

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF UNION CITY  
AND  
MARK THOMAS & COMPANY, INC.  
FOR PRELIMINARY ENGINEERING (30% FINAL DESIGN) OF THE  
EAST WEST CONNECTOR (QUARRY LAKES PARKWAY, PHASES 3 AND 4)  
PROJECT, CITY PROJECT NO. 18-04**

This Agreement for consulting services is made by and between the City of Union City, a municipal corporation, (“City”) and **Mark Thomas & Company, Inc.**, a California corporation, with offices located at 1970 Broadway, Suite 760, Oakland, CA 94612, (“Consultant”), (together referred to as the “Parties”) as of November 22, 2022 (the “Effective Date”).

**Section 1. Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Services attached as Exhibit A-1 and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A-1, the Agreement shall prevail.

**1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on December 31, 2023, and Consultant shall complete the work described in Exhibit A-1 on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as referenced in Section 8.

**1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.

**1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

**1.4 Time is of the Essence.** Time is of the essence. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to timely finish the Scope of Work, to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant’s obligations hereunder.

**1.5 Public Works Requirements.** Because the services described in Exhibit A-1 include “work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work,” the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the Labor Code applicable to public works, to the extent set forth in Exhibit C. Consultant shall waive, indemnify, hold harmless, and defend City concerning any liability arising out of Labor Code Section 1720 *et seq.*

**Section 2. COMPENSATION.** The compensation for this agreement is a “specific rate of compensation” not to exceed maximum dollar amount. City hereby agrees to pay Consultant a sum not to exceed Two Million Eighty-Seven Thousand Six Hundred Dollars (\$2,087,600), notwithstanding

any contrary indications that may be contained in Consultant's proposal for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

**2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- Project name & number if applicable;
- Per Item 1.1, Terms of Service expiration date;
- Purchase Order number to expedite payment;
- The beginning and ending dates of the billing period;
- A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

**2.3 Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

**2.4 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

**2.5 Hourly Rate/Fees.** Unless the services provided are for a lump sum or flat fee, fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation cost proposal attached hereto as Exhibit B. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit B, the Agreement shall prevail.

**2.6 Reimbursable Expenses.** Not applicable.

**2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

**2.8 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date. Additional costs may be incurred after the date of written termination in order to package up files and complete other pertinent project close-out procedures.

**2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**2.10. Business License.** The Consultant is not authorized to perform services or incur costs whatsoever under the terms of this Agreement until Consultant applies for and has been issued a business license from the City pursuant to Title 5 of the Union City Municipal Code.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any

facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work for the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence to the City that such insurance is in effect. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

**4.1 Required Coverage.** Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

<u>COVERAGE</u>	<u>TYPE OF INSURANCE</u>	<u>MINIMUM LIMITS</u>
A	<b>Commercial Liability</b> Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	<b>General</b> \$1,000,000 per occurrence; Bodily Injury and Property Damage \$2,000,00 in the aggregate; Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis.
B	<b>Commercial or Business Automobile Liability</b> All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$2,000,000 per occurrence; Any Auto; Bodily Injury and Property Damage. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

C	<b>Workers' Compensation (WC) and Employers Liability (EL)</b> Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease. Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.
D	<b>Professional Liability/Errors &amp; Omissions</b> Includes endorsements of contractual liability	\$5,000,000 per occurrence \$5,000,000 policy aggregate; Any deductible or self-insured retention shall not exceed \$200,000 per claim.

**4.2 Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

a. All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until three (3) years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement

b. All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: City of Union City, its City Council, and all City officers, agents, employees, volunteers and representatives.

c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

e. **Certificates of Insurance:** Before commencing operations under this Agreement, Consultant shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form

and satisfactory to City, evidencing that all required insurance coverage is in effect. The City reserves the rights to require the Consultant to provide complete, certified copies of all required insurance policies.

f. **Subcontractors:** Consultant shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

g. **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

i. The retroactive date of the policy must be shown and must be before the date of the Agreement.

ii. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

iii. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of three (3) years after completion of work under this Agreement.

iv. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

#### **4.3 All Policies Requirements.**

a. **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII. Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, with deductible amounts acceptable to the City. Acceptance of Consultant's insurance by City shall not relieve or decrease the liability of Consultant hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Consultant.

b. **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

c. **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

d. **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of

subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, and subcontractors.

**4.4 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

A. Consultant shall, to the extent permitted by law, indemnify, hold harmless and assume the defense of, in any actions at law or in equity, the City, its employees, agents, volunteers, and elective and appointive boards, from all claims, losses, and damages (excluding claims arising from a professional error or omission), including property damage, personal injury, death, and liability of every kind, nature and description, arising out of, pertaining to or related to the negligence, recklessness or willful misconduct of Consultant or any person directly or indirectly employed by, or acting as agent for, Consultant, during and after completion of Consultant's work under this Agreement.

B. With respect to those claims arising from a professional error or omission, Consultant shall defend, indemnify and hold harmless the City (including its elected officials, officers, employees, and volunteers) from all claims, losses, and damages to the extent caused by the professionally negligent acts, errors or omissions of Consultant. Consultant has no obligation to pay for any of City Indemnitees defense related cost prior to a final determination of liability by either a Court of law or third party neutral, or to pay any amount that exceeds Consultant's finally determined percentage of liability based upon the comparative fault of Consultant, except as provided in Civil Code Section 2782.8(a) and (e).

C. Consultant's obligation under this section does not extend to that portion of a claim caused in whole or in part by the active negligence or willful misconduct of the City.

D. Consultant shall also indemnify, defend and hold harmless the City from all suits or claims for infringement of any patent rights, copyrights, trade secrets, trade names, trademarks, service marks, or any other proprietary rights of any person or persons because of the City or any of its officers, employees, volunteers, or agents use of articles, products things, or services supplied in the performance of Consultant's services under this Agreement.

E. Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

F. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## **Section 6. STATUS OF CONSULTANT.**

**6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

**6.2 Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

## **Section 7. LEGAL REQUIREMENTS.**

**7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

**7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

**7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program. Specifically, the requirements of the Alameda CTC are as follows:

### ALAMEDA CTC Local Business Contract Equity Program

1. Consultant shall comply with all applicable provisions of Alameda County Transportation Commission's (ALAMEDA CTC's) Local Business Contract Equity (LBCE) Program, incorporated herein by reference as if attached hereto. City shall provide a copy of the LBCE PROGRAM to Consultant upon request.

2. If the Consultant or any subconsultant is a Local Business Enterprise ("LBE"), Small Local Business Enterprise ("SLBE"), and/or Very Small Local Business Enterprise ("VSLBE") firm, the certificate for that firm shall be attached to this AGREEMENT.

3. No substitution of a listed LBE, SLBE, or VSLBE subconsultant on a contract can be



made without the prior written approval of City with agreement of ALAMEDA CTC. If an LBE, SLBE, or VSLBE subconsultant is unable to perform successfully, the City or Consultant shall submit a written request to ALAMEDA CTC for approval to replace such firm. Consultant must make good faith efforts to replace such LBE, SLBE, or VSLBE with another LBE, SLBE, or VSLBE, respectively. ALAMEDA CTC may investigate the circumstances surrounding the substitution request.

4. Consultant agrees that within ten (10) calendar days' receipt of payment from City, Consultant shall pay to its subconsultants all amounts due from such payment for satisfactory performance of its contract, subject to such legal requirements under federal or state law regarding withholding of disputed payments and applicable penalties. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with ALAMEDA CTC's prior written approval. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the Consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the Consultant, deficient subconsultant performance, and/or noncompliance by a subconsultant. This clause applies to LBE, SLBE, and VSLBE and non- LBE, SLBE, and VSLBE subconsultants.

5. Consultant agrees to include any subconsultant's acceptable invoices with each Payment Request Form that it submits to Sponsor Agency no later than thirty (30) calendar days after receipt of such invoice from the subconsultant. This clause applies to LBE, SLBE, and VSLBE and non- LBE, SLBE, and VSLBE subconsultants.

6. Consultant agrees further to release retainage payments, if any, to each subconsultant within thirty (30) calendar days after the subconsultant's work is completed and accepted. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with ALAMEDA CTC's prior written approval. This clause applies to Prime Consultant.

**7.4 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

**7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

**8.1 Termination.** City, or Consultant, may cancel this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; Additional costs may be incurred after the date of written termination in order to package up and complete other pertinent project closeout procedures. City, however, may condition payment of such compensation upon Consultant delivering to City any or all work product, including, but not limited to documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

**8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein.

**8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

**8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

**8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

**8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

**8.6.1** Immediately terminate the Agreement;

**8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

**8.6.3** Retain a different consultant to complete the work described in Exhibit A-1 not finished by Consultant; or

**8.6.4** Charge Consultant the difference between the cost to complete the work described in Exhibit A-1 that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

**Section 9. KEEPING AND STATUS OF RECORDS.**

**9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

**9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

**9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

**Section 10 MISCELLANEOUS PROVISIONS.**

**10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

**10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

**10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

**10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

**10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

**10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

**10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9 Contract Administration.** This Agreement shall be administered by the City Manager, or his designee, identified as Marilou Ayupan, Public Works Director ("Contract Administrator"). All correspondence, meeting documentation, invoices and project deliverables shall be directed to or through the Contract Administrator.

**Marilou Ayupan, P.E.**  
Public Works Director  
City of Union City  
34009 Alvarado-Niles Road  
Union City, CA 94587  
[mariloua@unioncity.org](mailto:mariloua@unioncity.org)

**10.10 Notices.** Any written notice to Consultant shall be sent to:

**Shawn O’Keefe, P.E.**  
Vice President/Principal  
Mark Thomas & Company, Inc.  
1970 Boradway, Suite 760  
Oakland, CA 94612  
[sokeefe@markthomas.com](mailto:sokeefe@markthomas.com)

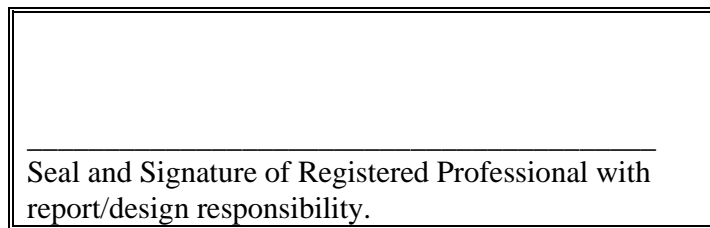
All other written notices to City shall be sent to:

Joan M. Malloy  
City Manager  
City of Union City  
34009 Alvarado Niles Rd.  
Union City, CA 94587

with a copy to

Kristopher J. Kokotaylo,  
City Attorney  
City of Union City  
34009 Alvarado Niles Rd.  
Union City, CA 94587

**10.11 Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



**10.12 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, and C represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A-1</u>	Scope of Services
<u>Exhibit A-2</u>	Schedule
<u>Exhibit A-3</u>	Team Organization
<u>Exhibit B</u>	Compensation/Fee
<u>Exhibit C</u>	Public Works Requirements

**10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**SIGNATURES ON FOLLOWING PAGE**

The Parties have executed this Agreement as of the Effective Date.

**CITY OF UNION CITY**

**MARK THOMAS & COMPANY, INC.**

\_\_\_\_\_  
JOAN MALLOY, CITY MANAGER

  
\_\_\_\_\_  
SHAWN O'KEEFE, VICE PRESIDENT

**ATTEST:**

\_\_\_\_\_  
ANNA M. BROWN, CITY CLERK

**APPROVED AS TO FORM:**

\_\_\_\_\_  
KRISTOPHER J. KOKOTAYLO  
CITY ATTORNEY

## EXHIBIT A-1

### SCOPE OF SERVICES

#### **FOR PRELIMINARY ENGINEERING (30% DESIGN) OF THE EAST WEST CONNECTOR (QUARRY LAKES PARKWAY, PHASES 3 AND 4) PROJECT, CITY PROJECT NO. 18-04**

City of Union City has now renamed the East West Connector project to Quarry Lakes Parkway (QLP) and this agreement covers preliminary engineering for QLP, Phases 3 and 4, City Project No. 18-04, as follows:

##### **Phase 3: 11<sup>th</sup> Street Connection (11<sup>th</sup> Street to 7<sup>th</sup> Stree)**

Construct QLP from 7th Street to 11th Street. Construct cement deep soil mix interior walls, retaining walls and grade separation structure between QLP and UPRR (Niles Subdivision) including railroad shoofly. Construct cement deep mix protection slab and pump station with drainage facilities. Extend 11th Street and install a new traffic signal at QLP/11th Street.

##### **Phase 4: Alvarado-Niles Connection & Grade Separations (Alvarado-Niles Rd. to 11<sup>th</sup> St.)**

Construct QLP from 11th Street to Alvarado-Niles Road. Construct cement deep soil mix interior walls, retaining walls and grade separations between QLP and BART, and QLP and UPRR (Oakland Subdivision) including BART track shoofly/bus bridge and UPRR railroad shoofly. Complete the pump station system. Construct conforms along Alvarado-Niles Road and modify the traffic signal at the intersection of QLP/Alvarado-Niles Blvd and Monterra Terrace/Osprey Drive/Alvarado-Niles Road.

#### **TASK 1. PROJECT MANAGEMENT**

Mark Thomas shall provide project management for each task for the entire duration of the Agreement schedule. It is assumed this contract will last up to 6 months. The management functions are described in detail below:

##### **Task 1.1. Supervise, Coordinate and Monitor Design**

Mark Thomas will supervise, coordinate and monitor design for conformance with guidelines, standards and policies as noted herein.

##### **Task 1.2. Team Coordination**

Mark Thomas will coordinate with the other design consultants for timely flow of information for each task activity.

##### **Task 1.3. BART, UP and ACWD Interface/Coordination**

Mark Thomas will review and become knowledgeable with the most current guidelines/criteria for BART, UP and ACWD. Mark Thomas will interface/coordinate with BART, UP and ACWD to seek preliminary acceptance of the design approach including up to three meetings each with BART and UP and one meeting with ACWD.

**Task 1.4. Codes/Standard Compliance**

Mark Thomas will confirm compliance with other codes and standards as acceptable to City. Any deviation from these standards and codes shall be documented as “Design Deviation”.

**Task 1.5. Maintain Project Files**

Mark Thomas will maintain project files and provide a file repository in the Microsoft Teams environment.

**Task 1.6. Update Project CPM Schedule**

Mark Thomas will update the Project CPM schedule on a monthly basis and submit a PDF file at the end of each month.

**Task 1.7. Meetings**

Mark Thomas will attend monthly design coordination check-in meetings. This task also includes up to 8 City meetings to resolve engineering issues and one presentation to City Council. Project Manager shall participate and attend City’s weekly meeting up to 10 meetings.

**Task 1.8. Invoices and Progress Reports**

Mark Thomas will prepare and submit budgets, monthly progress and performance reports and invoices.

**Task 1.9. Correspondence**

Mark Thomas will prepare and submit correspondence and memos, including all meeting minutes.

**Task 1.10. Quality Control / Quality Assurance**

Mark Thomas will establish and implement a quality control and quality assurance procedures for design activities, perform in-house quality control reviews for each report and other task deliverables. Quality Control documentation can be submitted to the City upon request. For the purposes of this initial Phase of work, the QA/QC procedures from Phase 1 & 2 will be used.

**Task 1.11. Design Coordination Meetings**

Mark Thomas will conduct bi-monthly Project Development Team (PDT) design coordination meetings. The location for the meetings will be a location to be determined by City of Union City and meetings shall include a video capable conference link for remote attendance. Mark Thomas will prepare and submit an agenda, data request log of information requested from and provided to others and meeting minutes after each meeting. The agenda outline shall cover cost, schedule and scope issues.



## ***DELIVERABLES***

- Meeting agendas and minutes (up to 24 meetings)
  - 3 BART
  - 3 UP
  - 1 ACWD
  - 8 City for resolution
  - 10 weekly
- Monthly Invoice, progress report and project schedule updates
- Presentation Materials for Project Coordination Meetings
- *All deliverables will be in .pdf format unless specified otherwise*

## **TASK 2. DATA COLLECTION AND REVIEW**

Mark Thomas shall obtain, and review readily available data and information related to the design the project. This information may be obtained from the City, CALTRANS, Alameda CTC, utilities, and other agencies and organizations.

Data to be gathered and review include, but is not limited to the following:

- Environmental Document and Mitigation Monitoring Plan
- East West Connector (EWC) Segment 3 Design Plans dated 2010
- Current BART Facilities Standards (BFS) that includes their design guidelines
- UP current design guidelines
- As-built plans
- Utility information
- Aerial photos and available mapping, including digital topography
- Survey - assumes no new field investigations are included in this scope of work
- Right of Way information
- Historical correspondence

## ***DELIVERABLES***

- List of additional information gathered
- List of additional information required for final design
- *All deliverables will be in .pdf format unless specified otherwise*

## **TASK 3. ROADWAY AND BRIDGE PLAN UPDATE**

### **Task 3.1. 30% Level Plans**

Mark Thomas will utilize the plans prepared as part of the 2010 EWC plan set as a basis to update the roadway and bridge plans to 30% level engineering. The level of detail shall be sufficient to develop realistic quantities and costs for a construction cost estimate that will be used to establish funding for the Project moving forward and will become the basis of design for final design. This effort will identify any updated criteria needed for today's design and

estimate its impact on the current design. It is anticipated that this Plan Set will consist of the following subtasks:

**Task 3.1.1. Roadway, Utilities, and Landscaping**

Title Sheet, Roadway Typical Cross Sections, Roadway Plan and Profile, Utilities and Underground Improvement, Conceptual Landscaping based on the Plan Set developed under Phase 1 & 2 (Mark Thomas / CSW / with a placeholder for PGA and ROMA) will be updated if the UP and BART structures impacts the roadway layout.

**Task 3.1.2. Roadway and Track Drainage**

Roadway and track drainage plans and profiles based on initial EWC concept with updates for current design criteria and risks (HDR)

**Task 3.1.3. Retaining Walls**

Retaining Walls plan, profile and typical sections (AECOM / Fugro)

**Task 3.1.4. BART Underpass Bridge General Plan**

BART Underpass Bridge general plan that includes plan, profile, staging (temporary shoofly and/or other approach developed per Task 3.1.7) and typical section (OPAC)

**Task 3.1.5. UPRR Oakland Subdivision Underpass Bridge General Plan**

UPRR Oakland Subdivision Underpass Bridge general plan that includes plan, profile, staging (temporary shoofly and/or other approach developed per Task 3.1.7) and typical section (Mark Thomas)

**Task 3.1.6. UPRR Niles Subdivision Underpass Bridge General Plan**

UPRR Niles Subdivision Underpass Bridge general plan that includes plan, profile, staging (temporary shoofly and/or other approach developed per Task 3.1.7) and typical section (Mark Thomas)

**Task 3.1.7. Construction Staging – BART and UPRR Oakland Subdivision**

Construction Staging for BART and UPRR Oakland and Niles Subdivisions including shoofly design for BART and UPRR tracks based on initial EWC concept with updates for current design criteria and risks (AECOM).

**Task 3.1.8. BART and UPRR Oakland Subdivisions Permanent Track Alignment**

BART and UPRR Oakland Subdivisions permanent track alignment plan, profile and typical sections with an evaluation for using a design speed of 79 mph above what was shown in the EWC at 50 mph for BART and 25 mph for UPRR (AECOM)

**Task 3.1.9. UPRR Niles Subdivision Permanent Track Alignment**

UPRR Niles Subdivision permanent track alignment plan, profile and typical sections (Mark Thomas)

**Task 3.1.10. Pump Station**

Pump Station plan, profile and typical section as part of the overall drainage evaluation (HDR)

**Task 3.1.11. Ground Improvement**

Ground improvement plan, profile and typical section as part of the retaining wall evaluation (Mark Thomas / AECOM / Parikh / Fugro)

**Task 3.1.12. Creek Restoration**

Creek restoration concept design (Balance)

**Task 3.1.13. PDR (Predesign Report)**

If there are alternatives or optional design approaches for above tasks (Task 3.1.1 thru 3.1.12), Mark Thomas will prepare PDR Reports for City’s review and input and then finalize and document the decisions made. PDR will be sequentially numbered and will become the basis for final design.

**Assumptions:**

- No surveys will be conducted at this phase but areas to be survey will be identified for subsequent phases of the project
- No field investigation will be conducted such as geotechnical investigation or hazardous materials. Estimates will be based on available data collected to date

**Task 3.2. Engineer’s Estimate**

Mark Thomas will prepare an updated engineering estimate broken down by bid items based on quantities and unit prices as appropriate based on the Hybrid Plan Set. Estimate will list assumptions and potential risks along with contingencies and escalation.

***DELIVERABLES***

- PDR Reports
- 30% level engineering plans

- Bridge General Plans
- Engineers Cost Estimate
- *All deliverables will be in .pdf format unless specified otherwise*

#### **TASK 4. Design Guidelines**

##### Task 4.1. Design Guidelines

As a part of the Mark Thomas team, PGA Design will prepare design guidelines for Phases 1 through 5 of QLP from Mission Boulevard to Paseo Padre Parkway. The guidelines will include items such as lighting, planting, cross-sections, setbacks, concrete colors, monumentation and wall and bridge aesthetics. This task includes up to three coordination meetings with the City and one with the City of Fremont. It is assumed no public outreach or public comments will be needed or required for preparation of the guidelines. After the draft guidelines are prepared and submitted it is anticipated that the Cities will provide one set of consolidated comments. After those comments are received and addressed the Design Guidelines will be finalized.

##### *DELIVERABLES*

- Draft and Final Design Guidelines
- *All deliverables will be in .pdf format unless specified otherwise*

## **EXHIBIT A-2**

### **SCHEDULE**

1. Notice to Proceed	November 22, 2022
2. Kick-off Meeting	November 29, 2022
3. Complete Review of Data	December 20, 2022
4. Update Engineering Drawings Hybrid Plans with Exhibits	February 1, 2023
5. Complete General Plans	February 20, 2023
6. First Meeting with BART and UP	February 27, 2023
7. Follow-up Meetings with BART and UP	March 30, 2023
8. First Submittal of Cost Estimates	March 30, 2023
9. Follow-up Meeting with BART and UP	April 1, 2023
10. Finalize Cost Estimates and draft presentation to ACTC	April 10, 2023
11. Alameda CTC Programs and Policy Sub-Committee	May 8, 2023
12. Alameda CTC Board Meeting	May 25, 2023

## EXHIBIT A-3

### CONSULTANT DESIGN TEAM ORGANIZATION



**EXHIBIT B**

**COMPENSATION/FEE**

FEE BREAKDOWN BY TASK:

<b>Task No.</b>	<b>Task Description</b>	<b>Task Budget</b>
<b>1</b>	<b>PROJECT MANAGEMENT</b>	<b>\$337,443.59</b>
1.1	Supervise, Coordinate and Monitor Design	\$106,920.13
1.2	Monthly Invoices, Progress Reports and Schedule Updates	\$41,813.88
1.3	Meetings	\$153,811.71
1.4	Quality Control/Quality Assurance	\$34,897.88
<b>2</b>	<b>DATA GATHERING &amp; REVIEW</b>	<b>\$51,141.02</b>
2.1	Data Gathering & Review	\$51,141.02
<b>3</b>	<b>CONSTRUCTION COST VALIDATION</b>	<b>\$1,570,385.14</b>
3.1.1	Roadway, Utilities, and Landscaping	\$218,268.92
3.1.2	Roadway and Track Drainage	\$41,871.75
3.1.3	Retaining Walls	\$238,159.15
3.1.4	BART Underpass Bridge General Plan	\$100,468.95
3.1.5	UPRR Oakland Subdivision Underpass Bridge General Plan	\$95,362.81
3.1.6	UPRR Niles Subdivision Underpass Bridge General Plan	\$95,362.81
3.1.7	Construction Staging - BART and UPRR Oakland Subdivision	\$186,017.27
3.1.8	BART and UPRR Oakland Subdivisions Permanent Track Alignment	\$30,736.62
3.1.9	UPRR Niles Subdivision Permanent Track Alignment	\$99,775.12
3.1.10	Pump Station	\$34,211.70
3.1.11	Ground Improvement	\$35,569.68
3.1.12	Creek Restoration	\$55,512.92
3.1.13	PDR (Predesign Report)	\$206,005.59
3.2	Engineer's Estimate	\$133,061.86
<b>4</b>	<b>Design Guidelines</b>	<b>\$128,630.25</b>
	<b>TOTAL</b>	<b>\$2,087,600.00</b>

FEE BREAKDOWN BY FIRMS:

<b>Consultant</b>	<b>Tier</b>	<b>Certification (LBE, SLBE, VSLBE and/or DBE)</b>	<b>Budget</b>
<b><i>NON-CONTINGENCY TASKS/DELIVERABLES</i></b>			
Mark Thomas & Company, Inc.*†	Prime	LBE	\$1,018,147.37
AECOM Technical Services, Inc.	Tier 1	LBE	\$303,599.63
Balance Hydrologics, Inc.	Tier 1	SLBE	\$77,807.85
Bonnie Fisher	Tier 2 under ROMA	None	\$36,400.00
Boris Dramov	Tier 2 under ROMA	None	\$36,400.00
CSW   ST2	Tier 1	LBE, SLBE	\$33,648.35
Fugro USA Land, Inc.	Tier 1	LBE	\$55,721.35
HDR Engineering, Inc.	Tier 1	LBE	\$90,428.09
OPAC Engineering	Tier 1	DBE	\$194,794.27
Parikh Consultants, Inc.	Tier 1	LBE, SLBE, DBE	\$74,584.32
PGA Design Inc.	Tier 1	LBE, SLBE, VSLBE	\$113,067.15
ROMA Collaborative	Tier 1	DBE	\$10,077.95
Y&C Transportation Consultants	Tier 1	LBE, SLBE, VSLBE, DBE	\$42,923.68
<b><i>CONTINGENCY TASKS/DELIVERABLES</i></b>			
		<b>TOTAL:</b>	<b>\$2,087,600.00</b>
		<b>DBE Total (excluding on-call or optional budget):</b>	15.44%
		<b>LBE Total (excluding on-call or optional budget):</b>	86.70%
		<b>SLBE Total (excluding on-call or optional budget):</b>	16.38%



## MARK THOMAS & CO. RATE SCHEDULE

### Engineering

Design Engineer I	\$88 - \$145
Design Engineer II	\$109 - \$177
Project Engineer	\$147 - \$184
Sr. Project Engineer	\$158 - \$216
Sr. Technical Engineer	\$158 - \$216
Technical Lead	\$182 - \$248
Sr. Technical Lead	\$217 - \$316
Engineering/Design Manager	\$282 - \$361
Sr. Engineering Manager	\$311 - \$452

### Construction Management

Office Engineer	\$109 - \$207
* Asst. Resident Engineer	\$155 - \$284
* Inspector - CM	\$150 - \$284
RE/Structural Representative	\$205 - \$345
Area Manager - CM	\$308 - \$452

### Planning

Planner I	\$82 - \$106
Planner II	\$106 - \$132
Sr. Planner	\$120 - \$165

### Landscape Architecture/Urban Design

Landscape Designer I	\$76 - \$113
Landscape Designer II	\$94 - \$142
Landscape Architect	\$109 - \$190
Sr. Landscape Architect	\$117 - \$213

### Grant Writing

Funding Specialist	\$109 - \$210
Sr. Funding Specialist	\$147 - \$226
Funding Manager	\$249 - \$326

### District Management

* Inspector - Apprentice	\$59 - \$106
* Inspector/Sr. Inspector	\$97 - \$158
Associate Sanitary Engineer	\$138 - \$207
Sr. Sanitary Project Engineer	\$161 - \$281
Deputy District Manager	\$223 - \$339
District Manager-Engineer	\$305 - \$368

### Surveying

Surveyor	\$109 - \$155
Sr. Surveyor	\$123 - \$187
Project Surveyor	\$144 - \$219
Sr. Project Surveyor	\$167 - \$226
* Single Chief	\$153 - \$203
* Single Instrumentman	\$144 - \$181
* Single Chainman	\$135 - \$177
* Apprentice	\$81 - \$139
* 1 Person Field Crew	\$153 - \$203
* 2 Person Field Crew	\$288 - \$407
* 3 Person Field Crew	\$369 - \$584

### Technicians

Intern	\$47 - \$103
Technician/Office/Survey Technician	\$62 - \$129
Sr. Technician/Survey Technician	\$91 - \$177
Lead Technician/Survey Technician	\$123 - \$200

### Project Management & Oversight

Project/Survey Manager	\$182 - \$258
Sr. Project/Survey Manager	\$217 - \$345
Division Manager	\$244 - \$381
Principal	\$390 - \$461

### Project Support

Technical/Sr. Technical Writer	\$59 - \$171
Project/Sr. Project Assistant	\$70 - \$132
Project/Sr. Project Coordinator	\$94 - \$168
Graphic/Sr. Graphic Designer	\$100-\$187
Project/Sr. Project Accountant	\$103 - \$177
Sr. Graphic Manager	\$141 - \$207
Project Accountant Manager	\$155 - \$216

### Special Services

Expert Witness	\$470
Strategic Consulting	\$470

Fee expires June 30, 2023

**FIXED HOURLY RATE SCHEDULE BY FIRM**

<b>Consultant</b>	<b>Personnel Name</b>	<b>Title and/or Role</b>	<b>Fixed Hourly Rate (\$)</b> <i>Effective Period</i> <i>01/01/22-12/13/22</i>	<b>Fixed Hourly Rate (\$)</b> <i>Effective Period</i> <i>01/01/23-12/31/23</i>	<b>Fixed Hourly Rate (\$)</b> <i>Effective Period</i> <i>01/01/24-12/31/24</i>
Mark Thomas & Company, Inc.	Shawn O'Keefe*	Principal/Strategic Advisor	\$390.98	\$410.53	\$431.06
Mark Thomas & Company, Inc.	Etty Mercurio*	Project Manager	\$352.73	\$370.36	\$388.88
Mark Thomas & Company, Inc.	Danielle Sanchez*	Civil Lead	\$202.18	\$212.29	\$222.90
Mark Thomas & Company, Inc.	Various	Technical Lead	\$217.98	\$228.88	\$240.33
Mark Thomas & Company, Inc.	Various	Sr. Project Engineer	\$189.71	\$199.20	\$209.16
Mark Thomas & Company, Inc.	Various	Project Engineer	\$164.20	\$172.41	\$181.03
Mark Thomas & Company, Inc.	Various	Design Engineer II	\$150.68	\$158.22	\$166.13
Mark Thomas & Company, Inc.	Various	Design Engineer I	\$123.10	\$129.26	\$135.72
Mark Thomas & Company, Inc.	Various	Sr. Project Manager (Structures - Various)	\$280.00	\$294.00	\$308.70
Mark Thomas & Company, Inc.	Various	Sr. Project Engineer (Structures - Various)	\$197.00	\$206.85	\$217.19
Mark Thomas & Company, Inc.	Various	Project Engineer (Structures - Various)	\$172.50	\$181.13	\$190.18
Mark Thomas & Company, Inc.	Various	Design Engineer II (Structures - Various)	\$150.68	\$158.22	\$166.13
Mark Thomas & Company, Inc.	Various	Sr. Technician (Structures - Various)	\$152.06	\$159.67	\$167.65
Mark Thomas & Company, Inc.	Various	Deputy District Manager	\$303.77	\$318.95	\$334.90
Mark Thomas & Company, Inc.	Various	CM Division Manager	\$310.39	\$325.91	\$342.20
Mark Thomas & Company, Inc.	Various	Operations Manager	\$273.15	\$286.81	\$301.15
Mark Thomas & Company, Inc.	Various	LAUD Division Manager	\$250.67	\$263.20	\$276.36
Mark Thomas & Company, Inc.	Various	Sr. Engineering Manager	\$391.67	\$411.26	\$431.82
Mark Thomas & Company, Inc.	Various	Survey Division Manager	\$334.71	\$351.45	\$369.02
Mark Thomas & Company, Inc.	Various	Survey Manager	\$226.18	\$237.49	\$249.36
Mark Thomas & Company, Inc.	Various	Sr. Project Surveyor	\$198.59	\$208.52	\$218.95
Mark Thomas & Company, Inc.	Various	Sr. Sruveyor	\$160.94	\$168.99	\$177.44
Mark Thomas & Company, Inc.	Various	Lead Survey Technician	\$170.05	\$178.55	\$187.48
Mark Thomas & Company, Inc.	Various	Sr. Survey Technician	\$146.55	\$153.87	\$161.57
Mark Thomas & Company, Inc.	Various†	2 Person Field Crew	\$354.38	\$372.10	\$390.70
Mark Thomas & Company, Inc.	Various	Sr. Project Coordinator	\$147.29	\$154.66	\$162.39
Mark Thomas & Company, Inc.	Various	Sr. Project Assistant	\$152.75	\$160.39	\$168.41
AECOM	Tom Barnard	Lead Sturctures Eng	\$308.08	\$323.48	\$339.65
AECOM	TBD	Track Eng	\$203.02	\$213.17	\$223.83
AECOM	TBD	Structures Eng	\$203.02	\$213.17	\$223.83

<b>Consultant</b>	<b>Personnel Name</b>	<b>Title and/or Role</b>	<b>Fixed Hourly Rate (\$)</b> <i>Effective Period</i> 01/01/22-12/13/22	<b>Fixed Hourly Rate (\$)</b> <i>Effective Period</i> 01/01/23-12/31/23	<b>Fixed Hourly Rate (\$)</b> <i>Effective Period</i> 01/01/24-12/31/24
AECOM	Daniel Villanueva	Systems Lead	\$239.51	\$251.48	\$264.06
AECOM	Millette Litzinger	Project Manager	\$302.39	\$317.51	\$333.39
AECOM	Alan Boone	Track Lead	\$258.82	\$271.76	\$285.35
AECOM	TBD	Sr. Signal Engineer	\$256.31	\$269.12	\$282.58
AECOM	TBD	Sr. Traction Power Engineer	\$256.31	\$269.12	\$282.58
AECOM	TBD	Project Controls Lead	\$241.08	\$253.14	\$265.79
AECOM	TBD	Project Controls Analyst	\$142.11	\$149.22	\$156.68
AECOM	TBD	Administrator	\$126.89	\$133.23	\$139.89
AECOM	TBD	Sr. Administrator	\$164.95	\$173.20	\$181.86
AECOM	TBD	Staff Structures Engineer	\$144.65	\$151.88	\$159.48
AECOM	TBD	Sr. Structures Engineer	\$241.08	\$253.14	\$265.79
AECOM	TBD	CADD Technician	\$139.57	\$146.55	\$153.88
AECOM	TBD	Sr. CADD Technician	\$177.64	\$186.52	\$195.85
Balance Hydrologics, Inc.	Peter Kulchawik	Principal II	\$170.16	\$178.67	\$187.60
Balance Hydrologics, Inc.	Tarick Abu-Aly	Senior Professional	\$155.65	\$163.43	\$171.60
Balance Hydrologics, Inc.	Zan Rubin	Project Professional	\$149.62	\$157.10	\$164.95
Balance Hydrologics, Inc.	Camille Pauley	Staff Professional	\$110.69	\$116.23	\$122.04
Balance Hydrologics, Inc.	Johnny Caspers	Staff Professional	\$114.80	\$120.54	\$126.57
Balance Hydrologics, Inc.	Jessalyn Siu	Staff Professional	\$119.08	\$125.04	\$131.29
Balance Hydrologics, Inc.	Dana Jepsen	GIS/CADD Senior Analyst	\$131.64	\$138.22	\$145.13
Balance Hydrologics, Inc.	Rachel Boitano	Senior Project Administrator	\$157.92	\$165.82	\$174.11
Balance Hydrologics, Inc.	Tylor Christopher	Report Specialist	\$116.14	\$121.95	\$128.04
CSW   ST2	Kirk Bovitz	Sr. Project Manager	\$211.74	\$222.32	\$233.44
CSW   ST2	Robert Stevens	Sr. Project Manager	\$211.74	\$222.32	\$233.44
CSW   ST2	Cristopher Ethier	Engineer II	\$151.78	\$159.37	\$167.34
CSW   ST2	Lorenzo Jimenez	Engineer I	\$103.21	\$108.37	\$113.79
CSW   ST2	Alan Garcia	Engineer I	\$100.18	\$105.19	\$110.45
CSW   ST2	Zhihong Huang	Engineer II	\$115.36	\$121.12	\$127.18
Fugro USA Land, Inc.	Jeriann Alexander	Principal Engineer/Hazardous Materials Specialist	\$297.70	\$312.58	\$328.21
Fugro USA Land, Inc.	Karen Emery-Tonkovich	Principal Geologist/Hazardous Materials Specialist	\$234.02	\$245.72	\$258.01
Fugro USA Land, Inc.	Ecem Isleyen	Senior Geologist/GIS Specialist	\$154.32	\$162.04	\$170.14

<b>Consultant</b>	<b>Personnel Name</b>	<b>Title and/or Role</b>	<b>Fixed Hourly Rate (\$)</b> <i>Effective Period</i> 01/01/22-12/13/22	<b>Fixed Hourly Rate (\$)</b> <i>Effective Period</i> 01/01/23-12/31/23	<b>Fixed Hourly Rate (\$)</b> <i>Effective Period</i> 01/01/24-12/31/24
Fugro USA Land, Inc.	Marissa McCallum	Senior Editor/Word Processing	\$116.86	\$122.70	\$128.84
HDR Engineering, Inc.			\$0.00	\$0.00	\$0.00
OPAC Engineering	Vivian Chang	Principal Engineer	\$231.83	\$243.42	\$255.59
OPAC Engineering	Francis Drouillard	Principal Engineer	\$227.17	\$238.53	\$250.45
OPAC Engineering	Matthew Etchepare	Project Manager	\$203.64	\$213.82	\$224.52
OPAC Engineering	Erik Lin	Senior Engineer	\$179.69	\$188.67	\$198.11
OPAC Engineering	Saurabh Ghag	Engineer	\$102.91	\$108.05	\$113.46
OPAC Engineering	Miguel Lamagna	CADD Technician	\$115.94	\$121.74	\$127.83
PARIKH CONSULTANTS, INC.	G. PARIKH *	PIC	\$299.11	\$314.06	\$329.77
PARIKH CONSULTANTS, INC.	D. WANG *	PROJECT MANAGER & QA-QC	\$216.79	\$227.63	\$239.01
PARIKH CONSULTANTS, INC.	F. WANG *	SEN. PROJECT ENGINEER	\$200.23	\$210.24	\$220.75
PARIKH CONSULTANTS, INC.	J. TURBAY	Project Engineer	\$165.84	\$174.13	\$182.84
PARIKH CONSULTANTS, INC.	Staff Engineer	Staff Engineer	\$111.02	\$116.57	\$122.40
PARIKH CONSULTANTS, INC.	Field Engineer	Field Engineer	\$147.01	\$154.36	\$162.08
PARIKH CONSULTANTS, INC.	C. Langbein	Project Geologist	\$133.98	\$140.68	\$147.72
PARIKH CONSULTANTS, INC.	Lab. Technician	Lab. Technician	\$106.20	\$111.51	\$117.08
PARIKH CONSULTANTS, INC.	Draftsperson-CADD	Draftsperson-CADD	\$116.59	\$122.42	\$128.54
PGAdesign	Christopher Kent*	Principal	\$270.44	\$283.96	\$298.16
PGAdesign	Kari Tanaka*	Senior Landscape Architect	\$152.83	\$160.47	\$168.49
PGAdesign	Charla Kaul*	Landscape Architect	\$113.20	\$118.86	\$124.81
PGAdesign	Adrienne Newton*	Landscape Designer	\$107.54	\$112.92	\$118.57
PGAdesign	Robert Towar*	Irrigation Designer	\$129.47	\$135.95	\$142.75
ROMA Collaborative	Ivana Micic *	Principal in Charge	\$239.95	\$251.95	\$264.55
ROMA Collaborative	Mimi Ahn	Senior Landscape Architect	\$220.19	\$231.20	\$242.76
ROMA Collaborative	Erika Cesarino	Designer	\$87.52	\$91.90	\$96.49
ROMA Collaborative	Esther Sam	Graphics	\$142.39	\$149.51	\$156.99
Y&C Transportation Consultants, Inc.	Daniel Yau	Engineer XII	\$213.60	\$224.28	\$235.49
Y&C Transportation Consultants, Inc.	Kin Chan	Engineer XI	\$197.99	\$207.89	\$218.29
Y&C Transportation Consultants, Inc.	Spencer Lee	Engineer VII	\$135.23	\$141.99	\$149.09

<b>Consultant</b>	<b>Personnel Name</b>	<b>Title and/or Role</b>	<b>Fixed Hourly Rate (\$)</b> <i>Effective Period</i> 01/01/22-12/13/22	<b>Fixed Hourly Rate (\$)</b> <i>Effective Period</i> 01/01/23-12/31/23	<b>Fixed Hourly Rate (\$)</b> <i>Effective Period</i> 01/01/24-12/31/24
Y&C Transportation Consultants, Inc.	Jessica Wu	Engineer VI	\$130.03	\$136.53	\$143.35
Y&C Transportation Consultants, Inc.	Meng Yang	Engineer VI	\$120.66	\$126.70	\$133.03
Y&C Transportation Consultants, Inc.	Shannon Liao	Engineer III	\$74.90	\$78.64	\$82.57
Y&C Transportation Consultants, Inc.	J. Nguyen	Engineer I	\$66.57	\$69.90	\$73.40
Y&C Transportation Consultants, Inc.	A. Huynh	Engineer I	\$66.57	\$69.90	\$73.40
Y&C Transportation Consultants, Inc.	Teresa Chan	Technician III	\$55.76	\$58.54	\$61.47

## EXHIBIT C

### PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

#### HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subcontractors shall forfeit as a penalty to the City \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

#### WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.
- B. In accordance with Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply Labor Code Section 1775, which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage

rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
  2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
  3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
  4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.
- C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
1. The information contained in the payroll record is true and correct.
  2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.
- The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.
- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

- E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

#### DIR REGISTRATION

Consultant shall be currently registered with the Department of Industrial Relations and qualified to perform public work consistent with Labor Code section 1725.5, except in limited circumstances as set forth in Labor Code section 1771.1. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code Section 1725.5. Consultant agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.