manholes, and inlets
- Storm water treatment and flow control improvements for Clean Water Program compliance
- Road realignments for safety
- Frontage improvements, i.e. curb and sidewalk
- Simple non-structural landslide repairs, i.e. earthwork and sub drainage work
- Restoration of eroded or failed creek banks and scour repairs at bridges
- Area-wide drainage improvements, such as open channels, concrete box culverts, large diameter storm drain pipes, manholes, and collector pipes, ditches and inlets
- Storm water detention basin construction or modifications

- Flood control channel silt removal and levee restoration
- Airport taxiway and runway pavement reconstruction and rehabilitation (seals, asphalt overlays and reconstruction)
- Parking lot pavement reconstruction and rehabilitation (seals, asphalt overlays and reconstruction)
- Bicycle and pedestrian path construction
- Prefabricated bicycle and pedestrian bridge installation
- Appurtenant improvements such as standard cantilevered or mechanically stabilized retaining walls, road signage and striping, boundary fences, guard railing, concrete safety barriers, permanent and temporary erosion control measures
- Traffic calming improvements

4. TYPICAL CONSULTANT SERVICES

During the term of this Agreement, Consultant will perform, at Agency's written request, the following types of civil engineering services as further specified by Task Order:

- Provide topographical and property field and office surveying
- Perform alternative analysis, such as road or flood control alignments, retaining structure type options, etc., including comparisons (cost to construct, public acceptance, ease of maintenance, longevity) of the alternates; and prepare written summary report of alternative analysis
- Coordinate with impacted utilities to determine conflicts and determine what utility relocation work is required and when the relocation work should be done relative to project construction
- Attend technical meetings and present design proposals at public forums
- Provide engineering support during project bidding and construction
- Perform peer review of plans and calculations for a variety of road, flood control, airport, and drainage infrastructure projects
- Prepare geometric layouts of planned improvements
- Perform earthwork and quantity calculations, estimate unit bid prices and prepare list of bid items
- Perform hydrologic, hydraulic and other calculations as necessary for the design of drainage, flood control, and clean water treatment and flood control improvements
- Prepare Design Exception Fact Sheets when necessary

- Provide necessary engineering and design information to Agency staff in support of environmental compliance and regulatory permitting
- Prepare construction plans and special provisions, with the following types of plan sheets, as applicable, and submit them to Agency for review at 35%, 65%, 95% and 100% completion, unless otherwise instructed by Agency
- Plans will include one or more of the following types of plan sheets, as specified by Agency:
 - ❖ Title Sheet
 - ❖ Typical Cross Sections
 - ❖ Key Map and Line Index
 - ❖ Layout
 - ❖ Profile and Superelevation Diagram
 - ❖ Construction Details
 - ❖ Contour Grading Plans
 - ❖ Drainage Plans and Profiles
 - ❖ Utility Plan
 - ❖ Pavement Delineation and Traffic Signage Plan
 - ❖ Construction Staging Plan
 - ❖ Traffic Handling Plan
 - ❖ Signing and Striping Plan
 - ❖ Median Curb Plan and Profile
 - ❖ Curb Return Profiles
 - ❖ Demolition Plan
- Provide final reproducible hardcopies and electronic files of plans (Microstation file format) and special provisions (Word file format)
- Prepare Project Study Reports
- Work with Agency staff to develop and adhere to a Task Order work time schedule that meets Agency's requirements
- Provide necessary management oversight and quality assurance to meet Task Order specified end product(s) (deliverables) within agreed schedule and budget
- Collect and review all relevant data necessary to perform Task Order
- Determine construction staging and traffic control plans

5. PERFORMANCE STANDARDS

Consultant shall perform civil engineering design services in compliance with the latest editions of design standards, including without limitation, Federal Aviation Administration (FAA) design standards, California Department of Transportation (Caltrans) Highway Design Manual, American Association of State Highway Transportation Officials' (AASHTO) "A Policy on Geometric Design of Highways and Streets", Agency design standards, and any additional standards referenced in the Task Order. Consultant shall also comply with Caltrans' format standards for all products, such as preliminary and/or final plans (hardcopy and electronic, CADD files), technical specifications, calculations, and cost estimates as required by each Task Order. Cost considerations will not be deemed justification for breach of sound principles of engineering design. Consultant will remain solely

responsible for the adequacy, fitness and correctness of design and all designing work in accordance with sound and accepted engineering principles despite Agency's approval or acceptance of reports, plans, specifications, and any other product prepared by Consultant under this Agreement.

6. PAYMENT DEMANDS

Consultant shall submit a written demand or invoice for the services provided under each Task Order either (i) upon completion of the services described in the Task Order if the services take less than one month to complete; or (ii) monthly, if the services under a Task Order take more than one month to complete. In each case, Consultant shall describe the work performed and list, for each item of services, the employee categories, hours and rates (consistent with the rates shown on Appendix B). All payment demands and payments hereunder are subject to Section 11 of this Agreement, Payment.

7. NON-EXCLUSIVE AGREEMENT

Consultant acknowledges that this Agreement is not exclusive and that Agency may, at any and all times during the term of this Agreement, obtain civil engineering and other types of services from any appropriate source.

8. TIME

Consultant understands and agrees that time is of the essence in this Agreement. Consultant shall perform the services authorized under each Task Order expeditiously and with adequate forces and shall complete the services within the time specified in each Task Order.

**Consulting Services Agreement
Task Order
(On Call Architectural, Engineering, or Land Surveying Services)**

Pursuant to Paragraph 2 of Appendix A (Scope of Services) to that certain Consulting Services Agreement entered into as of _____, 20____, between Agency and Consultant, and subject to all of the terms and conditions of the Consulting Services Agreement, Agency and Consultant agree as follows:

TASK ORDER NUMBER:

PROJECT NAME, NUMBER, LOCATION:

CONSULTANT'S NAME:

TASK/DELIVERABLES DESCRIPTION:

DETAILED SCOPE OF SERVICES:

[

COMMENCEMENT DATE FOR SERVICES:

SCHEDULE FOR SERVICES AND DELIVERABLES:

DEADLINE FOR COMPLETION OF TASK SERVICES AND DELIVERABLES:

PAYMENT LIMIT: \$

AGENCY By: _____ Department Head Date: _____	CONSULTANT By: _____ Authorized Representative Date: _____
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Appendix B to Consulting Services Agreement Payment Provisions, Project Personnel and Billing Rates

I. PAYMENT PROVISIONS

- A. Payment for services will not exceed the billing rates set forth in this Appendix B and will be based on the actual hours worked (by Consultant and authorized subconsultants) and actual approved Other Direct Costs (described below) subject to the Payment Limit specified in Section 4 of this Agreement, Payment Limit. In addition, payments for services (including payments to Consultant for authorized subconsultants) and Other Direct Costs will not exceed the following amounts for each phase or period indicated below unless approved in advance in writing by the Department Head:

1. Not Applicable: \$ (% of Payment Limit)
2. Not Applicable: \$ (% of Payment Limit)
3. Not Applicable: \$ (% of Payment Limit)
4. Not Applicable: \$ (% of Payment Limit)

- B. Payment to Consultant for subconsultants authorized in advance by Agency in accordance with Section 21 of this Agreement, Assignment, will be the amount equal to Consultant's direct costs, without handling mark ups. Consultant shall submit Subconsultant invoices as part of Consultant's bill for services.

- C. Payments for the extra work specified in Section 12 of this Agreement, Extra Work, shall be computed separately and shall not exceed any limits specified in Agency's written amendment describing the extra work and payment terms for the extra work.

- D. Subject to the Payment Limit in Section 4 of this Agreement, Payment Limit, Agency will reimburse the actual cost (without mark up) of documented expenditures by Consultant and its employees and authorized subconsultants for the Other Direct Costs listed below to the extent such Other Direct Costs were incurred to perform the services described in this Agreement:

See Attachment 1 to this Appendix B for allowable Other Direct Costs.

- E. All other expenses (*i.e.*, those not listed under Paragraph D above) are not reimbursable and are deemed covered by the hourly billing rates set forth in Section II of this Appendix B. When any of the items listed under Paragraph D above are provided for Consultant's own use and not at Agency's request, expenses therefor are not reimbursable and are deemed covered by the hourly billing rates set forth in Section II of this Appendix B. Agency will not pay for Consultant's and its subconsultants' time and expenses for transportation between Consultant's and its subconsultants' various offices. Costs for such transportation are deemed covered by the hourly billing rates set forth in Section II of this Appendix B.

- F. Notwithstanding anything to the contrary in Section 11 of this Agreement, Payment, these Payment Provisions, including billing rates, are subject to a post award audit by the state and/or federal government. After any post award audit cost adjustments are ordered by the state and/or federal government, these Payment Provisions and the billing rates shall be adjusted by Consultant and approved by Agency's Department Head to conform to the audit cost adjustments. Consultant agrees that the individual items of cost identified in the audit report may be incorporated into the Agreement at Agency's sole discretion. Refusal by Consultant to incorporate the post award audit cost adjustments will be considered a breach of the Agreement terms and cause for termination of the Agreement by Agency. Consultant agrees that all invoices after the post award audit will be based on the adjusted Payment Provisions. Any invoices paid prior to the post award audit will be recalculated by Agency in accordance with the post award audit. Any difference in moneys due Consultant as a result of the post award audit cost adjustments will be added to, or deducted from, moneys due the Consultant on subsequent invoices.

II. PROJECT PERSONNEL AND BILLING RATES

In accordance with Section 26 of this Agreement, Project Personnel, Consultant's personnel assigned to this project and their roles and billing rates are as follows:

See Attachment 1 to this Appendix B for Consultant's personnel roles and billing rates.

- A. Consultant may request an increase in the hourly rates set forth on Attachment 1 to Appendix B, on an annual basis, in January of each calendar year during the term of this Agreement, beginning with January 2013. The proposed increase in hourly rates cannot exceed the actual increase in the hourly rates paid by Consultant to its staff. Consultant shall provide Agency with at least 30 days advance written notice of a proposed increase. The requested increase is only effective 30 days after approved in writing by Consultant and Agency's department head and a dated Attachment 1 to Appendix B has been appended to this Agreement to replace the superceded Attachment 1 to Appendix B. An increase in the hourly rates shall not result in any increase in the Payment Limit specified in Section 4. Payment Limit of this Agreement.
- B. The County Project Manager and Contract Administrator is Slava Gospodchikov. The Consultant Project Manager is Sasha Dansky.

Mark Thomas & Company (2012 Civil On-Call)

	Fringe Benefit % [A]	Ovehead % [B]	General Admin % [C]	Combined % [D] = [A] + [B] + [C]	Profit % [E]
Normal	43.92%	125.98%	0.00%	169.90%	10%
Overtime	43.92%	125.98%	0.00%	169.90%	10%

Classification	Base Rate [F]	Combined FB + OH + GA [G] = [F] * [D]	Subtotal [H] = [F] + [G]	Profit [I] = [H] * [E]	Maximum Total Loaded Rate [J] = [H] + [I]
Principal	\$ 110.00	\$ 186.89	\$ 296.89	\$ 29.69	\$ 326.58
Sr. Project Manager	\$ 67.31	\$ 114.36	\$ 181.67	\$ 18.17	\$ 199.84
Project Manager	\$ 62.00	\$ 105.34	\$ 167.34	\$ 16.73	\$ 184.07
Senior Project Engineer	\$ 56.10	\$ 95.31	\$ 151.41	\$ 15.14	\$ 166.56
Project Engineer	\$ 45.84	\$ 77.88	\$ 123.72	\$ 12.37	\$ 136.09
Land Surveyor	\$ 56.16	\$ 95.42	\$ 151.58	\$ 15.16	\$ 166.73
Senior Design Engineer	\$ 39.14	\$ 66.50	\$ 105.64	\$ 10.56	\$ 116.20
Design Engineer	\$ 36.17	\$ 61.45	\$ 97.62	\$ 9.76	\$ 107.39
Engr/Survey/CADD Tech	\$ 36.90	\$ 62.69	\$ 99.59	\$ 9.96	\$ 109.55
Administrative	\$ 26.00	\$ 44.17	\$ 70.17	\$ 7.02	\$ 77.19
Technical Write	\$ 33.22	\$ 56.44	\$ 89.66	\$ 8.97	\$ 98.63
2-person survey crew	\$ 72.74	\$ 123.59	\$ 196.33	\$ 19.63	\$ 215.96
3-person survey crew	\$ 102.30	\$ 173.81	\$ 276.11	\$ 27.61	\$ 303.72

Other Direct Cost:

1. Mileage: included in the overhead multiplier.
2. Delivery & Reproduction: At Cost.

Geocadd Surveys (2012 Civil On-Call)

	Fringe Benefit % [A]	Ovehead % [B]	General Admin % [C]	Combined % [D] = [A] + [B] + [C]	Profit % [E]
Normal	50.00%	90.00%	0.00%	140.00%	10%
Overtime	50.00%	90.00%	0.00%	140.00%	10%

Classification	Base Rate [F]	Combined FB + OH + GA [G] = [F] * [D]	Subtotal [H] = [F] + [G]	Profit [I] = [H] * [E]	Maximum Total Loaded Rate [J] = [H] + [I]
Project Manager	\$ 47.00	\$ 65.80	\$ 112.80	\$ 11.28	\$ 124.08
Photogrammetrist	\$ 32.00	\$ 44.80	\$ 76.80	\$ 7.68	\$ 84.48
CADD Editor	\$ 32.00	\$ 44.80	\$ 76.80	\$ 7.68	\$ 84.48

Other Direct Cost:

1. Mileage: IRS rate
2. Delivery & Reproduction: At Cost.

Radman Aerial Surveys, Inc. (2012 Civil On-Call)

	Fringe Benefit % [A]	Ovehead % [B]	General Admin % [C]	Combined % [D] = [A] + [B] + [C]	Profit % [E]
Normal	29.35%	102.97%	0.00%	132.32%	10%
Overtime	29.35%	102.97%	0.00%	132.32%	10%

Classification	Base Rate [F]	Combined FB + OH + GA [G] = [F] * [D]	Subtotal [H] = [F] + [G]	Profit [I] = [H] * [E]	Maximum Total Loaded Rate [J] = [H] + [I]
Project Manager	\$ 50.00	\$ 66.16	\$ 116.16	\$ 11.62	\$ 127.78
Land Surveyor	\$ 40.00	\$ 52.93	\$ 92.93	\$ 9.29	\$ 102.22
Sr. Photogrammetrist	\$ 30.00	\$ 39.70	\$ 69.70	\$ 6.97	\$ 76.67
Photogrammetrist	\$ 25.00	\$ 33.08	\$ 58.08	\$ 5.81	\$ 63.89
CADD Spercialist	\$ 33.00	\$ 43.67	\$ 76.67	\$ 7.67	\$ 84.33

Other Direct Cost:

Aerial Photography	\$550.00
Aerial Exposures	\$50.00

Attachment 1 to Appendix B

Key Project Personnel

Name

Sasha Dansky

Classification

Principal

EXHIBIT 10-F CERTIFICATION OF CONSULTANT, COMMISSIONS & FEES

I HEREBY CERTIFY that I am the President, and duly authorized representative of the firm of Mark Thomas & Company, Inc., whose address is 3000 Oak Road, Suite 650 Walnut Creek, California 94597, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement; nor
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the agreement; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this agreement involving participation of Federal-aid Highway funds, and is subject to applicable state and federal laws, both criminal and civil.

09/18/2012
(Date)

M. Thomas
(Signature)

Distribution: 1) Local Agency Project File (Original & Contract)
2) DLAE (with contract copy)

EXHIBIT 10-G CERTIFICATION OF LOCAL AGENCY

I HEREBY CERTIFY that I am the Deputy Public Works Director of the Contra Costa County Public Works, and that the consulting firm of Mark Thomas and Company, Inc., or its representative has not been required (except as herein expressly stated), directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement to:

- (a) employ, retain, agree to employ or retain, any firm or person, or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of federal-aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

12/18/12
(Date)


(Signature)

Distribution: 1) Local Agency Project File (original & Contract)
2) DLAE (with contract copy)



EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

The Agency has not established a DBE goal for this Agreement. However, proposers are encouraged to obtain DBE participation for this Agreement.

1. TERMS AS USED IN THIS DOCUMENT

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, a “Local Agency Proposer DBE Commitment (Consultant Contract)” (Exhibit 10-O1) form shall be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal, and all DBE participation shall be collected and reported.

A “Local Agency Proposer DBE Information (Consultant Contract)” (Exhibit 10-O2) form shall be included with the Request for Proposal. The purpose of the form is to collect data required under 49 CFR 26. This form collects all DBE participation. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 - 1. The proposer is a DBE and will meet the goal by performing work with its own forces.
 - 2. The proposer will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.
 - 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subcontractor for each portion of work as defined in their proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- G. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program web site at: <http://www.dot.ca.gov/hq/bep/>.
- Click on the link in the left menu titled *Disadvantaged Business Enterprise*
 - Click on *Search for a DBE Firm* link
 - Click on *Access to the DBE Query Form* located on the first line in the center of the page
 - Searches can be performed by one or more criteria
 - Follow instructions on the screen
- C. How to Obtain a List of Certified DBEs without Internet Access:

DBE Directory - If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered from the Caltrans Publications Unit at (916) 263-0822, 1900 Royal Oaks Drive, Sacramento, CA 95815-3800.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

7. FOR DBE TRUCKING COMPANIES: CREDIT FOR DBES WILL COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Agreement, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
- B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.
- C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
- D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. A DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
- E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. A DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. A DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
- F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

EXHIBIT 10-J STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION**1. Subcontractors**

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Agency and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the Agency for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the Agency's obligation to make payments to the Contractor.
- B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
- C. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the Agency.
- D. Any substitution of subcontractors must be approved in writing by the Agency's Contract Manager in advance of assigning work to a substitute subcontractor.

2. Disadvantaged Business Enterprise (DBE) Participation

- A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Proposers who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. If the contract has a DBE goal, the Consultant must meet the DBE goal by committing DBE participation or document a good faith effort to meet the goal. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the local agency deems appropriate.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

3. Performance of DBE Consultant and other DBE Subconsultants/Suppliers

- A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing; and other relevant factors.
- B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- C. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

4. Prompt Payment of Funds Withheld to Subcontractors

- A. No retainage will be withheld by the Agency from progress payments due the prime contractor. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime contractor from progress due subcontractors. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.
- B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

5. DBE Records

- A. The Consultant shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," CEM-2402F (Exhibit 17-F, Chapter 17, of the LAPM), certified correct by the Consultant or the Consultant's authorized representative and shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25% of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" is submitted to the Contract Manager.

6. DBE Certification and Decertification Status

If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify the Consultant in writing with the date of certification. Any changes should be reported to the Agency's Contract Manager within 30 days.

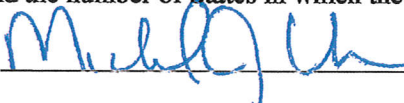
EXHIBIT 10-K CERTIFICATION OF FINANCIAL MANAGEMENT SYSTEM AND CONTRACT COSTS**Consultant Certification:**Consultant Firm Name: Mark Thomas & Company, Inc.Cost Proposal Date: N/AFiscal Period Covered (mm/dd/yyyy to mm/dd/yyyy): 1/1/2011 – 12/31/2011

I, the undersigned, certify that all costs in this proposal (prime consultants and all subconsultants) are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of title 48, Code of Federal Regulations (CFR), Part 31 and the indirect cost rate(s) have been prepared or audited in accordance with the following criteria and in the acceptable indirect cost rate schedule formats, and retained in the project files:

1. Generally Accepted Government Auditing Standards (GAGAS) issued by the United States Government Accountability Office, if applicable.
2. 23 Code of Federal Regulations (CFR), Chapter 1, Part 172 – Administration of Engineering and Design Related Service Contracts.
3. 48 CFR, Chapter 1, Part 31 – Contract Cost Principles
4. 48 CFR, Chapter 99, Cost Accounting Standards, Subpart 9900
5. All known material transactions or events that have occurred affecting the firm's ownership, organization, and indirect cost rates have been disclosed.

I, the undersigned, further certify that our financial management system meets the standards for financial reporting, accounting records, internal and budget control as set forth in the FAR of title 49, CFR, Part 18.20.

In addition, I the undersigned, certify that the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to this firm within the last three (3) calendar years for all State DOT and Local Agencies is \$ N/A and the number of States in which the firm does business is one.

*Consultant Certification Signature: Consultant Certifying Name and Title (Print): Michael J. Lohman PresidentConsultant Contact Information – Email and Phone number 925.938.0383 mlohman@markthomas.comDate of Consultant Certification (mm/dd/yyyy) September 18, 2012

*An Individual executive or financial officer of the contractor's organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the indirect cost rate proposal submitted in conjunction with the contract.

Local Agency Certification – Cost Analysis:

I, the undersigned, certify that I have performed a cost analysis in connection with this contract including, contract modifications exceeding \$150,000, for the fiscal period as specified above.

Local Agency Certification Signature: _____

Local Agency Certifying Name and Title (Print): _____

Local Agency Contact Information – Email and Phone number: _____

Date of Certification (mm/dd/yyyy): _____

Date of Cost Analysis (mm/dd/yyyy): _____

Distribution: 1) Original to Caltrans Audits and Investigations with Cost Analysis if \$1M or more
2) Local Agency Project Files

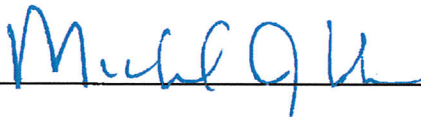
EXHIBIT 10-L CONSULTANT CERTIFICATION OF FINAL INDIRECT COSTS

Firm Name: Mark Thomas & Company, Inc.Indirect Cost Rate: 169.91%Date of Proposal Preparation (mm/dd/yyyy): 05/31/2012Fiscal Period Covered (mm/dd/yyyy to mm/dd/yyyy): 01/01/2011 to 12/31/2011

I certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

All costs included in this proposal to establish final indirect cost rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of title 48, Code of Federal Regulations (CFR), part 31.

1. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR 31.
2. All known material transactions or events that have occurred affecting the firm's ownership, organization, and indirect cost rates have been disclosed.

*Consultant Signature: Name and Title (Print) Michael J. Lohman, PresidentDate of Certification (mm/dd/yyyy): 09/18/2012

*An Individual executive or financial officer of the contractor's organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has the authority to represent the financial information utilized to establish the indirect cost rate proposal submitted in conjunction with the contract.

Distribution: 1) Original to Caltrans Audits and Investigations with Cost Proposal if \$1M or more
2) Local Agency Project Files