

**REQUEST FOR PROPOSALS (RFP) C2005
REAL PROPERTY CONSULTING SERVICES**

RFP Issued August 7, 2017

APPENDIX 1- FORM OF CONTRACT

[This form of contract is subject to the usage and terms and conditions specified in the RFP and is not an offer to contract.]

**CONSULTING SERVICES AGREEMENT
FOR METRO GOLD LINE FOOTHILL EXTENSION CONSTRUCTION AUTHORITY
REAL PROPERTY CONSULTING SERVICES**

CONTRACT NO. C2005

This consulting services agreement ("Agreement") is dated effective as of [____], 2017 and is between the Metro Gold Line Foothill Extension Construction Authority ("Authority") and [____] ("Consultant").

RECITALS

A. Pursuant to California Public Utilities Code section 132405, Authority is responsible for completing the construction of the Los Angeles-Pasadena Foothill Extension Gold Line light rail project, extending from Union Station in the City of Los Angeles to Sierra Madre Villa Boulevard in the City of Pasadena ("Phase 1"), and any mass transit guideway that may be planned east of Sierra Madre Villa Boulevard along the rail right-of-way ("ROW") extending to the City of Montclair ("Phase 2").

B. Phase 2, also known as the "Foothill Extension", is an anticipated approximate 24 mile east-west light rail extension of Phase 1 from the City of Pasadena to the City of Montclair. The Foothill Extension is the "Project" for purposes of this Agreement.

C. The Foothill Extension will be built in two phases. The first phase ("Phase 2A"), was substantially completed in September 2015 and extends the Phase 1 terminus approximately 12 miles from the Sierra Madre Villa Station in City of Pasadena to Citrus Avenue in the City of Azusa. The second phase is planned to extend the terminus approximately 12.3 miles from the City of Azusa to the City of Montclair.

D. In order to complete the Azusa to Montclair portion of the Project, the Authority needs certain consulting services in the form of those described in the Scope of Work attached hereto.

E. Authority desires to retain Consultant to provide such consulting services.

F. Consultant desires to provide such consulting services.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which each party acknowledges, the parties hereby agree as follows:

1. Term. This Agreement shall commence on the date first set forth above, and shall terminate at 11:59 P.M. on December 30, 2020 (the "Termination Date"). Consultant shall perform the services by or before the Termination Date and in accordance with the schedule included in the Scope of Services. The parties may extend this Agreement by mutual written consent.

2. Scope of Services. Consultant shall perform the services as set forth Exhibit A in a manner reasonably satisfactory to Authority and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

3. Compensation.

a. Total payment to Consultant pursuant to this Agreement shall not exceed \$[_____]. Authority agrees to compensate Consultant for those services expressly authorized by the Authority which Consultant performs to the satisfaction of the Authority in accordance with the hourly rates as set forth in Exhibit B; such hourly rates shall be fully loaded / burdened. Subject to the previous sentence, such hourly rates multiplied by the number of hours worked, or fraction thereof, shall be the entire compensation for Work, and shall constitute payment of Consultant's fee for the services as well as the actual cost of any equipment, materials, and supplies necessary to provide the services, including all general and administrative expenses as well as any other appropriate indirect costs, labor, materials, delivery, tax, assembly, and installation. Notwithstanding any to the contrary in the foregoing sentence, the Authority in its sole discretion may provide to Consultant certain equipment and services at the Authority's offices at no additional cost to Consultant and shall reimburse or otherwise pay for certain other expenses in accordance with Section 23.

b. Prior to submitting the first invoice, Consultant shall submit a completed Form 60, attached hereto as Exhibit G, references to overhead and other inapplicable information shall be disregarded. The prime contractor will not receive a handling fee or other markup on subcontractors and Other Direct Costs (ODC).

c. Additional services outside the scope of this Agreement shall be compensated for an amount agreed upon by Authority and Consultant in advance of payment and shall be incorporated into this Agreement through the issuance of an amendment to this Agreement. Additional services shall be invoiced and paid in accordance with the terms of this Agreement. Consultant shall not be entitled to compensation for additional services until the additional services are incorporated into this Agreement through the issuance of an amendment.

d. Consultant agrees that its right to receive the final payment pursuant to this Agreement is contingent upon submittal of all deliverables hereunder to

the reasonable satisfaction and approval of Authority. Should Authority not approve any or all such deliverables, Consultant shall revise the deliverables to Authority's reasonable satisfaction and approval, at no additional expense to Authority. 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.

4. Method of Payment. Authority shall pay invoices (or uncontested portions thereof) within 30 days after receipt of a proper invoice. Consultant shall not submit more than one invoice per calendar month. Invoices shall contain the following information, and be in the following form:

- a. The Agreement Number
- b. [NOT USED]
- c. An itemization of costs separated into the following categories: "Original Scope" (the services as set forth in Exhibit A), and an additional category for each "Additional Scope" (additional services outside the Original Scope as set forth in an amendment), if any.
- d. Supporting documentation for labor costs. Time spent performing the Work shall be recorded in 1/10 hour increments.
- e. A reference to an amendment(s), if any, authorizing costs itemized in the Additional Scope.
- f. Authorized reimbursable actual expenses and original receipts or other documentation substantiating such expenses in accordance with Section 23.

Consultant shall send all invoices attention to the Finance Department at the Authority's address set forth herein. Consultant shall notify Authority in writing prior to incurring 85% of the total "not to exceed" compensation amount set forth in Section 3. The notice shall also include an estimate of compensation that will be required to complete the services as set forth in Exhibit A.

Consultant is responsible for the accuracy and adequacy of its billing statements. If Authority raises any questions or concerns regarding Consultant's billing statements, Consultant shall confer directly with Authority to resolve the questions and concerns to the satisfaction of Authority.

5. Representatives.

a. Authority Representative. For the purposes of this Agreement, the Authority's representative shall be the Chief Contracting Officer or his designee (hereinafter the "Authority Representative"). It shall be Consultant's responsibility to ensure that the Authority Representative is kept informed of the progress of the performance of the services, and Consultant shall refer any decisions that must be made by Authority to the Authority Representative except for the purpose of transmitting

notices as set forth herein. Unless otherwise specified herein, any approval of Authority required hereunder shall mean the approval of the Authority Representative.

b. Consultant Representative. For the purposes of this Agreement, [_____] shall be Consultant's representative authorized to act on Consultant's behalf with respect to the services specified herein and make all decisions in connection therewith.

6. Personnel.

a. Consultant represents that it has, or shall secure at its own expense, all personnel required to perform the services under this Agreement. All personnel engaged in performing the services shall be qualified to perform such services.

b. Consultant shall be solely responsible for the satisfactory work performance of all personnel performing the services under the Agreement, and compliance with all performance standards set forth in this Agreement or otherwise reasonably required by Authority, appropriate governmental agencies and applicable law.

c. Consultant shall be responsible for payment of all employees' and subconsultants' wages and benefits.

d. Consultant reserves the right to determine the assignment of its personnel to the performance of the services under this Agreement, except that the Project Manager and other key personnel identified in the Proposal will perform the Work to the extent proposed in the Proposal for the term of this Agreement.

e. Authority reserves the right, in its discretion, to require Consultant to exclude any employee from performing the services. Furthermore, Consultant shall secure Authority's prior written approval for any change or reassignment of "key" personnel (individuals for whom resumes were provided pursuant to the RFP). In the event that Authority desires the removal of any person(s) assigned by Consultant to perform the services under to this Agreement, Consultant shall remove such person(s) immediately upon receiving notice of such from Authority.

7. Subconsultants.

a. Consultant shall not use any subconsultant or pay any subconsultant not identified in Exhibit D, attached hereto, to perform any of Consultant's services under this Agreement, without Authority's prior written approval.

b. Consultant may not change any subconsultants without the Authority's prior written approval.

c. Authority reserves the right, in its sole discretion, to require Consultant to remove any subconsultant(s) from performing the services under this

Agreement. In the event that Authority, in its sole discretion, desires the removal of any subconsultant(s) assigned by Consultant to perform the services under this Agreement, Consultant shall remove any such subconsultant(s) immediately upon receiving such notice from Authority.

d. Any agreements between Consultant and subconsultants in excess of \$25,000 in consideration, entered into as a result of this Agreement, shall contain all of the provisions stipulated in this Agreement as applicable to subconsultants.

8. Independent Contractor.

a. Consultant is, and shall at all times remain as to Authority, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of Authority or otherwise act on behalf of Authority as an agent. Neither Authority nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of Authority.

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

c. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify, defend, and hold Authority harmless from any failure of Consultant to comply with applicable workers' compensation laws. Authority shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to Authority from Consultant as a result of Consultant's failure to promptly pay to Authority any reimbursement or indemnification arising under this Section 8.

9. Facilities And Equipment.

Except as otherwise approved by Authority in writing, Consultant shall, at its sole expense, furnish all facilities and equipment that may be required to perform the Work.

10. Indemnification.

a. Indemnity for Professional Liability. When the law establishes a professional standard of care for the services, to the fullest extent permitted by law,

Consultant shall indemnify, defend and hold harmless Authority and any and all of its members, officials, officers, employees, agents, attorneys, representatives, consultants, successors and assigns (“Indemnified Parties”) from and against any and all claims, charges, liabilities, damages, demands, actions, proceedings, losses, costs, expenses, whether actual, alleged or threatened, actual attorney’s fees, court costs, and accountant’s fees, judgments, civil fines and penalties, and liabilities of any kind or nature whatsoever (“liabilities”), to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual for which or for whom Consultant shall bear the legal liability) in the performance of professional services under this Agreement.

b. Indemnity for Other than Professional Liability. Other than in the performance of professional services and to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless the Indemnified Parties from and against all liabilities to the extent caused in whole or in part by any negligent or wrongful act, error, or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual for which or for whom Consultant shall bear the legal liability) in the performance of this Agreement, including but not limited to, claims, suits and liabilities for bodily injury, death or property damage to any individual or entity, including employees or officials of Consultant. The provisions of this paragraph shall not apply to claims arising out of the gross negligence or willful misconduct of the Indemnified Parties, provided such gross negligence or willful misconduct is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where Authority is shown to have been grossly negligent or engaged in willful misconduct in accordance with the preceding sentence, and where Authority's gross negligence or willful misconduct accounts for only a percentage of the liability involved, the obligation of Consultant will be for that entire portion or percentage of liability not attributable to the gross negligence or willful misconduct of Authority.

c. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this Section 10.

d. This obligation to indemnify, defend and hold harmless the Indemnified Parties is binding on the successors, assigns, affiliates or heirs of Consultant and shall survive the termination of this Agreement or final payment hereunder. This obligation to indemnify, defend and hold harmless is in addition to any other rights or remedies that the Indemnified Parties may have under the law. Failure of Authority to monitor compliance with these requirements imposes no additional obligations on Authority and will in no way act as a waiver of any rights hereunder.

e. In the event of any claim or demand made against an Indemnified Party which is entitled to be indemnified hereunder, Authority may, in its sole discretion, reserve, retain or apply any monies due to Consultant under this Agreement for purposes of resolving such claims; provided, however, Authority may release such monies if Consultant provides Authority with reasonable assurance of protection of the Indemnified Party's interests. Authority shall, in its sole discretion, determine whether such assurances are reasonable.

f. In the event more than one person or entity is named in this Agreement as Consultant, all obligations to indemnify, defend and hold harmless under this Section 10 shall be joint and several.

g. The indemnity requirements set forth in this Section 10 are intended to be separate and distinct from any other provision in this Agreement and are intended to be interpreted as such.

11. Insurance.

a. Consultant shall, at its sole expense and all times during the term of this Agreement, maintain, and keep in full force and effect, the following policies of insurance issued by insurers licensed to do business in the State of California with A.M. Best ratings of no less than A-:

(1) Broad-form commercial general liability with minimum limits of \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate;

(2) Automotive liability with minimum limits of \$1,000,000 per accident, combined single limit;

(3) Worker's compensation on a state-approved policy form providing statutory benefits as required by law with minimum employer's liability limit of \$500,000 per accident for all covered losses; and

(4) Professional liability coverage with a minimum limit of liability of \$2,000,000 per claim and \$4,000,000 in the aggregate, providing coverage for any damages or losses suffered by Authority as a result of any error or omission or neglect by Consultant which arises out of the professional services of Consultant rendered under this Agreement. Such insurance may be subject to a self-insured retention or deductible to be borne entirely by Consultant, which shall not exceed \$100,000 per claim.

b. Consultant shall endorse the general liability coverage required herein to include as additional named insureds (using ISO Form CG2010 0704) (i) the Metro Gold Line Foothill Extension Construction Authority, its members, officials, officers, employees, agents, attorneys, representatives, and consultants, and (ii) the Los Angeles County Metropolitan Transportation Authority ("MTA"), its members, officials,

officers, employees and agents. Consultant shall require the same of all subconsultants or any other party engaged by or on behalf of Consultant in relation to this Agreement.

c. The insurance policies as to commercial general liability, automotive liability, and errors and omissions liability shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to Authority.

d. Consultant and their insurers shall waive their rights of subrogation against Authority and MTA. No coverage required herein shall prohibit Consultant, or Consultant's employees or agents, from waiving the right of subrogation prior to a loss.

e. All coverage types and limits required herein and deductibles are subject to approval, modification and additional requirements by Authority, as the need arises. Consultant shall not cancel, reduce or otherwise modify insurance coverages required herein without Authority's prior written approval. Authority reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving Consultant 90 days written notice of such change. Any such change that increases Consultant's costs, will be compensated by Authority in an amount to be negotiated by the parties.

f. All insurance policies required herein shall provide that insurers shall not cancel, reduce, or otherwise modify any coverage required herein without the insurer giving Authority 30 day's prior written notice. Consultant shall require the same of all subconsultants or any other party engaged by or on behalf of Consultant in relation to this Agreement.

g. In the event any insurance policy required herein does not comply with the requirements of this Section 11 or is canceled and not replaced, Authority has the right, but not the duty, to obtain the insurance it deems necessary and available at a reasonable cost, and any premium paid by Authority shall be promptly reimbursed by Consultant or Authority may withhold monies due to Consultant sufficient to pay the premium.

h. Consultant shall provide evidence of the insurance required herein, satisfactory to the CFO, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, not less than three days prior to beginning of performance under this Agreement. Consultant shall, upon Authority's request, allow Authority to review in Authority's offices complete, certified copies of any policies required herein, within ten days of such request. Any actual or alleged failure of Authority or any additional insured to obtain proof of insurance required under this Agreement shall in no way waive any right or remedy of Authority or any additional insured.

i. Consultant agrees to provide immediate notice to Authority of any claim or loss against Consultant arising out of the performance of this Agreement. Authority assumes no obligation or liability by such notice, but has the right (but not the

duty) to monitor the handling of such claim or claims if they are likely to involve Authority.

j. The insurance requirements set forth in this Section 11 are intended to be separate and distinct from any other provision in this Agreement and are intended to be interpreted as such.

12. Confidentiality. All data, documents, drawings, specifications, reports, records, discussions, or other information developed or received by Consultant or provided for performance of the services under this Agreement are deemed confidential and proprietary information. Consultant shall not disclose confidential and/or proprietary information without Authority's prior written approval. Notwithstanding the foregoing, Consultant shall not be in violation of this Section 12 with regard to disclosure that is in response to a valid order by a court or other governmental body, provided that Consultant is advised by legal counsel that such disclosure is required by law, and such disclosure is limited to the minimum extent required by law. Within ten business days following the date of any termination of this Agreement, Consultant shall return all confidential and/or proprietary information provided by Authority to Consultant. Consultant's covenant under this Section 12 shall survive the termination of this Agreement.

13. Ownership of Materials. All materials prepared or provided by Consultant in the performance of this Agreement shall be and remain the property of Authority without restriction or limitation upon its use or dissemination by Authority.

14. Conflict of Interest.

a. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner with the performance of the services under this Agreement. No person having any such interest shall be employed by or be associated with Consultant. Furthermore, Consultant shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the services under this Agreement.

b. Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of any hardware or software or other such equipment to Authority as a result of the performance of Consultant's services under this Agreement. Consultant's covenant under this Section 14 shall survive the termination of this Agreement.

15. Licensing and Taxes.

a. Consultant shall, at its sole expense, obtain and maintain during the term of this Agreement all necessary licenses, permits and certificates required by law for the performance of the services under this Agreement.

b. Consultant is liable for any and all taxes as a result of the performance of the services under this Agreement.

16. Financial Condition. Within 30 days of the first year anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement, Consultant shall submit such financial information as may be appropriate to establish to the satisfaction of Authority's CFO that Consultant is in at least as sound a financial position as Consultant was prior to executing this Agreement. The Authority's CFO shall return all financial statements and documentation submitted by Consultant after review and shall not retain the financial information.

17. Non-Discrimination and Equal Employment Opportunity.

a. Consultant shall not discriminate against any employee or applicant for employment, or harass or allow harassment of any employee or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, family care leave, or sexual orientation. Such actions shall include, but are not limited to the following: employment, upgrading, promotion, demotion, transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

b. Consultant shall, in all solicitations or advertisements for employees placed by, or on behalf of Consultant, state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, family care leave, or sexual orientation.

c. Consultant shall comply with the provisions of the California Fair Employment and Housing Act (Cal. Gov. Code, § 12900 *et seq.*) and the applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 7285.0 *et seq.*).

d. Consultant shall permit access to all records of employment, employment advertisements, application forms, and other pertinent employment data and records by the California Fair Employment and Housing Commission, or any other agency designated by the State of California, for the purpose of investigating compliance with Subsection (a) of this Section 17.

e. Consultant shall cause the foregoing Subsections (a) and (b) of this Section 17 to be inserted in all agreements with subconsultants entered into as a result of this Agreement, except agreements for standard commercial supplies or raw materials.

18. NOT USED

19. Small Business Enterprises ("SBE").

a. Consultant shall engage SBEs in a manner that is reasonably calculated to help the Authority to reach its Small Business Overall Project Aspirational

Goal. Consultant shall keep records of SBE participation and cooperate with the Authority in its efforts to engage SBEs.

b. A firm is considered an SBE if it is certified as an SBE (i) by the State of California Departments of Transportation (“CALTRANS”) or General Services (“DGS”), or the Los Angeles County Metropolitan Transportation Authority (“MTA”), or the City of Los Angeles; or (ii) by another recognized body acceptable to the Authority whose certification processes generally provide for a business size consistent with 13 CFR Part 121; a quality of SBE ownership that is real and substantial; and ownership discretion and control indicating true independence and discretion of the SBE.

20. Compliance with Living Wage Policy. Consultant acknowledges having received and reviewed a copy of Authority’s “Living Wage Policy,” Chapter 8 of Title III of the Authority’s Administrative Code, which is incorporated herein by this reference as though fully set forth herein. Consultant’s violation of the Living Wage Policy shall entitle Authority, at its option, to impose any of the following penalties on Consultant:

a. For failure to pay the minimum wages and overtime required by the Living Wage Policy, double back pay for all time worked during which the violation continued;

b. For failure to pay medical benefits required by the Living Wage Policy, double the difference between the minimum wage required herein without benefits and such minimum wages required herein with benefits, during the period of the violation;

c. For failure to allow an employee to take requested compensated or uncompensated time off as required by the Living Wage Policy, damages in an amount equivalent to that employee’s wages for the time off requested and not received, or, at the employee’s election, additional compensated time off in an amount equivalent to the time off requested and not received;

d. Termination of the contract; and

e. Other rights and remedies as provided by law.

21. Compliance with Laws. In the performance of the services required under this Agreement, Consultant shall abide by and conform with and to any and all applicable laws of the United States and the State of California, and the Authority’s codes and regulations.

22. Prompt Payment Clause.

a. Consultant shall pay each subconsultant (if any) for the satisfactory work performed under this Agreement, no later than ten calendar days from the receipt of each payment Consultant receives from Authority. Consultant agrees further to

return retainage payments to each subconsultant within 30 calendar days after the subconsultant's work is satisfactorily completed.

b. The Authority, at its discretion, may elect to utilize one of the following methods to comply with the prompt payment of retainage requirement:

(1) Decline to hold retainage from Consultant and prohibit Consultant from holding retainage from the subconsultant;

(2) Decline to hold retainage from Consultant and require a contract clause obligating Consultant to make prompt and full payment of any retainage kept by Consultant to the subconsultant within 30 days after the subconsultant's work is satisfactorily completed; or

(3) Hold retainage from Consultant and provide for prompt and regular incremental acceptances of portions of Consultant, pay retainage to prime consultant based on these acceptances, and require a contract clause obligating the Consultant to pay all retainage owed to the subconsultant for satisfactory completion of the accepted work within 30 days after payment to Consultant.

c. Failure to comply with this Section 22 or delay in payment without Authority's prior written approval shall constitute noncompliance, which may result in appropriate administrative sanctions, including, but not limited to, a penalty of two percent of the invoice amount due per month for every month that payment is not made.

d. These prompt payment provisions must be incorporated in all subconsultant agreements entered into as a result of this Agreement.

23. Business and Travel Expenses. Authority shall not reimburse business, travel or other expenses except on an exceptional basis when Authority otherwise agrees in writing before such expenses are incurred. If Authority so agrees, Authority's agreement shall be interpreted narrowly to apply only to those expenses specifically identified, and only for the amounts or ranges specifically stated.

Notwithstanding the preceding paragraph, when Consultant travels for Work to the alignment corridor (the cities along the light rail corridor including and between Monrovia and Montclair), the Authority shall pay for: (i) Consultant's mileage within the alignment corridor at the IRS rate in effect when such mileage occurs if invoiced with sufficient documentation as determined by the Authority; (ii) one-half of Consultant's time spent travelling to / from the alignment corridor for Work up to a maximum of one hour per day; and (iii) all of Consultant's time spent performing Work within the alignment corridor, including travel within the alignment corridor.

24. Accounting Requirements. Consultant and its subconsultants shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line item for the Project. The accounting system shall conform to the Generally Accepted Accounting Principles ("GAAP") and cost principles set forth in Titles 48 and 49 of the

Code of Federal Regulations, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. In conducting an audit of the costs and match credits claimed under these provisions, auditors shall rely to the maximum extent possible on any prior audit of Consultant pursuant to the provisions of Federal and State laws. In the absence of such a prior audit, any acceptable audit work performed by Consultant's external and internal auditors and/or Federal auditors shall be relied upon to the maximum extent possible by any subsequent auditors when planning and conducting additional audits.

25. Records Retention and Access to Records. For all purposes related to Consultant's and its subconsultant's performance under this Agreement, including but not limited to the purpose of determining compliance with Section 2500, *et seq.* of Title 21 of the California Code of Regulations, and other matters connected with the performance of Consultant's contracts with third parties pursuant to California Government Code Section 8546.7, Consultant and its subconsultants (if any) shall maintain all books, documents, papers, records, accounting records and other evidence pertaining to the performance of this Agreement and such third-party contracts, including but not limited to, the cost of administering the various contracts. Consultant and its subconsultants shall maintain and make available for inspection, excerpting and/or audit such materials at their respective offices at all reasonable times during this Agreement period and for three years from the date of final payment to Consultant and its subconsultants under this Agreement. Consultant shall make such materials available and grant access to the following entities and their respective designees: the Authority, LACMTA, the U.S. DOT, the California State Auditor, the Federal Highway Administrator, the United States Controller General, the State of California, and any duly authorized representative of the Federal Government. Copies thereof shall be furnished by Consultant if requested.

26. Assignment. Consultant shall not assign or attempt to assign any portion of this Agreement without the prior written approval of Authority. Contractor's assignment or attempt to assign any portion of this Agreement without such approval shall be void.

27. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by Authority of any payment to Consultant constitute or be construed as a waiver by Authority of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by Authority shall in no way impair or prejudice any right or remedy available to Authority with regard to such breach or default.

28. Termination. (a) Authority may terminate this Agreement with or without cause by providing written notice to Consultant. The effective date of termination shall be the date specified in the notice of termination, or, in the event no date is specified, the 15th day following delivery of the notice. Upon notice of termination, Consultant shall discontinue performing services under this Agreement. In

the event of termination by Authority, Consultant shall be paid full compensation for all services performed in accordance with the terms this Agreement, in an amount equal to the amount of services actually performed prior to the effective date of termination, based upon the hourly rates, maximum fees and billing requirements provided in this Agreement, including as set forth in Exhibit B. Consultant shall not be paid for any terminated services and expenses performed subsequent to the effective date of termination. (b) Consultant may terminate this Agreement with or without cause by providing 30 days written notice to the Authority. The Authority may subsequently elect to terminate this Agreement at a date sooner than 30 days in accordance with Section 28(a).

29. Suspension. Authority, may in writing, order Consultant to suspend all or any part of the services under this Agreement for the convenience of Authority or for work stoppages beyond the control of Authority and Consultant.

30. Disputes Resolution.

a. Unless Authority and Consultant otherwise agree in writing, all disputes between Authority and Consultant regarding the interpretation of this Agreement or the performance by a party hereunder shall be subject to the dispute resolution procedures set forth in this Section 30 as a condition precedent to the institution of legal or equitable proceedings by Authority or Consultant pursuant to Subsection (f) of this Section 30. Authority and Consultant shall notify the other party in writing within a reasonable time after the first observance of any dispute or claim for injury or damage to person or property because of an act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable. Upon notification of a dispute or claim, Authority and Consultant shall meet promptly to attempt to resolve the dispute or claim.

b. If unsuccessful, then prior to the initiation of any legal or equitable action or proceeding, the CEO shall designate a representative to resolve the dispute or claim. To facilitate resolution, Authority and Consultant shall have the opportunity to prepare and submit to the representative a "position paper" setting forth the material basis for their respective position.

c. No later than 15 days after the date on which the representative reviews the position papers, the representative shall issue a written decision resolving the dispute or claim and setting forth the reasons for the decision. The representative's written decision is final and shall notify the parties of their right to appeal.

d. Within ten days after the representative's written decision was noticed to Authority and Consultant, either party may seek review of the decision by filing a written appeal with the CEO. If neither party timely files a written appeal, the representative's decision shall be deemed confirmed. If either party timely files a written appeal with the CEO, the parties shall have the opportunity to present oral and written evidence in support of their respective positions. No later than ten days after the date

on which the CEO reviews the evidence, the CEO shall issue a written statement setting forth his decision and the reasons for his decision. The decision of the CEO shall be binding. For any claim, counterclaim, dispute or other matter valued at an amount less than or equal to \$100,000, such decision of the CEO (or representative where no appeal is made in accordance with this subsection (d)) is binding upon the parties and shall not be the subject of any additional action or proceeding, including in a court of law or equity.

e. Unless otherwise directed by Authority, Consultant shall continue performance under this Agreement while matters in dispute are being resolved.

f. All claims, counterclaims, disputes, and other matters valued at an amount greater than \$100,000 that remain in question between Authority and Consultant regarding the interpretation of this Agreement or the performance by a party under this Agreement after exercising the dispute resolution procedures set forth in Subsections (a) through (d) of this Section 30 may be brought in the Superior Court of the County of Los Angeles, State of California, in any other appropriate court in that County, or in the Federal District Court in the Central District of California, as applicable.

g. The duties and obligations imposed by this Agreement shall be in addition to any duties, obligations otherwise imposed by law. No action or failure to act by Authority or Consultant shall constitute a waiver of any duty or obligation imposed by this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

31. Attorney's Fees. In the event that either party to this Agreement shall commence in a court of law or equity any action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the non-prevailing party its reasonable costs of suit, including reasonable attorney's, expert witnesses' and consultants' fees, and costs on appeal.

32. Notices. Any notices, bills, invoices, or reports required by this Agreement shall be deemed duly and properly received on: (i) the day of delivery if delivered by hand during regular business hours or by facsimile before or during regular business hours; or (ii) on the third business day following deposit in the United States mail, postage prepaid, to the addresses set forth in this Section 32, or to such other addresses as the Authority and Consultant may designate in writing.

Authority:

Metro Gold Line Foothill Extension Construction Authority
406 East Huntington Drive, Suite 202
Monrovia, CA 91016
(626) 471-9050

(626) 471-9049 (facsimile)
ATTN: Habib F. Balian

Consultant:

[_____]
ATTN: [_____]

33. Representations and Warranties. Consultant represents, warrants, covenants to Authority:

a. Organization. Consultant is a duly organized, validly existing and in good standing under the laws of the state of its organization and in every other state in which it conducts business.

b. Authority. Consultant has all requisite licenses, permits, certifications, power and authority to carry on its business as presently conducted, to enter into this Agreement, and to perform the services under this Agreement. The consummation of the transactions contemplated by this Agreement will not violate, nor be in conflict with, any provisions of the charter, bylaws or governing documents of Consultant, or any agreements or instrument to which Consultant is a party or by which Consultant is bound, or any judgment, decree, order, statute, rule or regulation applicable to Consultant.

c. Qualified. Consultant and all Subconsultants (if any) are qualified and able to perform the services in accordance with the standard set forth in Section 2.

d. Approval. The execution, delivery and performance of this Agreement by Consultant and the consummation of the transactions contemplated by this Agreement have been duly and validly authorized.

e. Binding Obligation. This Agreement has been duly executed and delivered on behalf of Consultant, and all documents and instruments required hereunder to be executed and delivered by Consultant have likewise been duly executed and delivered. This Agreement does, and such documents and instruments will, constitute legal, valid and binding obligations of Consultant in accordance with their terms.

34. NOT USED

35. Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the domestic laws of the State of California without regard to conflict of law doctrines, principles or provisions.

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. This Agreement may be executed by a party's signature transmitted by facsimile ("fax") or scanned into a digital format and

emailed, and copies of this Agreement executed and delivered by means of faxed or emailed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed or emailed signatures as if such signatures were originals. Any party executing and delivering this Agreement by fax or email shall promptly thereafter deliver a physical counterpart signature page of this Agreement containing said party's original signature. All parties hereto agree that a faxed or emailed signature page may be introduced into evidence in any proceeding arising out of or related to this Agreement as if it were an original signature page.

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

38. Entire Agreement. This Agreement represents the entire and integrated agreement between Consultant and Authority, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by Consultant and Authority. Amendments shall be signed by the CEO or the Chairman of the Authority Board on behalf of Authority.

39. Severability. In the event any provision, section or subsection of this Agreement is declared or determined to be unlawful, invalid, or unconstitutional, such declaration or determination shall not affect, in any manner, the legality of the remaining provisions, sections, and subsections of this Agreement.

40. Time is of the Essence. Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof; and each and every provision hereof is hereby declared to be and made a material, essential, and necessary part of this Agreement.

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

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

“Authority”

METRO GOLD LINE FOOTHILL
EXTENSION CONSTRUCTION
AUTHORITY

By: _____

Habib F. Balian
Chief Executive Officer

Date: _____

Approved as to form:

Nossaman LLP

By: _____

Alfred E. Smith, II
General Counsel

“Consultant”

[_____]

By: _____

Name: _____

Title: _____

Date: _____

AUTHORITY INTERNAL USE ONLY – NOT PART OF CONTRACT	
Chief Contracting Officer	_____
Chief Financial Officer	_____

EXHIBIT A
SCOPE OF SERVICES

[Insert from RFP]

EXHIBIT B
COMPENSATION

[Insert from RFP]

EXHIBIT C
NOT USED

EXHIBIT D

SUBCONSULTANTS

See list of subcontractors attached hereto

EXHIBIT E

NOT USED

EXHIBIT F

NOT USED

EXHIBIT G – FORM 60



FORM 60

		Page _____
Contract Pricing Proposal (Services)	"Form 60"	of _____
Name of Proposer:	Division(s) Location(s) where services are to be performed:	
Home Office Address:	Contract #	
Services to be performed:	Total Amount of Proposal	

Detailed Description of Cost Elements

1. Direct Labor	Est Hours	Rate/Hour	Est. Cost (\$)	Total Est. Cost
Total Direct Labor				
2. Labor Overhead	OH Rate(%)	x Base =	Est. Cost	
Total Labor Overhead				
3. Travel*			Est. Cost	
a. Transportation				
b. Per Diem or Subsistence				
Total Travel				
4. Subcontractors/Suppliers**			Est. Cost	
Total Subcontractors/Suppliers				
5. Other Direct Costs*				
Total Direct Cost and Overhead				
6. General & Admin. Expense (_____ % of Item Nos; _____)				
7. Fee (10% of Direct Labor + Overhead + 3% Subs)				
Total Estimated Cost and Fee				
* Itemize on second page of "Form 60"				
** Attach "Form 60" for all proposed subcontractors				

