

ORIGINAL

Mark Thomas & Company, Inc.

Design Services During Construction for U.S. 50/Silva Valley Parkway Interchange – Phase 1 Project

AGREEMENT FOR SERVICES #157-S1411

THIS AGREEMENT, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Mark Thomas & Company, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 1960 Zanker Road, San Jose, California 95112, and whose local office address is 7300 Folsom Boulevard, Suite 203, Sacramento, California 95826 (hereinafter referred to as "Consultant");

RECITALS

WHEREAS, County has determined that it is necessary to obtain a consultant to assist its Community Development Agency, Transportation Division (Transportation Division), with design services during construction for its U.S. 50/Silva Valley Parkway Interchange – Phase 1 Project;

WHEREAS, Consultant has represented to County that it is specially trained, experienced, expert, and competent to perform the special services required hereunder, and County has determined to rely upon such representations;

WHEREAS, it is the intent of the parties that consultant use due professional care so as such services be in conformity with all applicable federal, state and local laws and ordinances applicable to the work, including compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775;

WHEREAS, County has determined that the provision of such services provided by Consultant are in the public's best interest, and authorized by El Dorado County Charter, Section 210(b)(6) and/or Government Code Section 31000;

NOW, THEREFORE, County and Consultant mutually agree as follows:

ARTICLE I

Scope of Services:

Consultant's services to be provided specifically in support of County's U.S. 50/Silva Valley Parkway Interchange - Phase 1 project (hereinafter referred to as "Project").

Consultant shall perform all professional and technical services, work, and tasks required to accomplish the objectives set forth herein, and shall provide and make available Consultant's own personnel, subconsultants, materials, equipment, and services customarily necessary to provide design services, and other services generally including, but not limited to, those tasks identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof, or as identified in the

individual Work Orders, to be issued in accordance with this Agreement. Deliverables for the specific items of work to be provided under the Scope of Work shall be as specified therein, shall be prepared using the software described in this Article, and shall be submitted in accordance with the timeframes specified in Exhibit A, hereto. Modifications to the deliverables required and completion times specified in Exhibit A, hereto or to the software requirements may only be made in accordance with the prior written approval of County's Contract Administrator.

Unless otherwise indicated, receipt of this executed Agreement is Consultant's Notice to Proceed with the work specified herein. No payment will be made for any work performed prior to the effective date of the Agreement.

In addition to the specific services identified in Exhibit A, hereto, this Agreement may also include Optional Tasks, as subsequently identified during the course of work under this Agreement by County's Contract Administrator, related to the Scope of Work as identified in Exhibit A. Such Optional Tasks may supplement or modify the Scope of Work as identified in Exhibit A, hereto or may include, but not be limited to, additional items of work that are deemed critical by County's Contract Administrator to the furtherance of completing the Project.

Before proceeding with any work concerning Optional Tasks under this Agreement, the parties will identify the specific services to be provided for each assignment in individual Work Orders to be issued in accordance with this Agreement.

The specific services for each Optional Tasks assignment shall be determined at a meeting or telephone conference between Consultant and County's Contract Administrator, or designee, to discuss the needs, applicable standards, required deliverables, specific Consultant staff, subconsultants, if applicable, and any necessary permits on a task-by-task basis. Within an agreed timeframe as determined by County's Contract Administrator, following the meeting or telephone conference, Consultant shall provide County's Contract Administrator with a written scope of work, a schedule including a list of tasks with completion dates, a target completion date for the overall scope of work, and a not-to-exceed cost itemization to complete the work (resulting in a Work Order), which shall require written approval, authorization, and written notification to proceed from County's Contract Administrator, prior to commencement of the work.

If a submittal or deliverable is required to be an electronic file, Consultant shall produce the file using Microsoft (MS) Office 2010 applications (specifically, MS Word, MS Project and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). Electronic AutoCAD 2010 or AutoCAD Civil 3D 2010 format shall be used for submittal of plans or other similar documents as specified by County's Contract Administrator. All digital photographs shall be submitted on CD-ROMs in jpeg format with a minimum resolution of 2816 X 2112. All deliverables shall be submitted in language, format and design that are compatible with and completely transferable to County's computer and engineering applications and that are acceptable to County's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator.

No payment will be made for any Optional Tasks performed prior to approval and full execution of the applicable Work Order, and no payment will be made for amounts in excess of the not-to-exceed amount of the applicable Work Order.

Consultant shall provide County's Contract Administrator with the names and titles of Consultant's representatives that are authorized to bind Consultant by signing Work Orders and Work Order Amendments on Consultant's behalf. Consultant's notification of individuals authorized to execute Work Orders and Work Order Amendments on Consultant's behalf shall be communicated to County in accordance with the provisions of ARTICLE XVII, Notice to Parties, of this Agreement.

The period of performance for Work Orders issued for Optional Tasks, if any, shall be in accordance with dates specified in each Work Order. No payment will be made for any work performed before or after the period of performance in the Work Order, unless County's Contract Administrator and Consultant amend the Work Order. No Work Order will be written which exceeds the cumulative total of the not-to-exceed dollar amount of this Agreement.

County shall review Consultant's progress at key points as specified in each Work Order. Milestone reviews shall be performed for the specific products and deliverables listed in each Work Order. Milestones may only be changed by written agreement between County's Contract Administrator and Consultant's Project Manager.

Consultant shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in Exhibit A hereto or as specified in the individual Work Order. County's review of deliverables will ensure that Consultant's work meets a level of acceptability as determined by County's Contract Administrator, and Consultant shall be required to modify its work as necessary to meet that level of acceptability as defined by County's Contract Administrator. Failure to submit the required deliverables in the formats required shall be grounds for termination of the Agreement, as provided in ARTICLE XVI, Default, Termination, and Cancellation, herein.

All of the services included in Exhibit A hereto, are the responsibility of Consultant, unless specifically described as a task or item of work to be provided by County. Consultant shall be responsible for the supervision, administration and work performed by any subconsultant for services rendered under this Agreement.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall expire upon the later of ninety (90) days after County's recordation of the Notice of Acceptance for the Project or the resolution of all construction claims, if any, associated with the Project.

ARTICLE III

Compensation for Services:

- A. For services provided herein, including all of the deliverables described in Exhibit A, Scope of Work, and in the individual Work Orders issued pursuant to this Agreement, County agrees to pay Consultant monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoices detailing the services rendered.
- B. For the purposes hereof, the billing rates shall be in accordance with Exhibit B, marked "Fee Schedule," incorporated herein and made by reference a part hereof. Other direct costs including subconsultants' services and outside services authorized herein shall be invoiced at Consultant's cost, with a five percent (5%) markup, for the services rendered. Any invoices that include subconsultant services and other direct costs shall be accompanied by backup documentation to substantiate Consultant's costs for the services being billed on those invoices.

Neither mileage nor travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls, and other per diem expenses) will be reimbursed as a direct cost for any services performed under this Agreement by Consultant or any authorized subconsultants.

- C. For services provided herein and described as Items of Work on Exhibit A, Scope of Work, the cost allocation and subconsultant assignment per Item of Work shall be in accordance with Exhibit C, marked "Cost Proposal*," incorporated herein and made by reference a part hereof.
- D. The total amount for all Optional Tasks, if any, which may be assigned in accordance with this Agreement, shall not exceed \$25,000.00, inclusive of all Work Orders and amended Work Orders, all work of subconsultants, and all costs and expenses. The not-to-exceed amount of each individual Work Order so assigned shall not exceed the amount specified in each Work Order, unless County's Contract Administrator and Consultant amend the Work Order.
- E. The total amount of this Agreement, including all of the services detailed in Exhibit A, Scope of Work, and including any Optional Tasks which may be assigned, and inclusive of all work of subconsultants, costs, expenses, and Work Orders shall not exceed \$338,000.00.
- F. Itemized invoices shall follow the format specified by County and shall reference this Agreement number, the County-supplied Work Order number, and the Work Breakdown Structure (WBS) Activity Identification codes (Activity IDs) applicable for each item of work on their faces. Consultant shall bill County for only one (1) Work Order per invoice.
- G. In accordance with ARTICLE XIV, Prevailing Wage, Consultant shall provide County's Contract Administrator with certified payroll for applicable personnel,

including authorized subconsultants, for the period for which payment is requested and such certified payroll shall accompany each invoice submitted. The certified payroll shall contain information related only to the Project. No invoice shall be paid until the certified payroll is submitted.

- H. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

County of El Dorado
Community Development Agency
Transportation Division
2441 Headington Road
Placerville, California 95667
Attn.: John H. Kahling, Deputy Director, Engineering
Construction Unit

or to such other location as County directs.

- I. In the event that Consultant fails to deliver, in the format specified, the deliverables required by this Agreement, County at its sole option may delay the monthly payment for the period of time of the delay, cease all payments until such time as the required deliverables are received, or proceed as set forth below in ARTICLE XVI, Default, Termination, and Cancellation, herein.

ARTICLE IV

Standards for Work: Services rendered under this Agreement shall be performed in accordance with the guidelines set forth in the current edition of the *Caltrans Construction Manual*, *Caltrans Bridge Construction Records and Procedures (BCRP) Manual*, *Caltrans Materials Testing Manual*, *Caltrans Local Assistance Procedures Manual*, *Caltrans Source Inspection Quality Management Plan (SIQMP) Outline*, the El Dorado County Community Development Agency, Transportation Division's Quality Assurance Program, Caltrans Uniform Filing System, ASTM testing procedures, and all other applicable Caltrans, federal, state and local laws, County guidelines and accepted industry standards, and shall be performed in a safe, professional, skillful and workmanlike manner in accordance with good engineering practices. Where applicable, services shall further conform to all U.S. Code of Federal Regulation Title 23 requirements and all applicable federal laws, regulations and policy and procedural or instructional memoranda.

Material testing and Quality Control/Assurance shall conform to the current edition of the *Caltrans Construction Manual*, *Caltrans Construction Manual Supplement for Local Agency Resident Engineers*, *Caltrans Local Agency Structural Representative Guidelines*, and Caltrans' California Test Methods and shall be performed by a material-tester certified by the State.

All of Consultant's services and deliverables must adhere to current County, Caltrans and federal requirements for project development and shall be made available to

County and to Caltrans for review and approval at the appropriate stages or upon request by County's Contract Administrator.

Consultant has full responsibility for the accuracy and completeness of the deliverables, reports and such other documents that may be required for the tasks or items of work assigned. Assistance, cooperation and oversight by County, Caltrans, or other regulatory agencies will not relieve Consultant of this professional responsibility. All work must be performed and work products prepared in a format and manner customarily anticipated by the appropriate approving agencies.

ARTICLE V

Quality Control: Consultant shall have a quality control/quality assurance (QC/QA) plan in effect during the entire time work is being performed under this Agreement. Prior to the start of any work, Consultant shall provide County with its QC/QA plan and an outline of the project-specific quality control/quality procedures. Consultant shall identify quality control reviews to provide compliance with the major deliverables within the Scope of Work for this Agreement.

ARTICLE VI

Licenses: Consultant represents that it and any and all subconsultants employed under this Agreement are duly certified or licensed in good standing by the State of California to perform the services contemplated under this Agreement, and that Consultant and all subconsultants shall maintain said certificates and licenses in good standing throughout the term of this Agreement.

ARTICLE VII

Ownership of Data: Upon completion or earlier termination of all services under this Agreement, or upon the completion or earlier termination of services provided in accordance with individual Work Orders issued pursuant to this Agreement, ownership and title to all reports, documents, plans, maps, specifications, estimates, compilations, photographs, videos and any and all other materials or data produced or obtained as part of this Agreement will automatically be vested in County without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to County. Copies may be made for Consultant's records, but shall not be furnished to others without written authorization from County's Contract Administrator. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by County. Consultant shall furnish County all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the services and deliverables provided under this Agreement.

The ownership of data provisions herein will remain in effect until terminated or modified in writing by mutual agreement.

ARTICLE VIII

Consultant's Project Manager: Consultant designates Derek Minnema, P.E., Project Manager - Sacramento, as its Project Manager for this Agreement. Consultant's Project Manager, or County-approved designee, shall be accessible to County's Contract Administrator, or designee, during normal County working hours and shall respond

within twenty-four (24) hours to County inquiries or requests. Consultant's Project Manager shall be responsible for all matters related to Consultant's personnel, operations and any subconsultants authorized under this Agreement including, but not limited to (1) assigning qualified personnel to perform the required work and to prepare the deliverables required by the individual Work Orders issued pursuant to this Agreement; (2) reviewing, monitoring, training and directing Consultant's personnel and any subconsultants authorized herein; and (3) providing qualified and appropriate traffic control services for field work. Project Manager must be a registered engineer in the State of California.

ARTICLE IX

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Amendments may be made to permit mutually acceptable changes in the scope, character or complexity of the work if such changes become desirable or necessary as the work progresses. Appropriate extensions of time in case of unavoidable delays and for consideration of warranted adjustments in payment may also be accomplished by amendments to the Agreement. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto. There shall be no change in Consultant's Project Manager or subconsultants, which shall be established at the issuance of individual Work Orders, without prior written approval by County's Contract Administrator.

ARTICLE X

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during the term hereof.

ARTICLE XI

Confidentiality:

- A. Consultant and any subconsultants authorized under this Agreement shall maintain the confidentiality and privileged nature of all records, including billing records, all financial, statistical, personal, technical, or other data and information relative to County's operations together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, including any subconsultants authorized herein, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Transportation Division for the purpose of, and in the performance of, this Agreement.
- B. Permission granted by County to disclose information on one occasion or at public hearings held by County relating to this Agreement shall not authorize Consultant or any subconsultants authorized under this Agreement to further disclose such information, or disseminate the same on any other occasion.

- C. Consultant and any subconsultants authorized under this Agreement shall not comment publicly to the press or any other media regarding this Agreement or County's actions on the same, except to County's staff, Consultant's own personnel or authorized subconsultants involved in the performance of this Agreement, at public hearings or in response to questions from County's Board of Supervisors.
- D. Consultant and any subconsultants authorized under this Agreement shall not issue any news release or public relations item of any nature, whatsoever, regarding services performed or to be performed under this Agreement without prior review of the contents thereof by County, and receipt of County's Contract Administrator's written permission.
- E. Consultant shall hold all administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for Project in confidence to the extent permitted by law. Where applicable, the provisions of California Government Code section 6254.5(e) will govern the disclosure of such documents.
- F. All information related to any construction estimates prepared or otherwise obtained in the performance of this Agreement is confidential, and shall not be disclosed by Consultant to any entity other than to County.
- G. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- H. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

ARTICLE XII

Assignment and Delegation: Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County. Notwithstanding this Article, County may, through its Contract Administrator, authorize Consultant to utilize subconsultants for services performed in Exhibit A, Scope of Work, for the particular tasks, work and deliverables identified therein or as identified in the individual Work Orders issued pursuant to this Agreement. Said authorization and approval shall be sought and obtained by Consultant prior to subconsultants' commencement of any work under this Agreement. Specific subconsultants shall be authorized in individual Work Orders issued pursuant to this Agreement. Consultant shall require each subconsultant, to the extent of the work to be performed by the subconsultant, to be bound to Consultant by the terms of this Agreement and to assume toward Consultant all of the obligations and responsibilities that Consultant, by this Agreement, assumes toward County.

Notwithstanding any provision to the contrary, at no time shall County be obligated to pay separately for subconsultant services.

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

ARTICLE XIII

Independent Contractor/Liability: Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subconsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner in accordance with good engineering practices and shall be liable for its own negligence and negligent acts of its employees and subconsultants as required by California law. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees, agents, associates, representatives, or subconsultants.

ARTICLE XIV

Prevailing Wage: County requires Consultant's services on public works project(s) involving local funds to which prevailing wage requirements may apply. As a consequence, Consultant and any authorized subconsultants, shall comply with all applicable state prevailing wage rates, statutes, rules and regulations then in effect. Consultant and its subconsultants shall use the general prevailing wage rates determined by the Director of Industrial Relations for the county in which the work is to be done, which are available at the principal office of County's Transportation Division. Changes, if any, to the general prevailing wage rates will be available at the same location.

Future effective general prevailing wage rates which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates. Consultant and any authorized subconsultants shall comply with all applicable wage requirements, as set forth in Labor Code Sections 1770 et seq., 1773.2, 1775, 1776, 1810, and 1813. In accordance with the provisions of Labor Code Section 1810, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and Consultant and any subconsultants authorized under this Agreement shall also conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

As required under the provisions of Labor Code Section 1776, Consultant and any subconsultants authorized under this Agreement shall keep accurate payroll records. Consultant shall submit certified payroll to County in accordance with ARTICLE III, Compensation for Services.

ARTICLE XV

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is

subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XVI

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended at the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the Time to Cure has expired.

- B. **Bankruptcy:** This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

- D. Termination or Cancellation without Cause: County may terminate this Agreement or any Work Order issued pursuant to this Agreement, in whole or in part upon seven (7) calendar days' written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Consultant, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the not-to-exceed amount of the Work Order or the total amount of this Agreement, as applicable. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- E. Consultant shall comply with the requirements of this Article, regarding administrative, contractual, or legal remedies in instances of default, termination or cancellation and with other terms and conditions of County's grant funding agreements that provide for such sanctions and penalties as may be appropriate in instances where contract terms are violated or breached.

- F. Completion of Work: In the event of termination of the Agreement, County reserves the right to take over and complete any work, service, or task by contract or by other means.

ARTICLE XVII

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
 Community Development Agency
 Transportation Division
 2441 Headington Road
 Placerville, California 95667

Attn.: John H. Kahling, P.E.
 Deputy Director, Engineering
 Construction Unit

With a Copy to:

County of El Dorado
 Community Development Agency
 Administration and Finance Division
 2850 Fairlane Court
 Placerville, California 95667

Attn.: Sherrie Busby
 Administrative Services Officer
 Contract Services Unit

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Mark Thomas & Company, Inc.
1960 Zanker Road
San Jose, California 95112

Attn.: Michael J. Lohman
President

or to such other location as Consultant directs.

ARTICLE XVIII

Change of Address: In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify County in writing as provided in ARTICLE XVII, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XIX

Indemnity: Consultant shall immediately defend, indemnify, and hold harmless the County and its officers and employees from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of Consultant includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party, (1) Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability and (2) Consultant may submit a claim to the County for reimbursement of reasonable attorneys' fees and defense costs incurred in defending County in proportion to the established comparative liability of the indemnified party.

Except as otherwise prohibited by law, neither State nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by Consultant under or in connection with any work, authority, or jurisdiction conferred upon Consultant and arising under this Agreement. Consultant shall fully defend, indemnify and save harmless State and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by Consultant under this Agreement.

The obligation to defend and indemnify contained herein will remain in effect until terminated or modified in writing by mutual agreement.

ARTICLE XX

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division, and Consultant agrees that no work or services shall be performed prior to the giving of such approval.
- H. The certificate of insurance must include the following provisions stating that:
 1. The insurer will not cancel the insured's coverage without prior written notice to County; and
 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured (on an additional insured endorsement), but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

- I. Consultant's insurance coverage shall be primary insurance as respects County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to, and approved, by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

In addition, Consultant shall ensure that all subconsultants authorized pursuant to this Agreement shall maintain workers' compensation, general liability, automobile liability and professional liability insurance as specified above and shall provide County with proof of same if requested.

ARTICLE XXI

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XXII

Interest of Consultant: Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire the same in any manner or

degree, in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

Consultant hereby certifies that neither Consultant, nor any firm affiliated with Consultant has prepared plans, specifications, and estimates for any construction project named in the individual Work Order. Consultant also certifies that neither Consultant, nor any firm affiliated with Consultant will bid on any construction contract or construction subcontracts for any construction project resulting from work assigned under this Agreement. An affiliated firm is one which is subject to the control of the same persons through joint-ownership, or otherwise. Additionally, Consultant certifies that no person working under this Agreement is also employed by the construction contractor for any Project included within this Agreement.

Except for subconsultants whose services are limited to providing materials testing information, no subconsultant who is providing services in connection with this Agreement shall have provided services on the design of any project named in the individual Work Order.

Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all of the provisions of this Article.

ARTICLE XXIII

California Residency (Form 590): All independent consultants providing services to County must file a State of California Form 590, certifying their California residency, or in the case of a limited liability company or corporation, certifying that they have a permanent place of business in California. Consultant will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Consultant during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXIV

County Payee Data Record Form: All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

ARTICLE XXV

Business License: County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XXVI

California Forum and Law: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXVII

Record Retention: All of Consultant's books, papers, job cost records, detailed cost estimates, claims, and accounts, including payment, property, payroll, personnel, subconsultant records, and financial records related to or which arise out of the work or under terms of this Agreement shall be retained for access, inspection and/or audit, as applicable, by the State of California, the California State Auditor and County or their duly authorized representatives for at least four (4) years after County's final payment to Consultant and all other pending matters are closed. Consultant shall incorporate this provision in any subcontract entered into as a result of this Agreement.

The obligation to retain records herein will remain in effect until terminated or modified in writing by mutual agreement.

ARTICLE XXVIII

Claims Filed by County's Construction Contractors:

- A. If claims are filed by County's construction contractors relating to work performed by Consultant's personnel or subconsultants, and additional information or assistance from Consultant's personnel or subconsultants is required in order to evaluate or defend against such claims, Consultant agrees to make its personnel and/or subconsultants available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. Consultant's personnel and subconsultants that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Any consultation or testimony that may be required by County will be reimbursed at the Expert Witness rate under Exhibit B, hereto.
- 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.

ARTICLE XXIX

Safety: Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that there are areas that may be within the limits of certain Projects that are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

ARTICLE XXX

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is John H. Kahling, P.E., Deputy Director, Engineering,

Construction Unit, Transportation Division, Community Development Agency, or successor.

ARTICLE XXXI

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

ARTICLE XXXII

Taxes: Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Consultant agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE XXXIII

Partial Invalidity: If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXXIV

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.


ARTICLE XXXV

Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

ARTICLE XXXVI

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

Requesting Contract Administrator Concurrence:

By:  Dated: 10/16/13
John H. Kahling, P.E.
Deputy Director, Engineering
Construction Unit
Transportation Division
Community Development Agency

Requesting Division Concurrence:

By:  Dated: 10/17/13
Bard R. Lower
Transportation Division Director
Community Development Agency

Requesting Department Concurrence:

By:  Dated: 10/18/13
Kimberly A. Kerr, Acting Director
Community Development Agency

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:

James S. Mitrison
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- MARK THOMAS & COMPANY, INC. --

By: _____
Michael J. Lohman
President
"Consultant"

Dated: _____

By: _____
Richard K. Tanaka
Chief Financial Officer

Dated: _____

Mark Thomas & Company, Inc.

AGREEMENT FOR SERVICES #157-S1411

Exhibit A

Scope of Work

Scope of Work Table of Contents

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Item of Work H. Post-Construction Record of Survey and Monumentation.....5

DELIVERABLES:

Unless otherwise indicated below, and notwithstanding any other provision of this Agreement to the contrary, Consultant shall submit hard copy deliverables via US Mail or in-person delivery and electronic copy deliverables via email to County’s Contract Administrator (CA). All deliverables, whether hard copy or electronic versions, shall be prepared and submitted in accordance with the computer and software requirements of ARTICLE I, Scope of Services, of this Agreement. All digital photographs shall be submitted on a CD-ROM in jpeg format with a minimum resolution of 2816 X 2112. County’s CA’s current address is 2441 Headington Road, Placerville, CA 95667 and the current email address is john.kahling@edcgov.us. Changes to County’s CA’s physical or email address will be transmitted to Consultant in accordance with the provisions of ARTICLE XVII, Notice to Parties, of this Agreement.

Unless otherwise directed by County’s CA, the files for the U.S. 50/Silva Valley Parkway Interchange – Phase 1 Project (Project) will be located at the temporary field office that will be provided by County’s Construction Contractor.

Scope of Work

Consultant and its five (5) subconsultants: 1) Blackburn Consulting, 2) Fehr & Peers, 3) Foothill Associates, 4) LSA Associates, Inc., and 5) Ric Windmiller shall perform the tasks included in the Items of Work below.

Work Orders issued for Optional Tasks which include subconsultants that are not listed above shall be identified in the specific service to be provided for each assignment in the individual Work Orders to be issued in accordance with this Agreement.

The WBS Activity ID code for Items of Work A through H is CE01.

ITEM OF WORK A – PROJECT MANAGEMENT

This item of work provides for day-to-day project management of Project including management of subconsultants, updating County's CA on specific issues, and managing and directing the work of designers. It is anticipated that construction will commence October 2013 and be completed by August 2016.

Meetings

Consultant shall schedule, coordinate, and attend meetings on an as requested basis at the direction of County's CA.

Deliverables: When requested by County's CA, Consultant shall deliver electronic copies of project management records to County's CA within the timeframe specified by County's CA. Consultant shall deliver to County's CA all data and correspondence pertaining to project management in Project files within five (5) working days of creating or receiving such data or correspondence.

ITEM OF WORK B – CONSTRUCTION SUPPORT (GENERAL)

When requested by County's CA, Consultant shall respond to inquiries from the Resident Engineer and contractor's formal Requests for Information (RFIs) through the Resident Engineer's request. Field visits to the construction site shall be made as directed by the Resident Engineer. The field visits shall include meetings with the Resident Engineer to answer questions regarding the ongoing construction activities, as needed.

When requested by County's CA, Consultant shall review submittals and shop drawings. The review of shop drawings shall include, but not be limited to: bridge working drawing submittals, construction contractor's submittals for substitutions, construction contractor's alternative construction approvals, independent checks of construction contractor's falsework and shoring submittals, and others as directed by the Resident Engineer.

When requested by County's CA, Consultant shall perform analyses or prepare drawings for contract change orders and review contract change orders created by County.

Any work required by Consultant under the "Construction Support (General)" portion of this scope of work that is caused by negligent errors in Consultant's design product shall not be compensable.

Deliverables: When requested by County's CA, Consultant shall create reports containing analysis and recommendations and deliver electronic copies to County's CA within the timeframe specified by County's CA. Consultant shall deliver to County's CA all data and correspondence pertaining to construction support in Project files within five (5) working days of creating or receiving such data or correspondence.

ITEM OF WORK C – CONSTRUCTION SUPPORT (GEOTECHNICAL)

When requested by County's CA, Consultant and its subconsultant, Blackburn Consulting, shall provide geotechnical construction services including, but not limited to the following:

- Review Project plans and specifications.
- Attend a pre-construction meeting.
- Conduct a field review during excavation work for various structures to observe foundation conditions and confirm bearing materials and recommend treatment of inadequate foundation material, if necessary.
- Conduct a field review of cut-slopes and excavations for conditions that may influence slope stability.
- Provide geotechnical consulting support for issues including, but not limited to: design modifications, seepage/subdrainage, rock excavation, overhead sign foundations, identification of naturally occurring asbestos (including associated testing), and suitability of fill materials.
- Conduct a field review of the new pavement subgrade.

Deliverables: When requested by County's CA, Consultant shall create reports containing analysis and recommendations and deliver electronic copies to County's CA within the timeframe specified by County's CA. Consultant shall deliver to County's CA all data and correspondence pertaining to geotechnical services in Project files within five (5) working days of creating or receiving such data or correspondence.

ITEM OF WORK D – CONSTRUCTION SUPPORT (BIOLOGICAL/ENVIRONMENTAL)

When requested by County's CA, Consultant and its subconsultants, Foothill Associates and LSA Associates, Inc., shall provide biological and environmental construction support services including, but not limited to the following:

- Perform field investigations and/or site inspections as required by and in accordance with Project's environmental documents and permits.
- Provide analysis, reports, or plans as required by and in accordance with Project's environmental documents and permits.
- Provide analysis, recommendations, and reports regarding the relationship between construction work and Project's environmental impact report.

Deliverables: When requested by County's CA, Consultant shall create reports containing analysis and recommendations and deliver electronic copies to County's CA within the timeframe specified by County's CA. Consultant shall deliver to County's CA all data and correspondence pertaining to biological construction support in Project files within five (5) working days of creating or receiving such data or correspondence.

ITEM OF WORK E – CONSTRUCTION SUPPORT (SIGNALS/ELECTRICAL)

When requested by County's CA, Consultant and its subconsultant, Fehr & Peers, shall provide signal and electrical construction support services including, but not limited to the following:

- Provide signal timing data for input into signal controllers by County or State of California (State) personnel.
- Perform field observations of traffic patterns.
- Perform analysis of data and traffic patterns.
- Provide modified signal timing data for input into signal controllers by County or State personnel.

Deliverables: When requested by County's CA, Consultant shall create reports containing analysis and recommendations and deliver electronic copies of the reports to County's CA within the timeframe specified by County's CA. Consultant shall deliver to County's CA all data and correspondence pertaining to signal/electrical construction support in Project files within five (5) working days of creating or receiving such data or correspondence.

ITEM OF WORK F – CONSTRUCTION SUPPORT (ARCHAEOLOGICAL)

When requested by County's CA, Consultant and its subconsultant, Ric Windmiller, shall provide archaeological construction support services including, but not limited to the following:

- Perform field investigations and/or site inspections as required by and in accordance with Project's environmental documents and permits. This work includes, but is not limited to, all inspections and analysis of potentially archaeological sensitive areas.

Deliverables: When requested by County's CA, Consultant shall create reports containing analysis and recommendations and deliver electronic copies of the

reports to County's CA within the timeframe specified by County's CA. Consultant shall deliver to County's CA all data and correspondence pertaining to archaeological construction support in Project files within five (5) working days of creating or receiving such data or correspondence.

ITEM OF WORK G – FINALIZE PROJECT RECORDS / PREPARE RECORD DRAWINGS

When requested by County's CA, Consultant shall furnish Project records in accordance with the Caltrans' Uniform Filing System, as required. Consultant shall prepare record drawings using notes provided by the Resident Engineer and any revised plan sheets prepared by Consultant.

Deliverables: When requested by County's CA, Consultant shall provide hard copies of all Project records (construction phase only) to County's CA within twenty (20) working days. Consultant shall complete work related to record drawings such that timelines in the Cooperative Agreement between County and State are met. A copy of the Cooperative Agreement will be submitted to Consultant prior to this Agreement's execution.

ITEM OF WORK H – POST-CONSTRUCTION RECORD OF SURVEY AND MONUMENTATION

After construction is complete, and when requested by County's CA, Consultant shall install monumentation in the field and prepare a Record of Survey that reflects all adjustments to County right of way caused by Project. Consultant shall obtain County Surveyor approval of this Record of Survey. County's fee right of way lines shall be monumented along said fee right of way lines, including monumentation of the intersection of any property lines with County's fee right of way line. Before setting any monuments along County's fee right of way line, Consultant shall obtain approval of proposed monument locations by County's CA.

In addition, after construction is complete, and when requested by County's CA, Consultant shall install monumentation in the field and prepare all post-construction right of way mapping required by State that reflects all adjustments to State right of way caused by Project. Consultant shall obtain State approval of this right of way mapping. Before setting any monuments along State right of way, Consultant shall obtain approval of proposed monument locations by State.

All work in this section shall comply with all State laws and County ordinances; the Caltrans manuals and policies listed in ARTICLE IV, Standards for Work, and Project's Cooperative Agreement between County and State; and any policies implemented by County Surveyor.

Deliverables: Consultant shall submit proposed monument locations to County's CA for approval at any time after execution of this Agreement. Any subsequent resubmittal of the proposed monument locations required to be made to County's CA shall be made within two (2) weeks of County's CA's return

of the proposed monument locations. Consultant shall perform the monumentation and submit the Record of Survey to County Surveyor within four (4) weeks of completion of construction. Any subsequent resubmittal of the Record of Survey required to be made to County Surveyor shall be made within two (2) weeks of County Surveyor's return of the Consultant's Record of Survey.

Consultant shall submit proposed monument locations to State for approval at any time after execution of this Agreement. Any subsequent resubmittal of the proposed monument locations required to be made to State shall be made within two (2) weeks of State's return of the proposed monument locations. Consultant shall perform the monumentation and submit the right of way mapping to State within four (4) weeks of completion of construction. Any subsequent resubmittal of the right of way mapping required to be made to State shall be made within two (2) weeks of State's return of the Consultant's right of way mapping.

Mark Thomas & Company, Inc.

AGREEMENT FOR SERVICES #157-S1411

Exhibit B

Fee Schedule

Title	Hourly Rate
<u>Professional and Office</u>	
Principal/Project Manager	\$ 275.00
Structural Manager	\$245.00
Engineering Manager	\$230.00
Senior Project Manager	\$202.00
Survey Manager	\$189.00
Project Manager	\$184.00
Senior Project Engineer	\$173.00
Project Engineer	\$153.00
Senior Design Engineer	\$142.00
Design Engineer	\$113.00
Land Surveyor	\$163.00
Project Surveyor	\$142.00
Engineering/Survey/CADD Technician	\$110.00
Inspector	\$110.00
Technical Writer	\$89.00
Design (Tech Assistant)	\$89.00
Survey (Tech Assistant)	\$70.00
Administrative	\$77.00
<u>Field</u>	
Single Chief without Equipment	\$103.00
Single Chief with Equipment	\$160.00
Single Chainman	\$84.00
2 Person Field Party and Vehicle	\$275.00
3 Person Field Party and Vehicle	\$335.00
<u>Special Services</u>	
Expert Witness	\$368.00
Strategic Consulting (Principal)	\$368.00
<u>Other Direct Costs</u>	
Reimbursables including, but not limited to: Printing and Materials, Filing Fees, and Field Expenses	Cost + 5%
Subconsultant Fees	Cost + 5%

Mark Thomas & Company, Inc.
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Exhibit C
Cost Proposal*

Item of Work	Description	Not-To-Exceed Amount**	Consultant/Subconsultant
Item of Work A.	Project Management	\$20,000.00	Mark Thomas & Company, Inc.
Item of Work B.	Construction Support (General)	\$160,000.00	Mark Thomas & Company, Inc.
Item of Work C.	Construction Support (Geotechnical)	\$20,000.00	Mark Thomas & Company, Inc. / Blackburn Consulting
Item of Work D.	Construction Support (Biological/Environmental)	\$44,000.00	Mark Thomas & Company, Inc. / Foothill Associates (\$36,500.00); LSA Associates, Inc. (\$7,500.00)
Item of Work E.	Construction Support (Signals/Electrical)	\$15,000.00	Mark Thomas & Company, Inc. / Fehr & Peers
Item of Work F.	Construction Support (Archaeological)	\$29,000.00	Mark Thomas & Company, Inc. / Ric Windmiller
Item of Work G.	Finalize Project Records/Prepare Record Drawings	\$10,000.00	Mark Thomas & Company, Inc.
Item of Work H.	Post-Construction Record of Survey and Monumentation	\$15,000.00	Mark Thomas & Company, Inc.
Items of Work A – H Subtotal:		\$313,000.00	
Optional Tasks	Assigned by Work Orders	\$25,000.00	Determined by Work Orders
Optional Tasks Subtotal:		\$25,000.00	
Total Not-To-Exceed Amount of Agreement		\$338,000.00	

*All expenses and their distribution among Items of Work are estimates only. This exhibit represents the composition of the total not-to-exceed budget for this Agreement. In the performance of the scope of services to be provided in accordance with this budget, Consultant may request to reallocate the expenses listed herein among personnel and among the various Items of Work identified herein (not including subconsultants), subject to County's Contract Administrator's written approval. In no event shall the total not-to-exceed amount of the Agreement be exceeded.

**The Not-To-Exceed Amounts are inclusive of any markups for subconsultant services and direct costs associated with each Item of Work.

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