

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2018, by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and **MARK THOMAS & COMPANY, INC.** ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to CITY OF GARDEN GROVE Resolution No. 9212-14 (January 28, 2014).
2. CITY desires to utilize the services of CONSULTANT to **provide engineering design services for bicycle facility improvements including creating new bike lanes through road rebalancing, striping buffers, and providing bicycle wayfinding signs along the proposed corridors included in the Bicycle Corridor Improvement Program (BCIP)** (the "Project").
3. CITY does not have the personnel to accomplish said services.
4. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish the required services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement:** This Agreement shall cover services rendered from date of this Agreement until the services to be provided are completed or unless sooner terminated per Subsection 3.4.
2. **Services to be Provided:** The services to be performed by CONSULTANT shall consist of the tasks specified in CONSULTANT's Proposal, which is attached hereto as Attachment "A" and incorporated herein by reference. The Proposal and this Agreement do not guarantee any specific amount of work. CONSULTANT warrants that all services will be performed in a competent, professional and satisfactory manner in accordance with customary and usual practices in CONSULTANT'S profession and the standards prevalent in the industry for such services. By executing this Agreement, CONSULTANT warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.
3. **Compensation.** CONSULTANT shall be compensated as follows:
 - 3.1 **Amount.** CONSULTANT shall be compensated for the services provided under this Agreement in accordance with the fee schedule set forth in

CONSULTANT's Proposal; provided, however, that total compensation payable by CITY to CONSULTANT under this Agreement shall not exceed the total amount of **Ninety-five Thousand Two-Hundred and Twenty** Dollars and 00/100 cents (**\$95,220.00**), payable in arrears and billed on a time-and material basis. Unless otherwise mutually agreed by the parties in writing, CONSULTANT shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein.

- 3.2 Payment. For work under this Agreement, payment shall be made per invoice submitted by CONSULTANT for work completed. Labor and Expenses will be billed per the attached rate sheet (Attachment "B").
- 3.3 Records of Expenses. CONSULTANT shall keep complete and accurate records of payroll costs, travel and incidental expenses. These records will be made available at reasonable times to CITY.
- 3.4 Termination. CITY and CONSULTANT shall each have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice of termination to the other party. If the Agreement is terminated by CITY, then the provisions of this Section 3 shall apply to that portion of the work completed. In such event, CITY will compensate CONSULTANT for work performed to date in accordance with the Proposal. CONSULTANT is required to present evidence to support performed work.

4. **Insurance Requirements**

- 4.1 Commencement of Work. CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
- 4.2 Workers Compensation Insurance. For the duration of this Agreement, CONSULTANT and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable. The insurer shall waive its rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers.
- 4.3 Insurance Amounts. CONSULTANT shall maintain the following insurance for the duration of this Agreement:
 - a) Commercial general liability in an amount not less than \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable); Insurance companies must be approved by the CITY, admitted and licensed in

California, and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY;

- b) Automobile liability in an amount not less than of \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable) Insurance companies must be approved by the CITY, admitted and licensed in California, and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (c) Professional liability in the amount not less than \$1,000,000 per occurrence; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, lease, hired, or borrowed by CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

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

If CONSULTANT maintains higher insurance limits than the minimums shown above, CONSULTANT shall provide coverage for the higher insurance limits otherwise maintained by the CONSULTANT.

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONSULTANT in the event of any default or breach by CITY, or for any amount, which may become due to CONSULTANT.
6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance With Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government. CONSULTANT shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this Agreement to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.
9. **Disclosure of Documents.** All documents or other information developed or received by CONSULTANT are confidential and shall not be disclosed without authorization by CITY, unless disclosure is required by law.
10. **Ownership of Work Product.** Except for licensed work as provided for in CONSULTANT'S Proposal, all documents or other information developed or received by CONSULTANT shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
11. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
12. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
13. (a) Address of CONSULTANT is as follows:

Mark Thomas & Company, Inc.
Attention: Arturo Vivar
16795 Von Karman Avenue, Suite 240
Irvine, CA 92606

(b) Address of CITY is as follows (with a copy to):

Alana Cheng
Community & Econ. Dev. Dept.
City of Garden Grove
P.O. Box 3070
Garden Grove, CA 92840

13. **CONSULTANT'S Proposal.** This Agreement shall include CONSULTANT's proposal, Exhibit "A" hereto, which shall be incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
14. **Licenses, Permits and Fees.** At its sole expense, CONSULTANT shall obtain a **Garden Grove Business License**, all permits and licenses as may be required by this Agreement.
15. **Familiarity With Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
16. **Time of Essence.** Time is of the essence in the performance of this Agreement.
17. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability and reputation of CONSULTANT, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONSULTANT. CITY will deal directly with and will make all payments to CONSULTANT.

18. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
19. **Indemnification.** To the fullest extent permitted by law, CONSULTANT agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT in the performance of the Agreement. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by CITY and CONSULTANT.
21. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and CONSULTANT.
22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.
23. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties
24. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.
25. **Appropriations.** This Agreement is subject to and contingent upon funds being appropriated therefor by the Garden Grove City Council for each fiscal year covered by the term of this Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the CITY.*[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS THEREOF, these parties hereto have caused this Agreement to be executed as of the date set forth opposite the respective signatures.

**"CITY"
CITY OF GARDEN GROVE**

By: _____
City Manager Dated

ATTEST:

**"CONSULTANT"
MARK THOMAS & COMPANY, INC.**

City Clerk Dated

By: _____

Title: _____

Dated: _____

Tax I.D.: _____

APPROVED AS TO FORM:

City Attorney Dated

If CONSULTANT/CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY

Attachment "A"
SCOPE OF WORK

ATTACHMENT A - SCOPE OF WORK

GARDEN GROVE BCIP – PROFESSIONAL ENGINEERING SERVICES

Mark Thomas

Phase I Project Data Gathering and Coordination

1.1 Project Management and Coordination

This task includes project management time to manage scope tasks below. Includes monthly Project Study Meetings (9), right of entry permits, maintaining schedule and subconsultants. Prior to developing the 60% design plans, Mark Thomas will conduct a meeting with City staff to determine the appropriate vision for the project areas and gain consensus on design criteria for the project. This task also includes all project administration time and QA/QC process implementation.

Deliverables:

- Agendas and meeting minutes for monthly Project Status Meeting (9)
- Monthly invoices and Progress Reports
- Project Schedule and Updates as needed.

1.2 Review Existing Conditions and Data.

Mark Thomas will review existing design alignment plans from the City, prepared as part of the last phase, and will prepare refinement recommendations to the preliminary plan (cross sections) for initial City meeting. After initial preliminary design is reviewed, Mark Thomas will conduct a field survey along with City Staff to confirm improvement areas and key intersections.

Deliverables:

- Review Existing Data
- Preliminary Design Refinements (Cross Sections)
- Field Visit with City

1.3 Survey (Topographic Mapping)

Mark Thomas will use existing aerial imagery as background for the striping design. The background will include publicly available right-of-way lines depicted in recorded documents. It is anticipated that the design will be completed within public right-of-way.

- Aerial Base Mapping with ROW lines.

Phase II – PS&E

2.1 60% Plans and Quantities/Estimate

After the design criteria and concept plan refinement are completed and agreed upon. Mark Thomas shall prepare 60% design plans, which shall only include geometry and the dimensions necessary to review the layout before incorporating full annotations and detail numbers.

Mark Thomas shall prepare quantities back up spreadsheet and estimate for the design of all project segments.

All plans shall be developed using the City's standard plans and any applicable MUTCD and NACTO guidelines. The plans shall be prepared using AutoCAD (version per City's preference), at 40 scale double stacked plans and shall include the following plans:

- Title Sheet
- Signing and Striping Plans (40 Sheets)
- Signing and Striping Details (2 Sheets)

Deliverables:

- 60% Plans, Quantities and Estimates. (PDF and Hard Copies)

2.2 90% PS&E

Mark Thomas shall address any 60% comments and update the striping design per review comments and shall prepare fully annotated 90% plans which shall include all annotations and details.

Quantities shall be updated and reflected in the estimate.

Mark Thomas shall prepare the technical provisions for the project, including any special contractor requirements and new City special provisions needed.

Deliverables:

- 90% PS&E (PDF and Hard Copies)
- 60% review comment responses.

2.3 Final PS&E

Mark Thomas shall address any 90% submittal comments and prepare the final plans for final review.

Based on updates to the signing and striping plans, Mark Thomas shall update the quantities back-up, estimates and technical provisions for the project.

Deliverables:

- Final PS&E
- 90% review comment responses.

2.4 Bid Package

After addressing any minor review comments from the Final PS&E, Mark Thomas shall prepare the bid package.


Deliverables:

- Bid Plans (PDF, CADD files and Full Size Signed Mylar)
- Bid Specification (PDF, MS Word file and Unbound Signed Hard Copy)
- Quantities back up, Estimate and Bid Item List (PDF and Hard Copy)

Attachment "B"

RATE SHEET

COST PROPOSAL FOR PROJECT SCOPE - City of Garden Grove: BCIP

	Mark Thomas								TOTAL COST	
	Engineering Services							Total Hours		Total MT Cost
	Principal \$340	Project Manager \$172	Design Engineer II \$111	Design Engineer I \$90	Sr. Technician \$106	Intern \$52	Project Coordinator \$86			
1.0 PROJECT COORDINATION AND DATA GATHERING										
1.1 Project Management and Coordination		8	8				12	28	\$3,295	\$3,295
1.2 Review Existing Conditions and Data		4	8					12	\$1,571	\$1,571
1.3 Base Mapping			8				60	68	\$4,032	\$4,032
Subtotal Phase 1	0	12	24	0	0	60	12	108	\$8,898	\$8,898
2.0 PS&E										
2.1 60% PS&E		16	60	140	160	240		616	\$51,589	\$51,589
2.2 90% PS&E		12	40	40	80	100		272	\$23,837	\$23,837
2.3/2.4 Final/Bid PS&E		8	20	24	24	40		116	\$10,396	\$10,396
Subtotal Phase 2	0	36	120	204	264	380	0	1004	\$85,822	\$85,822
TOTAL HOURS	0	48	144	204	264	440	12	1112		1,112
OTHER DIRECT COSTS									\$500	\$500
TOTAL COST	\$0	\$8,236	\$15,926	\$18,367	\$28,074	\$23,080	\$1,038		\$95,220	\$95,220