

ATTACHMENT D

SAMPLE CONTRACT NO. XP8902-008

**VENICE BOULEVARD UNDERPASS-COMMUNICATION LINES JOINT TRENCH
COORDINATION & DESIGN (JTCD)**

CONTRACT

BETWEEN

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

AND

TBD

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

CONTRACT NO: XP8902-008

Between

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

707 WILSHIRE BLVD SUITE 3400

LOS ANGELES, CA 90017

And

TBD

**VENICE BOULEVARD UNDERPASS-COMMUNICATION LINES JOINT TRENCH
COORDINATION & DESIGN (JTCD)**

This Contract is entered into on this ____ day of August 2011 by and between the Exposition Metro Line Construction Authority (Authority), and TBD (Consultant) to provide Venice Boulevard Underpass-Communication Lines Joint Trench Coordination & Design (JTCD).

In consideration of the mutual covenants of the parties as set forth below, the parties hereby agree as follows:

ARTICLE I: CONTRACT DOCUMENTS ORDER OF PRECEDENCE

A. This Contract includes the Contract Documents listed in Section B, and all Attachments, all of which are incorporated herein and made a part of this Contract. **PLEASE READ ALL CONTRACT DOCUMENTS; THEY ALL APPLY.**

B. Except as otherwise specified herein, in the event of any conflict, the precedence of the Contract Documents shall be as follows:

1. Form of Contract
2. Regulatory Requirements
3. General Conditions
4. Statement of Work

C. An Amendment or Change to this Contract shall take its precedence from the term it amends. All other documents and terms and conditions shall remain unchanged.

ARTICLE II: COMPENSATION

A. The Consultant agrees to provide all of the Work for the Project according to the terms and conditions herein contained, and to accept as full payment for all Work included in the Statement of Work, the compensation described below, up to the firm-fixed price set forth in Section 1), or negotiated pursuant to, the provisions of this subsection, for the Work as follows:

- 1) The Authority and the Consultant have agreed upon a firm-fixed price of _____ (_____ Dollars) which includes all of the Consultant's costs, direct and indirect, overhead, travel and profit for the Work to be provided under this Agreement.
- 2) If the option for construction management services is exercised those services will be provided by the consultant on a time and materials basis. Those rates will be negotiated at the time the Authority decides to exercise the option.

B. Payment Schedule. Except as otherwise expressly provided, the agreed upon firm fixed fee shall be paid to the Consultant based upon approved invoices, submitted each month, and based on the following payment milestones:

- NTP 10%
- Prelim design approved by DWP PS 20%
- Bid package: plans, specs, and estimate 50%
- Approved plans (IFC) 20%

C. Invoicing. The Consultant shall submit an original and one copy of each invoice. Each invoice shall include the date, contract number, and description of the work completed. The Consultant shall also submit with each invoice a Certification for Request for Payment attached as Exhibit 1. The Authority shall pay the Consultant within thirty (30) days after the receipt of an acceptable invoice. Invoices shall be mailed to the Authority as follows:

Exposition Metro Line Construction Authority
Attention: Document Control / Contract No. XP8902-008
707 Wilshire Blvd, Suite 3400
Los Angeles, CA 90017

Authority shall remit payment to the Consultant at the following address:

TBD
Attn:
Address

The Application for Final Payment shall be marked **FINAL**.

ARTICLE III: CONTRACT TERM AND PERIOD OF PERFORMANCE

The period of performance of this Contract shall begin on _____, 2011 (hereinafter "Commencement Date"). Consultant shall complete all Work under the Contract by _____, 2012 (hereinafter "Completion Date"), unless this Contract is terminated earlier or extended by the Authority, in writing, as provided in the Contract.

The Work will be directed by the Project Director Phase 2 Monica Born.

ARTICLE V: INSURANCE

Insurance shall be in accordance with GC-15 Insurance. The applicable limits are as follows:

| | |
|--------------------------------------|------------------------------------|
| Commercial General Liability | Minimum \$1,000,000 per occurrence |
| Automobile Liability | Minimum \$1,000,000 per occurrence |
| Workers' Compensation Liability | Minimum As required by law |
| Professional Liability | Minimum \$2,000,000 per occurrence |
| Deductible or Self Insured Retention | Maximum \$10,000 |

ARTICLE VI: ENTIRE AGREEMENT

The contract documents include the following:

1. Form of Contract
2. Statement of Work, Attachment 1
3. General Conditions, Attachment 2
4. Regulatory Requirements, Attachment 3

INTENTIONALLY LEFT BLANK

This Contract Documents identified herein constitute the complete and entire agreement between the Authority and the Consultant and supersedes any prior representations, understandings, communications, agreements or proposals, oral or written.

CONSULTANT

**EXPOSITION METRO LINE
CONSTRUCTION AUTHORITY
RICHARD D. THORPE
CHIEF EXECUTIVE OFFICER**

BY: _____

BY: _____

PRINT NAME AND TITLE

DATE

DATE

DATE TAX ID NO.: _____

APPROVED AS TO FORM

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

GENERAL COUNSEL NOSSAMUN, LLP

ATTACHMENT 1
STATEMENT OF WORK
TO BE ADDED AFTER AWARD

ATTACHMENT 2

GENERAL CONDITIONS - EZ FORM SERVICES CONTRACT

1.0 DEFINITIONS

Terms and conditions marked with an asterisk (*) shall be included in any subcontract placed under this contract. "EXPO" means the Exposition Metro Line Construction Authority. "Contractor" or "Consultant" means the person, firm or corporation supplying the Work under the Contract, and includes all of its employees, representatives, subcontractors, and suppliers. "Work" means goods, equipment and materials, and all productive and operative efforts and services provided to generate the results specified, indicated or implied in the Contract to complete the project described in the Statement of Work; may also refer to Work in progress. "Modification" means a written order from Expo's Authorized Representative directing an amendment in the Work that is within the general scope of the Work described in the Statement of Work. Additional terms may be defined elsewhere in the Contract.

2.0 INDEPENDENT CONTRACTOR

Contractor is an independent contractor and is not an agent of EXPO in the performance of the Contract, and represents that it is fully experienced and properly qualified, licensed, equipped, organized, and financed to perform the Work required for the Contract and shall maintain complete control over its employees and its Subcontractors and Suppliers of any tier. Contractor shall: (1) perform the Work in compliance with the terms of the Contract in accordance with its own methods and in accordance with professional standards or skill, care, and diligence adhered to by firms recognized for their expertise and knowledge in performing similar Work, and (2) be responsible for the professional quality, technical accuracy, completeness and coordination of the Work. Nothing contained in the Contract or any Subcontract awarded by Contractor shall create any contractual relationship between any Subcontractor and EXPO. EXPO reserves the right of prior approval of all subcontractors and may provide notice to Contractor to terminate any subcontractor for any reason, and Contractor shall terminate the subcontractor in accordance with the notice.

3.0 EXPO AUTHORIZED REPRESENTATIVES

Expo's Authorized Representatives shall be its Contracting Officer, staff of Metro Creative Services or other persons designated by the Contracting Officer in a written Notice to Contractor. The authority of such designated Authorized Representatives will be limited as expressly set forth in the Notice.

Staff of Metro Creative Services will work with the Contractor to ensure that the work meets all design criteria and maintains the quality demonstrated by the previously submitted sample.

Any changes to the contract must be in writing and signed by an authorized representative of the Authority to be binding.

4.0 ACCEPTANCE BY EXPO

EXPO, in consultation with Metro creative Services, shall have a reasonable time (but not less than 30 days) after notice to inspect the Work tendered by Contractor. EXPO may in its sole discretion reject all or any portion of Work tendered for acceptance if any portion does not comply in every respect with each and every term and condition of this Contract or does not meet the quality of the representative sample submitted by the Contractor during the procurement phase of this project. If EXPO elects to accept nonconforming Work, in addition to its other remedies, EXPO may deduct a reasonable amount from the Contract Price to compensate EXPO for the nonconformity. Any acceptance by EXPO, even if unconditional, shall not be deemed a waiver or settlement of any defect in the Work. In determining whether or not to accept the Work, Expo may be guided by Metro Creative Services. Any acceptance of the Work will be in writing and will be signed by Metro Creative Services and Authority representatives.

Until accepted by EXPO as provided above and received by the Framer, Contractor shall bear all risk of loss and damage, unless such loss or damage results solely from the active negligence of EXPO or Metro Creative Services. Notwithstanding any acceptance by EXPO, Contractor shall not be relieved of any obligation hereunder, including its obligations to complete any portion of the Work, the non-completion of which was not disclosed to EXPO (regardless of whether such nondisclosures were fraudulent, negligent, or otherwise); and Contractor shall remain obligated under all those provisions of this Contract which expressly or by their nature extend beyond and survive final acceptance of the Work.

5.0 ASSIGNMENT

Contractor shall not assign any right or delegate any duty without the prior written consent of EXPO.

6.0 EXTENSION OF TIME

EXPO will grant Contractor an extension of time to perform the Work if the delay is caused by circumstances which are both beyond its control and not foreseeable, but in no event shall Contractor be excused for any inability to obtain goods or services necessary for Contractor's performance or for failure to take reasonable precautions or actions to mitigate the delay.

7.0 WARRANTY

Contractor warrants that the Work shall (a) comply with each requirement of this Contract, (b) be of merchantable quality; (c) be fit for the particular needs and purposes of EXPO as communicated to Contractor in the Statement of Work; and (d) not be restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties is breached, Contractor shall correct all defects and nonconformities, be liable for all direct, indirect, consequential and other damages suffered by EXPO and any other persons, and defend and indemnify EXPO from any claim asserted by any person resulting in whole or in part from such breach.

8.0 TERMINATION

Expo may, by written Notice to Contractor, terminate this Contract in whole or in part at any time, either for EXPO's convenience or for default.

- A. Default.** If Contractor is in default of any provision of this Contract, EXPO may terminate in whole or in part, and Contractor shall be liable for all damages arising out of the default. If in EXPO's reasonable judgment a default can be cured, prior to termination for default EXPO may issue a Cure Notice to Contractor. If Contractor fails to cure the default within five (5) days, or commence and complete the cure in accordance with such additional time limits as may be described in the Cure Notice, EXPO may terminate for default.
- B. Convenience.** If EXPO terminates all or any part of this Contract for EXPO's convenience EXPO will compensate Contractor to the extent provided and in accordance with the applicable portions of Part 49 of the Federal Acquisition Regulations. EXPO will not compensate Contractor for any services not performed or goods not shipped by the date of such termination.

9.0 MODIFICATIONS

EXPO may direct changes in the Work by Modifications. If a Modification results in an increase or decrease in costs to be incurred or time needed to complete performance of this Contract, then Contractor shall submit a written proposed adjustment in the contract Price and/or schedule, and the parties shall make a fair and equitable adjustment.

10.0 FORCE MAJEURE

Force Majeure events are limited to (1) events beyond the control and not due to an act or omission of the Consultant, the effects of which materially and adversely affect the Consultant's ability to fulfill its obligations hereunder, and (2) events, the effects of which could not have been avoided by due diligence and reasonable efforts of the Consultant. Force Majeure events include natural disasters, wars, riots, civil disorders, sabotage, strikes, labor disputes, freight embargos and weather conditions more severe than normal. An earthquake of less than 3.5 on the Richter Scale shall not be a Force Majeure event.

11.0 RESOLUTION OF DISPUTES

The Parties shall use their best efforts to resolve disputes by negotiation or mutually agreed alternate dispute resolution (ADR) process such as mediation or arbitration. If the Parties are unable to resolve the dispute, it may be pursued by either party in the courts of Los Angeles County or in the Federal District Court for the Central District of

California. All rights and remedies of EXPO and Contractor shall be cumulative. Unless otherwise directed by EXPO, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

12.0 INDEMNITY

Contractor shall indemnify, defend and hold harmless EXPO, its officers, representatives and employees, from and against all liability, demands, claims, suits, losses and expenses whatsoever ("Liability"), including attorneys fees, whether direct or consequential, on account of (1) any loss, injury to or death of any person or persons or damage to any property (including without limitation all property owned by, leased to or used by either Contractor or EXPO or both), or (2) any loss or damage to business or reputation or privacy of any person, arising in whole or in part from Contractor's performance hereunder, and regardless of whether such Liability results in whole or in part from the negligence or omission of EXPO. Liability resulting solely from EXPO's gross negligence or willful misconduct is excluded from this indemnity.

13.0 APPLICABLE LAW

This Contract and the performance hereunder shall be construed according to the law of California. Contractor shall at all times comply with all applicable laws, regulations and codes.

14.0 PUBLIC RECORDS ACT

- A. All records, documents, drawings, plans, specifications, and all other information relating to the conduct of the Authority's business, including information submitted by the Consultant, shall become the exclusive property of the Authority and shall be deemed public records. Said information shall be subject to the provisions of the California Public Records Act (Government Code §6250 et. seq.). The Authority's use and disclosure of its records are governed by this Act. The Authority will use its best efforts to inform the Consultant of any request for any documents provided by the Consultant to the Authority marked "Trade Secret", "Confidential" or "Proprietary" or any financial records provided by the Consultant to the Authority.
- B. In the event of litigation concerning the disclosure of any information submitted by the submitting party, the Authority's sole involvement will be as a stakeholder, retaining the information until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the information and shall indemnify and hold the Authority harmless from all costs and expenses including attorney's fees in connection with any such action.

15.0 NO WAIVER

Failure or delay of EXPO to enforce at any time any provision of the Contract shall not be construed as a waiver thereof. No waiver by EXPO of any breach of any provision of the Contract shall constitute a waiver of any other breach of such provision.

16.0 INSURANCE

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons, or damages in property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, or employees.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG0001)
2. Insurance Services Office form number CA0001 covering Automobile Liability.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability Insurance

MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

1. Commercial 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. Commercial Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation to comply with California's statutory requirements.
4. Professional Liability \$2,000,000 per occurrence.

OTHER INSURANCE PROVISIONS

The insurance policies required per the terms of the contract are to contain, or be endorsed to contain, the following provisions:

1. The AUTHORITY, its subsidiaries, officials and employees 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 coverage shall contain no special limitations on the scope of protection afforded to the AUTHORITY, its subsidiaries, officials and employees.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the AUTHORITY, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by the 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 the AUTHORITY, its subsidiaries, officials and employees.
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 Accord Certificate of insurance required by this contract shall be worded 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 has been given to the AUTHORITY. Cancellation provision should also delete the words, "endeavor to".
6. Workers' Compensation and Employer's Liability policies shall provide a waiver of subrogation in favor of the AUTHORITY.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to, and amounts over \$25,000 approved by the AUTHORITY.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with California admitted insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by the AUTHORITY or non-admitted carriers on the California Department of Insurance's approved list.

VERIFICATION OF COVERAGE

Consultant shall furnish THE AUTHORITY with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer. All documents are to be received and approved by the AUTHORITY before work commences. If requested by the AUTHORITY, the Consultant shall submit copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

SUB-CONSULTANTS

Consultant shall include all sub-consultants as insured under its policies or shall furnish separate certificates and endorsement for each sub-consultant. All coverage's for sub-consultants shall be subject to all of the requirements stated herein. If requested by the AUTHORITY, the Consultant shall submit copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

17.0 PAYMENT TO SUBCONTRACTORS

- A. Applicability.** This Article applies only if Consultant has employed sub-consultants.
- B. Requirements**

1. Payments - Consultant shall pay each sub-consultant under this Contract for satisfactory performance of its subcontract no later than ten (10) days after its receipt of each Payment from Expo.
2. Release of Retention to Sub-consultants - Consultant shall pay to each sub-consultant all amounts it has retained from payments under the subcontract within ten (10) days after the sub-consultant's Work is satisfactorily completed.
3. Delay in Payment – Consultant shall not delay payment beyond the ten (10) day time limit except for good cause.

C. Failure to Comply

If Expo determines that Consultant has failed to comply with this Article, Expo may give written notice to Consultant and Consultant's Surety describing the default, that the default shall be cured, and if the default is not cured as provided the Article entitled TERMINATION FOR DEFAULT in the GENERAL CONDITIONS of this Contract, the Contract may be terminated for default as provided therein, or Expo may exercise any other remedy it has under the Contract or Law.

18.0 SAFETY AND LOSS PREVENTION

This Article is to be construed in its broadest sense for the protection of persons and property by the Contractor and no action or omission by EXPO, the Contracting Officer, any Authorized Representative or any other person shall relieve the Contractor of any of its obligations and duties hereunder.

A. EXPO's Safety Principles

1. Safety is a 24/7 priority
2. Safety is everyone's responsibility
3. Accidents and injuries are preventable
4. Working safely is a condition of employment

B. Contractor Responsibilities

The Contractor is responsible for:

1. Complying with all applicable safety Laws
2. Enforcing Worksite safety practices; and
3. The discovery, determination and correction of any unsafe conditions related to the Contractor's performance of the Work or Goods supplied by the Contractor on EXPO property.

4. The Contractor shall cooperate and coordinate with EXPO and with other EXPO Contractors on safety matters and shall promptly comply with any specific safety instructions or directions given to the Contractor by EXPO.

C. Safety Practices

1. The Contractor shall inform its personnel of EXPO safety practices and the requirements of EXPO's safety program.
2. If any of the Contractor's personnel are required to visit any Worksites, the Contractor shall furnish suitable safety equipment and enforce the use of such equipment by those personnel. The Contractor shall cooperate and coordinate with EXPO and with other EXPO Contractors on safety matters and shall promptly comply with any specific safety instructions or directions given to the Contractor by EXPO.

19.0 ENGLISH REQUIREMENTS

At all times, all Consultant personnel on site must have sufficient knowledge of the English language to comprehend safety related directions and requirements. At all times the Consultant shall have a lead representative on site who has sufficient comprehension of the English language to read, write, speak and understand all job related directions and discussions.

ATTACHMENT 3

REGULATORY REQUIREMENTS

RR-01 ADMINISTRATIVE CODE *

A. Applicability

This Article applies to all contracts.

B. Exposition Metro Line Construction Authority Administrative Code

Contractor warrants and represents that it has read and understands Title III, Contracting and Procurement, and Title II, Ethics, of the Exposition Metro Line Construction Authority Administrative Code (hereinafter "Administrative Code"), and will comply with each and every one of those requirements in accordance with their terms to the extent that they are applicable to contractors doing business with Exposition Metro Line Construction Authority (the "Authority"). All definitions used in the Administrative Code are hereby incorporated herein as though fully set forth.

Without reducing or affecting its obligation to comply with any and all provision of the Administrative Code, as applicable, Contractor specifically warrants, represents and covenants that it will:

1. Comply with:

a. Chapter 2, Specific Conflict of Interest Provisions, and;

2. Not induce, attempt to induce, or solicit:

a. Board members to violate Chapter 2;

b. The Authority employees to violate Chapter 2;

c. Either Board members or Authority employees to violate any other provision of the Administrative Code.

C. Compliance with §§1090 et. seq. and §§87100 et. seq. of the California Government Code

Contractor shall comply with all applicable provisions of §§1090 et. seq. and §§87100 et. seq. of the California Government Code. Without reducing or affecting its obligation to comply with any and all of said provisions, Contractor specifically covenants:

1. Contractor shall not cause or permit any member, officer, or employee of the Authority to have any financial interest in the Contract;
2. Contractor shall not enter into any Subcontract involving services or property with a person or business prohibited from transacting such business with the Authority;
3. Contractor warrants and represents that to its knowledge no Board member, officer, or employee of the Authority has any interest, whether contractual, non-contractual, financial or otherwise, in this Contract, or in the business or any other contract or transaction of the Contractor or any Subcontractor and that if any such interest comes to Contractor's knowledge at any time, Contractor shall make a full and complete disclosure of all such information in writing to the Authority.

D. Campaign Contributions

Neither Contractor nor its Agents shall give or offer to give any campaign contribution to any member of the Authority's Board of Directors in violation of the California Government Code §§84300 et seq or of the Administrative Code. Contractor shall submit a Certification of Campaign Contributions with all Change Orders of two hundred thousand dollars (\$200,000) or more.

RR-02 DISCRIMINATION *

- A. Applicability
This Article applies to all contracts.
- B. In connection with the performance of Work provided for under this Contract, Contractor agrees 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.

RR-03 WHISTLEBLOWER REQUIREMENTS *

- A. Applicability
This Article applies to all contracts.
- B. Contractor shall not adopt any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee believes the information discloses violation or noncompliance with a state or Federal regulation; nor shall Contractor retaliate against an employee for taking such actions as set forth in the

RR-04 PUBLIC RECORDS ACT *

A. Applicability

This Article applies to all contracts.

B. Except as otherwise provided herein, all records, documents, drawings, plans, specifications, and all other information relating to the conduct of the Authority's business, including all information and documents submitted by Contractor ("**Records**"), shall become the exclusive property of the Authority and shall be deemed public records. Said Records are subject to the provisions of the California Public Records Act (Government Code §6250 et. seq.). The Authority's use and disclosure of its records are governed by this Act. The Authority will use its best efforts to inform the Contractor of any request for any financial records or documents marked "Trade Secret", "Confidential" or "Proprietary" provided by Contractor to the Authority. The Authority will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.

C. In the event of litigation concerning the disclosure of any Records, the Authority's sole involvement will be as a stakeholder, retaining the Records until otherwise ordered by a court. The submitting party, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the Records and shall indemnify and hold the Authority harmless from all costs and expenses including attorney's fees in connection with any such action.