

RESOLUTION NO. 2005-58

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING A CONTRACT WITH MARK THOMAS AND COMPANY, INC. FOR
PROFESSIONAL SERVICES FOR THE HARBOUR POINT DRIVE IMPROVEMENTS
PROJECT – ELK GROVE BOULEVARD TO LAGUNA BOULEVARD**

WHEREAS, the City of Elk Grove requires professional services for project design, preparation of construction documents and related engineering services for the Harbour Point Drive Improvements Project - Elk Grove Boulevard to Laguna Boulevard; and

WHEREAS, City staff has determined through a competitive selection process that Mark Thomas and Company, Inc. is best qualified to carry out the engineering services required for this project.

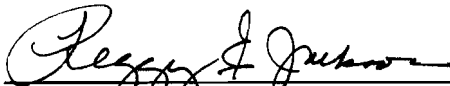
NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby authorizes the City Manager or his designee to enter into a professional services contract for the Harbour Point Drive Improvements Project - Elk Grove Boulevard to Laguna Boulevard for an amount not to exceed \$146,789.

PASSED AND ADOPTED BY THE City Council of the City of Elk Grove on this 9th day of March 2005.



DANIEL BRIGGS, MAYOR of the
CITY OF ELK GROVE

ATTEST:



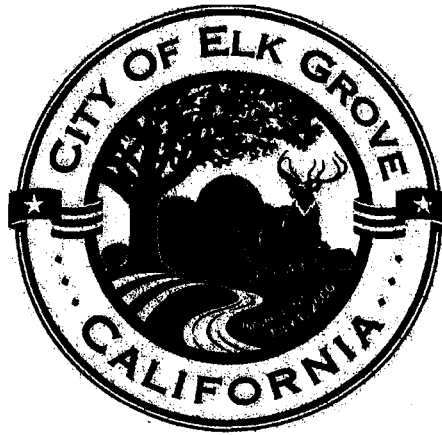
PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

CITY OF ELK GROVE



CONTRACT FOR

MARK THOMAS AND COMPANY, INC. - CONSULTANT

Harbour Point Drive Improvements – Elk Grove Blvd. to Laguna Blvd.



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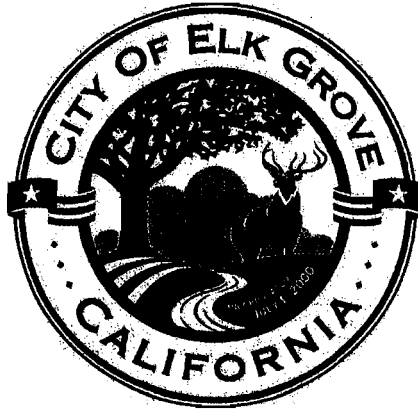
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CONTRACT FOR
MARK THOMAS AND COMPANY, INC. - CONSULTANT

THIS CONTRACT is made and entered into between City of Elk Grove, a Municipal Corporation ("City") and Mark Thomas and Company, Inc. ("Consultant"). City and Consultant agree as follows:

1. SCOPE, TERM AND STANDARDS:

A. CONTRACT. Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to complete the services described in the SCOPE OF WORK AND STANDARDS FOR SERVICES, attached hereto and incorporated herein by this reference as Exhibit A, as requested by the City. Consultant shall, at its own cost, make any revisions of its own work as required by the City and re-do, at its own cost, any work which the City finds unsatisfactory due to Consultant's errors or omissions. Consultant represents and warrants that it has the qualifications, experience, and facilities to properly perform said services in a thorough, competent, and professional manner. This document shall be known as the "Contract." This Contract and its exhibits shall be known as the "Contract Documents." Terms set forth in any Contract Document shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control. If either party to this contract deems that any portion of the Contract Documents shall be in conflict with any other portion, the Parties shall first attempt to informally reach an interpretation of those provisions so as to reconcile them. If after five (5) business days the Parties are unable to reach an informal resolution, the City shall issue in writing an interpretation resolving the conflicting provisions, which shall be provided to Consultant. The interpretation provided by the City shall become final and binding on the parties three (3) business days after it was provided to Consultant, and shall thereafter be an integrated term of this Contract and neither party shall be considered to be the drafter of the provision.

B. CONSULTANT IS INDEPENDENT CONTRACTOR. Consultant enters into this Contract as, and shall at all times remain as to the City, an independent contractor and not as an employee of the City. Nothing in this Contract shall be construed to be inconsistent with this relationship or status. The



Consultant shall have no power or authority except by this Contract to bind the City in any respect. All employees, agents, contractors or subcontractors hired or retained by the Consultant are employees, agents, contractors or subcontractors of the Consultant and not of the City. The personnel performing the services under this Contract on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Contract. Consultant shall not at any time or in any manner represent that it or any of its officers, or employees, or agents are in any manner officers, employees, of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. The City shall not be responsible, obligated, or liable in any way to pay any salary, wage, compensation, tax, withholding, benefit, injury, illness claims or other claims made against the Consultant and/or the City by any such employees, agents, contractors or subcontractors, or any other person arising from performance of this Contract. Additionally, Consultant shall be solely responsible, obligated, and liable for any and/or all salary, wage, compensation, tax, withholding, benefit, injury, illness claims or other claims made against Consultant and/or the City by any such employees, agents, contractors or subcontractors, or other person arising from performance of this contract, and Consultant shall indemnify, defend and hold harmless the City against such claims to the extent caused by Consultant's errors, omissions or negligence.

C. NO PAY FOR ADDITIONAL SERVICES WITHOUT WRITING.

Consultant shall not be compensated for any services rendered in connection with its performance of this Contract, which are in addition to those set forth herein or listed in Exhibit A, unless such additional services are authorized in advance and in writing by the City Manager or the City Manager's designee (hereinafter "City Manager" shall include the City Manager's designee). Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City and Consultant at the time City's express written authorization signed by the City Manager is given to Consultant for the performance of said services.

D. TERM

Except as provided in Sections 6 and 19, below, this Contract shall terminate no later than December 31, 2006.

E. INTENDED USE OF CONSULTANT'S PRODUCT AND MATERIALS.

It is expressly intended by the parties that the Consultant's work product and materials, whether or not in writing, shall be used for the purposes of providing professional services for the preparation of construction documents and related engineering services for the Harbour Point Drive Improvements – Elk Grove Boulevard to Laguna Boulevard.

2. EMPLOYMENT STATUS OF PERSONNEL

A. AGENT OF CITY. For the purposes of performing the services provided for in this Contract, and for the purpose of giving official status to the performance thereof where necessary, every



Consultant officer and employee engaged in the performance of any service under this Contract shall be deemed to be an agent of City while performing such services, provided that such services are within the scope of this Contract and are purely municipal functions. Notwithstanding the agency relationship established by this subsection, City shall not be liable for any act or omission of any Consultant officer or employee performing the services provided for in this Contract, unless specifically provided for in this Contract.

B. EMPLOYEES OF CONSULTANT. Any persons employed by Consultant for the performance of services pursuant to this Contract shall remain employees of Consultant, shall at all times be under the direction and control of Consultant, and shall not be considered employees of City. All persons employed by Consultant to perform services pursuant to this Contract shall be entitled solely to the right and privileges afforded to Consultant employees and shall not be entitled, as a result of providing services hereunder, to any additional rights or privileges that may be afforded to City employees.

C. INDEPENDENT INVESTIGATION. The Consultant agrees and hereby represents it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.

D. COMPLIANCE WITH EMPLOYMENT LAWS. The Consultant shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable federal, state, county and municipal laws, ordinances, regulations, orders and decrees which in any manner affect those engaged or employed on the work described by this Contract or the materials used or which in any way affect the conduct of the work.

E. UNLAWFUL DISCRIMINATION PROHIBITED. Consultant shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation.

3. TIME OF PERFORMANCE:

The services of Consultant are to commence upon execution of this Contract by City, and shall be undertaken and completed in a prompt and timely manner, in accordance with the Scope of Work referenced in Exhibit A.

4. COMPENSATION:

A. TERMS. Compensation to the Consultant shall be as set forth in Exhibit B attached hereto and made a part hereof. Total compensation to Consultant shall not exceed \$146,789.00 without the advance written consent of City.



B. TIME FOR PAYMENT. Payments shall be made within thirty (30) days after receipt of each invoice as to all undisputed fees. If City disputes any of Consultant's fees, it shall give written notice to Consultant within 20 days of receipt of an invoice of any disputed fees set forth on the invoice.

5. SUPERVISION, LABOR AGREEMENTS AND PERSONNEL:

A. CONSULTANT SUPERVISES PERSONNEL. The Consultant shall have the responsibility for supervising the services provided under this Contract, hiring of personnel, establishing standards of performance, assignment of personnel, determining and affecting discipline, determining required training, maintaining personnel files, and other matters relating to the performance of services and control of personnel. The City Manager may use any reasonable means to monitor performance and the Consultant shall comply with the City Manager's request to monitor performance.

B. LABOR RELATIONS. Consultant shall be responsible for negotiating and administering all labor relations agreements and personnel rules and procedures between Consultant and its employees rendering services pursuant to this Contract.

C. PERFORMANCE NOT SUBJECT TO EMPLOYMENT AGREEMENTS.

The City acknowledges that the Consultant may be obligated to comply with bargaining agreements and/or other agreements with employees and that the Consultant is legally obligated to comply with these Contracts. It is expressly the intent of the parties and it is agreed by the parties that the Consultant's performance shall not in any manner be subject to any bargaining agreement(s) or any other agreement(s) the Consultant may have covering and/or with its employees.

D. APPROVAL OF STAFF MEMBERS. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Contract. Consultant shall notify City of any changes in Consultant's staff to be assigned to perform the services required under this Contract and shall obtain the approval of the City Manager of a list of all proposed staff members who are to be assigned to perform services under this Contract prior to any such performance.

6. TERMINATION:

A. 90 DAYS NOTICE. Either Party, upon ninety (90) days written notice, may terminate this Contract, without cause, at any time. In the event of such termination, Consultant shall be compensated for non-disputed fees under the terms of this Contract up to the date of termination. If the City has advanced payment, Consultant shall refund unused fees as of the date of the termination.

B. OBLIGATIONS SURVIVE TERMINATION. Notwithstanding any termination of this Contract, Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract by Consultant, and the City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due the City from Consultant is determined. All of the indemnification, defense and hold harmless obligations in this Contract shall survive termination.



7. CHANGES:

The City or Consultant may, from time to time, request changes in the scope of the services of Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of Consultant's compensation and/or changes in the schedule must be authorized in advance by both Parties in writing. Mutually agreed changes shall be incorporated in written amendments to this Contract. Any increase in the amount of Consultant's compensation and/or changes in Exhibit A and or Exhibit B must be authorized in advance by the City Manager.

8. PROPERTY OF CITY:

A. MATERIALS PREPARED EXCLUSIVE PROPERTY OF CITY.

It is mutually agreed that all materials prepared by the Consultant under this Contract are upon creation and shall be at all times the exclusive property of the City, and the Consultant shall have no property right therein whatsoever. City agrees that Consultant shall bear no responsibility for any modifications made to, or reuse of, the materials prepared by the Consultant if used for purposes other than those expressly set forth in the Intended Use of Consultant's Products and Materials section of this Contract. Consultant shall not disseminate any information or reports gathered or created pursuant to this Contract without the prior written approval of City including without limitation information or reports required by government agencies to enable Consultant to perform its duties under this Contract and as may be required under the California Public Records Act excepting therefrom as may be provided by court order. Consultant will be allowed to retain copies of all deliverables.

B. CONSULTANT TO DELIVER CITY PROPERTY.

Immediately upon termination, or upon the request by the City, the City shall be entitled to, and the Consultant shall deliver to the City, all data, drawings, specifications, reports, estimates, summaries and other such materials and property of the City as may have been prepared or accumulated to date by the Consultant in performing this Contract. Consultant will be allowed to retain copies of all deliverables to the City.

9. CONFLICTS OF INTEREST

A. CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Contract. Consultant further covenants that in the performance of this Contract, Consultant shall take reasonable care to ensure that no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Contract. Consultant agrees to include language similar to this Section 9(A) in all contracts with subcontractors and agents for the work contemplated herein.



B. CITY understands and acknowledges that Consultant is, as of the date of execution of this Contract, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

10. CONFIDENTIAL INFORMATION

A. ALL INFORMATION KEPT IN CONFIDENCE. All information gained by Consultant in performance of this Contract shall be considered confidential and shall not be released by either party without the other's prior written authorization, including without limitation, that information which is a public record and subject to disclosure pursuant to the California Public Records Act Government Code §6250, et. seq. Neither the City nor the Consultant, its officers, employees, agents, or subcontractors, shall without written authorization given by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Contract or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary", provided Consultant or City gives notice to the other party of such court order or subpoena.

B. REIMBURSEMENT FOR UNAUTHORIZED RELEASE. If City or Consultant or any of its officer, employees, or subcontractors does voluntarily provide information in violation of this Contract, the other party has the right to reimbursement and indemnity from party releasing such information for any damages caused by the releasing party's, including the non-releasing party's attorney's fees and disbursements, including without limitation expert's fees and disbursements.

C. COOPERATION. City and Consultant shall promptly notify the other party should Consultant or City, its officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Contract and the work performed thereunder or with respect to any project or property located within the City. City and Consultant each retains the right, but has no obligation, to represent the other party and/or be present at any deposition, hearing or similar proceeding. Consultant and City agree to cooperate fully with the other party and to provide the other party with the opportunity to review any response to discovery requests provided by Consultant or City. However, City and Consultant's right to review any such response does not imply or mean the right by the other party to control, direct, or rewrite said response.

11. PROVISION OF LABOR, EQUIPMENT AND SUPPLIES

A. CONSULTANT PROPERTY. Consultant shall furnish all necessary labor, supervision, equipment, communications facilities, and supplies necessary to perform the services required by this Contract. City acknowledges that all equipment and other tangible assets used by Consultant in providing these services are the property of Consultant and shall remain the property of Consultant upon termination of this Contract.



B. SPECIAL SUPPLIES. City shall be responsible for supplying any special supplies, stationary, notices, forms or similar items that it requires to be issued with a City logo. All such items shall be approved by the City Manager and shall be provided at City's sole cost and expense.

12. COMPLIANCE WITH LOCAL LAW:

A. COMPLIANCE REQUIRED. Consultant shall keep itself informed of applicable local, state, and federal laws and regulations which may affect those employed by it or in any way affect the performance of its services pursuant to this Contract. Consultant shall observe and comply with all applicable laws, ordinances, regulations and codes of federal, state and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract. Consultant shall at all times hold a valid contractor's license if performing any function or activity for which a license is required pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the California Business and Professions Code, and Consultant shall provide a copy of the license(s) upon the request of the City. The City, its officials, officers, elected officials, appointed officials and employees shall not be liable at law or in equity as a result of any failure of consultant to comply with this section.

B. PREVAILING WAGES. In the event it is determined that the Consultant is required to pay prevailing wages for the work performed under this Agreement, the Consultant shall pay all penalties and wages as required by applicable law.

13. REPRESENTATION:

Consultant agrees and represents that it is qualified to properly provide the services set forth in Exhibit A in a manner which is consistent with the generally accepted standards of Consultant's profession. Consultant further represents and agrees that it will perform these services in a legally adequate manner in conformance with applicable federal, state and local laws and guidelines.

14. SUBCONTRACTING:

None of the services covered by this Contract shall be subcontracted without the prior written consent of the City Manager. Consultant shall be as fully responsible to the City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Consultant. Consultant is authorized to subcontract with those subcontractors and for services as identified in Exhibit C, and the terms of Exhibit C are hereby incorporated by this reference into this Contract.

15. ASSIGNABILITY:

Consultant shall not assign or transfer any interest in this Contract whether by assignment or novation. However, claims for money due or to become due Consultant from the City under this Contract may be assigned to a financial institution, but only with prior written consent of the City Manager. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished



promptly to the City. The rights and benefits under this agreement are for the sole and exclusive benefit of the City and this Contract shall not be construed that any third party has an interest in the Contract.

16. INTEREST IN CONTRACT:

Consultant covenants that it shall take reasonable care to ensure that neither it, nor any of its employees, agents, contractors, subcontractors have any interest, nor shall they acquire any interest, direct or indirect, in the subject of the Contract, nor any other interest which would conflict in any manner or degree with the performance of its services hereunder.

17. FINDINGS CONFIDENTIAL:

All of the materials prepared or assembled by Consultant pursuant to performance of this Contract are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the City, except by court order. However, Consultant shall not be deemed for any purposes a confidential employee of the City.

18. LIABILITY OF CONSULTANT:

Consultant shall be responsible for performing the work under this Contract in a manner which is consistent with the generally accepted standards of Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.

19. INDEMNITY AND LITIGATION COSTS:

A. CONSULTANT IS SKILLED. Consultant represents it is skilled in the services necessary to perform the duties agreed to hereunder by Consultant, and City relies upon the skills and knowledge of Consultant. Consultant shall perform such duties consistent with the standards generally recognized as being employed by agencies or contractors performing similar service in the State of California.

B. CONSULTANT SHALL INDEMNIFY. Consultant is an independent contractor and shall have no authority to bind City nor to create or incur any obligation on behalf of or liability against City, whether by contract or otherwise, unless such authority is expressly conferred under this Contract or is otherwise expressly conferred in writing by City. City and their elected and appointed officials, officers, agents, employees, and volunteers (individually and collectively, "Indemnities") shall have no liability to Consultant or to any other person for, and Consultant shall indemnify, defend, protect, and hold harmless the Indemnities from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs, and expenses of whatever nature, including reasonable attorneys' fees and disbursement, including without limitation expert's fees and disbursements (collectively "Claims"), which the Indemnities may suffer or incur or to which the Indemnities may become subject by reason of or arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss



or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or omission of the Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, occurring as a result of or allegedly caused by the performance or failure to perform by Consultant of Consultant's service under this Contract or the negligent or willful acts or omissions of Consultant, its agents, officers, directors, or employees, in performing any of the services under this Contract, except such loss or damage which was caused by the active negligence or willful misconduct of the City.

C. LIMITS OF INSURANCE NOT LIMITING INDEMNIFICATION. If any action or proceeding is brought against the Indemnities by reason of any of the matters against which Consultant has agreed to indemnify the Indemnities as above provided, Consultant, upon notice from the City, shall defend the Indemnities at Consultant's expense. The Indemnities need not have first paid any of the matters as to which the Indemnities are entitled in order to be indemnified. The Consultant should assure that the insurance required to be maintained by Consultant under this Contract shall ensure Consultant's obligations under this paragraph, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of Sections 19(B) and 19(C) shall survive the expiration or early termination of this Contract.

20. CONSULTANT TO PROVIDE INSURANCE:

A. CONSULTANT SHALL MAINTAIN INSURANCE.

Consultant shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this Contract the policies of insurance specified in this Section. Such insurance must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A:VII.

B. CONSULTANT TO PROVIDE EVIDENCE OF INSURANCE.

Prior to execution of this Contract and prior to commencement of any work, the Consultant shall furnish to the City, and the City must approve, original certificates of insurance and endorsements effecting coverage for all policies required by the Contract. The certificates shall be signed by a person authorized by the insurer, or insurers, to bind coverage on their behalf. Certificates of insurance and endorsements shall be on standard Acord, Department of Insurance, and Insurance Services Office approved forms or on forms approved by the City. As an alternative to providing the City with approved forms of certificates of insurance and endorsements, the Consultant may provide complete, certified copies of all required insurance policies, including endorsements, effecting the coverage required by this Section. At anytime at the written request of the City, the Consultant agrees to furnish one or more copies of each required policy including declarations pages, conditions, provisions, endorsements, and exclusions. Such copies shall be certified by an authorized representative of each insurer. Approval of the insurance by the City shall not relieve or decrease any liability of Consultant.



C. CITY MAY OBTAIN INSURANCE AT CONSULTANT'S EXPENSE.

In addition to any other remedy the City may have, if Consultant fails to maintain the insurance coverage as required in this Section 20, the City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and the City may deduct the cost of such insurance from any amounts due or which may become due Consultant under this Contract.

D. NO SUSPENSION OF INSURANCE. Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, canceled, terminated by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City, except in the event of non-payment of premium, in which case no less than ten (10) days prior written notice by certified mail, return receipt requested, must be given to the City.

E. DEDUCTIBLES. Any deductibles exceeding five thousand dollars (\$5,000) must be declared to, and approved by, the City.

F. COVERAGES SHALL NOT LIMIT OBLIGATIONS. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Contract.

G. REQUIRED LIMITS. Consultant and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance or work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance by Consultant and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of Consultant or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this Contract.

(1) Workers' Compensation and Employer's Liability Insurance

Consultant shall maintain Workers' Compensation insurance as required by Labor Code Section 3700 of the State of California and Employer's Liability Act's, including Longshoremen's and Harbor Workers' Act ("Acts"), if applicable. Employer's Liability limits shall not be less than one million dollars (\$1,000,000) per occurrence. The Consultant shall execute a certificate in compliance with Labor Code Section 1861, on the form provided in the Contract Documents.

If an injury occurs to any employee of the Consultant for which the employee or his dependents, in the event of his death, may be entitled to compensation from the City under the provisions of the Acts, for which compensation is claimed from the City, there will be retained out of the sums due the Consultant under this Contract, an amount sufficient to cover such compensation as fixed by the Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums



due, or to become due to the Consultant. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by the Consultant.

(2) Commercial General and Automobile Liability Insurance.

The insurance shall include, but not be limited to, protection against claims arising from death, bodily or personal injury, or damage to property resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than one million dollars (\$1,000,000) per occurrence/five thousand dollars (\$5,000) medical per occurrence, and two million dollars (\$2,000,000) per policy aggregate. As an alternative to the per policy aggregate the Consultant may have an aggregate limit of one million dollars (\$1,000,000) per project apply. Coverage shall be at least as broad as Insurance Services Office "occurrence form CG 00 01 (ed. 10/03)" covering commercial general liability or its equivalent, and Insurance Services Office "form CA 00 01 (ed. 06/92) covering automobile liability, Code 1 "Any Auto".

Consultant shall include all subcontractors as insureds under its policies or shall furnish separate Certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the insurance requirements stated herein. Commercial general liability coverage shall include independent contractor's coverage, and the Consultant shall be responsible for assuring that all subcontractors are properly insured.

The commercial general and automobile liability insurance coverage shall also include, or be endorsed to include, the following:

a. Provision or endorsement naming the City and each of its officers, employees, and agents, as additional insureds in regards to: liability arising out of the performance of any work under the Contract; liability arising out of activities performed by or on behalf of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

b. Provision or endorsement stating that for any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers to the extent the City is an additional insured. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.

c. Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies including breaches of representations shall not affect coverage provided to the City, its officers, officials, employees, or volunteers.



d. Provision or endorsement stating that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) Professional Liability.

The Consultant and its contractors and subcontractors shall secure and maintain in full force, during the term of this Contract professional liability insurance policies appropriate to the respective professions and the work to be performed as specified in this Contract. The limits of such professional liability insurance coverage shall not be less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate. As an alternative, contractors and subcontractors of the Consultant may maintain in full force during the term of this Contract, professional liability insurance coverage not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) annual aggregate, provided the Consultant and the Consultant's insurance carrier both provide to the City a written statement to the effect that "There are no known claims, reserves, or circumstances that might impair the annual aggregate amount of Consultant's Professional Liability policy." If any professional liability policy is written on a "claims made" basis, such policy, and any succeeding policy must be specifically endorsed to show that "prior acts" occurring at anytime after the inception date of this Contract will be covered. Upon termination of the Contract with the City, the same professional liability insurance requirements will apply for a three (3) year period following such termination. A "tail" policy may be purchased as an alternative to satisfy this requirement.

21. RECORDS.

Consultant shall maintain complete and accurate records with respect to labor costs, material expenses, parcels abated or serviced and other such information required by City that relates to the performance of services under this Contract. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible and in a form acceptable to the City, which the City may specify and change from time to time. Consultant shall provide free access to the representatives of City or its designees, at reasonable times, to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings, and activities related to this Contract. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

22. MISCELLANEOUS PROVISIONS:

A. NONDISCRIMINATION/NONPREFERENTIAL TREATMENT STATEMENT.

In performing this Contract, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.



B. UNAUTHORIZED ALIENS. Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. & 1101 et seq.), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this contract, and should the Federal Government impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

C. GOVERNING LAW. The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Contract and also govern the interpretation of this Contract. Any litigation concerning this Contract shall take place in the Sacramento Superior Court, federal diversity jurisdiction being expressly waived.

D. ASSIGNMENT OR SUBSTITUTION. City has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Consultant by this Contract. In recognition of that interest, neither any complete nor partial assignment of this Contract, may be made by Consultant nor changed, substituted for, deleted, or added to without the prior written consent of City which consent shall not be unreasonably withheld. Any attempted assignment or substitution shall be ineffective, null, and void, and constitute a material breach of this Contract entitling City to any and all remedies at law or in equity, including summary termination of this Contract. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Contract.

E. ENTIRE CONTRACT. This Contract constitutes the entire Contract and understanding between the parties relative to the services specified herein and there are no understandings, agreements, conditions, representations, warranties or promises, with respect to this Contract, except those contained in or referred to in this Contract and this Contract supersedes all prior understandings, agreements, courses of conduct, prior dealings among the parties and documentation of any kind without limitation.

F. AMENDMENTS. This Contract may be modified or amended, or any of its provisions waived, only by a subsequent written agreement executed by each of the parties. The parties agree that this requirement for written modifications cannot be waived and any attempted waiver shall be void.

G. CONSTRUCTION AND INTERPRETATION. Consultant and City agree and acknowledge that the provisions of this Contract have been arrived at through negotiation and that each party has had a full and fair opportunity revise the provisions of this Contract and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Contract shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Contract.

H. WAIVER. The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Contract shall not be deemed a waiver with respect to any subsequent default or other matter.



I. SEVERABILITY. The invalidity, illegality or unenforceability, of any provision of this Contract shall not render the other provisions invalid, illegal or unenforceable.

J. NOTICES. All invoices, payments, notices, demands, requests, comments, or approvals that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties (deemed to have been received three (3) business days after deposit in the U.S. Mail) at the following addresses:

City: City of Elk Grove
City Manager
8400 Laguna Palms Way
Elk Grove, CA 95758

Consultant Mark Thomas and Company, Inc.
Attn: Dave Melis
7300 Folsom Blvd., Suite 203
Sacramento, CA 95826

Each party may change the address at which it gives notice by giving ten (10) days advance, written notice to the other party.

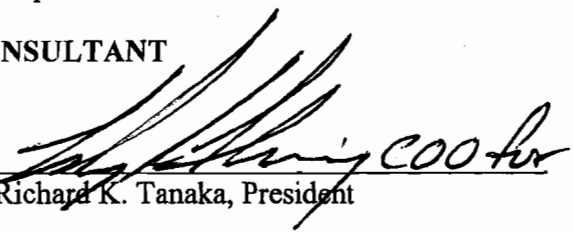
K. AUTHORITY TO EXECUTE. The person or persons executing this Contract on behalf of Consultant warrant and represent that they have the authority to execute this Contract on behalf of their agency and further warrant and represent that they have the authority to bind Consultant to the performance of its obligations hereunder.

AGREED to this _____ day of _____, 2005, by the parties as follows.

Approved as to form:

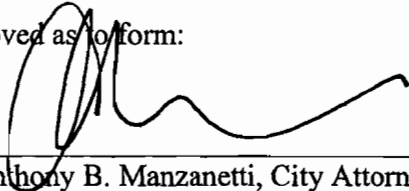
CONSULTANT

Counsel for consultant

By: 
Richard K. Tanaka, President

Approved as to form:

CITY OF ELK GROVE

By: 
Anthony B. Manzanetti, City Attorney

By: _____
John Danielson, City Manager

City of Elk Grove
Mark Thomas & Company, Inc.
Re: Harbour Point Drive Improvements



CERTIFICATE OF COMPLIANCE
WITH LABOR CODE § 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I have complied or will comply with such provisions before commencing the performance of the work of this contract. (Cal. Labor C. §§1860, 1861.)

CONSULTANT

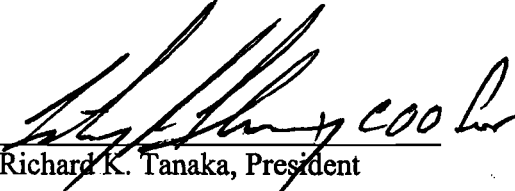

Richard K. Tanaka, President



EXHIBIT A

Scope of Work

Mark Thomas & Company, Inc. (MTCO) will prepare construction documents for the construction of a raised, landscaped median on Harbour Point Drive from Laguna Blvd to Elk Grove Blvd in the City of Elk Grove, approximately 7000 feet (one and a quarter mile) in length. Specific project development activities includes preparation of construction documents and bidding assistance services.

MTCO will undertake and perform professional services for the median and traffic signal project based on the following project understanding:

Environmental Documentation (CEQA): the City of Elk Grove will be the lead agency responsible for preparation of the environmental documentation for this project, with input from the consultant team. Because the construction of a raised median is within existing Right of Way limits warrants, but will result in changes to circulation patterns in the adjacent neighborhoods, the preparation of a CEQA Initial Study (IS), resulting in preparation and certification of a Negative Declaration (ND) is likely warranted. This approach assumes that there will be no significant, unavoidable affects that cannot be mitigated to less-than-significant levels.

Base Mapping: MTCO utilize a combination of City-supplied photogrammetric base mapping with field surveyed points at conforms, intersections to be signalized, and at critical utility features.

Geometric Improvements: Construction can take place with off-peak daytime lane closures. Standard plans for work-period traffic control and lane closures will suffice for maintaining traffic through the construction zone.

Right of Way: No Right of Way acquisition is anticipated, as traffic signals and equipment will be placed behind the back of sidewalk, within existing public utility easements.

Utility Relocation: It is assumed that no significant utility relocation will be required by the project. Verification of existing utilities will be required to ensure that there are no conflicts with traffic signal pole foundations and conduits. MTCO did identify one location where a storm drain manhole will be in conflict with the proposed median.

Traffic Signals/Lighting: Two new traffic signals (at Galen Drive and Renwick Ave) will be constructed. These signals will be interconnected with the existing signals at Laguna Blvd, Maritime



Drive and Elk Grove Blvd. At Galen Drive and Renwick Ave, existing street lighting may need to be removed due to conflicts with traffic signal equipment.

Construction-Phase Services: Bidding assistance includes answering bidders question during the bidding phase, attending a pre-bid meeting and the bid opening. Construction support services include answering RFIs and change orders, periodic job site visits, and consultation with the Resident Engineer.

Public Outreach: the City will be responsible for Public Outreach activities. The consultant team (including a landscape architect) will attend three public workshops to assist the City with the presentation and to answer questions. No presentations to the City Council are included in this scope of work.

Engineering and Landscape Design Services

Task 1 – Project Management

1.1 Project Development Team (PDT) Meetings: Project meetings will consist of informal technical progress meetings, held in conjunction with resolution of design issues. We assume that the meetings will be held approximately once every month, with a total of six (6) meetings. The purpose of the meetings is to provide a forum to share project information, identify critical issues, make decisions, assign project tasks, review the project schedule, estimates and budget, establish design criteria, or any other items critical to project delivery.

These meetings can take place immediately after the regularly scheduled Grant Line Road PDT meetings, Right of Way Coordination meetings, or at a time and interval most convenient for the City's Project Manager.

1.2 Progress Reports/Scheduling: Along with the each monthly invoice, a progress report will be prepared detailing progress made vs. the current status of the budget. Prior to each PDT meeting, an updated schedule, showing the critical path of the project to meet the required construction start date and anticipated milestone delivery dates, will be provided along with the agenda package.

Task 1 Deliverables:

- Action-Oriented Meeting Minutes within one-week of the PDT meetings
- Progress Reports provided with each invoice
- Schedule updates for each PDT Meeting
- PDT Meeting agendas distributed one-week in advance of the PDT Meetings



Task 2 – Development of Base Mapping

2.1 Surveying/Mapping: We will supplement the City’s aerial photography with field surveys for conforms and significant utility features. At the intersections to be signalized, additional survey shots will be taken to establish the locations of sidewalks, curb returns and curb ramps. A minimum number of monuments will also be located to reestablish the baseline of Harbor Point Drive. Field topography will be combined with the mapping from the City, an edited version of the combined topography will be the base mapping for the project. The existing baseline of Harbor Point Drive, along with the limits of the existing right of way (established from recorded subdivision and parcel maps) will be overlaid on the City’s aerial photography.

2.2 Develop Landscape Base Maps: MTCO will develop plans as it pertains to landscaping work and sheet layout, based the median layout. MTCO will visit the site once during the initial development stage to determine any conflicts with overhead utilities or other conflicts. MTCO will work closely with Elk Grove Community Service District to achieve both a low maintenance, and attractive design.

Task 2 Deliverables:

- Compiled Base Map from the City-supplied aerial photography, supplemented with limited field surveys.
- Landscape Base Maps with the proposed median geometrics

Task 3 – Project Initiation

3.1 Project Initiation: Once a signed contract and notice to proceed is received from the City, the project files will be set up, subconsultant agreements will be prepared and executed, and the baseline project schedule will be established. This baseline schedule will be compared to subsequent schedule updates.

Task 3 Deliverables:

- Executed Subconsultant agreements
- Setup Project files
- Baseline Project Schedule, showing the construction start date (CPM Method)

Task 4 – Field Investigations/Research

4.1 Data Gathering: Using the base map developed in Task 2.1, the team will perform a job walk to identify areas of concern or potential conflicts between the proposed median, traffic signals and the existing utilities.



MTCO will also gather data and conduct field work as may be required to create a complementary planting design with the neighboring developments.

Using the City-provided projected future volumes, MTCO will prepare queuing analysis to determine left-turn storage lengths at these intersections using Poisson method with a 95% confidence level. The queuing analysis will be summarized in a letter report and submitted to the City.

Task 5 – Not Used

Task 5 Deliverables: N/A

Task 6 – Utility Coordination

6.1 Utility Coordination: The MTCO team will be responsible for utility coordination. Utility coordination will include identifying utility facilities and conflicts, and coordinating with the utility company for relocation. MTCO will use the “A”, “B” and “C” plan format for the utility coordination with the all letters being reviewed by the City prior to being sent out. MTCO will attend coordination meetings; and locating proposed improvements in the field with stakes, surveys, painting, and/or other means to facilitate utility relocations. The team will work diligently to provide all utilities with plans as necessary. The design team will coordinate relocation/extension of City-owned utilities (water, sewer, street lighting). No water, storm drain or sewer relocations are anticipated in this scope. A utilities contact matrix will be prepared to document the utility coordination.

6.2 Utility Plans/Mapping: Using the information provided by the utility companies, along with the field survey data, the approximate location of existing overhead and underground utilities will be added to the base map developed in Task 2.1 and distributed to the project team.

Task 6 Deliverables:

- Updated Utility Contact Matrix at each PDT meeting.
- Approximate Location of underground and overhead utilities will be incorporated into the project base map.

Task 7 – Support City Public Involvement Efforts

7.1 Landscape Concept Alternatives: MTCO will prepare three conceptual alternatives for the median landscaping treatments for use by the City at Public Meetings / Neighborhood Meetings. Each Conceptual Plan will be drawn at 1”=20’ and a 600’ sample section will be provided as well as a typical section through the median. Once a preferred alternative is selected, MTCO will coordinate our field investigations with a final concept plan, begin preliminary design work and prepare a ballpark estimate.



7.2 Public Outreach Support: Attendance at three Public Meetings will be required to discuss the median and signal construction, and the landscape alternatives, with the public. For purposes of public meetings, MTCO will provide a rendering of the proposed landscaping in a plan view and typical sections. MTCO will assist the City's public outreach support with the preparation of exhibits and other meeting materials, as requested.

Task 7 Deliverables:

- Three Conceptual Landscape Plans and cost estimate for each concept.
- Exhibits for the Public Meetings/Workshops

Task 8 – Preparation of Plans and Estimate

Preparation of Plans, Specifications, and Estimates: Roadway plans will be prepared at the 65%, 95% and final stages, and will include quality control checklists with each submittal.

For the 65% submittal, the plans and engineers estimate will be provided to the City for internal review and comment. Before the 65% submittal, it is assumed that the City will have determined the turn movement restrictions at the non-signalized intersections. It is also assumed that the City will have determined the general landscaping treatment before 65% submittal.

For the 95% and Final submittal, the plans, specifications and estimate will be provided for Community Service District (CSD) review and comment.

After each review, the project team will respond to each comment and include with the following submittal.

- a) Roadway and surface improvements: Roadway plans will be developed at a scale of 1"=40' for the median curb construction. These plans will also show the approximate location of the existing utilities. Intersection details (i.e. curb returns, curb ramps, etc.) will be shown on enlarged view (1"=20').
- b) Stage Construction/Traffic Handling Plans: No construction staging plans are anticipated. Traffic handling plans will follow standard lane closure plans.
- c) Traffic Signal Plans: Signal plans will consist of new signals at Galen Drive and Renwick Ave, and interconnection to existing signals at Elk Grove Blvd, Maritime Drive and Laguna Blvd. Work for 65% submittal will include layout of signal standards and heads.
- d) Signing and Striping Plans: MTCO will prepare signing and striping plans to show the removal of existing striping and pavement marking, plus the location of new traffic



striping, pavement markers and pavement markings, along with any signs to be removed or replaced.

- e) Lighting Plans: MTCO will prepare an inventory of existing street lighting in conflict with the traffic signals, and lighting modification plans will be prepared.

Plan sheet count for the project plans is estimated as follows:

<i>Description</i>	<i>Scale</i>	<i># sheets</i>
Title Sheet	1"=500'	1
Typical Cross Sections	none	1
Surface Improvements/Utility Plans	1"=40'	4
Construction Details	varies	2
Signing and Striping	1"=40'	4
Signal Plans	1"=20'	4
Lighting Plans	1"=40'	2
Landscaping and Irrigation Plans	varies	10
Summary of Quantities	none	2
<i>Totals</i>		30

- f) Storm Water Pollution Prevention Plan (SWPPP): MTCO will provide input to City staff for preparation of the SWPPP worksheet. Input will consist of standard plan details for inlet controls and applicable BMPs (i.e. silt fences, inlet protection, sediment basins). Estimated areas of disturbance, changes in coefficient of runoff, drainage boundaries, etc. will be provided, plus applicable information compiled from environmental documentation and soils investigation. It is assumed that much of the information, however, will need to be provided by the construction contractor.
- g) Specifications: MTCO will prepare draft and final specifications consisting of special provisions and standard City of Elk Grove General Provisions. Special provision format will be based on Caltrans SSPs.
- h) Estimates: We will prepare cost estimates at each submittal.



8.1 65% Design Submittal: 10 sets of half sized plans will be provided for City review. A copy of the Engineer's Estimate (electronic or hard copy) will be provided.

8.2 95% Design Submittal: 10 sets of half sized plans will be provided for City review. A half sized copy of the plans will be provided to the CSD for review. A copy of the Engineer's Estimate (electronic or hard copy) will be provided. 10 sets of edited special provisions will be provided.

8.3 Final Design Submittal: Two sets of half sized plans and special provisions, including the City's standard provisions, will be provided for the City's final review. Once approval of the plans is received, one set of "camera ready" plans and specifications will be provided for reproduction of the bid package.

Task 8 Deliverables:

- Half-sized sets of drawings, specifications and estimate at each level of development (65%, 95%, and 100% Submittal). At the 65% level, no specifications will be provided
- 1 "camera ready" set of bid documents for reproduction and City's files after approval of plan package.

Task 9 – Quality Control Plan (Development of Plan and Implementation)

9.1 Quality Control: The MTCO Quality Control plan consists of established procedures for performing the work (which are reassessed with each project), including methods for design calculations, establishing appropriate levels of design development for intermediate submittals, identification of required plan checks (who, what, when), design checklists, and methods of project documentation. Both MTCO prepared plans and subconsultant produced plans will be subject to MTCO's quality control procedures.

Task 9 Deliverables:

- Quality Control Checklists provided with each submittal.

Task 10 – Bidding Assistance

The project team will provide assistance to the City during the bidding phase by answering bidders' questions and preparing any addenda that may be needed, attending a pre-bid meeting and the bid opening.

10.1 Assistance during Bidding: The project team will provide assistance during the bidding process. Assistance shall include providing clarification or answers to questions received from prospective bidders. This assistance could include necessary design revisions if deemed necessary and preparing an



addenda during the bid period, if required. The City will send out coordinated responses to all questions during the bidding period.

The project team will also attend a City-arranged pre-bid meeting and the bid opening.

Task 10 Deliverables:

- Addenda to bid documents (if necessary) during the bidding period.

Task 11 – Engineering Services During Construction

11.1 Pre-Construction and Job Site Meetings: If required on-site, project team members will perform a maximum of three (3) on-site visits periodically throughout the median, signal, and landscape installation process. A summary of discussion and observations will be written after each visit, if the resident engineer does not accompany the project team.

11.2 Design Support/Plan Clarifications: The project team will be available for general consultation throughout construction as may be required for interpretation of contract documents, attendance at pre-construction meeting, shop drawing or submittal review, and make recommendations to the Resident Engineer.

Task 11 Deliverables:

- Responses to RFIs.

Schedule for Performance

Attached to the Contract as Exhibit B, and incorporated into this Contract is the Schedule of Performance for the Consultant under this Contract.



EXHIBIT B

Compensation and Method of Payment

Project Funding: Project will utilize local funding.

Under no circumstances will the aggregate amount paid under this Agreement exceed the amount specified in Section 4.A. above.



EXHIBIT C
Approved Subcontractors

Pursuant to Section 14 of this Contract the City of Elk Grove consents to the following services to be provided by the Consultant through the use of the following subcontractors. Any proposed assignment of services, change in the services, scope of services or subcontractors, shall be governed by the requirement of prior consent of the City of Elk Grove as set forth this Contract. All other aspects of this Contract, including but not limited to those found in Sections 9(A), 10(A), 10(C), 14, 20(G) and 22(d), shall apply to the Consultant, these subcontractors and the activities of these subcontractors.

Name & Address of Subcontractor	Services Provided by Subcontractor
Orsee Design Associates 2320 Broadway Sacramento, CA 95818 (916) 456-4433	Landscape Architecture and Design Services
Y&C Transportation Consultants 3250 Ramos Circle Sacramento, CA 95827 (916) 366-8000	Traffic Signal and Lighting Design Services

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2005-58**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 9th day of March 2005 by the following vote:

AYES 5: COUNCILMEMBERS: Briggs, Scherman, Soares, Cooper, Leary

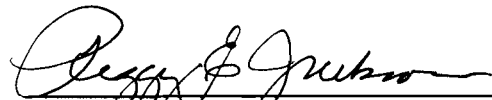
NOES 0: COUNCILMEMBERS:

ABSTAIN :0 COUNCILMEMBERS:

ABSENT 0: COUNCILMEMBERS:

RECUSAL 0 : COUNCILMEMBER:





**Peggy E. Jackson, City Clerk
City of Elk Grove, California**