

Consultant Name Mark Thomas & Company, Inc.

Description of Services: Construction Management and Inspection Services for Electric Bus Charging Station

SUMMARY OF MATERIAL TERMS

Max Contract Price: \$69,645.50

Contract Start Date: 8/23/2023

Contract End Date: 10/31/2023

Liquidated Damages: N/A

INSURANCE POLICIES

FUNDING:

Commercial General Liability (\$2,000,000)	Nevada County Transit Services California Air Resources Board (CARB) Grant No. G20-NS-001
Automobile Liability (\$1,000,000)	
Worker's Compensation (Statutory Limits)	
Professional Errors and Omissions(\$2,000,000)	

LICENSES AND PREVAILING WAGES

Designate all required licenses: CA Registered Professional Civil Engineer, or CA Registered Professional Electrical Engineer

NOTICE & IDENTIFICATION

COUNTY OF NEVADA:

Nevada County
Department of Public Works

CONSULTANT:

Mark Thomas & Company, Inc

Address: 950 Maidu Avenue, Suite 170,
P.O. Box 599002
City, St, Zip Nevada City, CA 95959
Attn: Steven Whittlesey
Email: Steven.Whittlesey@nevadacountyca.gov
Phone: (530) 470-2580

Address 701 University Ave, Suite 200
City, St, Zip Sacramento, CA 95825
Attn: Hank Doll
Email: HDoll@MarkThomas.com
Phone: (916) 826-3038

Consultant is a: (check all that apply)

- Corporation: Calif., Other, LLC,
- Non- Profit Corp Yes No
- Partnership: Calif., Other, LLP, Limited
- Person: Individ., DbA, Ass'n Other

EDD Worksheet Required

Yes No

ATTACHMENTS

Exhibit A: Schedule of Services

Exhibit B: Schedule of Charges and Payments

Exhibit C: Insurance Requirements

Exhibit D: DBE Forms

Exhibit E: Schedule of Changes (Additions, Deletions & Amendments)

Administering Agency: Nevada County Department of Public Works

Contract No. _____

Contract Description: Construction Management and Inspection Services for Electric Bus Charging Station

DESIGN/ENGINEERING PROFESSIONAL SERVICES CONTRACT

THIS DESIGN/ENGINEERING PROFESSIONAL SERVICES CONTRACT ("Contract") is made at Nevada City, California, as of August 22, 2023 by and between the County of Nevada, ("County"), and Mark Thomas & Company, Inc. ("Consultant"), who agree as follows:

1. **Services** Subject to the terms and conditions set forth in this Contract, Consultant shall provide the services described in Exhibit A. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A.
2. **Payment** County shall pay Consultant for services rendered pursuant to this Contract at the time and in the amount set forth in Exhibit B. The payments specified in Exhibit B shall be the only payment made to Consultant for services rendered pursuant to this Contract. Consultant shall submit all billings for said services to County in the manner specified in Exhibit B; or, if no manner be specified in Exhibit B, then according to the usual and customary procedures which Consultant uses for billing clients similar to County. **The amount of the contract shall not exceed sixty-nine thousand six hundred and forty-five Dollars and fifty-cents (\$69,645.50).**
3. The salary rate (excluding overhead) paid to individual consultants retained by Contractor or Subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages>, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices). Sub-agreements with firms for services which are awarded using the procurement requirements in Subpart D of 2 CFR 200 are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation.
4. **Term** This Contract shall commence on, 8/23/2023. All services required to be provided by this Contract shall be completed and ready for acceptance no later than the **Contract Termination Date** of: 10/31/2023.
5. **Facilities, Equipment and Other Materials** Consultant shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Contract.
6. **Exhibits** All exhibits referred to herein and attached hereto are incorporated herein by this reference.
7. **Electronic Signatures** The parties acknowledge and agree that this Contract may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed or emailed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.
8. **Time for Performance** Time is of the essence. Failure of Consultant to perform any services within the time limits set forth in Exhibit A, or elsewhere in this Contract, shall constitute material breach of this contract. Consultant shall devote such time to the performance of services pursuant to this Contract as may be reasonably necessary for the satisfactory performance of Consultant's obligations pursuant to this

Contract. Neither party shall be considered in default of this Contract to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

8. **Liquidated Damages**

Liquidated Damages are presented as an estimate of an intangible loss to the County. It is a provision that allows for the payment of a specified sum should Consultant be in breach of contract. Liquidated Damages shall apply shall not apply to this contract.

9. **Relationship of Parties**

9.1. **Independent Consultant**

In providing services herein, Consultant, and the agents and employees thereof, shall work in an independent capacity and as an independent Consultant and not as agents or employees of County. Consultant acknowledges that it customarily engages independently in the trade, occupation, or business as that involved in the work required herein. Further, the Parties agree that Consultant shall perform the work required herein free from the control and direction of County, and that the nature of the work is outside the usual course of the County's business. In performing the work required herein, Consultant shall not be entitled to any employment benefits, Workers' Compensation, or other programs afforded to County employees. Consultant shall hold County harmless and indemnify County against such claim by its agents or employees. County makes no representation as to the effect of this independent Consultant relationship on Consultant's previously earned California Public Employees Retirement System ("CalPERS") retirement benefits, if any, and Consultant specifically assumes the responsibility for making such determination. Consultant shall be responsible for all reports and obligations including but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation and other applicable federal and state taxes.

9.2. **No Agent Authority** Consultant shall have no power to incur any debt, obligation, or liability on behalf of County or otherwise to act on behalf of County as an agent. Neither County nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Contract. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of the County.

9.3. **Indemnification of CalPERS Determination** In the event that Consultant or any employee, agent, or subconsultant of Consultant providing service under this Contract or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the County, Consultant shall indemnify, defend, and hold harmless County for all payments on behalf of Consultant or its employees, agents, or subconsultants, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

10. **Assignment and Subcontracting** Except as specifically provided herein, the rights, responsibilities, duties and Services to be performed under this Contract are personal to the Consultant and may not be transferred, subcontracted, or assigned without the prior written consent of County. Consultant shall not substitute or replace any personnel for those specifically named herein or in its proposal without the prior written consent of County.

Consultant shall cause and require each transferee, subconsultant, and assignee to comply with the insurance provisions set forth herein, to the extent such insurance provisions are required of Consultant under this Contract. Failure of Consultant to so cause and require such compliance by each transferee, subconsultant, and assignee shall constitute a Material Breach of this Contract, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both.

10.1 Prompt Progress Payment

CONSULTANT or Subconsultant shall pay to any Subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the Subconsultants, to the extent of each Subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or Subconsultant to a Subconsultant, CONSULTANT or Subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the Subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE Subconsultants.

10.2 Prompt Payment of Withheld Funds to Subconsultants

The COUNTY may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the COUNTY, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The COUNTY shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or Subconsultant to a Subconsultant.

No retainage will be held by the COUNTY from progress payments due to CONSULTANT. CONSULTANTS and Subconsultants are prohibited from holding retainage from Subconsultants. Any delay or postponement of payment may take place only for good cause and with the COUNTY's prior written approval. Any violation of these provisions shall subject the violating CONSULTANT or Subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to CONSULTANT or Subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient Subconsultant performance and/or noncompliance by a Subconsultant. This clause applies to both DBE and non-DBE Subconsultants.

11. **Licenses, Permits, Etc.** Consultant represents and warrants to County that Consultant shall, at its sole cost and expense, obtain or keep in effect at all times during the term of this Contract, any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

12. **Hold Harmless and Indemnification Contract**

12.1 **Definitions.** For purposes of this Section, "Consultant" shall include Consultant, its officers, employees, servants, agents, or subConsultants, or anyone directly or indirectly employed by either Consultant or its subConsultants, in the performance of this Agreement. "County" shall include County, its officials, officers, agents, employees and volunteers.

12.2 **Consultant to Indemnify County.** Where the services to be provided by Consultant under this Agreement are design professional services, as that term is defined under Civil Code Section 2782.8, Consultant agrees to indemnify, defend and hold harmless, the County, its officers, officials, employees and volunteers from any and all claims, demands, costs or liability that actually or allegedly arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant and its agents in the performance of services under this contract, but this indemnity does not apply to liability for damages for bodily injury, property damage or other loss, arising from the sole negligence, active negligence or willful misconduct by the County, its officers, official employees, and volunteers. If it is finally adjudicated that liability is caused by the

comparative active negligence or willful misconduct of the County, then Consultant's indemnification and defense obligations shall be reduced in proportion to the established comparative liability of the County and shall not exceed the Consultant's proportionate percentage of fault.

As respects all acts or omissions which do not arise directly out of the performance of design professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, and to the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the County, its officers, officials, agents, employees, and volunteers from and against any claims, demands, losses, liability of any kind or nature (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are in connection with, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-Consultants of Consultant, excepting those which arise out of the active negligence, sole negligence or willful misconduct of the County, its officers, officials, employees and volunteers.

- 12.3 **Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify County for such loss or damage as is caused by the sole active negligence or willful misconduct of the County. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of an indemnified party, then Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability.
- 12.4 **Attorneys Fees.** Such costs and expenses shall include reasonable attorneys' fees for counsel of County's choice, expert fees and all other costs and fees of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 12.5 **Defense Deposit.** The County may request a deposit for defense costs from Consultant with respect to a claim. If the County requests a defense deposit, Consultant shall provide it within 15 days of the request.
- 12.6 **Waiver of Statutory Immunity.** The obligations of Consultant under this Section are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to County.
- 12.7 **Indemnification by SubConsultants.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section from each and every subConsultant or any other person or entity involved in the performance of this Agreement on Consultant's behalf.
- 12.8 **Insurance Not a Substitute.** County does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Consultant's indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 12.9 **Civil Code.** The parties are aware of the provisions of Civil Code 2782.8 relating to the indemnification and the duty and the cost to defend a public agency by a Design Professional and agree that this Section complies therewith.

13. **Standard of Performance** Consultant shall perform all services required pursuant to this Contract in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. All products of whatsoever nature which Consultant delivers to County pursuant to this Contract shall be prepared in a substantial first class and workmanlike manner and conform to the standards or quality normally observed by a person practicing in Consultant's profession.

Consultant without additional compensation. Consultant's personnel, when on the County's premises and when accessing the County network remotely, shall comply with the County's regulations regarding security, remote access, safety and professional conduct, including but not limited to Nevada County Security Policy NCSP-102 Nevada County External User Policy and Account Application regarding data and access security. Consultant personnel will solely utilize the County's privileged access management platform for all remote access support functions, unless other methods are granted in writing by the County's Chief Information Officer or his/her designee.

14. **Prevailing Wage and Apprentices** To the extent made applicable by law, performance of this Contract shall be in conformity with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, commencing with section 1720 relating to prevailing wages which must be paid to workers employed on a public work as defined in Labor Code section 1720, et seq., and shall be in conformity with Title 8 of the California Code of Regulations section 200 et seq., relating to apprenticeship. Where applicable:
- Consultant shall comply with the provisions thereof at the commencement of Services to be provided herein, and thereafter during the term of this Contract. A breach of the requirements of this section shall be deemed a material breach of this contract. Applicable prevailing wage determinations are available on the California Department of Industrial Relations website at <http://www.dir.ca.gov/OPRL/PWD>.
 - Consultant and all subConsultants must comply with the requirements of Labor Code section 1771.1(a) pertaining to registration of Consultants pursuant to section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Contract.
 - Contracts to which prevailing wage requirements apply are subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each Consultant and subConsultant must furnish certified payroll records to the Labor Commissioner at least monthly.
 - The County is required to provide notice to the Department of Industrial Relations of any public work contract subject to prevailing wages within five (5) days of award.
15. **Accessibility** It is the policy of the County of Nevada that all County services, programs, meetings, activities and facilities shall be accessible to all persons, and shall comply with the provisions of the Americans With Disabilities Act and Title 24, California Code of Regulations. To the extent this Contract shall call for Consultant to provide County contracted services directly to the public, Consultant shall certify that said direct Services are and shall be accessible to all persons.
16. **Nondiscriminatory Employment** Consultant shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or sexual orientation in contravention of the California Fair Employment and Housing Act, Government Code section 12900 et seq.

During the performance of this Professional Services Contract, Consultant and their subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and their subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and their subconsultants shall comply with the provisions of the California Fair

Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (A-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and their subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining agreement or other agreement.

CONSULTANT, subrecipient or Subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the COUNTY components of the DBE Program Plan, CONSULTANT, subrecipient or Subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

The Consultant shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Consultant to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

17. **Civil Rights Obligations** Consultant shall fully comply with all applicable civil rights statutes and implemented U.S. EPA Regulations, including Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; 40 CFR Part 7; when applicable, Title IX of the Education Amendments of 1972 and 40 CFR Part 5; and, when applicable, Section 13 of the Federal Water Pollution Control Act Amendments of 1972.
18. **Drug-Free Workplace** Senate Bill 1120, (Chapter 1170, Statutes of 1990), requires recipients of state grants to maintain a "drug-free workplace". Every person or organization awarded a contract for the procurement of any property or services shall certify as required under Government Code Section 8355-8357 that it will provide a drug-free workplace.
19. **Political Activities** Consultant shall in no instance expend funds or use resources derived from this Contract on any political activities.
20. **Financial, Statistical and Contract-Related Records:**
 - 19.1. **Books and Records** Consultant shall maintain statistical records and submit reports as required by County. Consultant shall also maintain accounting and administrative books and records, program procedures and documentation relating to licensure and accreditation as they pertain to this Contract. All such financial, statistical and contract-related records shall be retained for five (5) years or until program review findings and/or audit findings are resolved, whichever is later. Such records shall include but not be limited to bids and all supporting documents, original entry books, canceled checks, receipts, invoices, payroll records, including subsistence, travel and field expenses, together with a general ledger itemizing all debits and credits.
 - 19.2. **Inspection** Upon reasonable advance notice and during normal business hours or at such other times as may be agreed upon, Consultant shall make all of its books and records available for inspection, examination or copying, to County, or to the State Department of Health Care Services, the Federal Department of Health and Human Services, the Controller General of the United States and to all other authorized federal and state agencies, or their duly authorized representatives.

19.3. **Audit** Consultant shall permit the aforesaid agencies or their duly authorized representatives to audit all books, accounts or records relating to this Contract, and all books, accounts or records of any business entities controlled by Consultant who participated in this Contract in any way. All such records shall be available for inspection by auditors designated by County or State, at reasonable times during normal business hours. Any audit may be conducted on Consultant's premises or, at County's option, Consultant shall provide all books and records within fifteen (15) days upon delivery of written notice from County. Consultant shall promptly refund any moneys erroneously charged and shall be liable for the costs of audit if the audit establishes an over-charge of five percent (5%) or more of the Maximum Contract Price.

21. **Termination**

- A. A Material Breach, as defined pursuant to the terms of this Contract or otherwise, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to immediately suspend payments hereunder, or terminate this Contract, or both, without notice.
- B. If Consultant fails to timely provide in any manner the services materials and products required under this Contract, or otherwise fails to promptly comply with the terms of this Contract, or violates any ordinance, regulation or other law which applies to its performance herein, County may terminate this Contract by giving **five (5) calendar days written notice to Consultant**.
- C. Either party may terminate this Contract for any reason, or without cause, by giving **thirty (30) calendar days written notice** to the other, which notice shall be sent by registered mail in conformity with the notice provisions, below. In the event of termination not the fault of the Consultant, the Consultant shall be paid for services performed to the date of termination in accordance with the terms of this Contract. Consultant shall be excused for failure to perform services herein if such performance is prevented by acts of God, strikes, labor disputes or other forces over which the Consultant has no control.
- D. County, upon giving **thirty (30) calendar days written notice** to Consultant, shall have the right to terminate its obligations under this Contract at the end of any fiscal year if the County or the State of California, as the case may be, does not appropriate funds sufficient to discharge County's obligations coming due under this contract.

In the event this Contract is terminated:

- 1) Consultant shall deliver copies of all writings prepared by it pursuant to this Contract. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.
- 2) County shall have full ownership and control of all such writings delivered by Consultant pursuant to this Contract.
- 3) County shall pay Consultant the reasonable value of services rendered by Consultant to the date of termination pursuant to this Contract not to exceed the amount documented by Consultant and approved by County as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the Contract specified in Exhibit B, and further provided, however, County shall not in any manner be liable for lost profits which might have been made by Consultant had Consultant completed the services required by this Contract. In this regard, Consultant shall furnish to County such financial information as in the judgment of the County is necessary to determine the reasonable value of the services rendered by Consultant. The foregoing is cumulative and does not affect any right or remedy, which County may have in law or equity.

22. **Intellectual Property** To the extent County provides any of its own original photographs, diagrams, plans, documents, information, reports, computer code and all recordable media together with all copyright interests thereto, not the property of Consultant (herein "Intellectual Property"), which concern or relate to this Contract and which have been prepared by, for or submitted to Consultant by County, shall be the property of County, and upon fifteen (15) days demand therefor, shall be promptly delivered to County without exception.

23. **Waiver** One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Contract shall not operate as a waiver of any subsequent breach or default by the other party.
24. **Conflict of Interest** Consultant certifies that no official or employee of the County, nor any business entity in which an official of the County has an interest, has been employed or retained to solicit or aid in the procuring of this Contract. In addition, Consultant agrees that no such person will be employed in the performance of this Contract unless first agreed to in writing by County. This includes prior Nevada County employment in accordance with County Personnel Code.
25. **Nonlobbying Certification** The prospective participant certifies, by signing and submitting this Contract or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in conformance with its instructions.

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, U.S. 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.

The prospective participant also agrees by submitting his or her Contract or proposal 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 subrecipients shall certify and disclose accordingly.

26. **Entirety of Contract** This Contract contains the entire Contract of County and Consultant with respect to the subject matter hereof, and no other Contract, statement, or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Contract, shall be binding or valid.
27. **Alteration** No waiver, alteration, modification, or termination of this Contract shall be valid unless made in writing and signed by all parties, except as expressly provided in Section 19, Termination.
28. **Governing Law and Venue** This Contract is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. The venue for any legal proceedings regarding this Contract shall be the County of Nevada, State of California. Each party waives any Federal court removal and/or original jurisdiction rights it may have.
29. **Compliance with Applicable Laws** Consultant shall comply with any and all federal, state and local laws, codes, ordinances, rules and regulations which relate to, concern or affect the Services to be provided by this Contract.
30. **Additional Consultant Responsibilities**
- A. To the extent Consultant is a mandated reporter of suspected child and/or dependent adult abuse and neglect, it shall ensure that its employees, agents, volunteers, subConsultants, and independent Consultants are made aware of, understand, and comply with all reporting requirements. Consultant

shall immediately notify County of any incident or condition resulting in injury, harm, or risk of harm to any child or dependent adult served under this Contract.

- B. Consultant will immediately notify County of any active complaints, lawsuits, licensing or regulatory investigations, reports of fraud or malfeasance, or criminal investigations regarding its operations. Consultant agrees to work cooperatively with County in response to any investigation commenced by County with regard to this Contract or the clients served herein, including providing any/all records requested by County related thereto.
- C. Consultant shall employ reasonable background check procedures on all employees, prospective employees, volunteers and consultants performing work involving direct contact with minor children or dependent adults under this Contract, including fingerprinting and criminal records checks, sexual offender registry checks, and reference checks, including both personal and professional references.

31. **Notification** Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or deposited in the mail, postage prepaid, and addressed to the parties as follows:

COUNTY OF NEVADA:

Nevada County
Department of Public Works
Address: 950 Maidu Avenue, Suite 170
City, St, Zip Nevada City, CA 95959
Attn: Steven Whittlesey
Email: Steven.Whittlesey@nevadacountyca.gov
Phone: 530.470.2580

CONSULTANT:

Mark Thomas & Company Inc.
Sacramento Office
Address 701 University Ave, Ste 200
City, St, Zip Sacramento, CA 95825
Attn: Hank Doll
Email: HDoll@MarkThomas.com
Phone: (916) 826-3038

Any notice so delivered personally shall be deemed to be received on the date of delivery, and any notice mailed shall be deemed to be received five (5) days after the date on which it was mailed.

Executed as of the day first above stated:

Authority: All individuals executing this Contract on behalf of Consultant represent and warrant that they are authorized to execute and deliver this Contract on behalf of Consultant.

IN WITNESS WHEREOF, the parties have executed this Contract effective on the Beginning Date, above.

COUNTY OF NEVADA:

By: _____

Date: _____

Printed Name/Title: Chair, of the Board of Supervisors

By: _____
Attest: Julie Patterson Hunter, Clerk of the Board of Supervisors

Approved as to Form – County Counsel:

By: _____

Date: _____


CONSULTANT: Mark Thomas & Company, Inc.

By:  _____

Date: 7/28/2023

Name: Zach Siviglia

* Title: President

By:  _____ Date: 7/28/2023

Name: Matt R. Brogan

* Title: Secretary _____

**** If Consultant is a corporation, this Contract must be signed by two corporate officers; one of which must be the secretary of the corporation, and the other may be either the President or Vice President, unless an authenticated corporate resolution is attached delegating authority to a single officer to bind the corporation (California Corporations Code Sec. 313).***

Exhibits

- A. Schedule of Services
- B. Schedule of Charges and Payments
- C. Insurance Requirements

EXHIBIT A

SCHEDULE OF SERVICES

Services that may be required as part of this contract include but are not limited to Inspection services as follows:

TASKS		DELIVERABLES
TASK 1.0 ADMINISTRATION		
Subtask 1.1	Administer Mark Thomas' Contract	Progress Reports and Invoices
TASK 2.0 CONSTRUCTION-PERIOD SERVICES		
Subtask 2.1	Monitor Contractor performance and enforcement of all requirements of applicable codes, specs and contract drawings	Field Directives
Subtask 2.2	Monitoring of DIR Certified Payroll to ensure Contractor meets prompt payment and prevailing wage requirements.	Prevailing Wage Submittal Log
Subtask 2.3	Performing field inspections and reports and other quality control activities. The Nevada Conty DPW will separately contract with a materials testing firm. The Consultant shall provide field directions, and communicate as necessary with the representative(s) of the materials testing firm hired by the Nevada County DPW for necessary materials testing.	Coordinate testing and ensure testing logs are updated (LAPM Exhibits 16-H, 16-R).
Subtask 2.4	Proactively ensure the Contractor has coordinated with power utility providers, the Nevada County Transit Division, materials testing services, and Design Engineers as needed for the project's duration	Meeting minutes and communication logs
Subtask 2.5	Monitoring, evaluating, and directing Contractor to ensure adherence to WPCP BMPs.	Corective action notices
Subtask 2.6	Tracking Subconsultant's work. Ensuring Contractor submits written request prior to substituting a subcontractor.	LAPM Exhibit 16-B
Subtask 2.7	Maintaining well-organized photographic and/or video records	Digital Site Photos
Subtask 2.8	Ensuring Contractor properly provides for the safety of the workers	Safety Meeting Minutes as part of Weekly Construction Meeting, Stop Work Notices
Subtask 2.9	Quantity Sheets for County's preparation of Progress Payments	Quantity sheets
Subtask 2.10	Enforcing Labor Compliance by preparing daily reports with required information, monitoring Certified Payroll and doing spot check labor surveys and interviews	Daily inspection reports, EEO Interviews, Certified Payroll Log, Labor Compliance Reports (LCP-AR1, LAPM Exhibits 16-N, 16-O)
Subtask 2.11	Providing final inspection and coordinate startup testing for each charging station	Punch List
TASK 3.0 POST CONSTRUCTION SERVICES		
Subtask 3.1	As an additive task, if requested by the County, the inspector shall be available to attend and answer any construction related documentation and procedure questions from either the EPA auditor or third-party auditor.	Deliverable to be determined upon request as a Contract amendment
Subtask 3.2	Assist the County with Caltrans close-out and post construction review	Project files

EXHIBIT B

SCHEDULE OF CHARGES AND PAYMENTS

1. Maximum Limit & Fee Schedule

Consultant's compensation shall be paid at the schedule shown below. Reimbursement of travel, lodging and miscellaneous expenses is not authorized. All expenses of Consultant, including any expert or professional assistance retained by Consultant to complete the work performed under this contract shall be borne by the Consultant.

NAME/CLASSIFICATION	BILLING RATE (\$USD/HR)			HOURS BY PHASE			TOTAL HOURS	AMOUNT \$USD
	Straight	OT	DT	Precon	Construction	Closeout		
Principal	417.15			0			0	\$ -
Area Manager	369.77			2	0		2	\$ 739.54
Technical Advisor	251.32			0	0	0	0	\$ -
RE/Structural Rep	230.72			0	0	0	0	\$ -
Inspector (PW) ⁽¹⁾	182.9	274.35	365.79		240		240	\$ 43,896.00
Electrical Inspector (PW) ⁽²⁾	195.92	293.87	391.83		24		24	\$ 4,702.08
Inspector	154.11	231.16	308.22	16		24	40	\$ 6,164.40
Electrical Inspector	166.56	249.84	333.12	16		12	28	\$ 4,663.68
Sr. Project Accountant	143.17	214.76	286.34	4			4	\$ 572.68
Sr. Project Coordinator	142.14	213.21	284.28	8			8	\$ 1,137.12
CASI (DBE/WBE)								\$ 7,070.00
Mileage IRS Rate								\$ 600.00
Copies								\$ 100.00
TOTAL COST:								\$ 69,645.50

(1) Assumes 30 days (8-hr) for Inspection

(2) Assumes 3 days (8-hr) for electrical inspection

The total of all payments made under this Contract shall not exceed the amount shown in Section 2 of this contract.

2. Payment Schedule

Consultant will be reimbursed for hours worked at the hourly rates specified in Consultant's Fee Schedule/Cost Proposal as described below herein. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee.

The COUNTY shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the COUNTY fails to pay promptly, the COUNTY shall pay interest to the Consultant, which accrues at the

rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the COUNTY shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by the COUNTY as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

County is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of the agreement and is not required to issue W-2 forms for income and employment tax purposes for any of Consultant's assigned personnel. Consultant, in the performance of its obligation hereunder, is only subject to the control or direction of the County as to the designation of tasks to be performed and the results to be accomplished.

Consultant will be reimbursed within thirty (30) days upon receipt by County's Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which Consultant is billing, or upon completion of the work. Invoices shall detail the work performed on each milestone. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this agreement number and project title. Credits due County that include any equipment purchased under the provisions of Section 31. Equipment Purchase and other Capital Expenditures, must be reimbursed by Consultant prior to the expiration or termination of this agreement.

3. Invoices

Invoices shall be submitted to County in a form and with sufficient detail as required by County. Work performed by Consultant will be subject to final acceptance by the County project manager(s).

Submit all invoices to:

Nevada County
Department of Public Works
Address: 950 Maidu Avenue, Suite 170, P.O. Box 599002
City, St, Zip Nevada City, CA 95959
Attn: Steven Whittlesey, Senior Civil Engineer
Email: Steven.Whittlesey@nevadacountyca.gov
Phone: (530) 470-2580

Unless otherwise agreed to by County, all payments owed by County to Consultant under this Contract shall be made by Automated Clearing House (ACH). In the event County is unable to release payment by ACH the Consultant agrees to accept payment by County warrant.

EXHIBIT C

INSURANCE REQUIREMENTS

Insurance. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. Coverage shall be at least as broad as:

- (i) **Commercial General Liability CGL:** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- (ii) **Automobile Liability** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage. **(Note – required only if auto is used in performance of work, submit waiver to Risk for approval to waive this requirement)**
- (iii) **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. **(Not required if Consultant provides written verification it has no employees).**
- (iv) **Professional Liability** (Errors and Omissions) Insurance appropriate to the Consultant’s profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- (i) **Additional Insured Status: The County, its officers, employees, agents, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of the work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 25, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used.)
- (ii) **Primary Coverage** For any claims related to this contract, the **Consultant’s insurance shall be primary** insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by the County, its officers, employees, agents, and volunteers shall be excess of the Consultant’s insurance and shall not contribute with it.
- (iii) **Notice of Cancellation** This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Nevada.

- (iv) **Waiver of Subrogation** Consultant hereby grants to County a waiver of any right to subrogation which any insurer or said Consultant may acquire against the County by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
- (v) **Sole Proprietors** If Consultant is a Sole Proprietor and has no employees, they are not required to have Workers Compensation coverage. Consultant shall sign a statement attesting to this condition, and shall agree they have no rights, entitlements or claim against County for any type of employment benefits or workers' compensation or other programs afforded to County employees.
- (vi) **Deductible and Self-Insured Retentions** Deductible and Self-insured retentions must be declared to and approved by the County. The County may require the Consultant to provide proof of ability to pay losses and related investigations, claims administration, and defense expenses within the retention. The Policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County. **(Note – all deductibles and self-insured retentions must be discussed with risk, and may be negotiated)**
- (vii) **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.
- (viii) **Claims Made Policies** if any of the required policies provide coverage on a claims-made basis: **(note – should be applicable only to professional liability)**
 - a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - c. If the coverage is canceled or non-renewed, and not replaced with another **claims-made policy form with a Retroactive Date**, prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of **five (5)** years after completion of contract work.
- (ix) **Verification of Coverage** Consultant shall furnish the County with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to County before work begins. However, failure to obtain and provide verification of the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- (x) **Subconsultants** Consultant shall require and verify that all subconsultants maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that County is an additional insured on insurance required from subConsultants. For CGL coverage subconsultants shall provide coverage with a format at least as broad as CG 20 38 04 13.
- (xi) **Special Risks or Circumstances** County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- (xii) **Conformity of Coverages** If more than one policy is used to meet the required coverages, such as an umbrella policy or excess policy, such policies shall be following form with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the County as noted above. In no cases shall the types of polices be different.

- (xiii) **Premium Payments** The insurance companies shall have no recourse against the COUNTY and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.
- (xiv) **Material Breach** Failure of the Consultant to maintain the insurance required by this Contract, or to comply with any of the requirements of this section, shall constitute a material breach of the entire Contract.
- (xv) **Certificate Holder** The Certificate Holder on insurance certificates and related documents should read as follows:

County of Nevada
950 Maidu Ave.
Nevada City, CA 95959

Upon initial award of a contract to your firm, you may be instructed to send the actual documents to a County contact person for preliminary compliance review.

Certificates which amend or alter the coverage during the term of the contract, including updated certificates due to policy renewal, should be sent directly to Contract Administrator.

EXHIBIT D

DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION & FORMS

1. CONSULTANT, subrecipient (COUNTY), or Subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, The COUNTY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE Subconsultants and suppliers.

CONSULTANT shall meet the DBE goal of 1% for MBE and 1% for WBE each, or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found here.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

2. Contract Assurance

Under 49 CFR 26.13(b):CONSULTANT, subrecipient or Subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying CONSULTANT from future proposing as non-responsible

3. Termination and Substitution of DBE Subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE Subconsultant obtains the COUNTY's written consent. CONSULTANT shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the COUNTY. Unless the COUNTY's consent is provided, the CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Bid. The COUNTY authorizes a request to use other forces or sources of materials if CONSULTANT shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The COUNTY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the COUNTY's bond requirements.
3. Work requires a consultant's license and listed DBE does not have a valid license under Consultants License Law.

4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The COUNTY determines other documented good cause.

CONSULTANT shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise CONSULTANT and the COUNTY of the reasons why the use of other forces or sources of materials should not occur.

CONSULTANT's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from CONSULTANT to the DBE regarding the request.
3. Notices from the DBEs to CONSULTANT regarding the request.

If a listed DBE is terminated or substituted, CONSULTANT must make good faith efforts in accordance with 40 CFR 33.301 to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

4. Commitment and Utilization

The COUNTY's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The COUNTY shall request CONSULTANT to:

1. Notify the COUNTY's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
 - Name and business address of each 1st-tier Subconsultant
 - Name and business address of each DBE Subconsultant, DBE vendor, and DBE trucking company, regardless of tier
 - Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)

If CONSULTANT is a DBE CONSULTANT, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to the COUNTY. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form to the COUNTY within 30 days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F Final Report – Utilization of

Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants and submit it to the COUNTY within 90 days of contract acceptance. The COUNTY will withhold \$10,000 until the form is submitted. The COUNTY will release the withhold upon submission of the completed form.

In the COUNTY's reports of DBE participation to the CARB, the COUNTY must display both commitments and attainments.

EXHIBIT E

SCHEDULE OF CHANGES

Amendments and additions to the Contract are hereby set-forth as follows:

12. Hold Harmless and Indemnification Contract: Paragraph 12 of the contract is hereby amended as follows:

- 12.1 **Definitions.** For purposes of this Section, "Consultant" shall include Consultant, its officers, employees, servants, agents, or subconsultants, or anyone directly or indirectly employed by either Consultant or its subConsultants, in the performance of this Agreement. "County" shall include County, its officials, officers, agents, employees and volunteers.
- 12.2 **Consultant to Indemnify County.** Where the services to be provided by Consultant under this Agreement are design professional services, as that term is defined under Civil Code Section 2782.8, Consultant agrees to indemnify, ~~defend~~ and hold harmless, ~~but not defend~~, the County, its officers, officials, ~~and employees and volunteers~~ from any and all ~~claims, demands,~~ costs or liability ~~that actually or allegedly arise out of, or pertain to, or relate to but only to the extent actually caused by~~ the negligence, recklessness or willful misconduct of Consultant and its agents in the performance of services under this contract, but this indemnity does not apply to liability for damages for bodily injury, property damage or other loss, arising from the sole negligence, active negligence or willful misconduct by the County, its officers, official employees, and volunteers. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of the County, then Consultant's indemnification and defense obligations shall be reduced in proportion to the established comparative liability of the County and shall not exceed the Consultant's proportionate percentage of fault.

~~Consultant has no obligation to pay for any of the indemnitees' defense related costs prior to a final determination of liability or to pay any amount that exceeds the Consultant's finally determined percentage of liability based upon the comparative fault of Consultant.~~

As respects all acts or omissions which do not arise directly out of the performance of design professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, and to the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the County, its officers, officials, agents, employees, and volunteers from and against any claims, demands, losses, liability of any kind or nature (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are in connection with, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-Consultants of Consultant, excepting those which arise out of the active negligence, sole negligence or willful misconduct of the County, its officers, officials, employees and volunteers.

- 12.3 **Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify County for such loss or damage as is caused by the ~~sole active~~ negligence or willful misconduct of the County. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of an indemnified party, then Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability.

~~12.4 **Attorneys Fees.** Such costs and expenses shall include reasonable attorneys' fees for counsel of County's choice, expert fees and all other costs and fees of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.~~

~~12.5 **Defense Deposit.** The County may request a deposit for defense costs from Consultant with respect to a claim. If the County requests a defense deposit, Consultant shall provide it within 15 days of the request.~~

- 12.6 **Waiver of Statutory Immunity.** The obligations of Consultant under this Section are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to County.
- 12.7 **Indemnification by SubConsultants.** Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section from each and every subConsultant or any other person or entity involved in the performance of this Agreement on Consultant's behalf.
- 12.8 **Insurance Not a Substitute.** County does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Consultant's indemnification obligations apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 12.9 **Civil Code.** The parties are aware of the provisions of Civil Code 2782.8 relating to the indemnification and the duty and the cost to defend a public agency by a Design Professional and agree that this Section complies therewith.

Approved:

APPROVED
By Sims Ely at 2:14 pm, Jul 27, 2023

County Counsel