

EXPOSITION LRT PROJECT
PHASE 2
STAGE A AGREEMENT
PRELIMINARY ENGINEERING SERVICES
CONTRACT NO. XP8902-827
DRAFT

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**STAGE A AGREEMENT FOR
PRELIMINARY ENGINEERING SERVICES**

TERMS AND CONDITIONS

This Stage A Agreement (Agreement) is entered into this ____ day of February, 2010, by and between the Exposition Metro Line Construction Authority (Authority), a public entity of the State of California, and _____ (Contractor), for the provision of Preliminary Engineering and related services for Phase 2 of the Exposition Light Rail Transit Project.

WHEREAS, the Authority conducted a qualifications-based competitive procurement process (RFP No.XP8902-827) to select two firms to provide Preliminary Engineering and services, so that each firm can develop sufficient technical definition of the project's elements to use as the basis for submitting well informed competitive firm fixed price proposals for the final design and construction of Phase 2 of the Exposition Light Rail Transit Project.

WHEREAS, based on that procurement process, the Authority determined that the Contractor was one of the two most qualified firms to perform the required Preliminary Engineering and related services, and to compete for the subsequent award of the design and construction work.

WHEREAS, based on subsequent price proposals and performance of the Preliminary Engineering work, the Authority intends to select one of the two Preliminary Engineering contractors to perform the final design and construction work.

WHEREAS, the Authority and the Contractor have successfully negotiated the terms and conditions to apply to the Contractor's professional engineering services, including the price.

NOW, THEREFORE, the Authority and the Contractor mutually agree as follows:

SEC. 1. DEFINITIONS

As used in this Agreement --

(1) **Agreement.** The term “Agreement” means this Stage A Agreement for Preliminary Engineering and related services entered into by the Authority and the Contractor.

(2) **Authority.** The term “Authority” means the Exposition Metro Line Construction Authority.

(3) **Change Order.** The term “Change Order” means a change to the Scope of Work or the price or time for performance of the Work, issued by the Authority pursuant to Section 12 of this Agreement.

(4) **Contract Documents.** The term “Contract Documents” means the following, set forth hereinafter in their order of precedence:

- (A) This Stage A Agreement, including the Attachments hereto;
- (B) The Stage B General Requirements;
- (C) RFP No. XP8902-827, including any addenda thereto;
- (D) The Proposer’s response to the RFP.

(5) **Contractor.** The term “Contractor” means [name], one of the two entities selected by the Authority pursuant to RFP Number XP8902-827 to provide Preliminary Engineering and related services for the Authority.

(6) **Days.** The term “days” means calendar days, unless otherwise specified.

(7) **Design-Build.** The term “Design-Build” means a type of project delivery method in which a single contractor is responsible for designing and constructing the Project under a single Agreement.

(8) **Draft Environmental Impact Report and DEIR.** The terms “Draft Environmental Impact Report” and “DEIR” mean the draft environmental review and

analysis documents and supporting materials that are prepared in accordance with applicable State laws and regulations.

(9) **Final Environmental Impact Report and FEIR.** The terms “Final Environmental Impact Report” and “FEIR” mean the final environmental analysis and review documents and supporting materials that are prepared in accordance with applicable State laws and regulations.

(10) **Governing Board.** The term “Governing Board” means the Board of Directors of the Authority.

(11) **Key Subcontractor.** The term “Key Subcontractor” means (A) a subcontractor responsible for performing one of the following: (i) trackwork/rail; (ii) train control; (iii) traction power; (iv) communications; (v) overhead catenary system (OCS); and (v) structures; and (B) any other subcontractor responsible for performing ten percent (10%) or more of the Stage A or Stage B Work.

(12) **Locally Preferred Alternative.** The term “Locally Preferred Alternative” means the alignment alternative developed pursuant to the alternatives analysis and used as the basis for Preliminary Engineering and the FEIR.

(13) **Metro and MTA.** The terms “Metro” and “MTA” mean the Los Angeles County Metropolitan Transportation Authority.

(14) **Preliminary Engineering Completion.** The term “Preliminary Engineering Completion” means the completion of all elements of the Scope of Work necessary for the submittal of all required Preliminary Engineering Plans and deliverables to the Authority.

(15) **Phase 1.** The term “Phase 1” means the Mid-City/Exposition Corridor Light Rail Transit (LRT) Project running approximately 9 miles from downtown Los Angeles to Culver City, as more specifically described in the Record of Decision issued by the Federal Transit Administration in February 2006.

(16) **Phase 2.** The term “Phase 2” means the second phase of the Exposition Corridor LRT Project, which will run approximately 7-8 miles from the terminus of Phase 1 in Culver City to the vicinity of 4th and Colorado Avenue in Santa Monica.

(17) **Plans.** The term “Plans” means the preliminary plans, profiles, drawings, and diagrams which describe and delineate the standards and criteria for construction and installation of civil works and systems for the Project.

(18) **Preliminary Engineering.** The terms “Preliminary Engineering” means the engineering work, Plans, and documents required to be produced, performed, and/or delivered under the Stage A Baseline Scope of work and the Stage A Discretionary Scope of Work.

(19) **Project.** The term “Project” means the Phase 2 of the Exposition Corridor LRT Project.

(20) **RFP.** The term “RFP” means the Authority’s Request for Proposals No. XP8902.827.

(21) **Stage A Key Personnel.** The term “Stage A Key Personnel” means the Project Manager, Engineering Manager, and Design-Build Manager. All Key Personnel identified in Stage A shall be available for the period of performance of both the Stage A and Stage B work.

(22) **Stage B Design-Build Contract.** The term “Stage B Design-Build Contract” means the design-build contract to be entered into by the Authority and the Preliminary Engineering Contractor selected to perform the design and construction work.

(23) **Stage B Proposal Bond.** The term “Stage B Proposal Bond” means the bond described in Section 16(e).

(24) **Third Party.** The term “Third Party” means a governmental entity, utility, or other entity that enters into a master cooperative agreement, utility agreement, or similar agreement to facilitate the work of the Contractor and/or the implementation of the Project.

(25) **Work and Stage A Work.** The terms “Work” and “Stage A Work” mean all of the Preliminary Engineering and related Contractor tasks in the Stage A Scope of Work set forth as Attachments A and B hereto.

SEC. 2. BASIC ELEMENTS OF AGREEMENT

(a) **Authority** -- The Authority hereby employs and retains the Contractor to provide professional services for the Project in accordance with the terms and

conditions set forth in this Agreement, for the price stated herein, and hereby contracts to pay the Contractor for those services, in the manner and upon the conditions set forth in this Agreement.

(b) Contractor -- The Contractor hereby agrees to provide all required Preliminary Engineering and related services described in the Scope of Work in Attachment A and Attachment B, in accordance with the Performance Requirements in Section 5 and the other provisions of this Agreement and the other Contract Documents.

SEC. 3. NOTICE OF AWARD AND NOTICES TO PROCEED

(a) Notice of Award -- Within five (5) days after this Agreement is approved by the Authority's Governing Board, the Authority will issue a Notice of Award to the Contractor. Within seven (7) days after receipt of the Notice of Award, the Contractor shall execute and deliver this Agreement to the Authority, together with the insurance certificates required under Section 15.

(b) Notices to Proceed -- The Authority will issue a Notice to Proceed (NTP) within seven (7) days after receipt of the executed Agreement and insurance certificates from the Contractor. The Contractor may not commence Work prior to receipt of the NTP.

SEC. 4. SCOPE OF WORK AND PERFORMANCE REQUIREMENTS

(a) Scope of Work -- The Stage A Scope of Work to be performed by the Contractor shall include (1) the Baseline Preliminary Engineering work, related tasks, and deliverables described in Attachment A; and (2) the discretionary Preliminary Engineering tasks and activities described in Attachment B, as set forth in the Contractor's proposal in response to the RFP. The Contractor is obligated under this Agreement to complete all of the Scope in Attachments A and B. No Stage A engineering work will be signed or sealed by either Contractor.

(b) Performance Requirements -- All design and engineering Work furnished by Contractor shall be performed by or under the supervision of persons licensed to practice architecture, engineering or surveying (as applicable) in the State of California,

by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents, and who shall assume professional responsibility for the accuracy and completeness of documents prepared or checked by them, in accordance with appropriate prevailing professional standards. Notwithstanding the provision of any drawings, technical specifications, or other data by the Authority, the Contractor shall have the responsibility of supplying all items and details required for the deliverables required hereunder.

(c) Plans and Deliverables -- The Contractor shall prepare, complete, and submit to the Authority all necessary Plans, reports, supporting data, and deliverables required to complete the Scope of Work in Attachments A and B.

(d) Errors or Omissions – During the period of performance of the Stage A Work, the Contractor shall, without additional compensation, correct or revise any deficiencies, errors, or omissions caused by the Contractor in its analysis, reports, and services. The Contractor also agrees that if any error or omission is found, the Contractor will expeditiously make the necessary correction, at no expense to the Authority, except when such error or omission was directly caused by the Authority.

(e) Design Professional Licensing Requirements – The Authority does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of the Agreement, the Contractor acknowledges that the Authority has no such intent. It is the intent of the parties that the Contractor, if not itself licensed, is fully responsible for furnishing the design of the Project through subcontracts with licensed design firm(s) as provided herein. Any references in the Contract Documents to the Contractor's responsibilities or obligations to "perform" professional services shall be deemed to mean that the Contractor shall "furnish" such professional services. The terms and provisions of this subsection (e) shall control and supersede every other provision of all Contract Documents.

(f) Correspondence -- The Contractor shall furnish the Authority with copies of all correspondence to regulatory agencies, consulting firms, contractors, and State, local, and Federal agencies, relating to its performance of Work under this Agreement.

(g) Cooperation -- The Contractor agrees that its officers and employees will cooperate with the Authority in the performance of services under this Agreement and will be available for consultation with the Authority at reasonable time with advance notice.

(h) Access to Property -- The Contractor shall obtain appropriate permission to enter any private or public property, other than the property of the Authority, for purposes of data collection or field reconnaissance. However, in the event the Contractor has made a good faith effort to obtain such permission and has been unable to do so, the Authority may assist the Contractor in obtaining such permission or revise the Scope of Work accordingly.

(i) Third Parties -- The Contractor acknowledges that interface and consultation with Third Parties is an essential element of its performance of Work under this Agreement. The Contractor agrees to cooperate with Third Parties in the implementation of this Agreement and in the development of the deliverables required by the Stage A Scope of Work, and to coordinate all its Third Party efforts with the Authority's Third Party Coordinator. The Contractor further agrees to report to the Authority no less than monthly regarding its progress in working on Third Party matters, specifically identifying any issues that may affect the schedule or performance of the Stage A Work.

(j) No Limitations or Disclaimers -- The Contractor agrees that it will not place any notes, notices, or stamps, or other similar statements on the Plans that it submits to the Authority which seek to disclaim or limit the Contractor's (or any subcontractor's) responsibility regarding such Plans; provided that nothing herein shall limit the right or obligation of the Contractor to add appropriate language to allow for the proper interpretation of its Plans, drawings, and other data in accordance with prevailing professional practice standards. The Contractor further agrees that it will not designate any of its work product produced for the Stage A deliverables as "confidential", "proprietary", or with any other similar designations that could serve to preclude the use of its design and engineering by others after the completion of Stage A; provided that if the Contractor is not awarded the Stage A Design-Build work, its continuing

responsibility for the Stage A deliverables may be limited in accordance with Section 11(a)(3) of this Agreement.

(k) Design and Construction Work -- If the Contractor is selected to perform the Stage B Work, and if the Authority and the Contractor are able to successfully agree upon a scope of final design and construction services and a lump sum fixed price for the Stage B Work pursuant to Section 16 of this Agreement, the Contractor will enter into the Stage B Design-Build Contract and thereafter perform the Stage B design and construction work for the Project in accordance with that Agreement.

(l) Authority Disclaimer -- This Stage A Agreement in no way indicates that a Stage B Design-Build Contract will be executed either with the Contractor or any other party or that the Authority is in any way obligated to award such Contract. Any such reliance by the Contractor on this Stage A Agreement as indicative that a Stage B Design-Build Contract will be executed is at the Contractor's own risk. The Authority will not be liable for such reliance or any costs associated therewith.

SEC. 5. PROJECT SCHEDULE

(a) Project Schedule -- The services to be performed by Contractor are to be completed six (6) months after NTP. The exact calendar date for the submittal of the final deliverable(s) will be specified in the NTP. The deadlines for required submittals are set forth in the Project Schedule in Attachment B to this Agreement.

(b) Completion Requirements -- The Contractor agrees to commence Work promptly on the issuance of the NTP and to perform Work in a timely manner in accordance with the Project Schedule.

(c) Delays -- Except as otherwise provided in this Agreement, when either party has knowledge that any actual or potential situation will delay or threaten to delay the timely performance of the Scope of Work in accordance with the Project Schedule, and/or delay the achievement of Preliminary Engineering Completion by the time specified in the Project Schedule, that party shall, within forty-eight (48) hours, give written notice thereof to the other party, including all relevant information concerning the actual or potential delay.

(d) Changes to Schedule -- The Authority may, in its discretion, approve revisions to the Project Schedule at the request of the Contractor. However, if any such requested revision to the Project Schedule is not approved by the Authority, the Contractor acknowledges that the Project Schedule shall be maintained. The Contractor also recognizes that changes to the Project Schedule may be made by the Authority in accordance with Section 12.

(e) Extensions -- The time for the performance of this Agreement may be extended if the Contractor and the Authority mutually agree to extend the Agreement through a written contract amendment. Such a written amendment may be used to increase the period of service and/or compensation for the Stage A Work, or to add required work to the Stage A Work set forth in Attachment A-1.

(f) Reports -- The Contractor shall submit monthly reports to the Authority documenting the progress of the Work and comparing the actual schedule to the Project Schedule.

SEC. 6. COMPENSATION

(a) Lump Sum Fixed Price Amount -- The Contractor agrees to provide all of its professional services for the Project according to the terms and conditions in this Agreement, and to accept the fixed amount of \$5,000,000 as full payment for performance of all of its obligations hereunder and all professional services included in the Stage A Scope of Work. This fixed price amount is full and complete compensation to the Contractor for all of the services, hours, expenses, overhead, taxes, fees, and other costs incurred in connection with the Stage A Work.

(b) Payment Schedule -- The Contractor will be paid an initial mobilization payment, a monthly payment amount and upon completion of the required deliverables, in accordance with the payment schedule set forth below:

| Months After NTP | Payment Amount |
|------------------|----------------|
| NTP | \$500,000 |
| 1 | \$250,000 |
| 2 | \$250,000 |
| 3 | \$500,000 |
| 4 | \$500,000 |
| 5 | \$500,000 |
| 6 | \$1,000,000 |
| 7 | \$500,000 |
| Total | \$5,000,000 |

Payments will be made to the Contractor in accordance with the invoicing requirements and process set forth in Section 7 of this Agreement.

(c) Reduction in Scope -- If it is determined by the Authority during the progress of the provision of professional services by the Contractor that some of the professional services specified in the Scope of Work are unnecessary prior to Contractor's performance of such professional services, the amounts stipulated herein may be adjusted by the appropriate amount pursuant to a Change Order issued under Section 12.

(d) Additions to Scope -- If it is determined by the Authority during the term of this Agreement that additional professional services over and above, and not inherent in, those set forth in the Scope of Work, are required, the Authority may issue an Change Order under Section 12 to add such services to the Agreement, with an appropriate increase in the compensation payable to the Contractor. The professional services affected by any such modification shall not be commenced until an appropriate Change Order has been issued in writing by the Authority pursuant to Section 12.

(e) Submittal of Deliverables and Final Payment -- The Contractor agrees that its right to receive the final payment pursuant to this Agreement is contingent upon

submittal of all deliverables required under the Stage A Scope of Work and the Authority's determination that such deliverables satisfy the requirements of this Agreement, including the Attachments hereto. If the Authority fails to make such determination and does not approve any or all such deliverables, the Contractor shall revise the deliverables to Authority's satisfaction and approval, at no additional expense to the Authority. The Authority shall have the right to withhold, in its sole discretion, any or all of the Contractor's final payment until Authority approves all of Contractor's deliverables.

SEC. 7. PAYMENT PROVISIONS

(a) Submittal and Payment -- The Authority shall pay invoices (or the uncontested portions thereof) within thirty (30) days after receipt of a proper invoice from the Contractor. All invoices shall be submitted monthly, using the format in Attachment D, shall be sent to the attention of the Authority's Accounting Department, and shall contain the following information:

1. The Agreement Number XP8902-827
2. An identification of the specific tasks listed in Attachment A that were performed and/or completed in the month covered by the invoice.
3. The SBE participation achieved to date.
4. The Contract amount expended to date and the balance remaining.

(b) Reservation of Rights -- Neither payment of amounts due by the Authority nor acceptance of any such payment by the Contractor shall constitute a waiver of any claim for errors or omission in invoices or payments.

(c) Additional Services -- Additional services outside the Scope of Work shall be compensated for an amount that the parties mutually agree to in advance, and such amount will be invoiced and paid in accordance with the terms hereof. The Contractor shall not be entitled to compensation for such additional services unless the Contractor has obtained prior written authorization in the form of a Change Order and/or Amendment from the Authority.

(d) Prompt Payment to Subcontractors --

(1) Time for Payment -- No later than ten (10) days after receiving payment from the Authority for work satisfactorily performed by any of its subcontractors for services provided under this Agreement, the Contractor shall make full payment to its subcontractors of all compensation due and owing under the relevant subcontract, unless excused by the Authority for good cause pursuant to paragraph (2) of this subsection.

(2) Delay in Payment -- The Contractor may only delay or postpone any payment obligation to any of its subcontractors for services provided under this Agreement if the Contractor demonstrates to the satisfaction of the Authority that good cause exists for such a delay or postponement. Any concurrence by the Authority that good cause exists for the delay or postponement of the Contractor's payment obligation to its subcontractor must be made in writing prior to the time when payment to the subcontractor would have been otherwise due.

SEC. 8. CONTRACTOR PERSONNEL

(a) Key Personnel -- The Authority's selection of the Contractor for the performance of the Scope of Work was based in part upon a consideration of the qualifications and experience of Contractor's Project Manager and other Key Personnel for Stages A and B, as well as its selected Key Subcontractors. The Contractor shall assign personnel to the Project in accordance with the organization and staffing plan submitted with its proposal. The names of the Key Personnel and their areas of participation and responsibility under this Agreement are set forth in Attachment E to this Agreement.

(b) Responsibility of Contractor -- The Contractor shall be responsible for the performance of all of the professional services under this Agreement and shall utilize the professional expertise and experience of the Stage A Key Personnel listed in Attachment E, as necessary and appropriate. All Key Personnel identified in Stage A shall be available for the period of performance of both the Stage A and Stage B work.

(c) Removal -- The Authority Project Director shall have the right to demand the removal by the Contractor of any of the Key Personnel listed in Attachment E, for reasonable cause and by advance written notice.

(d) No Replacements without Approval -- The Contractor shall not replace or remove its Project Manager or any of the other Stage A Key Personnel during the term of this Agreement (or, if the Contractor is selected for the Stage B work, during the term of performance of that work) without the prior written approval of the Authority's Project Director.

(e) Liquidated Damages --

(1) Amounts -- If the Contractor replaces or removes the Project Manager in violation of this Section, it will be assessed liquidated damages in the amount of \$250,000 for each such violation. If the Contractor replaces or removes any other Stage A Key Personnel in violation of this subsection, it will be assessed liquidated damages in the amount of \$100,000 for each such violation

(2) Basis for Liquidated Damage Amount -- The liquidated damages in paragraph (1) have been set based on an evaluation by the Authority of the damages to the Authority and the public caused by the unjustified replacement or removal of Key Personnel. The actual damages that would be incurred is impossible to ascertain and the Authority has established a liquidated amount in order to fix the Contractor's costs and to avoid later disputes regarding the amount of damages owing due to the Contractor's breach. Amounts payable under this subsection are in the nature of liquidated damages and not a penalty, and the Contractor agrees that the sums specified are in the nature of liquidated damages and not a penalty and are reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of the proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

(3) Exceptions -- If the Authority agrees in advance to a change in Key Personnel, or if the Contractor documents to the satisfaction of the Authority that the individual was removed for valid health or personal reasons or for violation of law, regulation, or written personnel policies of the Contractor, or by order of a court, then no liquidated damages will be assessed for such change.

(f) Substitution of Key Personnel --

(1) Duty to Provide Substitute Personnel -- In the event the Contractor is unable to provide the services of, or replaces, any of the Stage A Key Personnel, the Contractor shall be responsible for providing other personnel for the performance of the specific items of work involved, whose expertise and experience are equivalent to that which would have been provided by the originally listed personnel. The Contractor shall submit any such substitute Key Personnel to the Authority for its prior review and approval, which shall not be unreasonably withheld.

(2) Additional Costs -- The Contractor shall be responsible for any additional costs it may incur as the result of substitution of personnel for those listed in Attachment E. In no event shall any substitution of personnel result in an increase in compensation to be paid by the Authority under this Agreement.

SEC. 9. AUTHORITY PERSONNEL

(a) Project Director -- The Authority shall, upon execution of this Agreement, designate an individual to serve as the Authority's Project Director. The Project Director will be responsible for management and oversight of the Stage A Work and for interfacing with the Contractor through out the Stage A process., for providing information about the Project, and for assisting the Contractor and the Third Party Coordinator in coordination with Third Party contacts necessary for the Contractor to complete its Stage A work.

(b) Third Party Coordinator -- The Authority shall, upon execution of this Agreement, designate an individual to serve as the Authority's Third Party Coordinator. The Third Party Coordinator will be responsible for coordinating all communications and interface between the two Preliminary Engineering Contractors and the Third Parties, and for facilitating joint meetings between the two Preliminary Engineering Contractors and Third Parties as appropriate, obtaining information and responses from Third Parties on behalf of the Contractors, and performing related tasks. The confidentiality of communications with Third Parties will be maintained in accordance with Section 11 of this Agreement.

SEC. 10. PERFORMANCE EVALUATION

(a) General -- The Authority has developed a set of performance evaluation criteria, set forth in Attachment F hereto, which will be used by the Authority to evaluate the quality and timeliness of the Contractor's performance of the Stage A Work. The Contractor acknowledges that it has reviewed those criteria and understands and agrees that they will be used to evaluate the Contractor's performance and will be a factor in the selection of the design-build contractor.

(b) Report Card -- The Authority will provide the Contractor with an Interim Report Card three (3) months after the Notice to Proceed, reflecting the evaluation by the Authority of the Contractor's performance to date. The Authority will complete its evaluation and prepare a final Report Card on the Contractor's performance no later than fifteen (15) Days after completion of the Stage A work. The Authority will provide the Contractor a copy of the final Report Card after the Contractor submits its proposal, including its Lump Sum Fixed Price, for the design and construction work.

(c) Other Review -- In addition, the Authority intends to regularly monitor the Contractor's performance during Stage A. If any noncompliance with the Agreement is found, the Authority may direct the Contractor to correct the area of noncompliance, at its sole expense, or, in the alternative, may terminate this Agreement as provided herein.

SEC. 11. OWNERSHIP OF WORK; TREATMENT OF INFORMATION

(a) Ownership of the Plans --

(1) Property of the Authority -- The Plans and all reports, studies, tracings, maps and other documents or instruments of service prepared or obtained by the Contractor in the course of performing Work under this Agreement, shall be delivered to and become the property of the Authority. The Contractor and its subcontractors shall convey and transfer all copyrightable interests in such Plans, documents, and instruments to the Authority upon completion of all services under this Agreement and upon payment in full of all compensation due to the Contractor in accordance with the terms of this Agreement. Basic survey notes, sketches, charts,

computations and similar data prepared or obtained by the Contractor under this Agreement shall, upon request, also be made available to the Authority. The Contractor's obligations under this Section shall apply without regard to whether it is selected to perform the Stage B design and construction work.

(2) Use of Plans and Work -- The Authority agrees to use the Plans and engineering work submitted by the Contractor for purposes of Phase 2 of the Exposition Project only, and not to use that work in connection with any other project. All work submitted by the Contractor under this Stage A Agreement may be used in the performance of the Stage B Design-Build work (whether or not Contractor is awarded the Stage B work) and/or used to support any future procurement necessary for the completion of Phase 2 of the Exposition Project, subject to the limitations in paragraph (3) below

(3) Limitations on Responsibility – If the Contractor is not selected to perform the Stage B Design-Build work, the Contractor shall not have continuing responsibility or liability for any element of its Plans or other materials that are submitted to the Authority in accordance with this Agreement and are subsequently used by the Authority or by the selected Design-Build contractor in the design and construction of the Project, except to the extent of any professional liability insurance coverage applicable to that work under Section 15(a)(4) of this Agreement. The responsibility and liability for the use of that work will be in accordance with the terms of the Design Build Contract entered into by the Authority and the Design Build contractor.

(4) Safe Keeping -- In the event of the return of the Plans , drawings, or other documents to Contractor or its representative, the Contractor shall be responsible for their safe return to the Authority. The Contractor shall be entitled to retain copies of the Plans, drawings, or other documents for its files. Under no circumstances shall the Contractor fail to deliver any draft or signed Plans or drawings to the Authority upon written demand by the Authority for their delivery, notwithstanding any dispute between the Contractor and the Authority concerning payment, performance of this Agreement, or otherwise. This covenant shall survive the termination of this Agreement.

(b) Title to Intellectual Property -- The Contractor represents that it has secured all necessary licenses, consents, or approvals to use the components of any intellectual property, including computer software, used in the provision of services and the production of the materials under this Agreement, and that the Contractor has full legal title to and the right to reproduce such materials.

(c) Indemnification -- The Contractor agrees to defend, indemnify, and hold the Authority harmless for any loss, claim, or liability in any way related to a claim that the Authority is violating Federal, State, or local law, or any contractual provisions, relating to trade names, licenses, franchises, patents, or other means of protecting interests in products or inventions, by its use of intellectual property or other materials produced under this Agreement. The Contractor shall bear all costs arising from the use of patented, copyrighted, trade secret, or trademarked materials, equipment, devices, or processes used on or incorporated in the services and materials produced under this Agreement. In the event any such materials, equipment, devices, or processes are held to constitute an infringement and their use is enjoined, the Contractor, at its sole expense, shall either (1) secure for the Authority the right to continue using the materials by suspension of any injunction or by procuring a license or licenses for the Authority; or (2) modify the materials so that they become non-infringing. This covenant shall survive the termination of this Agreement.

(d) Grant and Assignment of Rights -- The Contractor hereby grants to the Authority all common law, statutory and copyrights, trademarks, and other intellectual property rights in connection with deliverables to be provided by the Contractor hereunder and the Project itself, including but not limited to all rights under the 1990 Architectural Works Copyright Protection Act, and shall retain no rights whatsoever as to such items; provided, however, the Contractor shall retain the right to utilize its work product in connection with the performance of its duties under this Agreement. The Contractor shall obtain a similar grant of rights from each of its subcontractors responsible for production of such deliverables. The Authority shall be entitled to utilize such rights for any and all purposes, including but not limited to constructing, using, maintaining, altering, adding to, restoring, rebuilding, and publicizing the Project. The

Contractor specifically agrees that filming (still, motion picture, television and yet to be developed analogous processes) in or about the Project shall not infringe on any rights of the Contractor or require the Contractor's permission or consent, or require the provision of any screen or equipment credit or payment of any sums to the Contractor.

(e) Confidential Treatment by Contractor -- The Contractor agrees that all reports, communications, documents, data, and other information that it obtains or prepares in connection with the performance of this Agreement shall be treated as confidential material and shall not be released or published without prior written consent of the Authority; provided, however, that the Contractor may refer to this Project in connection with its promotional literature in a professional and commercially reasonable manner. The provisions of this paragraph shall not apply to information in whatever form that comes into the public domain. The provisions of this paragraph also shall not restrict the Contractor from giving notices required by law or complying with an order to provide information when such order is issued by a court, administrative agency, or other authority with proper jurisdiction, or from using such information (upon prior notice to the Authority) when it is reasonably necessary for the Contractor to defend itself from any suit or claim.

(f) Confidentiality Treatment by Authority -- The Authority will use reasonable efforts to enter into confidentiality agreements with the Third Parties that the Contractor interacts or consults with in the performance of Work under this Agreement, to assure that drawings, materials, data, concepts, or other information provided or communicated by the Contractor to those Third Parties, and not otherwise in the public domain, are not disclosed to the other contractor providing Stage A Preliminary Engineering services for the Authority. In addition, the Authority will use reasonable efforts to ensure that work prepared during Stage A by a PE Contractor is not shared by the Authority with the other Contractor. However, the Authority will not be liable to the Contractor if it is unable to obtain confidentiality agreements with Third Parties, or if any disclosure of a Contractor's work otherwise occurs. .

SEC. 12. CHANGES TO SCOPE OF WORK

(a) Written Changes -- Changes to the Scope of Work or Project Schedule may only be made by written Change Order issued by the Authority. Oral changes are not allowed. The Contractor shall be liable for all costs resulting from any change in the Scope of Work not properly ordered by written Change Order issued in accordance with this Section and signed by the Authority Project Director.

(b) Change Orders –

(1) Process -- The Authority may make changes to the Scope of Work or the Project Schedule upon written change notice to the Contractor in accordance with this Section. The Contractor shall, within ten (10) days after receipt of such a change notice, notify the Authority in writing of any impact of the change on either time or compensation.

(2) Agreement on Change -- Upon agreement between the Authority and the Contractor as to the extent of the impacts of a proposed change on time and compensation, a Change Order shall be executed by the Parties modifying the Scope of Work, Project Schedule, or other appropriate provision of this Agreement or the other Contract Documents. Execution of the Change Order by both Parties shall constitute the Contractor's notice to proceed with the revised Scope of Work.

(3) Failure to Agree -- In the event the Parties are unable to agree on the schedule or cost impact of the change within fifteen (15) days after the Authority's notice under paragraph (1), the Contractor shall proceed with the change as directed by the Authority and the matter may be submitted by either party to dispute resolution under Section 17.

(c) Changes to Discretionary Scope – During the term of this Agreement, the Contractor may propose changes to specific elements of its Discretionary Scope of Work in Attachment B if it determines, and demonstrates to the satisfaction of the Authority, that the work element as originally proposed is not feasible or practical and will not significantly benefit the Project. In the event such a change is allowed, the Contractor shall substitute and perform discretionary Preliminary Engineering scope involving equivalent time, effort, and cost.

(d) Immediate Revisions -- The Authority reserves the right to issue immediate and unilateral revisions to the Scope of Work or Project Schedule, and in such a case the Contractor agrees to implement such revisions, with the understanding that the parties will subsequently discuss and agree upon the cost and schedule impact. Any immediate revisions pursuant to this subsection shall be confirmed in writing by the Authority within seven (7) Days.

SEC. 13. HOLD HARMLESS

(a) Professional Services Indemnity -- The Contractor has represented to the Authority that it is skilled in the professions necessary to perform the services and duties agreed to be performed under this Agreement, and the Authority is relying upon such representations and upon the skill and knowledge of Contractor to perform those services and duties. To the fullest extent permitted by law, the Contractor hereby agrees, at its sole cost and expense, to assume liability and defend, indemnify, and hold the Authority, Metro, and their Board Members, employees, and agents, the City of Los Angeles, the City of Culver City, and the City of Santa Monica ("Indemnitees") harmless from and against any and all direct damages, claims, losses, costs, judgments, and expenses including attorney fees and court costs ("Claims") that arise or are claimed to arise out of, or result from, any errors, omissions, or negligent acts of the Contractor, its agents, employees, subcontractors, assignees, licensees, or any other person for whom it is legally or contractually responsible in the performance of professional services under this Agreement.

(b) General Operational Indemnity -- With respect to all other operations of the Contractor in performance of this Agreement, the Contractor shall, to the greatest extent permitted by law, defend, indemnify, and hold the Indemnitees harmless from and against any and all claims, losses, damages, or liabilities or any costs, expenses or fees, including attorney fees and court costs ("Claims"), on account of bodily injury, disease or death of any person (including employees of the Contractor, its agents, representatives, or subcontractors), or loss or damage to or destruction of property to the extent such loss or damage arises out of or results from such operations of the Contractor, its subcontractors, agents, representatives, employees, or any other person

for whom the Contractor is legally or contractually responsible. The Contractor shall not be obligated to indemnify an Indemnitee under this Section to the extent of any loss that is determined to have been directly caused by the gross negligence or willful misconduct of that Indemnitee.

(c) Indemnification Independent of Insurance: The indemnity obligations of the Contractor shall be in effect whether or not the Contractor maintains or fails to maintain insurance as required in Section 15 of this Agreement and shall survive the expiration or termination of this Agreement.

(d) Additional Indemnifications -- The indemnification under this Section is in addition to that provided under Section 11(c) and Section 25 of this Agreement.

SEC. 14. DISCLAIMER OF LIABILITY

The Authority will not hold harmless or indemnify the Contractor for any liability whatsoever in connection with the performance of this Agreement.

SEC. 15. INSURANCE

(a) Required Coverages -- The Contractor shall, before performing any Work under this Agreement, procure and maintain insurance coverages in the form and amounts listed below, and shall provide the Authority with Certificates of Insurance evidencing such coverages by the time specified in Section 3(a) of this Agreement.

(1) Workers' Compensation insurance as required by the State of California. This policy shall include Employer's Liability insurance with limits not less than \$1,000,000 each accident and \$1,000,000 annual policy aggregate with respect to occupational disease, per employee. The policy shall include a waiver of the insurer's right of subrogation against the Authority.

(2) Commercial General Liability insurance on an occurrence basis (as opposed to claims made) with limits of liability not less than \$1,000,000 each occurrence and \$2,000,000 general policy aggregate, with defense provided in addition to limits of liability, covering: (A) all premises and operations of Contractor; (B) independent contractor's liability; (C) contractual liability; (D)

broad form property damage, including completed operations; (E) production and completed operations; and (F) personal injury liability. This policy shall include the Authority, Metro, the City of Los Angeles, the City of Culver City, and the City of Santa Monica, as additional insureds, on blanket or individual terms and without exclusions, and shall provide that the Contractor's liability policy will be primary and non-contributing insurance with respect to any other insurance available to the additional insureds.

(3) Business Auto Policy with limits not less than \$1,000,000 each accident, covering all owned, leased, non-owned, borrowed and hired autos. If Contractor owns no autos, then a non-owned and hired auto endorsement providing coverage under Contractor's Commercial General Liability policy may be used to satisfy the requirement.

(4) Professional Liability Insurance covering any liability arising out of or resulting from any error, omission, or negligent act by the Contractor or any employee, subcontractor, or anyone for whose acts or omissions Contractor may be legally or contractually responsible, in performance of professional services under this Agreement. This policy shall be endorsed to include defense of the Authority, Metro, the City of Los Angeles, the City of Culver City, and the City of Santa Monica, for vicarious liabilities arising out of the Contractor's professional services, and shall contain limits of liability not less than \$1,000,000 each claim and in the aggregate. This policy may be written on a "claims made" basis, with defense costs included within limits of liability. Coverage of professional liabilities arising out of this Agreement shall continue for five (5) years after completion of the professional services performed under this Agreement, either by policy renewals (with retroactive dates that include this Work) or by extended reporting provision under the current policy. If requested by the Authority, the Contractor shall provide the Authority with a current estimate of the claims and defense costs reported under the policy within the prior seven (7) year period. If current or potential claims threaten to erode professional liability policy limits, the

Contractor, shall, upon request by the Authority, acquire and maintain additional reasonable limits of liability for its work under this Agreement.

(b) Required Ratings -- All required insurance shall be written with insurers having ratings not less than "A-VII" in the current A.M. Best rating guide, and shall include unconditional agreement of the insurers to provide thirty (30) days prior written notice of cancellation (or ten (10) days prior written notice if cancellation is for non-payment of premium) to the Authority before such cancellation may apply to coverage interests of the Authority.

(c) Deductibles -- Liability for policy deductibles or self-insured retentions, if any, shall be entirely the responsibility of the Contractor.

(d) Uninterrupted Evidence of Insurance -- The Contractor shall provide its Certificates of all required insurance on a continuing basis, including renewals or replacement, throughout the term of this Agreement, and, with respect to professional liability insurance, for the number of years after completion of this work as stated in subsection (a)(4) of this Section. Failure of the Contractor to maintain the insurance required in this Agreement shall constitute a material breach of this Agreement.

(e) Subcontractor Insurance -- If the Contractor engages subcontractors in performance of its work under this Agreement, the Contractor shall require each such entity to obtain and maintain insurance as is required of the Contractor herein, unless otherwise agreed by the Authority, and to provide evidence of such coverage in the form of Certificates of Insurance. The Contractor shall, upon request, supply the Authority with copies of Certificates of Insurance for all coverage maintained by subcontractors.

(f) Additional Stage B Insurance -- Additional insurance requirements for the design and construction work will be included in the Stage B Design-Build Contract between the Authority and the selected design-build Contractor.

SEC. 16. PRICE PROPOSAL AND STAGE B DESIGN-BUILD CONTRACT

(a) Elements of Design-Build RFP -- The Authority intends to issue a final Request for Proposals (RFP) for the design and construction of the Project to the two Preliminary Engineering Contractors, at or near the completion of the Stage A work. The Design-Build RFP will request a proposed Lump Sum Fixed Price, to be submitted in

accordance with a Schedule of Quantities and Prices. The Design-Build RFP will also request a final qualifications proposal, which must include, among other items to be specified by the Authority, a final identification of all Key Subcontractors. All Key Subcontractors must be qualified by the Contractor and approved by the Authority prior to the submittal of a Preliminary Engineering Contractor's Design-Build proposal, and if a Contractor proposes a Key Subcontractor that was not included in its response to the RFP for the Preliminary Engineering work, it will be required to provide an explanation for that substitution. In addition, Preliminary Engineering Contractors will be required to identify subcontractors in their Design-Build proposals in accordance with the Subletting and Subcontracting Fair Practices Act.

(b) Contractor's Price Proposal -- Within forty-five (45) days after the Authority's issuance of the Design-Build RFP, the Contractor shall submit to the Authority a proposed Lump Sum Fixed Price (LSFP) for performing the final design and construction work (Stage B) on the Project. In developing its proposed price, the Contractor shall make every effort to be as consistent as feasible with the Authority's budget. The proposed fixed price must include all direct construction costs for labor, materials, equipment, and all associated indirect costs associated with the performance of the work. The Contractor shall develop this price on the basis of:

- (1) the detailed scope, quantity, and other information developed or established during the engineering process;
- (2) documents and project information provided by Authority on which the Contractor will be entitled to rely contractually;
- (3) current market rates for labor and materials; and
- (4) other relevant cost estimating data, information, and materials.

(c) Lump Sum Fixed Price -- If the Contractor is awarded the Stage B design and construction work, the Contractor's price proposal, as adjusted pursuant to any Best and Final Offer process or other agreement with the Authority, shall constitute the LSFP for design and construction.

(d) Stage B Design-Build Contract --

(1) Selection and Agreement -- If the Authority selects the Contractor to perform the design-build work in accordance with the RFP and the parties agree upon the LSFP, then the Contractor agrees that it will enter into the Stage B Design-Build Contract with the Authority, which will set forth the scope of design and construction services, the Lump Sum Fixed Price, the schedule, and other terms and conditions to govern the design and construction of the Project.

(2) No Agreement -- If the Authority selects the Contractor but the Parties are unable to reach an agreement for the Stage B Work, the Authority shall terminate any further negotiations. In that event, the Authority may award the design and construction work to the other Stage A Contractor or elect to competitively procure the final design and construction work.

(e) Stage B Proposal Bond --

(1) Amount and Purpose of Bond -- The Contractor has provided a Proposal Bond in the amount of \$5,000,000, to secure the Contractor's obligation to provide a proposal for the Stage B Design-Build Contract, to negotiate in good faith if selected, and to execute and deliver the Design Build Contract together with required bonds, insurance and other documents. A copy of such bond is attached hereto as Attachment H.

(2) Call on Proposal Bond -- If the Contractor fails to submit a responsive proposal in response to the Authority's request for proposals for the Stage B Design-Build Contract, fails to negotiate in good faith if selected, or fails to enter into the Design-Build Contract and provide all required insurance and bonds in connection therewith, then the Authority shall have the right to call on the Contractor's Stage B Proposal Bond. If such bond is not honored, the Contractor shall have the obligation to return to the Authority all payments previously made hereunder.

SEC. 17 DISPUTES

(a) General -- Any dispute between the Contractor and the Authority relating to the implementation or administration of this Agreement shall be resolved in accordance with this Section.

(b) Initial Actions -- The parties shall first attempt to resolve the dispute informally in meetings or communications between the Contractor's Project Manager and the Authority Project Director. If the dispute remains unresolved fifteen (15) days after it first arises, the Contractor may request that the Authority Project Director issue a recommended decision on the matter in dispute. The Authority Project Director shall issue the recommended decision in writing, within thirty (30) days after such request, and shall provide a copy to the Contractor.

(c) Decisions and Further Resolution -- The recommended decision of the Authority Project Director shall become final unless, within fifteen (15) days of receipt of such recommended decision, the Contractor submits a written request for review to the Authority's CEO. The CEO will review the recommended decision and issue a determination within thirty (30) days after receipt of the request for review. In connection with any such review, the Contractor and the Authority Project Director shall be afforded an opportunity to be heard and to offer evidence on the issues presented. If the dispute remains unresolved after review and determination by the Authority's CEO, either party may seek resolution through referral to non-binding mediation. In the event of mediation, the mediator shall be selected by agreement of the Authority and the Contractor or, in the absence of agreement, from a list of potential mediators provided by the American Association of Arbitrators or similar body agreed upon by the parties. If such mediation is unsuccessful, either party may seek judicial resolution of the dispute in an appropriate Court of the State of California. Any party seeking resolution through the Courts of the State of California must, as a condition precedent to the commencement of litigation, demonstrate that it has made a good faith effort to resolve the dispute through the use of non-binding mediation, unless mediation was not sought by either party or unless this precondition is waived by agreement of the Parties hereto.

(d) Requirement to Proceed -- Pending final resolution of a dispute under this Section (including any resulting litigation), the Contractor shall proceed diligently with performance in accordance with the Agreement and the recommended decision of the Authority Project Director.

(e) Alternatives -- If agreed upon by the Parties, disputes may be resolved by an alternative disputes resolution process, including arbitration or fact finding.

SEC. 18. SUBCONTRACTING

(a) Requirement for Approval -- Except for those Key Subcontractors approved by the Authority during the Stage A RFP process, the Contractor shall not enter into any Key Subcontract except with the prior review and written approval of the Authority. The Contractor shall be fully responsible for all work performed by all subcontractors.

(b) Authority Not a Party -- Any approval of a subcontract shall not be construed as making the Authority a party to such subcontract, giving the subcontractor privity of Agreement with the Authority, or subjecting the Authority to liability of any kind to any subcontractor.

(c) Copies -- The Contractor shall furnish, at the Authority's request, copies of any subcontracts for the performance of Work under this Agreement.

(d) Incorporation -- All subcontracts will incorporate in full all appropriate conditions and terms as set forth in this Agreement.

SEC. 19. ASSIGNMENT

The Contractor may not assign this Agreement, or any portion thereof or transfer any interests, rights, duties, or responsibilities of the Contractor hereunder, except with the prior written approval of the Authority. Any attempt to do so without such prior written approval shall be null and void. This provision is separate and apart from the provisions concerning subcontracting set forth in Section 18.

SEC. 20. LABOR CODE REQUIREMENTS

(a) Wage Requirements-- The Contractor shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Sections 1770 et seq., and all federal, state, and local laws and ordinances applicable to the Work.

(b) Insurance Requirements -- The Contractor is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and the Contractor will comply with such provisions before commencing the performance of the work hereunder.

(c) Inclusion in Subcontracts -- All subcontracts for more than \$25,000 involving public works construction and all subcontracts for more than \$15,000 involving the alteration, demolition, repair, or maintenance of public works (as all such terms are defined in the Labor Code), shall contain all of the provisions of this Section 19.

SEC. 21. CONFLICT OF INTEREST

(a) Restriction on Participation -- The Contractor shall not permit any officer, official or employee of the Authority to have any financial interest in the Contract prohibited by Sections 1090 et seq. and 87100 et seq. of the Government Code. In addition, the Contractor or its employees shall not enter into any contract involving services or property with a person or business prohibited from transacting such business with the Authority, pursuant to Sections 1090 et seq. and 87100 et seq. of the Government Code. Except to the extent explicitly disclosed in the Contractor's Proposal, the Contractor affirms that no Authority officer, official or employee has any interest (whether contractual, non-contractual, financial, or otherwise) in this transaction or in the business of the Contractor. If any such interest becomes known to the Contractor at any time, the Contractor shall submit a full and complete written disclosure of such information to the Authority, even if such interest would not be

considered a conflict under Sections 1090 et seq. and 87100 et seq. of the Government Code.

(b) Gratuities Prohibited -- Neither the Contractor nor any of its employees, agents, representatives or subcontractors shall offer or give to an officer, official or employee of the Authority any gifts, gratuities, favors, or anything of a monetary value.

(c) Conflict of Interest Code -- Neither the Contractor nor any of its employees, agents, representatives or subcontractors shall take any action prohibited by the Authority's Conflict of Interest Code.

SEC. 21. ORGANIZATIONAL CONFLICT OF INTEREST

(a) Organizational Conflicts The Contractor acknowledges that it is participating in a procurement process for the Stage B Design-Build Contract. The Contractor certifies that it is not aware of any real or apparent organizational conflict of interest which would result in an unfair competitive advantage to the Contractor. The Contractor shall take no action that would result in an unfair competitive advantage. If any such conflict of interest arises during the term of this Agreement, the Contractor shall promptly so notify the Authority.

(b) Collusion and Sham Bids The Contractor acknowledges that Public Contract Code Section 7106 prohibits collusion and sham bids in connection with public works contract procurements, agrees not to take any action prohibited by Section 7106, and acknowledges that it will be required to submit an affidavit to that effect as part of its proposal for the Stage B Design-Build Contract.

SEC. 22. FINANCIAL CONDITION

(a) Submittals and Updates -- Prior to entering into this Agreement, the Contractor submitted documentation acceptable to the Authority establishing that it is financially solvent, such that it can reasonably be expected to perform the services required by this Agreement and the Stage B Design-Build Contract. Upon the request of the Authority during the term of this Agreement, the Contractor shall submit such financial information as may be necessary and appropriate to establish to the

satisfaction of the Authority that the Contractor is in at least as sound a financial position as it was prior to entering into this Agreement.

(b) Adverse Information -- If the Contractor is not able to provide evidence of sound financial position in accordance with subsection (a), it shall provide a full explanation to the Authority of the facts or circumstances creating such inability. In addition, the Contractor shall promptly inform the Authority of any adverse financial condition or event that arises during the term of this Agreement which could jeopardize its successful and timely completion of the Work. Financial information submitted to the Authority shall be returned to the Contractor after review and shall not be retained by Authority.

SEC. 23. ELIGIBILITY TO BID ON PUBLIC WORKS PROJECTS

The Contractor hereby certifies that the Contractor, its joint venture members or general partners, its subcontractors, and all proposed subcontractors for the Stage B work identified in the Contractor's proposal for this Agreement, are eligible to bid on public works projects in the State of California. The Contractor shall promptly inform the Authority of any change in such eligibility occurs during the term of this Agreement.

SEC. 24. LICENSING AND TAXES

The Contractor and its subcontractors shall be appropriately licensed for the professional services required under the terms of this Agreement, and all Work hereunder shall be performed by persons holding the appropriate professional license. The cost for any required licenses shall be the responsibility of the Contractor. The Contractor shall be liable for any and all taxes due as a result of this Agreement.

SEC. 25. INDEPENDENT CONTRACTOR

The Contractor is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with the Authority other than that of Project developer and independent contractor. In no event shall the relationship between the Authority and the Contractor be construed as creating any relationship whatsoever between the Authority and the Contractor's employees. Neither

the Contractor nor any of its employees is or shall be deemed to be an employee of the Authority. Except as otherwise specified in the Contract Documents, the Contractor has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all subcontractors and for all other persons that the Contractor or any subcontractor hires to perform or assist in performing the Work.

SEC. 26. SMALL BUSINESS ENTERPRISES (SBEs)

(a) SBE Policy -- It is the policy of the Authority that MBE/WBE/OBE firms (collectively "SBEs") shall have the opportunity to compete fairly for subcontracts carried out under this Agreement.

(b) Contractor Obligation -- The Contractor shall comply with the Authority's SBE Policy, set forth in Attachment G hereto, throughout the period of performance of the Stage A Work, and shall make good faith efforts to meet the Stage A SBE goal of ten percent (10%).

(c) Reporting -- The Contractor shall submit a quarterly report to the Authority summarizing the activities it has undertaken in the previous quarter to encourage SBE participation and to achieve the established SBE goal.

SEC. 27. COMPLIANCE WITH LAWS AND PERMITS

The Contractor shall give all appropriate notices and comply with all applicable Federal, state, and local laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Agreement. If the Agreement is at variance therewith in any respect, any necessary changes shall be incorporated by appropriate modification. Upon request, the Contractor shall furnish to the Authority written confirmation of its compliance with all such laws, orders, and regulations.

SEC. 28. CANCELLATION OF CONTRACT

In any of the following cases, the Authority shall have the right to cancel this Agreement in whole or in part without expense to the Authority: (1) the Contractor is guilty of misrepresentation; (2) the Agreement is obtained by fraud, collusion, conspiracy, or

other unlawful means; or (3) the Agreement conflicts with any statutory or constitutional provision of the State of California or the United States. This Section shall not be construed to limit the Authority's right to terminate the Agreement for convenience or default, as provided in Sections 29 and 31, respectively.

SEC. 29. TERMINATION FOR CONVENIENCE

(a) General Authority -- The performance of work under this Agreement may be terminated by the Authority in accordance with this Section in whole, or from time to time in part, whenever the Authority determines that such termination is in the best interest of the Authority. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under this Agreement is terminated and the date upon which such termination becomes effective, which shall be no less than twenty (20) days from the date of such notice.

(b) Required Actions Upon Notice -- Upon receipt of a notice of termination, and except as otherwise directed by the Authority, the Contractor shall (1) stop performing professional services under the Agreement on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the professional services under the Agreement as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of professional services terminated by the notice of termination; (4) assign to the Authority in the manner, at the times, and to the extent directed by the Authority, all of the rights, title and interest of the Contractor under the orders and subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authority, to the extent the Authority may require, which approval or ratification shall be final for all the purposes of this Section; (6) transfer title to the Authority and deliver in the manner, at the times, and to the extent, if any, directed by the Authority, supplies, equipment, and other material produced as a part of, or acquired in connection with the performance of, the professional services terminated, and any information and other property which, if the

Agreement had been completed, would have been required to be furnished to the Authority; (7) complete any such part of the work as shall not have been terminated by the notice of termination; and (8) take such action as may be necessary, or as the Authority may direct, for the protection and preservation of the property related to the Agreement which is in the possession of the Contractor and in which the Authority has or may acquire an interest.

(c) FAR Principles -- Except as otherwise provided, settlement of claims by the Contractor under this Section shall be in accordance with the provisions set forth in 48 CFR Part 49, as amended from time to time. Consistent with these provisions, in the event of termination, the Contractor shall be entitled to payment for all services previously rendered prior to termination, plus reasonable termination costs.

SEC. 30. TERMINATION BY MUTUAL AGREEMENT

The Agreement may be terminated by mutual agreement of the parties. Such termination shall be effective in accordance with a written agreement by the parties. Any other act of termination shall be in accordance with the termination by convenience or default provisions contained in Sections 29 and 31.

SEC. 31. TERMINATION FOR DEFAULT

(a) Grounds for Default – Subject to the provisions of subsection (b) of this Section, the Authority may terminate the whole or any part of this Agreement in any one of the following circumstances:

(1) If the Contractor fails to provide the services in the manner required by the Agreement.

(2) If the Contractor fails to perform any of the provisions of this Agreement in accordance with its terms.

(3) If the Contractor fails to make progress in the prosecution of the Work under this Agreement so as to endanger such performance.

(4) If a federal or state proceeding for the relief of debtors is undertaken by or against the Contractor, or if the Contractor makes an assignment for the benefit of creditors.

(5) If the Contractor fails to submit a responsive proposal for the Stage B Design-Build Contract or, if selected, fails to execute and deliver such Contract together with required insurance, bonds and other documents.,

(b) Notice and Opportunity to Cure --Notice and Opportunity to Cure -- If the Authority determines that an event of default under this Section has occurred, it shall immediately notify the Contractor in writing and provide the Contractor with thirty (30) days in which to provide a plan to cure such default, including a timetable for accomplishing the cure. Such plan and timetable shall be subject to the approval of the Authority, which approval shall not be unreasonably withheld. If the Contractor fails to cure in accordance with its plan and timetable, or fails in a timely fashion to provide a plan for cure, the Authority may declare the Contractor to be in default and terminate this Agreement in whole or in part.

(c) Reprocurement and Liability for Costs-- In the event that the Authority terminates the Agreement in whole or in part under this Section, the Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, supplies or services similar to those so terminated. The Contractor shall be liable to the Authority for costs associated with the termination of the Agreement, the procurement of replacement services by the Authority, any excess costs of such similar supplies or services, and any increase in the total Agreement cost as a result of the reprocurement of services from the date of termination to the expiration date of the original Agreement.

The Contractor shall continue the performance of the Agreement to the extent not terminated under the provisions of this Section.

(d) Disputes -- Any disputes arising under this Section that cannot be resolved by the Contractor and the Authority are subject to resolution pursuant to Section 17.

(e) FAR Principles -- Except as otherwise provided, settlement of claims by the Contractor under this Section shall be in accordance with the provisions set forth in 48 CFR Part 49, as amended from time to time.

SEC. 32. SUSPENSION

The Authority may, by written notice, order the Contractor to suspend all or any part of the Contractor's services under this Agreement for the convenience of Authority for events beyond the control of the Authority and the Contractor, or for cause. If any such work suspension causes an increase or decrease in the cost of performance of the Work or in the time required for its performance, the Contractor shall promptly notify the Authority thereof and assert its claim for adjustment within ten (10) days after the change or work suspension is ordered, and an equitable adjustment shall be negotiated. However, nothing in this clause shall excuse the Contractor from proceeding immediately with the Agreement as changed.

SEC. 33 FORCE MAJEURE

The Contractor shall not be liable for any failure to perform if it establishes to the satisfaction of the Authority that the failure to perform this Agreement was due to an unanticipated and unforeseeable events that was beyond the control of the Contractor, was not the result of the Contractor's fault or negligence, and could not have been avoided by the Contractor's due diligence and the use of reasonable care and effort. Examples of such causes include acts of God; natural disaster, terrorism, civil disturbances, fire, war, or floods; and changes in law (enacted after the execution of this

Agreement) that directly effect the Contractor's substantive obligations hereunder: but do not include labor related incidents, such as strikes or work stoppages.

SEC. 34 ACCOUNTING REQUIREMENTS

(a) General Requirements -- The Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs by line item, that conform to Generally Accepted Accounting Principles (GAAP), and that provide support for the Contractor's invoices. Eligibility of costs will be subject to the principles of cost allowability, allocability, and reasonableness set forth in 48 CFR 48 Subpart 31.2.,

(b) Audits -- In the event of any audit of the costs claimed or paid under this Agreement, the Authority and/or the State will rely to the maximum extent possible on any prior audit of the Contractor pursuant to the provisions of Federal and State laws. In the absence of such an audit, any acceptable audit work that was performed by the Contractor's external and internal auditors and/or State auditors and that examined work performed under this Agreement may be relied upon and used by the Authority and/or the State.

SEC. 35. RECORDS RETENTION AND ACCESS TO RECORDS

The Contractor shall maintain a complete set of all books and records prepared or employed by the Contractor in its management, scheduling, cost accounting and otherwise with respect to the Project. The Contractor shall grant to the Authority or its designee, the State, the California State Auditor, and any other duly authorized representative of the Federal or State Government, such audit rights and allow such Persons such access to and the right to copy such books and records (including tax returns and supporting documentation) as the Authority may request from time to time in connection with the issuance of Change Orders, the resolution of disputes and such other matters as the Authority reasonably deems necessary for purposes of complying or verifying compliance with the Contract and applicable law. The Contractor shall maintain all records and documents relating to the Work and the Project (including copies of all original documents delivered to Authority) in Los Angeles County,

California until three (3) years from the latest to occur of (1) the date of final payment under this Agreement, (2) the date of final payment under the Stage B Design-Build Contract, if awarded to the Contractor, and (3) the date of resolution of litigation or claims arising under this Agreement or under the Stage B Design-Build Contract if awarded to the Contractor.

SEC. 36. EXCLUSION OF CONSEQUENTIAL DAMAGES

(a) General Rule -- Except as provided in subsection (b), in no event shall either Party be liable to the other Party for any “consequential damages” arising out of performance of the Work or implementation of this Agreement (or failure to perform hereunder), and each Party hereby releases the other from such liability. The term “consequential damages” means those special, indirect, or incidental damages that flow naturally and inevitably from an action or failure to act, such as fare revenue losses, loss of use, cost of capital, debt service, loss of profit on related contracts, administrative costs, extended overhead, claims of taxpayers and other indirect damage. The foregoing shall apply to limit liability under actions brought under any theory of law, including actions in tort (including negligence) as well as in contract, and shall extend to subcontractors provided that the originally executed subcontract for such subcontractor includes a similar release of liability in favor of the Authority.

(b) Exceptions -- The exclusion of consequential damages set forth in subsection (a) shall not exclude or affect:

- (1) The Contractor’s obligation to pay liquidated damages in accordance with Section 8(e) of this Agreement;
- (2) Any liability for gross negligence, fraud, intentional misconduct, or criminal acts;
- (3) Any liability with respect to indemnification for third party claims; or
- (4) Any liability for any type of damage or loss, to the extent such loss or damage is covered by insurance required under this Agreement or is covered by the actual amount of insurance the Contractor carries under project specific

policies applicable to the Project and the Work (regardless of whether required to be carried hereunder), whichever is greater.

SEC. 37. WAIVER OF TERMS AND CONDITIONS

The failure of the Authority to enforce one or more of the terms or conditions of this Agreement or to exercise any of its rights or privileges, or the waiver by the Authority of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

SEC. 38. INTERPRETATION, JURISDICTION, AND VENUE

This Agreement shall be subject to, governed by, and construed and interpreted solely according to the laws of the State of California. The Contractor hereby consents and submits to the jurisdiction of the appropriate courts of California or of the United States having jurisdiction in California for adjudication of any suit or cause of action arising under or in connection with this Agreement, or the performance hereof, and agrees that any such suit or cause of action may be brought in any such court. Venue of any action involving this Agreement shall be Los Angeles, California.

SEC. 39. LACK OF FUNDS

The entering into of the Agreement by the Authority is subject to its receipt of State or local funds adequate to carry out the provisions of the Agreement in full.

SEC. 40. NOTICES

Official notices or correspondence related to this Agreement shall be in writing and sent to the Contractor at the following address or to such other address as the Contractor may, from time to time, designate in writing pursuant to the provisions of this Section:

CONTRACTOR:

All communications to the Authority shall be marked with Authority's contract identification number and shall be delivered as directed by the Authority's Chief Executive Officer.

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Pacific Time and all other notices received after 5:00 p.m. shall be deemed received on the first business day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

SEC. 41. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

SEC. 42. AGREEMENT TO CONTROL

In the event of any inconsistency between the provisions of Contractor's proposal and the provisions of this Agreement or any of the other Contract Documents, the provisions of this Agreement and the other Contract Documents shall control.

SEC. 43. ENTIRE AGREEMENT

This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between the Contractor and the Authority. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement. Amendments on behalf of the Authority will only be valid if signed by the Authority CEO or the Chair of Governing Board.

SEC. 44. ATTACHMENTS

All Attachments referred to in this Agreement are hereby incorporated herein by reference.

SEC. 45. SEVERABILITY

If any clause, provision, section or part of the Contract Documents is ruled invalid by a court of competent jurisdiction, then the parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the compensation payable hereunder to account for any change in the obligations of the Contractor resulting from such invalidated portion; and (b) if necessary or desirable, apply to the court which declared such invalidity for a judicial construction of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the Contract Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section or part.

IN WITNESS WHEREOF, this Agreement has been executed as of the last date set forth next to the signatures of the parties, below.

EXPOSITION METRO LINE CONSTRUCTION
AUTHORITY

CONTRACTOR

By: _____

By:

Date: _____

Date: _____

Approved as to Form:

By: _____

ATTACHMENTS

- Attachment A – Stage A Baseline Scope of Work
- Attachment B – Stage A Discretionary Scope of Work
- Attachment C – Project Schedule
- Attachment D -- Invoice Format
- Attachment E – Key Personnel
- Attachment F – Performance Evaluation Criteria for Stage A Report Card
- Attachment G – Authority SBE Policy
- Attachment H Proposal Bond Form

ATTACHMENT A

STAGE A BASELINE SCOPE OF WORK

[This Scope of Work is set forth in Attachment 1 to the RFP]

ATTACHMENT B

STAGE A DISCRETIONARY SCOPE OF WORK

[This Scope of Work will be provided by the Preliminary Engineering Contractor in its proposal]

ATTACHMENT C

PROJECT SCHEDULE

[This schedule will be developed by the Authority and the Preliminary Engineering Contractor]

ATTACHMENT D

INVOICE FORMAT

[This format will be provided by the Authority]

ATTACHMENT E

KEY PERSONNEL

[This list of Key Personnel will be provided by the Preliminary Engineering Contractor in its proposal]

ATTACHMENT F

PERFORMANCE EVALUATION CRITERIA FOR STAGE A REPORT CARD

1. The Contractor's timeliness of deliverables and adherence to schedule requirements in the performance of the Stage A Preliminary Engineering Work.
2. The quality and content of the Contractor's work product and deliverables.
3. The Contractor's overall understanding of the engineering/ technical requirements of the Work and the Project.
4. The Contractor's understanding of the systems integration requirements, the vehicle interface requirements, the interface work relative to LACMTA's operational objectives, and integration with the Phase 1 elements of the EXPO line.
5. The Contractor's effectiveness in working to understand the existing site conditions, subsurface conditions, and system layout restrictions.
6. The Contractor's understanding of community and local government issues and concerns and its capability in community relations.
7. The Contractor's effectiveness in working with the approver/stakeholder Third Parties to understand their technical and coordination requirements, and to prepare for successful interface with those Third Parties during the Design Build phase.
8. The Contractor's responsiveness to directions and concerns of the Authority.
9. The quality and performance of the Contractor's Project Manager and other Key Personnel.
10. The adequacy of the Contractor's staffing levels assigned to the Work; the competence and necessary skills of assigned staff; and the overall quality of the Contractor's team?
11. The Contractor's ability to develop innovative and cost effective approaches and solutions to engineering and design issues and challenges presented by Phase 2 of the Project.
12. The ability of the Contractor to identify, evaluate and address cost-drivers, to reduce unnecessary contingency costs in their final lump sum, fixed price Design Build Price.

13. The Contractor's cooperation, attitude, and overall approach to the Work.

ATTACHMENT G

AUTHORITY SBE POLICY

[This policy will be provided by the Authority]