

ATTACHMENT C – DRAFT CONTRACT

**PHASE2 OPERATIONS AND MAINTENANCE FACILITY
ARCHITECTURAL, ENGINEERING, AND CONSTRUCTION SUPPORTSERVICES
XP8902-005**

AGREEMENT NO. XP8902-005

FOR

**Engineering and Design Services for an Operations and
Maintenance Facility**

Exposition Metro Light Rail Line Phase 2

between

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

and

CONSULTANT

March 2011

TABLE OF CONTENTS

	<u>Page</u>
SEC. 1. DEFINITIONS.....	1
SEC. 2. BASIC ELEMENTS OF AGREEMENT	3
SEC. 3. AUTHORITY PROJECT DIRECTOR.....	4
SEC. 4. NOTICE TO PROCEED.....	4
SEC. 5. SCOPE OF SERVICES AND PERFORMANCE REQUIREMENTS.....	4
SEC. 6. PROJECT SCHEDULE	5
SEC. 7. COMPENSATION.....	6
SEC. 8. PAYMENT PROVISIONS	7
SEC. 9. CONSULTANT PERSONNEL	10
SEC. 10. OWNERSHIP OF WORK.....	11
SEC. 11. CHANGES TO SCOPE OF SERVICES.....	13
SEC. 12. INDEMNITY.....	14
SEC. 13. DISCLAIMER OF LIABILITY.....	15
SEC. 14. INSURANCE.....	15
SEC. 15. DISPUTES.....	18
SEC. 16. SUBCONTRACTING	189
SEC. 17. SMALL BUSINESS ENTERPRISE	20
SEC. 18. ASSIGNMENT	20
SEC. 19. CONFLICT OF INTEREST	20
SEC. 20. ORGANIZATIONAL CONFLICT OF INTEREST	21
SEC. 21. DEBARMENT/SUSPENSION STATUS.....	21
SEC. 22. LICENSING AND TAXES	21
SEC. 23. INDEPENDENT CONTRACTOR	21
SEC. 24. PREVAILING WAGE	22
SEC. 25. COMPLIANCE WITH LAWS AND PERMITS; NONDISCRIMINATION.....	23
SEC. 26. CANCELLATION OF CONTRACT.....	23
SEC. 27. TERMINATION FOR CONVENIENCE.....	24
SEC. 28. TERMINATION BY MUTUAL AGREEMENT	25
SEC. 29. TERMINATION FOR DEFAULT	25
SEC. 30. SUSPENSION	26
SEC. 31. FORCE MAJEURE	26
SEC. 32. ACCOUNTING REQUIREMENTS	26
SEC. 33. RECORDS RETENTION AND ACCESS TO RECORDS.....	26
SEC. 34. WAIVER OF TERMS AND CONDITIONS	27
SEC. 35. INTERPRETATION, JURISDICTION, AND VENUE	27
SEC. 36. LIMITATION OF FUNDS	27
SEC. 37. NOTICES	28
SEC. 38. COUNTERPARTS.....	29
SEC. 39. AGREEMENT TO CONTROL.....	28
SEC. 40. ENTIRE AGREEMENT; BINDING EFFECT.....	29
SEC. 41. EXHIBITS.....	29
SEC. 42. SEVERABILITY	29
SEC. 43. HAZARDOUS MATERIALS	30
SEC. 44. CONSTRUCTION MEANS AND METHODS	30

EXHIBITS

Exhibit A – Scope of Services

Exhibit B – Project Schedule

Exhibit C – Small Business Enterprise Requirements

**AGREEMENT FOR
ENGINEERING AND DESIGN SERVICES**

This AGREEMENT is entered into this XXth day of March 2011, by and between the Exposition Metro Line Construction Authority (“Authority”), a public entity of the State of California, and (“Consultant”) for the provision of Engineering and Design Services for an Operations and Maintenance Facility for Phase 2 of the Exposition Light Rail Transit Project.

WHEREAS, the Authority has determined that the engineering and design of an Operations and Maintenance Facility (the ‘Facility’) is required in conjunction with the implementation of Phase 2 for the Exposition Light Rail Transit Project.

WHEREAS, the Authority conducted a qualifications-based competitive procurement process to select a firm to provide Engineering and Design Services for the Facility for Phase 2.

WHEREAS, based on that procurement process, the Authority determined that the Consultant was the most qualified firm to provide the required Engineering and Design Services.

WHEREAS, the Authority and the Consultant have successfully negotiated the terms and conditions to apply to the Consultant’s Engineering and Design Services, including a not-to-exceed price.

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

SEC. 1. DEFINITIONS

As used in this Agreement –

1. **Agreement.** The term “Agreement” means this Agreement for Engineering and Design Services.
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 Services or the price or time for performance of the Services, issued by the Authority pursuant to Section 11 of this Agreement.

4. **Contract Documents**. The term “Contract Documents” means the following, set forth hereinafter in their order of precedence:
 - a. This Agreement, including the Exhibits hereto;
 - b. RFQ No.XP8902-005 including any addenda thereto; and
 - c. The Consultant’s Statement of Qualifications and proposal in response to the RFQ.
5. **Consultant**. The term “Consultant” means the entity selected by the Authority pursuant to RFQ Number XP8902-005 and awarded the Contract to provide Engineering and Design Services for the Authority and the Project.
6. **Days**. The term “days” means calendar days, unless otherwise specified.
7. **Governing Board**. The term “Governing Board” means the Board of Directors of the Authority.
8. **Key Personnel**. The term “Key Personnel” means the Consultant’s Project Manager and other Consultant and sub-consultant staff identified in Section 9.a and Exhibit B of this Agreement.
9. **Major Subconsultant**. The term “Major Subconsultant” means any subconsultant identified by the Consultant as having been awarded a subcontract of \$250,000 or more.
10. **Metro**. The term “Metro” means the Los Angeles County Metropolitan Transportation Authority.
11. **Notice to Proceed or NTP**. The term “Notice to Proceed” or “NTP” means written notice from the Authority to the Consultant authorizing the Consultant to proceed with the Services (or portion thereof) on the date certain specified in that notice.
12. **Overtime**. Overtime is payment for hours worked outside of the normal or standard hours of a position, including but not limited to, work performed by personnel at the end of the standard work day, public holidays, weekends or rostered days off or otherwise resulting in the payment of wages higher than paid for normal time as required by law or Consultant’s personnel policies
13. **Phase 2**. The term “Phase 2” means the second phase of the Exposition Corridor LTR Project. Phase 2 is located in the Westside of Los Angeles, extending approximately seven miles from the Expo Phase 1 terminus at the Venice/Robertson Station in Culver City to Santa Monica. The Phase 2 alignment utilizes the existing Exposition Right-of-Way (ROW), then diverges from the Exposition ROW and enters onto Colorado Avenue east of 17th Street. The alignment follows the center of Colorado Avenue to the proposed terminus in

downtown Santa Monica in the vicinity of the intersection of 4th Street and Colorado Avenue.

14. **Plans and Specifications.** The term “Plans and Specifications” means drawings, plans, profiles, requirements and diagrams provided by Consultant under this Agreement, which describe and delineate the standards and criteria for construction of the Facility. Such plans and specifications will be used in the solicitation for construction of the Facility.
15. **Preliminary Engineering.** The term “Preliminary Engineering” or “PE” means engineering work, documents, and drawings provided by Authority’s contractor, sufficient to provide approximately 30% of the level of design necessary to construct the Project.
16. **Project.** The term “Project” means the Phase 2 of the Exposition Corridor LRT Project.
17. **RFQ.** The term “RFQ” means the Authority’s Request for Qualifications No. XP8902-005.
18. **Small Business Enterprise (SBE).** - A Small Business Enterprise (SBE) is a firm certified as a Small Business concern by one of the following entities (the firm must meet the specific size and related Small Business certification standards of the Certifying Agency):
 - a. California Department of General Services (DGS) – Procurement Divisions (PD) – Office of Small Business and Disabled Veterans Business Enterprise Services (OSDS) certified Small Businesses or Micro Businesses;
 - b. Los Angeles County Metropolitan Transportation Authority (Metro) certified Small Businesses; and
 - c. Firms certified as a Disadvantaged Business Enterprise (DBE) by a California Unified Certification Program (CUCP) certifying agency.
19. **Services.** The term “Services” means all of the design and engineering work necessary to provide a set of Plans and Specifications suitable for the construction of the Facility and additional services to be provided during the solicitation phase and construction of the Facility as set forth in Exhibit A to this Agreement.

SEC 2. BASIC ELEMENTS OF AGREEMENT

- a. **Authority Agreement to Retain** -- The Authority hereby employs and retains the Consultant to provide the Services for the Project in accordance with the terms and conditions set forth in this Agreement. The Authority agrees to pay the Consultant for performance of the Services, in the manner and upon the conditions set forth in this Agreement.
- b. **Consultant Agreement to Provide Services** -- The Consultant hereby agrees to provide the Services, as described in the Scope of Services attached hereto as Exhibit A, in

accordance with the Performance Requirements in Section 5 and the other provisions of this Agreement and the other Contract Documents.

c. Term of Agreement – The term of the Agreement shall commence on the date first written above and shall continue until **Date** (Expiration Date) or until otherwise terminated, canceled or extended in accordance with the procedures contained in this Agreement. Time is of the essence of this Agreement.

SEC 3. AUTHORITY PROJECT DIRECTOR

The Authority shall, upon execution of the Agreement, designate an individual to serve as the Authority's Project Director. The Project Director will be responsible for the supervision, direction, control, and approval of the Services provided by Consultant under this Agreement.

SEC 4. NOTICES TO PROCEED

Notices to Proceed -- The Consultant may not commence performance of the Services prior to receipt of a written Notice to Proceed ("NTP") or Limited Notice to Proceed ("LNTP") from the Authority. The Consultant shall promptly commence work upon receipt of a NTP or LNTP from the Authority.

SEC 5. SCOPE OF SERVICES AND PERFORMANCE REQUIREMENTS

a. Scope of Services -- The Services to be performed by the Consultant shall include the tasks described in the Scope of Services set forth in Exhibit A.

b. Overall Requirements -- (1) The Consultant shall, at all times during the term of this Agreement, perform all of its professional services in a technically sound manner and in accordance with generally accepted professional practice standards in the State of California; and shall furnish all labor, supervision, materials, and supplies necessary therefore. Notwithstanding the provision of any drawings, technical specifications, or other data by the Authority, the Consultant shall be responsible for supplying all items and details required to perform the Services specified in this Agreement. The Consultant shall perform all of its professional services in its own name and as an independent Consultant (as provided in Section 23), and not in the name of, or as an agent for, the Authority. (2) In providing consultant services, the Consultant agrees that it will exercise the ordinary care and skill expected of practitioners in the architectural and engineering professions acting under similar circumstances, and that it will accept professional responsibility for performing the Services set forth in this Agreement for the compensation and in accordance with the terms and conditions

specified herein. (3) Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant further represents and warrants to the Authority that its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement.

c. Support Services -- The work described in Exhibit A entitled Operations & Maintenance Facility Design Services includes the provision of design support services to provide complete design specifications and construction support for the Facility construction project. Consultant will provide all services required as the Designer and Engineer of Record for the Facility.

d. Errors or Omissions -- The Consultant shall, without additional compensation, correct or revise any deficiencies, errors, or omissions caused by the Consultant in its analysis, reports, and services. The Consultant also agrees that if any error or omission is found, the Consultant will expeditiously make the necessary correction, at no expense to the Authority.

e. Correspondence -- The Consultant shall furnish the Authority with copies of all correspondence to regulatory agencies, consulting firms, contractors, and State, local, and Federal agencies.

f. Cooperation -- The Consultant agrees that its officers and employees will cooperate with the Authority in the performance of the Services under this Agreement and will be available for consultation with the Authority at reasonable time with advance notice.

g. Access to Property -- The Consultant shall obtain appropriate permission to enter any private or public property, other than the property of the Authority. However, in the event the Consultant has made a good faith effort to obtain such permission and has been unable to do so, the Authority may assist the Consultant in obtaining such permission or revise the Scope of Services accordingly.

SEC 6. PROJECT SCHEDULE

a. Project Schedule -- The initial Project Schedule for the Services to be performed by Consultant is set forth in Exhibit B to this Agreement. The Project Schedule will be updated regularly to reflect the status of the Project. The updated Project Schedule will be formally provided by the Consultant and accepted by the Authority and will be binding, although Exhibit B

may not be amended without the Authority's approval. Time is of the essence in the performance of Work under this Agreement.

b. Timely Performance -- The Consultant agrees to commence performance of the Services promptly upon the issuance of a NTP or LNTP, to perform and complete the Services in a timely manner in accordance with the Project Schedule and prior to the "Expiration Date". The Consultant agrees to meet all other schedules and deadlines established during the performance of the Services.

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 Services in accordance with the Project Schedule, that party shall immediately 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 Consultant. However, if any such requested revision to the Project Schedule is not approved by the Authority in writing, the Consultant acknowledges that the Project Schedule shall be maintained without modification. The Consultant also acknowledges and agrees that changes to the Project Schedule may be made by the Authority in accordance with Section 11 Changes to Scope of Services.

e. Reports -- The Consultant shall submit monthly reports to the Authority documenting the progress of the performance of the Services and comparing the actual schedule to the Project Schedule.

SEC 7. COMPENSATION

a. Cost and Fee Amounts -- The Consultant agrees to provide all of the Services for the Project according to the terms and conditions herein contained, and to accept as full payment for all Services included in the Scope of Services, the compensation described below, up to the not to exceed the amount set forth in, or negotiated pursuant to, the provisions of this subsection, for the Preliminary Engineering portion of the Services, as follows:

- (1) The Authority and the Consultant have agreed upon a not to exceed amount of XXXXX which includes XXXX profit for the Preliminary Engineering Services to be provided under this Agreement.
- (2) The Authority and the Consultant have agreed that the fixed overhead rate applicable to direct labor for all Services shall be XXX% for the Home Office.

- (3) For the Preliminary Engineering Phase of the Services, Consultant may bill on a monthly basis for actual costs incurred plus a percentage of fee that corresponds to the amount of work completed.
- (4) After acceptance of the Preliminary Engineering, Consultant and Authority will negotiate a firm, fixed price for Final Design and Construction Support Services. At that time, this Agreement will be amended to reflect the firm, fixed price and invoicing schedule.

b. Reduction in Scope -- If it is determined by the Authority during the Consultant's performance of the Services that a portion of the Services specified in the Scope of Services are unnecessary, the Scope of Services may be modified pursuant to a Change Order issued by the Authority under Section 11 of this Agreement, with an appropriate reduction in the amount of compensation payable to the Consultant.

c. Additions to Scope -- If it is determined by the Authority during the Consultant's performance of the Services that additional Services over and above, and not inherent in, those set forth in the Scope of Services are required, the Scope of Services may be modified pursuant to a Change Order issued by the Authority under Section 11 of this Agreement, with an appropriate augmentation in the amount of compensation payable to the Consultant. Except as provided in Section 11, the Not-to-Exceed Amount is the maximum compensation to be paid for the completion of the Preliminary Engineering Services hereunder. Any costs incurred in excess of the Not-to Exceed Amount without prior written amendment shall not be compensable.

d. Final Payment -- The Consultant agrees that its right to receive the final payment pursuant to this Agreement is contingent upon submittal of all deliverables required by this Agreement, to the satisfaction and approval of the Authority. If the Authority does not approve any or all of such deliverables, the Consultant shall revise the deliverables to Authority's satisfaction and approval, at no additional expense to Authority. The Authority shall have the right to withhold, in its sole discretion, any or all of the Consultant's final payment until Authority approves all of Consultant's deliverables.

SEC 8. 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 Consultant. All invoices shall be submitted monthly and shall be sent to the following address:

Exposition Metro Line Construction Authority
Attn: Samantha Bricker
707 Wilshire Blvd. 34th Floor
Los Angeles, CA 90017

- b. Invoices shall contain at least the following information:
- (1) The Agreement Number XP8902-005
 - (2) Period of Performance. Any amounts billed for work or other direct charges that did not occur during the preceding monthly billing period must be broken out separately and a justification for late submittal provided.
 - (3) Invoices shall be broken down into those line item Tasks listed in Exhibit A.
 - (4) Supporting documentation for labor hours and costs shall be included with each monthly invoice. Such documentation should include a description of the work each person billing against the Agreement performed.
 - (5) The breakdown of hours and costs should separately identify any additional Services outside the original Scope of Services (“Additional Scope”) which has been approved by the Authority as set forth in Section 11 below. Documentation of the prior written approval received from the Authority for Additional Scope (if any) shall be attached to this cost breakdown.
 - (6) All Overtime must be approved in advance by the Project Manager. The Authority will pay straight time rates for previously approved overtime. Documentation of the approval must be provided with the invoice.
 - (7) Hours shown for staff should include only those hours actually spent working on the Project. Do not include time for travel, medical appointments, personal time-off, holidays etc.
 - (8) Other direct costs authorized for reimbursement expenses (such as travel expenses) shall be indicated and shall be invoiced at their actual cost, together with the original receipts or other documentation to substantiate expenditures. When seeking reimbursement for travel expenditures, the travel must have occurred during the billing period.

c. Invoices must be submitted no later than the 15th of the month following the period in which the work was performed.

d. SBEs -- The Consultant shall submit monthly progress reports on SBE utilization to the Authority on the SUMMARY OF CONSULTANT PAID REPORT FORM (FORM 103). Information provided by Consultant on the FORM 103 Report, shall include, but is not limited to, a summary of the following information:

- (a) Name of each SBE
- (b) General work assignment of each SBE
- (c) The dollars committed to each SBE
- (d) The dollars paid to each SBE during the reporting period
- (e) The dollars paid to date to each SBE
- (f) The dollars paid to date as a percentage of the total commitment to each SBE
- (g) SBE certifying agency and certification number

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

f. Notifications -- The Consultant shall notify Authority in writing prior to incurring 85% of the Not-to-Exceed Amount agreed upon for the Preliminary Engineering services. The notice shall also include an estimate of compensation that will be required to complete the Services required.

g. Additional Services -- Additional Services outside the Scope of Services shall be compensated for in an amount that the parties mutually agree to in advance, as set forth in Section 11, and such amount will be invoiced and paid in accordance with the terms hereof.

h. Prompt Payment to Subconsultants

(1) Timing. No later than thirty (30) days after receiving payment from the Authority for work satisfactorily performed by any of its subconsultants for Services provided under this Agreement, the Consultant shall make full payment to its subconsultants of all compensation due and owing under the relevant subcontract, unless excused by the Authority for good cause in the manner set forth in paragraph (3) of this subsection, below.

(2) Retentions. If applicable, no later than thirty (30) days after receiving payment of retention from the Authority for work satisfactorily performed by any of its subconsultants for services provided under this Agreement, the Consultant shall also make full

payment to its subconsultants of all retentions withheld by it pursuant to the relevant subcontract, unless excused by the Authority for good cause pursuant to paragraph (3) of this subsection.

(3) Delay or Postponement. The Consultant may only delay or postpone any payment obligation (or retention) to any of its subconsultants for Services provided under this Agreement if the Authority determines, in its sole discretion that the Consultant has shown that good cause exists for such a delay or postponement. Any determination by the Authority that good cause exists for the delay or postponement of the Consultant's payment obligation to its sub-consultant must be made in writing prior to the time when payment to the sub-consultant would have been otherwise due.

SEC 9. CONSULTANT PERSONNEL

a. Key Personnel -- The Authority's selection of the Consultant was based in large part upon a consideration of the qualifications and experience of Consultant's Project Manager, Principal-in-Charge, Lead Architect, Lead Civil Engineer, Lead Mechanical Engineer, Lead Electrical Engineer, Lead Track Engineer and the LEEDS/Sustainability advisor as well as the proposed subconsultants. The Consultant shall assign personnel to the Project in accordance with the organization and staffing plan submitted with its response to the RFQ. The names of the Key Personnel and their areas of participation and responsibility under this Agreement are set forth in Exhibit B to this Agreement.

b. Responsibility of Consultant -- The Consultant shall be responsible for the performance of all of the Services under this Agreement and shall utilize the professional expertise and experience of the Key Personnel listed in Exhibit B, as necessary and appropriate.

c. Removal -- In the event that the Authority deems any employee or subconsultant of Consultant to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or unwilling or unable to perform the Services in a manner acceptable to the Authority, Consultant shall promptly remove such employee or subconsultant from the Project and shall not permit such employee or subconsultant to be re-employed to perform any of the Services or to work on the Project in part or in whole.

d. No Replacements without Approval -- The Consultant shall not replace or remove its Project Manager or any of the other Key Personnel including key personnel of Consultant's

sub-consultants during the term of performance of the Services contained in this Agreement without the prior written approval of the Authority's Project Director.

e. Liquidated Damages; Key Personnel --

(1) Amount. If the Consultant replaces or removes any Key Personnel in violation of this subsection, Consultant will be assessed liquidated damages in the amount of \$5,000.00 for each such violation.

(2) Basis. The liquidated damages amount set forth in paragraph (1) has been set established by the Authority based on an evaluation of the damages to the Authority and the public caused by the unjustified replacement or removal of Key Personnel. The actual amount of damages that would be incurred is impossible to ascertain and the Authority has established a liquidated amount in order to fix the Consultant's costs and to avoid later disputes regarding the amount of damages owing due to Consultant's breach. Amounts payable under this subsection are in the nature of liquidated damages and not a penalty, and the Consultant 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.

f. Substitution --

(1) Consultant's Duty. In the event the Authority agrees to the removal of any of the Key Personnel, or if any of the Key Personnel resigns from or leaves their employment or engagement with the Consultant, the Consultant shall be responsible for providing other personnel for the performance of the specific items of Project work involved, whose expertise and experience are at least equivalent to that which would have been provided by the originally listed Key Personnel, subject to the approval of the Authority as specified above.

(2) Substitution Costs. The Consultant shall be responsible for any additional costs it may incur as a result of the substitution of those personnel listed in Exhibit B. In no event shall any substitution of personnel result in an increase in compensation to be paid by the Authority under this Agreement.

SEC 10. OWNERSHIP OF WORK

a. Ownership of Documents -- All documents, reports, analyses, photographs, plans, specifications or other instruments of service prepared or obtained by the Consultant in

the course of performing the Services under this Agreement shall be delivered to and be the property of the Authority. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by the Authority. Basic notes, sketches, charts, computations, drafts and similar data prepared or obtained by the Consultant under this Agreement shall, upon request, also be made available to the Authority.

b. Use -- The Authority agrees to use the work product submitted by the Consultant for the purposes of Phase 2 of the Exposition Project only, and not for any other project.

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

d. Title to Intellectual Property -- The Consultant 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 Authority has full legal title to and the right to reproduce such materials.

e. Indemnification -- The Consultant 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. The Consultant 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 Consultant, 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.

f. Grant and Assignment of Rights -- The Consultant hereby grants to the Authority all common law, statutory and copyrights, trademarks, and other intellectual property rights in connection with Consultant's deliverables provided Authority under this Agreement and the Project itself, and shall retain no rights whatsoever as to such items; provided, however, the Consultant shall retain the right to utilize such work product solely in connection with the performance of its duties under this Agreement. The Consultant shall obtain a similar grant of rights from each of its subconsultants responsible for production of such deliverables. The Authority shall be entitled to utilize such rights for any and all purposes related to the Project. The Consultant 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 Consultant or require the Consultant's permission or consent, or require the provision of any screen or equipment credit or payment of any sums to the Consultant.

g. Confidential Treatment -- The Consultant agrees that all reports, communications, documents, and information that it obtains or prepares in connection with performing this Agreement shall be treated as confidential material and shall not be released or published without prior written consent of the Authority. This includes any references to this Project that the Consultant may include in its promotional literature. 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 Consultant from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency, or other authority with proper jurisdiction, or if it is reasonably necessary for the Consultant to defend itself from any suit or claim.

SEC 11. CHANGES TO SCOPE OF SERVICES

a. Written Changes -- Changes to the Scope of Services or Project Schedule may only be made by written Change Order, amendment or modification issued by the Authority. Oral changes are neither permitted nor effective. The Consultant shall be liable for all costs resulting from any change in the Scope of Services not properly ordered by written Change Order issued in accordance with this Section and signed by the Authority Chief Executive Officer or Project Director, as appropriate.

b. Change Orders --

(1) The Authority may make changes to the Scope of Services or the Project Schedule upon written change notice to the Consultant in accordance with this Section. The

Consultant shall, within ten (10) days after receipt of such a change notice, notify the Authority in writing of any impact of the change on schedule and/or compensation.

(2) Upon agreement between the Authority and the Consultant as to the extent of such impacts on schedule and/or compensation, a Change Order, amendment or modification shall be executed by the Parties modifying the Scope of Services, Project Schedule, or other appropriate provision of this Agreement or the Exhibits. Execution of the Change Order, amendment or modification by both Parties shall constitute the Consultant's notice to proceed with the revised Scope of Services.

(3) If 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 Consultant shall proceed with the change as directed by the Authority and the matter may be submitted by either party to dispute resolution under Section 15 Disputes.

c. Immediate Revisions -- The Authority reserves the right to issue immediate revisions to the Scope of Services or Project Schedule, and in such a case the Consultant agrees to implement such revisions pending, agreement upon or resolution of the cost and schedule impact.

SEC 12. INDEMNITY

a. Professional Services Indemnity -- Consultant agrees to indemnify, hold harmless, and defend the Authority, Metro, and their respective Board Members, employees, and agents, the City of Los Angeles, the City of Culver City, and the City of Santa Monica ("Indemnitees") from and against any claims, losses, damages, or liabilities or any costs, expenses or fees, including attorneys' fees and reasonable expenses for litigation or settlement (collectively, "Claims") arising out of the actual or alleged negligence, or reckless act or omission, or willful misconduct in the performance of Services hereunder by Consultant, its subconsultants, agents, representatives, employees, or any other person for whom the Consultant is legally or contractually responsible, except to the extent caused by the negligence or willful misconduct of the party to be indemnified.

b. General Operational Indemnity -- With respect to all other operations of the Consultant in performance of this Agreement, the Consultant 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 (collectively, "Claims"), on account of bodily injury, disease or death of any person (including employees of the Consultant, its agents, representatives, or subconsultants),

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 Consultant, its subconsultants, agents, representatives, employees, or any other person for whom the Consultant is legally or contractually responsible. The Consultant 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 negligence or willful misconduct of that Indemnitee.

c. Indemnitees Independent of Insurance: The indemnity obligations of Consultant shall be in effect whether or not the Consultant maintains or fails to maintain insurance as required in Section 14 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 10 e and Section 23 of this Agreement.

SEC 13. DISCLAIMER OF LIABILITY

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

SEC 14. INSURANCE

Consultant shall, before performing any Services 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 the RFQ.

a. Minimum Scope of Insurance. Coverage shall endure for at least the term of this Agreement and include at least:

(1) Insurance Services Office Commercial General Liability coverage (occurrence form CG0001)

(2) Insurance Services Office form number CA0001 covering Automobile Liability, code 1 (any auto).

(3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(4) Professional Liability Insurance

b. Minimum Limits of Insurance:

Consultant shall maintain limits of no less than:

(1) General Liability: \$ 1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be twice the required occurrence limit or \$2,000,000. Products/Completed Operations aggregate shall apply separately to this contract/agreement or the aggregate limit shall be twice the required per occurrence limit.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance

(4) Professional Liability: \$5,000,000 per occurrence.

c. Endorsements: The insurance policies required herein shall contain, or be endorsed to contain, the following provisions:

(1) Exposition Metro Line Construction Authority, its officials and employees and Los Angeles County Metropolitan Transit Authority (Metro) are to be covered as additional insureds as respects liability arising out of the activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned leased, hired or borrowed by the Consultant. The general liability coverage shall also include contractual, personal injury, independent contractors and broad form property damage liability. The coverage shall contain no special limitations on the scope of protection afforded to Metro, its subsidiaries, officials and employees.

(2) For any claims related to this Project, the Consultant's insurance coverage shall be primary insurance as respects Authority, its officials and employees and Metro. Any insurance or self-insurance maintained by Authority shall be excess of the Consultant's insurance and shall not contribute with it.

(3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Authority, officials and employees and Metro.

(4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Authority.

(6) Workers' Compensation and Employer's Liability policies shall provide a waiver of subrogation in favor of Authority.

(7) Professional Liability insurance shall be continued, and evidence provided to Authority, for two years following the expiration of the contract or, tail coverage provided for two years in the event of cancellation or non-renewal.

d. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and amounts over \$25,000 approved by Authority. Liability for any deductibles or self-insured retentions, regardless of amount, shall be entirely the responsibility of Consultant.

e. Required Ratings. Insurance is to be placed with California-admitted insurers having ratings not less than "A- VII" in the current A.M. Best's rating guide , unless otherwise approved by Authority. All required insurance 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.

f. Verification of Coverages.
Consultant shall furnish Authority with original endorsements and certificates of insurance evidencing coverage required by this clause as set forth above and on a continuing basis, including renewals or replacements, throughout the term of the Agreement, and, with respect to professional liability insurance, for the number of years after completion of the Services as provided in this Agreement. All documents are to be signed by a person authorized to bind coverage on behalf of the insurer. All documents are to be received and approved by Authority before performance of the Services commences. If requested by Authority, the Consultant shall submit copies of all required insurance policies, including endorsements, affecting the coverage required by these specifications. Failure of the Consultant to maintain the insurance required in this Agreement shall constitute a material breach of this Agreement.

g. Subconsultant Insurance.
If the Consultant engages subconsultants in performance of the Services under this Agreement, the Consultant shall include all subconsultants as insured under its policies or shall require each such entity to obtain and maintain insurance as is required of Consultant herein, unless otherwise agreed by the Authority, and shall delivery to the Authority certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein. If requested by Authority, the Consultant shall submit copies

of all required insurance policies, including endorsements affecting the coverage required by these specifications.

SEC 15. DISPUTES

a. General -- Any dispute between the Consultant 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 Consultant's Project Manager and the Authority Project Director. If the dispute remains unresolved fifteen (15) days after it first arises, the Consultant may request in writing 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 and provide a copy to the Consultant.

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 Consultant submits a written request for review to the Authority's CEO. In connection with any such review, the Consultant 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 by the Authority's CEO, either party may seek resolution through referral to non-binding mediation. 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.

d. Requirement to Proceed -- Pending final resolution of a dispute under this Section, the Consultant shall proceed diligently with performance in accordance with the Agreement and the Project Director's recommended decision.

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

f. Construction Contractor Claims -- If claims are filed by any Authority construction contractor relating to the Services performed by Consultant, and additional information or assistance from the Consultant is required in order to evaluate or defend against such claims, Consultant agrees to make itself available for consultation with the Authority's construction

contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

SEC 16. SUBCONTRACTING

a. Requirement for Approval -- The Consultant shall not enter into any agreement or contract with a Major Sub-consultant except with the prior review and written approval of the Authority. The Consultant shall be fully responsible for all work performed by all subconsultants.

b. Substitution of a Sub-consultant; SBE -- Should Consultant wish to replace a certified Small Business Enterprise subconsultant, Consultant must submit documentary evidence of the efforts it made to replace the SBE with another SBE firm before the Consultant is granted approval to substitute with a non-SBE firm. Sufficient efforts include at a minimum, but are not limited to, a dated log of SBE names, contact persons, phone numbers and methods used for following-up on solicitations. All substitutions are subject to the approval of the Authority. The Authority will consider authorizing the substitution of a SBE \subconsultant for the below listed reasons:

(1) The listed SBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract is based upon the general terms, conditions, plans and specifications for the Project, or on the terms of such subconsultant's or suppliers written bid, is presented by the Consultant.

(2) The listed SBE becomes bankrupt or insolvent.

(3) The listed SBE fails or refuses to perform his subcontract or furnish the required services or listed materials.

(4) The listed SBE fails or refused to meet the insurance requirements of the Agreement and/or Consultant.

(5) The listed SBE is not duly licensed as required by California law, as applicable.

(6) The Authority determines that the work performed by the listed SBE is substantially unsatisfactory and is not in accordance with the plans and specifications or the Scope of Work, or that the SBE is substantially delaying or disrupting the progress of the Project.

c. Authority Not a Party -- Any approval of a subcontract shall not be construed as making the Authority a party to such subcontract, giving the subconsultant privity of contract with the Authority, or subjecting the Authority to liability of any kind to any subconsultant.

d. Copies -- The Consultant shall furnish, at the Authority's request, copies of any subcontracts for the performance of work under this Agreement.

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

SEC 17. SMALL BUSINESS ENTERPRISE PROGRAM

The Consultant has committed to achieve a level of participation greater than or equal to the SBE 19% goal established by the Authority for this project. The Consultant will comply with the Authority's Small Business Enterprise policy, goal and related Small Business requirements as detailed in Exhibit C to this Agreement.

SEC 18. ASSIGNMENT

The Consultant may not assign this Agreement, or any portion thereof or transfer any interests, rights, duties, or responsibilities of the Consultant 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 this provision does not apply to subcontracting permitted in accordance with Section 16.

SEC 19. CONFLICT OF INTEREST

a. Restriction on Participation -- The Consultant shall not permit any officer, official or employee of the Authority to have any financial interest in the Agreement prohibited by Sections 1090 *et seq.* and 87100 *et seq.* of the Government Code. In addition, the Consultant 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 Consultant's proposal, the Consultant 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 Consultant. If any such interest becomes known to the Consultant at any time, the Consultant 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 Consultant nor any of its employees, agents, representatives or subconsultants shall offer or give to an officer, official or employee of the Authority any gifts, gratuities, favors, or anything of a monetary value.

c. Administrative Code - Conflict of Interest -- Neither the Consultant nor any of its employees, agents, representatives or subconsultants shall take any action prohibited by the Authority's Administrative Code, including provisions concerning ethics and Conflict of Interest.

SEC 20. ORGANIZATIONAL CONFLICT OF INTEREST

The Consultant 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 Consultant. The Consultant 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 Consultant shall promptly notify the Authority.

SEC 21. DEBARMENT/SUSPENSION STATUS

Prior to entering into this Agreement, the Consultant provided the Authority with a certification addressing its debarment and suspension status and that of its principals. The Consultant shall promptly inform the Authority of any change in the suspension or debarment status of the Consultant or its principals during the term of this Agreement.

SEC 22. LICENSING AND TAXES

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

SEC 23. INDEPENDENT CONTRACTOR

a. Status of Consultant. The Consultant is an independent contractor, and nothing contained in this Agreement or in any other of the Contract Documents shall be construed as constituting any relationship with the Authority other than that of an independent contractor. In no event shall the relationship between the Authority and the Consultant be construed as creating any relationship whatsoever between the Authority and the Consultant's employees. Neither the Consultant nor any of its employees is or shall be deemed to be an employee of the

Authority. Except as otherwise specified in this Agreement, the Consultant 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 subconsultants and for all other persons that the Consultant or any sub-consultant hires to perform or assist in performing the Services.

b. Payment of Taxes -- The Consultant agrees to pay all required taxes on amounts paid to the Consultant under this Agreement, and to indemnify, defend, and hold the Authority harmless from any and all taxes, assessments, penalties, and interest asserted against the Authority by reason of the independent contractor relationship created by this Agreement or by reason of the Consultant's failure to pay taxes when due. In the event that the Authority is audited by any Federal or State agency regarding the independent contractor status of the Consultant and the audit in any way fails to sustain the validity of an independent contractor relationship between the Authority and the Consultant, then the Consultant agrees to reimburse the Authority for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

c. Workers Compensation Compliance -- The Consultant shall fully comply with the workers' compensation laws applicable to the Consultant and its employees. The Consultant further agrees to indemnify, defend, and hold the Authority harmless from any failure of the Consultant to comply with applicable workers' compensation laws. The Authority shall have the right to offset against any amounts otherwise due to the Consultant under this Agreement any costs incurred by the Authority resulting from any such failure to comply or resulting from Consultant's failure to promptly pay to the Authority any reimbursement or indemnification arising under this Section.

SEC 24. PREVAILING WAGES

a. The Consultant is aware of and shall comply with the requirements of California Labor Code Sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* (collectively, the "Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Consultant is responsible for determining which Services are subject to the Prevailing Wage Laws, and for compliance with such Prevailing Wage Laws as applicable.

b. The Consultant is further 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 Consultant will comply with such provisions before commencing the performance of the work hereunder.

c. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the Authority, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

SEC 25. COMPLIANCE WITH LAWS AND PERMITS; NONDISCRIMINATION

a. The Consultant 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 Consultant shall furnish to the Authority written confirmation of its compliance with all such laws, orders, and regulations.

b. In connection with the performance of Services provided for under this Agreement, Consultant agrees to that it will not, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, sex, sexual orientation or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State or local laws.

SEC 26. 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 Consultant 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 27 and 29, respectively.

SEC 27. TERMINATION FOR CONVENIENCE

a. General Authority -- The performance of Services 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 Consultant of a notice of termination specifying the extent to which performance of Services 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 Consultant shall (1) stop performing the 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 Services under the Agreement as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of the 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 Consultant 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, documents, data and other material produced as a part of, or acquired in connection with the performance of, the 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 Consultant and in which the Authority has or may acquire an interest. All undisputed payments due to be made by the Authority to the Consultant shall be made by the date of termination with respect to the subject matter of the notice of termination.

c. Except as otherwise provided, settlement of claims by the Consultant 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 Consultant shall be entitled to payment for all services rendered prior to termination for which it has not previously received payment, plus reasonable termination costs.

SEC 28. 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 for convenience or default provisions contained in Sections 27 and 29.

SEC 29. 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 a federal or state proceeding for the relief of debtors is undertaken by or against the Consultant;
- (2) if the Consultant makes an assignment for the benefit of creditors; or
- (3) if the Consultant breaches any material term or violates any material provision of this Agreement, including, but not limited to, failure to make progress in the prosecution of the Services as required under this Agreement, and does not cure such breach or violation within fifteen (15) calendar days after written notice thereof by the Authority.

b. Liability and Re-procurement -- In the event that the Authority terminates the Agreement in whole or in part under this Section 29, 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 Consultant shall be liable to the Authority for costs associated with the termination of the Agreement, including costs for the procurement of replacement services by the Authority, any excess costs of such replacement services, and any increase in the Authority's costs as a result of the re-procurement of services from the date of termination to the Expiration Date of this Agreement. The Consultant shall continue the performance of the Agreement to the extent not terminated under the provisions of this Section.

c. Disputes -- Any disputes arising under this Section that cannot be resolved by the Consultant and the Authority are subject to resolution pursuant to Section 15.

SEC 30. SUSPENSION

The Authority may, by written notice, order the Consultant to suspend all or any part of the Consultant's services under this Agreement for the convenience of Authority or for events beyond the control of the Authority and the Consultant. If any such work suspension causes an increase or decrease in the cost of performance of the Services or in the time required for its performance, the Consultant 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 Consultant from proceeding immediately with any portion of the Services not suspended.

SEC 31. FORCE MAJEURE

Either party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing. Consultant shall use its best efforts to minimize any schedule extensions or additional cost to the Authority resulting from any force majeure event.

SEC 32. ACCOUNTING REQUIREMENTS

Consultant and its subconsultants shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs by line item for the Project. The Consultant and its subconsultants accounting system shall conform to Generally Accepted Accounting Principles (GAAP), and cost principles set forth in CFR 48 and CFR 49, enable the determination of incurred costs at interim points of completion, and provide support for invoices. All such records shall be clearly identifiable.

SEC 33. RECORDS RETENTION AND ACCESS TO RECORDS

The Consultant shall maintain a complete set of all books and records prepared or employed by the Consultant in its management, scheduling, cost accounting and otherwise with respect to the Project. The Consultant shall grant to the Authority, Metro, or their 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 Documents and applicable law. The Consultant shall maintain all records and documents relating to the Services and the Project (including copies of all original documents delivered to Authority) until three (3) years from the latest to occur of (i) the date of final payment under this Agreement, and (ii) the date of resolution of litigation or claims arising under this Agreement.

SEC 34. 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 35. INTERPRETATION, JURISDICTION, AND VENUE

This Agreement shall be construed and interpreted according to the laws of the State of California. The Consultant 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 36. LIMITATION OF FUNDS

The entering into of the Agreement by the Authority is subject to its receipt of local funds through Metro adequate to carry out the provisions of the Agreement in full. Funding for this Agreement is based upon the availability of funds as determined by the Authority's fiscal budget, which runs from July 1 through June 30 of each fiscal year. If funding is not approved for any subsequent fiscal year during which this agreement is in effect, the Authority will issue a stop work notice.

SEC 37. NOTICES

Official notices or correspondence related to this Agreement shall be in writing and sent to the following addresses, or to such other addresses as the Authority or Consultant may, from time to time, designate in writing pursuant to the provisions of this Section 37:

THE AUTHORITY:

Richard D. Thorpe
Chief Executive Officer
Exposition Metro Line Construction Authority
707 Wilshire Boulevard, 34th Floor
Los Angeles, CA 90017

CONSULTANT:

All communications to the Authority shall be marked with Authority's Agreement 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 38. 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 39. AGREEMENT TO CONTROL

In the event of any inconsistency between the provisions of Consultant'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 40. ENTIRE AGREEMENT; BINDING EFFECT

This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between the Consultant 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 CEO or the Chair of the Authority's Governing Board. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors.

SEC 41. EXHIBITS

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

SEC 42. 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 Consultant 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.

SEC 43. HAZARDOUS MATERIALS

Notwithstanding any other provision of this Agreement, the Consultant and Consultant's subconsultants shall have no responsibility for the presence, handling, removal, disposal or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, mold, polychlorinated biphenyl (PCB) or other toxic substances.

SEC 44. CONSTRUCTION MEANS AND METHODS

Notwithstanding anything in this Agreement, the Consultant shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures.

(SIGNATURE PAGE TO FOLLOW)

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

CONSULTANT

EXPOSITION METRO LINE
CONSTRUCTION AUTHORITY

RICHARD D. THORPE
CHIEF EXECUTIVE OFFICER

By: _____

By: _____

Date: _____

Date: _____

Approved as to Form:

By: _____

Nossaman LLP
General Counsel