

ORIGINAL

Mark Thomas & Company, Inc.

Project Support Services for Diamond Springs Parkway Phase 1A – SR49 & 1B and Its Underground Utility District

AGREEMENT FOR SERVICES #225-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 project support services in its Diamond Springs Parkway Phase 1A – SR49 & 1B and its underground utility district;

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 hereto that 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 are to be provided specifically in support of County's Diamond Springs Parkway Phase 1A – SR49 & 1B and its Underground Utility District (hereinafter referred to as "Project").

Consultant agrees to furnish personnel, subconsultants, materials, equipment and services necessary to provide project management services, project planning and preliminary design services, project design services, utility coordination services, right-of-way services, and other project delivery support services including, but not limited to, those tasks identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof.

The actual number of issues addressed, levels of service provided and associated levels of effort will vary depending on project conditions, means and methods employed, and the levels of support required by County as described in the individual Task Orders issued pursuant to this Agreement.

Before proceeding with any work under this Agreement, the parties will identify the specific services to be provided for each assignment in individual Task Orders to be issued in accordance with this Agreement. The specific services for each assignment shall be determined at a meeting or telephone conference between Consultant and County's Contract Administrator, or designee, to discuss the needs, applicable design standards, required deliverables, specific Consultant staff, subconsultants (if required), and any task-related mileage budget, if applicable, 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 and a target completion date for the overall scope of work, and a not-to-exceed cost to complete the work (Task Order), which shall require written approval, authorization, and written notification to proceed from County's Contract Administrator, prior to commencement of the work. No payment will be made for any work performed prior to approval of the Task Order, and no payment will be made for amounts in excess of the not-to-exceed amount of the Task Order.

Funding from various local sources may be utilized to fund certain assignments to be performed under this Agreement and as a consequence, the requirements (other than those incorporated herein below) of the funding agencies related to those grants will be incorporated into the provisions of the specific Task Orders issued for those assignments.

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

The period of performance for Task Orders shall be in accordance with dates specified in each Task Order. No payment will be made for any work performed before or after the period of performance in the Task Order, unless County's Contract Administrator and Consultant amend the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement, nor the cumulative total of the not-to-exceed Contract amount.

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.

All of the tasks included in this Article 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.

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

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall expire three (3) years thereafter or upon completion of all issued Task Orders, whichever is later.

ARTICLE III

Compensation for Services:

- A. For services provided herein including all deliverables described in the Task Orders issued pursuant to this Agreement, and including the progress reports required in ARTICLE XXVII, Progress Reports below, 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 services rendered. The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless County's Contract Administrator and Consultant amend the Task Order.
- 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. The hourly rates listed on the Fee Schedule shall not be adjusted for the performance period set forth in this Agreement.
- C. Reimbursement for mileage expenses for Consultant and subconsultants, if applicable, shall not exceed the lesser of (1) the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the

mileage expenses are incurred; or (2) the rates authorized to be paid to rank and file state employees under the then current State of California Department of Personnel Administration (DPA) rules. References to the DPA rates and Consultant's responsibilities for cost differences and any overpayments are more fully described in ARTICLE XVI, Cost Principles herein. Mileage reimbursement rates apply to Consultant and to any subconsultants authorized under this Agreement. There shall be no markups allowed on mileage rates for Consultant or for any subconsultant. Any reimbursements for mileage expenses will only be made if such expenses are included in the budget of an approved and fully executed Task Order issued pursuant to this Agreement.

- D. Travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls and other per diem expenses) will not be reimbursed as a direct cost for any services performed under this Agreement by Consultant or by any authorized subconsultants.
- E. The total amount of this Agreement, including all of the services detailed in Exhibit A, Scope of Work, and inclusive of all work of subconsultants, costs, expenses, and Task Orders shall not exceed \$250,000.00.
- F. Itemized invoices shall follow the format specified by County and shall reference this Agreement number, the County-supplied Task Order number, 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) Task 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
2850 Fairlane Court
Placerville, California 95667
Attn.: Matthew D. Smeltzer
Deputy Director, Engineering
Engineering 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 XX, Default, Termination, and Cancellation, herein.

ARTICLE IV

Standards for Work:

All of Consultant's services and deliverables must be in accordance with federal and California laws, regulations, standards, practices, and applicable agreements; FHWA Standards; and Caltrans Standards.

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.

Project Management Services

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, 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.

Project Planning, Preliminary Design Services and Project Design Services

Plans, specifications and estimates shall be prepared in conformance with the standards, design criteria, regulations, policies, procedures, manuals and guidelines stated herein above. As part of the work involved in the preparation of the plans,

specifications and estimates, Consultant may be required to prepare and furnish special provisions for items of work included in the plans which are not covered by the Caltrans Standard Specifications and Caltrans' approved standard special provisions.

Consultant has full responsibility for the accuracy and completeness of the plans and related designs, specifications, estimates, reports and such other documents that may be required for the projects assigned. Assistance, cooperation and oversight by County, Caltrans, FHWA 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.

Utility Coordination Services

Utility coordination services shall be provided in accordance with federal and California laws and regulations, and CALTRANS' policies, procedures, standards, practices, and applicable agreements.

Right-of-Way Services

All services rendered shall be performed in accordance with the guidelines set forth in the *Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended; *Caltrans Right of Way Manual*; the *FHWA Right of Way Project Development Guide*; all other applicable Caltrans, FHWA, state, and local public agency guidelines and Local Assistance Procedures; federal, state and local laws, including but not limited to, applicable provisions of the California Business and Professions Code, and accepted industry standards.

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, FHWA 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 plan in effect during the entire time work is being performed under this Agreement. Consultant shall provide County with a general overview of Consultant's quality control plan in the form of a written outline. Consultant shall also identify critical quality control reviews for the major deliverables within each Task Order schedule. The plan shall take into account the following:

- A. The plan shall establish a process whereby calculations and plans are independently checked, corrected and back-checked, all draft and final reports are reviewed for accuracy, completeness, and readability before submittal, and all job-related correspondence and memoranda are routed and received by affected persons and then filed in the appropriate Task Order file.

- B. Consultant is responsible for the accuracy and completeness of all data, plans, specifications and estimates prepared by Consultant under this Agreement and shall check all such material accordingly.
- C. Consultant is responsible for a detailed review of design components and related details, and the accuracy with which such designs are depicted on the plans and the details.
- D. Plans, designs, estimates, calculations, reports and other documents furnished under each Task Order shall be of a quality acceptable to County's Contract Administrator.
- E. A design, estimate, calculation, report or other document furnished under each Task Order is of acceptable quality when it is neat in appearance, well-organized, technically and grammatically correct, and checked.
- F. The minimum standard of appearance, organization and content of the drawings and reports shall be that of similar types by County. County will provide examples to Consultant upon request.
- G. The page identifying the preparer of engineering reports, the title sheet for specifications, and each sheet of plans shall bear the professional seal, certificate number, registration classification, expiration date of the certificate, and the signature of the professional engineer(s) responsible for their preparation.
- H. Consultant shall maintain a complete project file for each Task Order performed under this Agreement. This file shall be made available to County's Contract Administrator, or designee, during normal County working hours and shall be transferred to County upon completion of work under the Task Order.

County's Contract Administrator shall decide all questions pertaining to the quality or acceptability of deliverables furnished and work performed under 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 Task 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 Task 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. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

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 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 a Legislative committee.
- D. Consultant and any subconsultants authorized under this Agreement shall not issue any news release or public relations item of any nature, whatsoever, regarding work 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. 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.
- F. Any non-final or draft administrative reports, studies, materials and documentation, including but not limited to, all environmental documents and any Project Report (PR), relied upon, produced, created or utilized for any items of work performed under this Agreement shall be held in confidence pursuant to Government Code §6254.5(e) until release in accordance with the California Environmental Quality Act (CEQA). County and Consultant agree that such material will not be distributed, released or shared with any other organization, person or group other than County's, and Consultant's employees and agents whose work requires that access.

ARTICLE XII

Public Records Request: If Consultant receives a public records request pertaining to this Agreement, Consultant shall notify County within five (5) working days of receipt and make County aware of any disclosed public documents. Consultant and County will consult with each other prior to the release of any public documents related to this Agreement.

ARTICLE XIII

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.

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 subconsultants authorized in the individual Task Orders issued pursuant to this Agreement 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 all 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

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. 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.

ARTICLE XVI

Cost Principles: The Federal Acquisition Regulations in Title 48, CFR, Part 31 et seq. are the governing factors regarding allowable elements of cost for all services to be performed under this Agreement.

- A. Any expenditures for costs for which Consultant has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR Part 225, 48 CFR, Parts 31 et seq. or 49 CFR, Part 18 are subject to repayment by Consultant to County.
- B. Travel and subsistence (per diem) reimbursements, if applicable, and third-party contract reimbursements to subconsultants will be allowable as Project costs only after those costs are incurred and paid for by Consultant. For the purposes of this Agreement, travel and per diem costs will not be reimbursed for any services performed by Consultant or any authorized subconsultant.
- C. Notwithstanding any other provision of this Agreement to the contrary, payments to Consultant for travel and subsistence (per diem) and mileage expenses, if applicable, for Consultant's staff or for subconsultants claimed for reimbursement shall not exceed the lesser of (1) the rates to be paid to County employees under the current Board of Supervisors Travel Policy in effect at the time the expenses are incurred; or (2) the rates authorized to be paid to rank and file state employees under the then current State of California Department of Personnel Administration (DPA) rules. If the rates invoiced are in excess of these authorized rates, then Consultant is responsible for the cost difference and any overpayments shall be reimbursed to County upon demand. For the purposes of this Agreement, only mileage expenses for Consultant and for subconsultants, if applicable, shall be eligible for reimbursement in accordance with ARTICLE III, Compensation for Services above. No reimbursements for travel and subsistence (per diem) expenses for Consultant or subconsultants shall be allowed.
- D. Consultant and its subconsultants, if applicable shall establish and maintain accounting systems and records that properly accumulate and segregate funds received under this Agreement by line item. The accounting systems of Consultant and all subconsultants shall conform to Generally Accepted Accounting Principles (GAAP), shall enable the determination of incurred costs at interim points of completion, and shall provide support for reimbursement of payment vouchers or invoices.

ARTICLE XVII

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 XVIII

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 by the FHWA, 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 under this Agreement.

Consultant shall incorporate this provision in any subcontract entered into as a result of this Agreement.

These provisions will remain in effect until terminated or modified in writing by mutual agreement.

ARTICLE XIX

Disputes:

- A. Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of County's Contract Administrator and the Acting Community Development Director, or designee, which may consider written or verbal information submitted by Consultant.
- B. Not later than thirty (30) days after completion of all work under any individual Task Order issued pursuant to this Agreement, Consultant may request review by the Board of Supervisors, or designee, of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Agreement.
- D. Consultant's failure to follow this dispute resolution procedure shall constitute a waiver of such claims and a bar to further proceedings.

ARTICLE XX

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 Task 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 Task Order or the total amount of this Agreement. 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.

ARTICLE XXI

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
2850 Fairlane Court
Placerville, California 95667

With a Copy to:

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

Attn.: Matthew D. Smeltzer, P.E.
Deputy Director, Engineering
Engineering Unit

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 XXII

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 XXI, 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 XXIII

Indemnity: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, agents, employees and representatives 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.

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 XXIV

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, the State of California, their 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 XXV

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 XXVI

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 Task Order, as applicable. 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 Task Order, as applicable.

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 XXVII

Progress Reports: Upon the issuance of a Task Order, Consultant shall submit progress reports to County's Contract Administrator at intervals that are commensurate

with the requirements of the items of work and tasks being performed and based upon a mutually agreeable schedule. At a minimum, Consultant shall submit progress reports once per month. The reports shall be sufficiently detailed for County's Contract Administrator to determine if Consultant is performing to expectations and is on schedule, to provide communication of interim findings, and to afford occasions for airing difficulties or special circumstances encountered so that remedies can be developed. County's review of these reports 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 the Contract Administrator. Separate detail shall be provided for each ongoing item of work and Task Order. Progress reports shall include the total number of hours worked by Consultant and any authorized subconsultants and shall include descriptions of the work and tasks performed, including a description of any deliverables submitted during the reporting period and the anticipated work, tasks and deliverables proposed for the subsequent reporting period. Any invoices submitted by Consultant for payment under the terms of this Agreement shall include copies of the progress reports that relate to the services being billed on those invoices.

ARTICLE XXVIII

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 XXIX

County Payee Data Record Form: All independent consultants 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 XXX

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 XXXI

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 XXXII

Taxes: Consultant certifies that as of today, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County.

ARTICLE XXXIII

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Matthew D. Smeltzer, P.E., Deputy Director, Engineering, Engineering Unit, Transportation Division, Community Development Agency, or successor.

ARTICLE XXXIV

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 XXXV

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 XXXVI

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 XXXVII

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 XXXVIII

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: 
Matthew D. Smeltzer, P.E.
Deputy Director, Engineering
Engineering Unit
Transportation Division
Community Development Agency

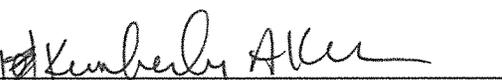
Dated: 10/25/13

Requesting Division Concurrence:

By: 
Bard R. Lower
Transportation Division Director
Community Development Agency

Dated: 10/31/13

Requesting Department Concurrence:

By: 
Kimberly A. Kerr, Acting Director
Community Development Agency

Dated: 10/31/13

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"

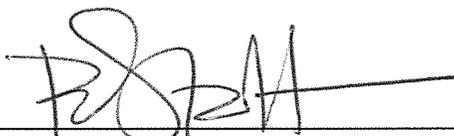
Attest:
James S. Mitrison
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

--MARK THOMAS & COMPANY, INC.--

By:  _____

Dated: 11/14/13

~~Michael J. Lohman~~
~~President~~
"Consultant"

ROBERT A HIMES
VICE PRESIDENT

By:  _____

Dated: 11/13/13

Jimmy W. Sims
Secretary

Mark Thomas & Company

AGREEMENT FOR SERVICES #225-S1411

Exhibit A

Scope of Work

Consultant's services are to be provided specifically in support of work associated with the Diamond Springs Parkway Phase 1A and Phase 1B Projects and its Underground Utility District.

All work will be performed on a time and materials basis and billed in accordance with the provisions of ARTICLE III, Compensation for Services.

Consultant's services for these projects which may include, but not be limited to the following, will be specifically identified in individual Task Orders in accordance with Article I, Scope of Services, herein:

Project Management Services

- Provide full service Project management for all stages of Project development.
- Make recommendations to establish the Project scope, schedule and budget.
- Provide Project scheduling and resource analysis.
- Assist in identifying possible funding sources, and in coordinating and preparing funding and programming documents.

Project Planning and Preliminary Design Services

- Make recommendations to establish the Project-specific purpose and need, based on information provided by the Transportation Division and supplemental review and analysis by Consultant.
- Prepare the preliminary design of improvements and adjacent County road modifications in support of the Department's Capital Improvement Program (CIP).
- Prepare Project Report (PR) and design exceptions.
- Perform preliminary engineering analysis and prepare studies and reports relating to alternative interchange geometrics alignment alternatives, traffic management, traffic operations, drainage, right-of-way, utility and geotechnical engineering.
- Perform necessary land and topographic surveys.
- Prepare advanced planning level (30%) plans, estimates and outline specifications (PS&E) as appropriate.
- Provide review and analysis of previously prepared preliminary engineering data, designs, PS&E, and prior recommendations.

Project Design Services

- Prepare Project design and contract documents (PS&E).
- Prepare additional land and topographic surveys.
- Prepare final engineering reports, maintain and provide project records.
- Prepare final quantity take-off documentation for use during construction.
- Provide specialty engineering and design services in traffic, hydrology and hydraulics, structures and geotechnical engineering support.

Utility Coordination Services

- Meet with utility companies and obtain records of company facilities.
- Positively locate existing utilities in the field as necessary.
- Identify conflicts with existing utility facilities.
- Coordinate design avoidance or relocation strategies.
- Coordinate design of Project with utility company relocations.
- Provide relocation costs and liability assignment.

Right-of-Way Services

- Provide right-of-way engineering and documentation for necessary acquisitions.
- Support appraisal and acquisition efforts by providing design documentation, off-setting improvement costs, and meeting with property owners, appraisal and acquisition agents.
- Prepare, submit for approval and file deeds, legal descriptions and records of survey.
- Establish final right-of-way and property monuments.

Mark Thomas & Company, Inc.

AGREEMENT FOR SERVICES #225-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%