

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Public Works *W. Thomas*

BOARD AGENDA # \*C-1

Urgent  Routine

AGENDA DATE March 25, 2014

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Award a Contract for All-Inclusive Engineering Services to Mark Thomas & Company of Sacramento, CA for the Claribel Road at Roselle Avenue Intersection Project

STAFF RECOMMENDATIONS:

1. Award a contract for All-Inclusive Engineering Services to Mark Thomas & Company of Sacramento, California in the amount of \$409,065 for the Claribel Road at Roselle Avenue Intersection Project.
2. Authorize the Director of Public Works to execute a contract with Mark Thomas & Company in the amount of \$409,065 and to sign necessary documents, including any amendments to the agreement not to exceed 10%.

FISCAL IMPACT:

At this time, \$449,972 is needed to fund the contract for all-inclusive design engineering services (\$409,065) and a contingency not to exceed 10% (\$40,907). The contingency is to be used for any amendments to the agreement per discretion of the Director of Public Works. An Authorization to Proceed (E-76) has been secured from Caltrans for the Preliminary Engineering (PE) phase of the project in the amount of \$300,000. These funds are Federal Congestion Mitigation and Air Quality (CMAQ). The remainder of the project will be funded with City/County Public Facilities Fees. These funds are available in the current fiscal year's Road Projects budget.

BOARD ACTION AS FOLLOWS:

No. 2014-134

On motion of Supervisor Monteith, Seconded by Supervisor O'Brien

and approved by the following vote.

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

*Christine Ferraro*

ATTEST:

CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Award a Contract for All-Inclusive Engineering Services to Mark Thomas & Company of Sacramento, CA for the Claribel Road at Roselle Avenue Intersection Project

**DISCUSSION:**

The Claribel Road at Roselle Avenue intersection lies on the southern border of the City of Riverbank, approximately 1 mile north of the City of Modesto. It currently operates at a Level of Service F in the peak hour, which is defined as an average user delay of greater than 50 seconds for an unsignalized intersection. This intersection has an average delay of 93.5 seconds. The project will analyze a roundabout alternative and a traffic signal alternative. Public Works staff is considering both alternatives in conformance with the Intersection Control Evaluation Methodology which is a new Caltrans Traffic Operations Policy Directive.

The scope of design services includes:

- Strategy determination and strategy report;
- Comprehensive project management services;
- Geotechnical investigation;
- Topographical survey;
- Comprehensive environmental services;
- Comprehensive civil engineering services;
- Traffic system design;
- Utilities conflict coordination;
- Comprehensive right of way services; and
- Bidding and construction support services.

On April 23, 2013, the Board of Supervisors approved a Memorandum of Agreement (MOA) which was executed with the City of Riverbank for the preliminary engineering phase of the project. The MOA lists the County as the lead agency for this phase of project development.

On November 7, 2013, six proposals were submitted for review by various consulting firms. Public Works staff reviewed the proposals and selected Mark Thomas & Company of Sacramento, California as the most qualified consultant based on the results of the following evaluation criteria:

- Understanding of the work to be performed;
- Experience with similar projects;
- Qualifications and availability of staff;
- Project schedule;
- Familiarity with State and Federal procedures;
- Demonstrated technical ability;
- Demonstration of professional and financial responsibility; and
- References.

All proposals were evaluated based on qualifications only. Along with the proposal, consultant fees were submitted in a separate sealed fee envelope and were not part of the evaluation process. A sealed fee envelope was opened only for the most qualified proposal.

Approval to Award a Contract for All-Inclusive Engineering Services to Mark Thomas & Company of Sacramento, CA for the Claribel Road at Roselle Avenue Intersection Project

- DF Engineering (Modesto)
- Drake Haglan and Associates (Rancho Cordova)
- Mark Thomas & Company, Inc. (Sacramento)
- Mid-Valley Engineering (Modesto)
- North Star Engineering Group (Modesto)
- Omni-Means (Roseville)

**POLICY ISSUES:**

The recommended actions are consistent with the Board's priorities of providing A Safe Community, A Healthy Community, and A Well Planned Infrastructure System by providing the Public Works Department with all-inclusive design engineering services to assist with the development and delivery of a significant transportation project in Stanislaus County.

**STAFFING IMPACT:**

There are no staffing impacts associated with this item

**CONTACT PERSON:**

Matt Machado, Public Works Director. Telephone: (209) 525-4130.

AM/djd

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ATTACHMENTS AVAILABLE  
FROM CLERK

**STANISLAUS COUNTY**  
Addendum to Professional Design Services Agreement

Consultant: Mark Thomas & Company, Inc.  
Project: Claribel Road and Roselle Avenue Intersection - #9606  
Federal Aid No. CML-5938(181)  
Award Date & Board Resolution No. *March 25, 2014 - #2014-134*

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In addition to, and notwithstanding, the requirements set forth in the Professional Design Services Agreement, CONSULTANT agrees to the following:

**1. CERTIFICATION OF CONSULTANT, COMMISSIONS & FEES**

Exhibit 10-F – (attachment)

**2. CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to the COUNTY's operations, which are designated confidential by the COUNTY and made available to the CONSULTANT in order to carry out this contract, shall be protected by the CONSULTANT from unauthorized use and disclosure.
- B. Permission to Disclose information on one occasion, or public hearing held by the COUNTY relating to the contract, shall not authorize the CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. The CONSULTANT shall not comment publicly to the press or any other media regarding the contract or the COUNTY's actions on the same, except to the COUNTY's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.
- D. The CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the COUNTY, and receipt of the COUNTY's written permission.
- E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

**3. CONFLICT OF INTEREST**

- A. The CONSULTANT shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this agreement, or any ensuing COUNTY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this agreement, or any ensuing COUNTY construction project, which will follow.
- B. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.
- C. Any subcontract in excess of \$25,000 entered into as a result of this agreement, shall contain all of the provisions of this Article.
- D. The CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with the CONSULTANT will bid on any construction agreement, or on any agreement to provide construction inspection for any construction project resulting from this agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this agreement shall be eligible to bid on any construction agreement, or on any agreement to provide construction inspection for any construction project resulting from this agreement.

**4. CONSULTANT'S ENDORSEMENT OF PS&E/OTHER DATA:**

- A. The CONSULTANT/engineer shall sign all Plans, Specifications and Estimates (PS&E) and engineering data furnished under the contract including registration number.

**5. COST PRINCIPLES**

- A. The CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.
- B. The CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to the COUNTY.

**6. COST PROPOSAL**

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

**7. DEBARMENT AND SUSPENSION CERTIFICATION**

- A. The CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONSULTANT has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the COUNTY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

**8. FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES**

Exhibit 17-F – (attachment)

## **9. EQUIPMENT PURCHASE**

- A. Prior authorization, in writing, by the COUNTY shall be required before the CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in the CONSULTANT'S Cost Proposal and exceeding \$5,000 prior authorization by the COUNTY; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this agreement is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the COUNTY shall receive a proper refund or credit at the conclusion of the agreement, or if the agreement is terminated, the CONSULTANT may either keep the equipment and credit the COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit the COUNTY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT'S expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the COUNTY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the COUNTY."
- D. All subcontracts in excess \$25,000 shall contain the above provisions.

## **10. FUNDING REQUIREMENTS**

- A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the agreement were executed after that determination was made.
- B. This agreement is valid and enforceable only, if sufficient funds are made available to the COUNTY for the purpose of this contract. In addition, this agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature or COUNTY governing

board that may affect the provisions, terms, or funding of this contract in any manner.

- C. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.
- D. The COUNTY has the option to void the contract under the 30-day cancellation clause, or by mutual agreement to amend the contract to reflect any reduction of funds.

## **11. INSPECTION OF WORK**

The CONSULTANT and any subcontractor shall permit the COUNTY, the state, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

## **12. NONDISCRIMINATION**

- A. During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:
- B. Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter “FHWA”) Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- C. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color or national origin, sex, age, and disability/handicap and low income in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- D. Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contract for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor



or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap and low income.

- E. Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the COUNTY or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the COUNTY, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- F. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the COUNTY shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
- G. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- H. Cancellation, termination or suspension of the contract, in whole or in part.
- I. Incorporation of Provisions: The contractor shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the COUNTY or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that , in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the COUNTY to enter into such litigation to protect the interests of the COUNTY, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

### **13. PERFORMANCE PERIOD**

- A. This agreement shall go into effect on March 11, 2014, contingent upon approval by the COUNTY, and the CONSULTANT shall commence work after notification to proceed by the COUNTY. The agreement shall end on February 26, 2016, unless extended by agreement amendment.

- B. The CONSULTANT is advised that any recommendation for agreement award is not binding on the COUNTY until the agreement is fully executed and approved by the COUNTY.

**14. PROHIBITION OF EXPENDING LOCAL AGENCY, STATE OR FEDERAL FUNDS FOR LOBBYING CLAUS**

- A. The CONSULTANT certifies to the best of his or her knowledge and belief that:
  - B. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
  - C. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
  - E. The CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

**15. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION (LOBBYING CLAUSE)**

A. The CONSULTANT warrants that this agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right in its discretion; to terminate the agreement without liability; to pay only for the value of the work actually performed; or to deduct from the agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

**16. REIMBURSEMENT OF TRAVEL & SUBSISTENCE**

COUNTY agrees to pay pre-approved travel and subsistence expenses per the COUNTY's Travel Policy.

**17. RETENTION OF RECORDS/AUDIT**

A. For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; the CONSULTANT, subcontractors, and the COUNTY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the agreement, including but not limited to, the costs of administering the agreement. All parties shall make such materials available at their respective offices at all reasonable times during the agreement period and for three years from the date of final payment under the agreement. The state, the State Auditor, COUNTY, FHWA, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the CONSULTANT that are pertinent to the agreement for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

B. Subcontracts in excess of \$25,000 shall contain this provision.

~~**18. SALARY ESCALATION**~~

~~The CONSULTANT will be allowed salary increases as shown in EXHIBIT C.~~

**19. STATE PREVAILING WAGE RATES**

A. The CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor

Code, Section 177, and all federal, state, and local laws and ordinances applicable to the work.

- B. Any subcontract entered into as a result of this contract if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

**20. SUBCONSULTANT DBE PARTICIPATION**

Exhibit 10-J – (attachment)

**21. SUBCONTRACTING**


- A. The CONSULTANT shall perform the services with resources available within its own organization; and no portion of the work pertinent to this agreement shall be subcontracted without written authorization by the COUNTY, except that, which is expressly identified in the approved Cost Proposal.
- B. Any subcontract in excess of \$25,000 entered into as a result of this agreement, shall contain all the provisions stipulated in this agreement to be applicable to subcontractors.
- C. Any substitution of subcontractors must be approved in writing by the COUNTY.


**(SIGNATURES ON FOLLOWING PAGE)**

**IN WITNESS WHEREOF**, the parties hereto have caused this Addendum to be executed by and through their respective authorized officers:

COUNTY OF STANISLAUS

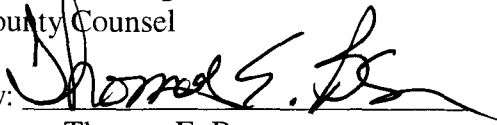
MARK THOMAS & COMPANY

By:   
Matt Machado, Director  
Department of Public Works

By:   
Robert A. Himes, PE  
Principal in Charge/Vice President

APPROVED AS TO FORM:

John P. Doering  
County Counsel

By:   
Thomas E. Boze  
Deputy County Counsel