

**ATTACHMENT B**

**CONTRACT NO. XP8901-847**

FOR

**CLAIMS SUPPORT SERVICES**

BETWEEN

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

AND

CONSULTANT

MARCH 2012

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## EXHIBITS

Exhibit A – Scope of Work  
Exhibit B – Key Personnel  
Exhibit C – Payment Certification

## AGREEMENT FOR PHASE 1 CLAIMS SUPPORT SERVICES

This AGREEMENT is entered into this day of March 2012, by and between the Exposition Metro Line Construction Authority (“Authority”), a public entity of the State of California, and (“Consultant”) for the provision of claims support services for the Exposition Light Rail Transit Project.

WHEREAS, the Authority has determined that it needs claims support for Phase 1 of the Exposition Light Rail Transit Project.

WHEREAS, the Authority conducted a qualifications-based competitive procurement process (RFP No. XP8901-847) to select a firm to provide claims support services for Phase 1

WHEREAS, based on that procurement process, the Authority determined that the Consultant was the most qualified firm to perform the required claims support services.

WHEREAS, the Authority and the Consultant have successfully negotiated the terms and conditions to apply to the Consultant’s services, including the fully burdened labor rates.

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

### SEC. 1. DEFINITIONS

(1) **Agreement or Contract.** The terms “Agreement” and “Contract” mean the Agreement for Engineering and Claim Support Services to be entered into by the Authority and the Consultant.

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

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

(3) **Consultant.** The term “Consultant” means the entity that is selected by the Authority and that is awarded the contract to provide Claims Support services for the Authority.

(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) RFP No. XP8901-847, including any addenda thereto; and
- (C) The Consultant’s response to the RFP.

(5) **Contracting Officer.** The term “Contracting Officer” means the Authority Chief Executive Officer unless otherwise delegated.

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

(5) **Dispute.** The term “dispute” shall mean a disagreement between the parties as to the merits, amount or remedy arising out of an issue in controversy, including a disagreement regarding a Claim or asserted default.

(6) **Dispute Review Board “DRB”.** The term “Dispute Review Board” refers to a three member panel established to assist in the resolution of disputes arising out of the conduct of the Work associated with the design and construction of the Exposition project.

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

(8) **Key Personnel.** The term “Key Personnel” means the Proposers Project Manager, Lead Claim Consultant, and Forensic Cost Engineer.

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

(10) **Phase 2.** The term “Phase 2” means the proposed extension to Phase 1 of the Exposition Project, which would run approximately 6.5 – 7.5 miles from the terminus of Phase 1 in Culver City to Santa Monica.

(11) **Project.** The term “Project” means the Phase 1 of the Exposition Corridor LRT Project.

(12) **RFP.** The term “RFP” means the Authority’s Request for Proposals No. XP8901-847.

(14) **Task Order.** The term “Task Order” shall have the meaning set forth in Section 4 B.

(15) **Work.** The term “Work” means all of the claims or engineering investigative requirements of the Authority as described in Exhibit A.

## SEC. 2. BASIC ELEMENTS OF AGREEMENT

A. Agreement to Retain -- The Authority hereby employs and retains the Consultant to provide professional services for the Project in accordance with the terms and conditions set forth in this Agreement, for the Not to Exceed price stated herein, and hereby contracts to pay the Consultant for those services, in the manner and upon the conditions set forth in this Agreement.

B. Agreement to Provide Services -- The Consultant hereby agrees to provide all claims support and related services described in the Scope of Work in Exhibit A, in accordance with the provisions of this Agreement and the other Contract Documents.

## 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 professional services of the Consultant under this Agreement.

## SEC. 4. CONTRACT AWARD AND TASK ORDER ASSIGNMENT

A. Contract Award and Execution—Pursuant to the authorization of the Governing Body, the Authority and the Consultant have negotiated final contract terms and conditions, the Consultant has provided proof of insurance coverage and satisfied all contingencies identified in the Procurement Manager’s Notice of Award and has executed this Agreement. Execution of the Agreement by both parties shall be deemed to constitute Contract Award by the Authority.

B. Task Orders -- Work under this Agreement will be assigned to and performed by the Consultant in the following sequence:

(1) Step 1 – The Authority Project Director will issue a request for quote (RFQ) specifying the general concern, issue, claim, scope of work (SOW), etc. which the Authority needs investigated/analyzed. General deliverables shall be specified.

(2) Step 2 – Consultant will expand, if necessary, on the SOW and then propose labor hours by previously negotiated labor categories plus any associated “Other Direct Costs (ODC)” anticipated to accomplish the proposed scope. Labor hour/ODC information should be provided on a Form 60.

(3) Step 3 – The Authority Project Director will negotiate and/or accept the proposed quote and issue a Task Order to proceed with the requested service.

**SEC. 5. SCOPE OF WORK AND PERFORMANCE REQUIREMENTS**

A. Scope of Work -- The services to be performed by the Consultant shall include all of the tasks described in the Scope of Work 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 appropriate prevailing professional practice standards; and shall furnish all necessary labor, supervision, materials, and supplies. Notwithstanding the provision of any drawings, technical specifications, or other data by the Authority, the Consultant shall have the responsibility of supplying all items and details required to perform the professional services specified in this Agreement. The Consultant shall perform all of its professional services in its own name and as an independent contractor (as provided in Section 25), 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 a practitioner in the architectural and engineering profession 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.

C. Reports -- The Consultant shall prepare, complete, and submit to the Authority all necessary reports and supporting data required to complete the Scope of Work.

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, except when such error or omission was directly caused by 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 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, for purposes of data collection or field reconnaissance. 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 Work accordingly.

H. No Limitations or Disclaimers -- The Consultant agrees that it will not place any notes, notices, or stamps, or other similar statements on the deliverables that it submits to the Authority which seek to disclaim or limit the Consultant's responsibility regarding such deliverables; provided that nothing herein shall limit the right or obligation of the Consultant to add appropriate language to allow for the proper interpretation of its deliverables and other data in accordance with prevailing professional practice standards.

## SEC. 6. PROJECT SCHEDULE

A. Project Schedule -- The Project Schedule for the services to be performed by the Consultant will be established by the Authority's Project Director. Time is of the essence in the performance of Work under this Agreement.

B. Contract Term -- The initial term of this contract will be for one year from the date of award. This period will be for all work associated with Phase 1 of the Exposition Light Rail Project. At its sole discretion, the Authority may choose to extend this contract for a period of up to two years. In addition the Authority retains the option to assign claims filed under Phase 2 of the Exposition Light Rail Project. Should the Authority exercise this option, Consultant agrees to keep all charges and records for Phases 1 and 2 separate and to bill separately for work performed for Phase 2.

C. Completion Requirements -- The Consultant agrees to commence Work promptly on the issuance of the Task Order, to perform Work in a timely manner in accordance with the Project Schedule.

D. Delays -- Except as otherwise provided in this Agreement, when either party has knowledge that any actual or potential situation will delay or threaten to delay the timely performance of the Scope of Work in accordance with the Project Schedule, that party shall immediately give written notice thereof to the other party, including all relevant information concerning the actual or potential delay.

E. Changes to Schedule -- (1) The Authority may, in its sole discretion, approve revisions to the Project Schedule at the request of the Consultant. However, if any such requested revisions to the Project Schedule are not approved by the Authority, the Consultant acknowledges that the Project Schedule shall be maintained.

(2) The Consultant also recognizes that changes to the Project Schedule may be made by the Authority in accordance with Section 12.

F. Reports -- The Consultant shall submit reports to the Project Director as required.

**SEC. 7. COMPENSATION**

A. Cost and Fee Amounts -- The Consultant agrees to provide all of its professional services for the Project according to the terms and conditions herein contained, and to accept as full payment for all professional services included in the Scope of Work, an amount not to exceed the hourly fully burdened labor rates specified herein, or negotiated pursuant to, the provisions of this subsection, as follows:

(1) Not to Exceed Amount -- The Authority and the Consultant have agreed upon a price not to exceed **To Be Determined** for the duration of this agreement.

(2) Labor Hour Rates -- The Authority and the Consultant have agreed that the Labor Hour Rates will be fixed for the first twenty four months of this agreement. Prior to commencement of the last twelve months of this agreement the Authority has agreed to evaluate supporting rationale and entertain discussions about possible labor rate changes for the remainder of the agreement. Labor rates by category for the first twenty four months after NTP are:

Principal	
Senior Consultant	
Consultant	
Analyst	
Administrative Staff	

(3) Overhead Calculation -- The Authority and the Consultant recognize that the overhead rate has been established and will applied in accordance with the Form 60 submitted with Consultant's proposal dated XXX.

(4) Fee Calculation -- The Authority and the Consultant recognize that fee has been established and will applied in accordance with the Form 60 submitted with Consultant's proposal dated XXX.

(4) Other Direct Costs -- Other direct costs shall be reimbursed only at the actual and reasonable cost and as set forth in the Contractor's Form 60 for each task order assigned. No fee or other mark-up shall be applied to other direct costs.

B. Travel Costs -- Travel costs shall be reimbursed consistent with the Request for Proposal XP8901-847 and the Exposition Metro Line Construction Authority's Travel and Business Expense Policy.

C. Reduction in Scope -- If it is determined by the Authority during the progress of the provision of professional services by the Consultant that some of the professional services either specified in the Scope of Work or a current Task Order are unnecessary prior to Consultant's completion of such professional services, the quantity of labor hours accepted on the Form 60 may be adjusted by the appropriate amount pursuant to a Change Order issued under Section 12.

D. Additions to Scope -- If it is determined by the Authority during the progress of Consultant's performance of the professional services that additional professional services over and above, and not inherent in, those set forth in the Scope of Work are required, quantity of labor hours may be adjusted by an appropriate amount. The professional services affected by any such modification shall not be commenced until either a limited notice to proceed or an appropriate Change Order has been issued in writing by the Authority pursuant to Section 12.

E. 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 hereunder to the satisfaction and approval of the Authority. If the Authority fails to approve any or all 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 should be sent to the attention of the Authority's Document Control Section and shall contain the following information:

- (1) The Agreement Number (XP8901-847)
- (2) Invoices shall cite the authorizing Task Order number.
- (3) Supporting documentation for labor hours and costs shall be included with each monthly invoice.
- (4) The breakdown of hours and costs should separately identify any additional work outside the original Scope of Work ("Additional Scope") which has been approved by the Authority. Documentation of the prior written approval received from the Authority for Additional Work (if any) shall be attached to this cost breakdown.

(5) 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.

B. 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.

C. Notifications-- (1) The Consultant shall notify the Authority in writing prior to incurring 85% of the not to exceed cost amount for any Task Order issued. The notice shall also include an estimate of compensation that will be required to complete in full the Scope of Work for that Task Order, as specified in Exhibit A. Consultant shall also notify the Authority in writing prior to incurring 85% of the total contract not-to-exceed amount.

(2) The Consultant shall notify the Authority in writing prior to the Consultant or its sub consultants incurring any travel costs associated with the Work. The Consultant and its sub consultants shall comply with the requirements of the Exposition Metro Line Construction Authority's Travel and Business Expense Policy.

D. Additional Services -- Additional Services which the parties agree are outside the Scope of Work shall be compensated for in an amount that the parties mutually agree to in advance, and such amount will be invoiced and paid in accordance with the terms hereof. The Consultant shall not be entitled to compensation for Additional Services unless the Consultant has obtained prior written authorization in the form of a Task Order and/or a Task Order Modification from the Authority.

E. Prompt Payment to Subcontractors -- (1) No later than thirty (30) days after receiving payment from the Authority for work satisfactorily performed by any of its subcontractors for services provided under this Agreement, the Consultant shall make full payment to its subcontractors of all compensation due and owing under the relevant subcontract, unless excused by the Authority for good cause.

(2) The Consultant may only delay or postpone any payment obligation (or retention) to any of its subcontractors for services provided under this Agreement if the Authority determines, in its sole discretion, that the Consultant has shown 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 subcontractor must be made in writing prior to the time when payment to the subcontractor would have been otherwise due.

**SEC. 9. CONSULTANT PERSONNEL**

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

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

C. Removal -- The Authority Project Director shall have the right to direct the removal by the Contractor of any of the personnel listed in Exhibit B, for reasonable cause and by advance written notice.

D. No Replacements without Approval -- The Consultant shall not replace or remove its Project Manager or any of the other Key Personnel during the term of this Agreement without the prior written approval of the Authority's Project Director.

If the Consultant replaces the Project Manager without prior approval from the Authority, it will be assessed liquidated damages in the amount of \$50,000 for each such violation. Removal or replacement of any other identified Key Personnel, without prior approval will result in an assessment of \$10,000 for each such violation.

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

(2) The Consultant shall be responsible for any additional costs caused by the substitution of personnel for those 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 the Plans -- (1) All reports, studies, and other documents or instruments of service prepared or obtained by the Consultant in the course of performing Work under this Agreement shall be delivered to and be the property of the Authority. The Consultant and its subcontractors shall convey and transfer all copyrightable interests in such documents and instruments to the Authority upon completion of all services under this Agreement and upon payment in full of all compensation due to the Consultant in accordance with the terms of this Agreement. Basic analysis, sketches, charts, computations and similar data prepared or obtained by the Consultant under this Agreement shall, upon request, also be made available to the Authority.

(2) The Authority agrees to use the Consultant generated data/analysis for purposes of Phase 1 of the Exposition Project only, and not to use the original Consultant generated data in connection with any other project.

(3) In the event of the return of the Consultant generated data 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 data or other documents for its files. Under no circumstances shall the Consultant fail to deliver any data 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.

B. Title to Intellectual Property; Indemnification -- 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. 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 that arise or are claimed to arise out of, result from, or relate to any negligent or reckless act or omission, or willful misconduct of Consultant, its agents, employees, subcontractors, assignees, licenses, or any other person for whom it is legally or contractually responsible in the performance of professional services under this Agreement. 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 gross negligence or willful misconduct of that

Indemnitee. Consultant acknowledges that it has a duty to ensure that Authority personnel are aware of any restrictions applicable to methods, processes, designs, information, or other items furnished or communicated to Authority by Consultant in connection with the performance of professional services under this Agreement. Accordingly, Consultant shall be deemed responsible for any infringement or improper appropriation or use by Authority or its directors, officers, employees or agents of trade secrets, proprietary information, know-how, copyright rights or inventions, and the agreement to indemnify, defend and hold harmless set forth herein shall fully apply thereto, except to the extent caused by negligence or willful misconduct of the party to be indemnified. 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.

C. Grant and Assignment of Rights -- Upon execution of this Agreement, the Consultant shall grant to the Authority and shall require all of its subcontractors to assign to the Authority, all common law, statutory and copyrights, trademarks, and other intellectual property rights in connection with Consultant's instruments of service and the Project itself, including but not limited to all rights under the 1990 Architectural Works Copyright Protection Act, and shall retain no rights whatsoever as to such items; Provided, however, the Consultant shall retain the right to utilize such instruments of service solely in connection with the performance of its duties under this Agreement. The Authority shall be entitled to utilize such rights for any and all purposes, including but not limited to constructing, using, maintaining, altering, adding to, restoring, rebuilding, and publicizing the Project. The 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.

D. 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; provided, however, that the Consultant may refer

to this Project in connection with its promotional literature in a professional and commercially reasonable manner. The provisions of this paragraph shall not apply to information in whatever form that comes into the public domain. The provisions of this paragraph also shall not restrict the 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 WORK**

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

B. Change Order Process -- (1) The Authority may make changes to the Scope of Work 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 either time or compensation. Upon agreement between the Authority and the Consultant as to the extent of such impacts on time and/or compensation, a Change Order shall be executed by the Parties modifying the Scope of Work or other appropriate provision of this Agreement or the Exhibits. Execution of the Change Order by both Parties shall constitute the Consultant's notice to proceed with the revised Scope of Work.

(2) 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.

C. Immediate Revisions -- The Authority reserves the right to issue immediate revisions to the Scope of Work and in such a case the Consultant agrees to implement such revisions, with the understanding that the parties will subsequently discuss and agree upon the cost and schedule impact.

**SEC. 12. HOLD HARMLESS**

A. Professional Services Indemnity -- The Consultant has represented to the Authority that it is skilled in the professions necessary to perform the services and duties agreed to be performed under this Agreement, and the Authority is relying upon such representations and

upon the skill and knowledge of Consultant to perform those services and duties. To the fullest extent permitted by law, the Consultant hereby agrees, at its sole cost and expense, to assume liability and defend, indemnify, and hold the Authority, Metro, and the respective Board Members and employees ("Indemnitees") harmless from and against any and all direct damages, claims, losses, costs, judgments, and expenses including attorney fees and court costs ("Claims") that arise or are claimed to arise out of, result from, or relate to any negligent or reckless act or omission, or willful misconduct of the Consultant, its agents, employees, subcontractors, assignees, licenses, or any other person for whom it is legally or contractually responsible in the performance of professional services under this Agreement. 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 gross negligence or willful misconduct of that Indemnitee.

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 ("claims"), on account of bodily injury, disease or death of any person (including employees of the Consultant, its agents, representatives, or subcontractors), or loss or damage to or destruction of property to the extent such loss or damage arises out of or results from any negligent or reckless act or omission, or willful misconduct of the Consultant, its subcontractors, 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 gross negligence or willful misconduct of that Indemnitee.

C. Indemnities 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 11B and Section 25 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**

A. Required Coverage -- The Consultant shall, before performing any Work under this Agreement, procure and maintain insurance coverage in the form and amounts listed below, and shall provide the Authority with Certificates of Insurance evidencing such coverage by the time specified in Section 4B of this Agreement.

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

2. Commercial General Liability insurance on an occurrence basis (as opposed to claims made) with limits of liability not less than \$1,000,000 each occurrence and \$2,000,000 general policy aggregate, with defense provided in addition to limits of liability, covering: (a) all premises and operations of Consultant; (b) independent contractor's liability; (c) contractual liability; (d) broad form property damage, including completed operations; (e) production and completed operations; and (f) personal injury liability. This policy shall include the Authority as additional insured, on blanket or individual terms, and shall provide that the Consultant's liability policy will be primary and non-contributing insurance with respect to any other insurance available to the additional insured.

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

4. Professional Liability insurance covering any liability arising from any negligent act, error, or omission by the Consultant or any employee, subcontractor, or anyone for whose acts or omissions Consultant may be legally or contractually responsible, in performance of professional services under this Agreement. This policy shall be endorsed to include defense of the Authority and Metro for vicarious liabilities arising out of the Consultant's professional services, and shall contain limits of liability not less than \$1,000,000 each claim. This policy may be written on a "claims made" basis, with defense costs included within limits of liability. Coverage of professional liabilities arising out of this Agreement shall continue for five years after completion of the professional services performed under this Agreement, either by policy renewals

(with retroactive dates that include this work) or by extended reporting provision under the current policy. If requested by the Authority, the Consultant shall provide the Authority with a current estimate of the claims and defense costs reported under the policy since its inception. The Authority agrees to maintain the confidentiality of any claims information received under this paragraph. If current or potential claims threaten to erode professional liability policy limits, the Consultant, shall, upon request by the Authority acquire and maintain additional limits of liability for its work under this Agreement.

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

C. Uninterrupted Evidence of Insurance -- The Consultant shall provide its Certificates of all required insurance on a continuing basis, including renewals or replacement, throughout the term of this Agreement, and, with respect to professional liability insurance, for the number of years after completion of this work as stated in subsection A(4) of this Section. If the Consultant engages subcontractors in performance of its work under this Agreement, the Consultant shall require each such entity to obtain and maintain insurance as is required of the Consultant herein, and provide evidence of such coverage in the form of Certificates of Insurance; and the Consultant shall, upon request, supply the Authority with copies of any and all such certificates. Failure of the Consultant to maintain the insurance required in this Agreement shall constitute a material breach of this Agreement.

## 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 ten (10) days after it first arises, then (i) the Consultant may request that the Authority Project Director issue a recommended decision on

the matter in dispute; and (ii) the Authority Project Director may, on the Authority's own initiative, issue a recommended decision. 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.

#### SEC. 16. **SUBCONTRACTING**

A. Requirement for Approval -- The Consultant shall not enter into any subcontract except with the prior review and written approval of the Authority. The Consultant shall be fully responsible for all work performed by all subcontractors.

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

C. Copies -- The Consultant shall furnish, at the Authority's request, copies of any sub-contracts for the performance of Work under this Agreement.

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

#### SEC. 17. **ASSIGNMENT**

The Contractor 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 is separate and apart from the provisions concerning subcontracting set forth in Section 18.

**SEC. 18. CONFLICT OF INTEREST**

A. Restriction on Participation -- No Board Member nor employee of the Authority shall participate in the selection, or in the award or administration, of this Agreement if a conflict of interest, real or apparent, would be involved. Such a conflict is determined in accordance with the Conflict of Interest Code adopted by the Authority's Governing Board.

B. Gratuities Prohibited -- The Authority's Board Members and employees shall neither solicit, demand, nor accept from Consultant, or any subcontractor any gifts, gratuities, favors, or anything of a monetary value.

C. Interests Prohibited -- The Consultant covenants that both itself, its principals and its subcontractors presently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

**SEC. 19. ORGANIZATIONAL CONFLICT OF INTEREST**

Prior to entering into this Agreement, the Consultant was required to inform the Authority of any real or apparent organizational conflict of interest or which it is aware as of the date of execution of the Agreement. Such organizational conflict of interest exists when the nature of the work to be performed under an agreement may, without some restriction on future activities, results in an unfair competitive advantage to the Consultant, or may impact the Consultant's objectivity in performing the Work.

**SEC. 20. FINANCIAL CONDITION**

A. Annual Submittals -- Prior to entering into this Agreement, the Consultant submitted documentation acceptable to the Authority establishing that it is financially solvent, such that it can reasonably be expected to perform the services required by this Agreement. Within thirty (30) days of the first anniversary of the date of execution of this Agreement, and each year thereafter throughout the term of this Agreement, the Consultant shall submit such financial information as may be necessary and appropriate to establish to the satisfaction of the Authority that the Consultant is in at least as sound a financial position as it was prior to entering into this Agreement.

B. Adverse Information -- If the Consultant is not able to provide evidence of sound financial position in accordance with subsection A, it shall provide a full explanation to the Authority of the facts or circumstances creating such inability. In addition, the Consultant shall promptly inform the Authority of any adverse financial condition or event that arises during the term of this Agreement which could jeopardize its successful and timely completion of the Work. Financial information submitted to the Authority shall be returned to the Consultant after review and shall not be retained by 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 subcontractors shall be appropriately licensed for the professional services required under the terms of this Agreement, and all Work hereunder shall be performed by persons holding the appropriate professional license. The cost for any required licenses shall be the responsibility of the 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 -- Under the terms of this Agreement, the Consultant is an independent contractor and has and retains full control and supervision of all the services it performs under this Agreement, and of all employees and other persons performing those services, other than the Authority representatives. The Consultant agrees to be solely responsible for all matters relating to wages, hours of work, and working conditions and payment of employees, including compliance with social security, all payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters. The Consultant agrees to be responsible for its own acts and those of its subordinates, employees, and any and all subcontractors during the term of this Agreement.

B. Payment of Taxes -- The Consultant acknowledges that it has a duty 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, which arises or is claimed to arise out of, result from, or relate to any negligent or reckless act or omission, or willful misconduct of the Consultant, its agents, employees, subcontractors, assignees, licenses, or any other person for whom it is legally or contractually responsible in the performance of professional services under this Agreement. 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 acknowledges that it has a duty to 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 that arises or is claimed to arise out of, result from, or relate to any negligent or reckless act or omission, or willful misconduct of the Consultant, its agents, employees, subcontractors, assignees, licenses, or any other person for whom it is legally or contractually responsible in the performance of professional services under this Agreement. 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. **COMPLIANCE WITH LAWS AND PERMITS**

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, including, but not limited to, the laws referred to in Exhibit E hereto. 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.

#### SEC. 25. **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 26 and 38, respectively.

**SEC. 26. TERMINATION FOR CONVENIENCE**

A. General Authority -- The performance of work under this Agreement may be terminated by the Authority in accordance with this Section in whole, or from time to time in part, whenever the Authority determines, in its sole discretion, 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 work under this Agreement is terminated and the date upon which such termination becomes effective, which shall be no less than twenty (20) days from the date of such notice.

B. Required Actions upon Notice -- Upon receipt of a notice of termination, and except as otherwise directed by the Authority, the Consultant shall (1) stop performing professional services under the Agreement on the date and to the extent specified in the notice of termination; (2) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the professional services under the Agreement as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of professional services terminated by the notice of termination; (4) assign to the Authority in the manner, at the times, and to the extent directed by the Authority, all of the rights, title and interest of the 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, and other material produced as a part of, or acquired in connection with the performance of, the professional services terminated, and any information and other property which, if the Agreement had been completed, would have been required to be furnished to the Authority; (7) complete any such part of the work as shall not have been terminated by the notice of termination; and (8) take such action as may be necessary, or as the Authority may direct, for the protection and preservation of the property related to the Agreement which is in the possession of the Consultant and in which the Authority has or may acquire an interest. All 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. 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 previously rendered prior to termination, plus reasonable termination costs.

**SEC. 27. TERMINATION BY MUTUAL AGREEMENT**

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

**SEC. 28. TERMINATION FOR DEFAULT**

A. Grounds for Default -- Subject to the provisions of subsection B of this Section, the Authority may terminate the whole or any part of this Agreement in any one of the following circumstances:

- (1) If the Consultant fails to provide the services in the manner required by the Agreement;
- (2) If the Consultant fails to perform any of the provisions of this Agreement in accordance with its terms; or
- (3) If the Consultant fails to make progress in the prosecution of the Work under this Agreement so as to endanger such performance.

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

C. Re procurement -- In the event that the Authority terminates the Agreement in whole or in part under this Section, the Authority may procure, upon such terms and in such manner as the Authority may deem appropriate, supplies or services similar to those so terminated. The Consultant shall be liable to the Authority for costs associated with the termination of the

Agreement, the procurement of replacement services by the Authority, any excess costs of such similar supplies or services, and any increase in the total Agreement cost as a result of the re procurement of services from the date of termination to the expiration date of the original Agreement. The Consultant shall continue the performance of the Agreement to the extent not terminated under the provisions of this Section.

D. Disputes -- Any disputes arising under this Section that cannot be resolved by the Consultant and the Authority are subject to resolution pursuant to Section 17.

E. FAR Principles -- 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.

#### SEC. 29. **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.

#### SEC. 30. **FORCE MAJEURE**

The Consultant shall not be liable for any failure to perform if acceptable evidence has been submitted to the Authority that the failure to perform this Agreement was due to causes beyond the control and without the fault or negligence of the Consultant. Examples of such causes include acts of God, civil disturbances, fire, war, or floods, but do not include labor related incidents, such as strikes or work stoppages.

#### SEC. 31. **RECORDS RETENTION AND ACCESS TO RECORDS**

For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500, et seq., when applicable, and other matters connected with the performance of the Consultant's contracts with third parties pursuant to Government Code Section 8546.7, the Consultant and its subcontractors shall maintain all books, documents, papers, records, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the cost of administering this Agreement. The Consultant and its subcontractors shall make such materials available at their respective offices at all reasonable times during the Agreement term and for three (3) years from the date of final payment to Consultant and its subcontractors under this Agreement or the date of resolution of litigation or claims arising under this Agreement, whichever is later. The Consultant shall make available to

the Authority, or its designee, the State, the California State Auditor, the Secretary of Transportation, the United States Controller General, or any other duly authorized representative of the Federal or State Government, any books, documents, papers, records, accounting records, and other evidence pertaining to the performance of this Agreement that are pertinent to this Agreement or Project for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished by Consultant if requested.

**SEC. 32. 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. 33. 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.

**SEC. 34. LACK OF FUNDS**

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

**SEC. 35. NOTICES**

Official notices or correspondence related to this Agreement shall be in writing and sent to the following addresses:

THE AUTHORITY:

Richard D. Thorpe, P.E.  
Chief Executive Officer  
Exposition Metro Line Construction Authority  
707 Wilshire Boulevard, 34<sup>th</sup> Floor  
Los Angeles, CA 90017

CONSULTANT:

Any notices required by this Agreement shall be deemed received on: (A) the day of delivery if delivered by hand (including overnight courier service) during receiving Party's regular business hours or by facsimile before or during receiving Party's regular business hours; or (B) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth above, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to the provisions of this Section. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**SEC. 36. 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. 37. AGREEMENT TO CONTROL**

In the event of any inconsistency between the provisions of this Agreement and Consultant's proposal, the provisions of this Agreement shall control.

**SEC. 38. ENTIRE AGREEMENT**

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.

**SEC. 39. EXHIBITS**

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

**SEC. 40. SEVERABILITY**

In the event any provision of the Agreement is declared or determined to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of the Agreement and each provision of the Agreement will be and is deemed to be separate and severable from each other provision.

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**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth below their endorsements.

CONSULTANT

EXPOSITION METRO LINE  
CONSTRUCTION AUTHORITY

NAME

RICHARD D. THORPE

TITLE

CHIEF EXECUTIVE OFFICER

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

By: **signature obtained**  
Nossaman L.L.P.  
General Counsel

**EXHIBIT A**  
**SCOPE OF WORK**

**To be finalized after award of contract**

**EXHIBIT B**  
**KEY PERSONNEL**

The following individuals are Key Personnel for the Contractor for the performance of the Scope of Work under this Agreement:

**To be determined after award of contract**

These individuals may not be replaced during the term of the Agreement except through written approval of the Exposition Metro Line Construction Authority in accordance with Section 9 of the Agreement.

**EXHIBIT C**  
**PAYMENT CERTIFICATION**

1. I hereby certify to the best of my knowledge and belief that:
  - A. This Payment Request represents a true and correct statement of the Work performed;
  - B. The Work completed to date under this Contract is in full accordance with the terms of the Contract; and
  - C. All Subcontractors and/or Suppliers who have performed Work on the project through the closing date of the prior Payment Request have been paid their proportionate share of all previous payments from the AUTHORITY.
  
2. I understand that it is a violation of both the federal and California False Claims Acts to knowingly present or cause to be presented to the AUTHORITY a false claim for payment or approval. A claim includes a demand or request for money. It is also a violation of the False Claims Acts to knowingly make use of a false Record or statement to get a false claim paid. The term "knowingly" includes either actual knowledge of the information, deliberate ignorance of the truth or falsity of the information, or reckless disregard for the truth or falsity of the information. Proof of specific intent to defraud is not necessary under the False Claims Acts. I understand that the penalties under the Federal False Claims Act and State of California False Claims Act are non-exclusive, and are in addition to any other criminal and/or civil remedies which the AUTHORITY may have either under contract or law.

I certify under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Certifying Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_