

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.]

CONTRACT NO. C1165

**STRATEGIC MEDIA AND PUBLIC RELATIONS
CONSULTING SERVICES AGREEMENT**

This Strategic Media and Public Relations Consulting Services Agreement (“Agreement”) is dated effective as of [_____] 2014, and is between the Metro Gold Line Foothill Extension Construction Authority (“Authority”) and [_____] (“Consultant”).

RECITALS

A. Authority was established pursuant to the provisions of Chapter 6 of Division 12.7 of the Public Utilities Code, commencing with Section 132400, which became effective January 1, 1999.

B. Pursuant to California Public Utilities Code section 132405, Authority is responsible for completing the construction of the Los Angeles to Pasadena Metro Blue 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”).

C. 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.

D. The Foothill Extension is anticipated to begin at the Sierra Madre Villa Boulevard Station in the City of Pasadena, run along the acquired railroad right-of-way (“ROW”) parallel to Interstate 210 (I-210) and Arrow Highway, and connect to the downtown areas of the cities of Arcadia, Monrovia, Duarte, Irwindale, Azusa, Glendora, San Dimas, La Verne, Pomona, Claremont, and Montclair.

E. The Foothill Extension will be built in two phases. The first phase (“Phase 2A”), is planned to extend 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 (“Phase 2B”), is planned to extend the Phase 1 terminus from the City of Azusa to the City of Montclair.

F. Authority desires to retain Consultant to provide strategic media and public relations consulting services with respect to the Project.

G. Consultant desires to provide such services.

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

1. Term. The term of this Agreement shall commence as of the date first written above, and continue until June 30, 2016. Notice to proceed under this Agreement is deemed given concurrently with the foregoing commencement date. The parties may extend this Agreement by mutual written consent.

2. Scope of Services/Schedule. Consultant shall provide consulting services as set forth in 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. Responsible Principals.

(a) Authority's Responsible Principal shall be the Chief Executive Officer ("CEO"), or his or her designee. Authority's Responsible Principal shall administer the terms of this Agreement on behalf of Authority. Unless otherwise specified herein, any approval of Authority required hereunder shall mean the approval of Authority's Responsible Principal.

(b) Consultant's Responsible Principal shall be [_____], who shall be principally responsible for Consultant's obligations under this Agreement and shall serve as principal liaison between Authority and Consultant. Consultant's Responsible Principal shall keep the Authority's Responsible Principal informed of the progress of the performance of Consultant's services under this Agreement, and shall refer any decisions that must be made by Authority to Authority's Responsible Principal. Designation of another Responsible Principal by Consultant shall not be made without the prior written approval of Authority.

4. 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 the work 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 reasonable performance standards set forth in this Agreement or required by Authority, appropriate governmental agencies and applicable law.

(c) Authority reserves the right, in its reasonable discretion, to require Consultant to exclude any employee from performing the services under this

Agreement. Furthermore, Consultant shall secure Authority's prior written approval for any change or reassignment of key personnel identified in Exhibit C. In the event that Authority desires the exclusion of any person(s) assigned by Consultant to perform the services under to this Agreement, Consultant shall exclude such person(s) immediately upon receiving notice of such from Authority unless otherwise mutually agreed.

(d) Consultant shall be responsible for payment of all employees' wages and benefits.

5. Subcontractors.

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

(b) Authority reserves the right, in its sole discretion, to require Consultant to remove any subcontractor(s) from performing the services under this Agreement. In the event that Authority, in its sole discretion, desires the removal of any subcontractor(s) assigned by Consultant to perform the services under this Agreement, Consultant shall remove any such subcontractor(s) immediately upon receiving such notice from Authority unless otherwise mutually agreed.

6. 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 for furnishing the services under this Agreement.

7. 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 hardware or software to Authority as a result of the performance of Consultant's services under this Agreement. Consultant's covenant under this Section 7 shall survive the termination of this Agreement.

8. Compensation.

(a) Authority agrees to compensate Consultant for the services which Consultant performs to the satisfaction of Authority's CEO, or his or her designee, and Consultant agrees to accept in full satisfaction for the services required by this Agreement, the compensation set forth in Exhibit C. Compensation shall be based on hourly rates of Consultant personnel as set forth in Exhibit C, subject to the maximum

amount set forth therein. Compensation shall constitute reimbursement 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 labor, materials, delivery, tax, assembly, and installation, as applicable).

(b) Consultant shall notify Authority in writing prior to incurring 85% of the maximum amount set forth in Exhibit C. Such notice shall also include an estimate of compensation that will be required to complete in full any work outstanding. After providing Authority with notice in accordance with this Section 8(b), Consultant shall have the right to stop work once the maximum amount is reached, unless the Authority authorizes an increase.

(c) Additional services outside the scope of this Agreement shall be compensated for in an amount that Authority and Consultant mutually agree to in advance of payment and shall be incorporated into this Agreement through the issuance of an Agreement Amendment. 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 Agreement 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 satisfaction and approval of 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.

9. Method of Payment.

(a) Consultant shall provide monthly billing statements of the services provided and the time spent providing those services for Consultant's Scope of Work, in the form customarily supplied by Consultant to clients being billed on an hourly basis and with such information and modifications as Authority may reasonably request. Consultant shall send all invoices attention to the Finance Department at the Authority's address set forth below. Authority shall pay invoices (or uncontested portions thereof) within 30 days after receipt of a proper invoice.

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

10. Confidentiality. All data, documents, drawings, specifications, reports, records, discussion, or other information developed or received by Consultant or provided for performance of the services under this Agreement are deemed confidential information. Consultant shall not disclose confidential information without Authority's prior written approval. Notwithstanding the foregoing, Consultant shall not be in violation of this Section 10 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 or upon expiration, Consultant shall return all confidential information provided by Authority to Consultant. Consultant's covenant under this Section 10 shall survive the termination of this Agreement.

11. Ownership of Materials. All files of Consultant pertaining to Authority shall be and remain the property of Authority. Consultant will control the physical location of its files during the term of this Agreement unless directed to the contrary by Authority, its Board or its Chief Executive Officer.

12. Indemnification.

(a) To the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless Authority and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs, to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, employees, agents or subcontractors (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) This obligation to indemnify, defend and hold harmless the Indemnified Parties is binding on the successors, assigns 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.

(c) 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.

(d) The indemnity requirements set forth in this Section 12 are intended to be separate and distinct from any other provision in this Agreement and are intended to be interpreted as such.

(e) Consultant shall have no liability, in contract, tort or otherwise, for claims or losses to the extent arising from the negligent or wrongful act, error or omission of any subconsultant which provides professional services for Authority. Consultant hereby assigns to Authority all claims Consultant may have against any

subconsultant arising from the wrongful or negligent action or inaction of such subconsultant. The foregoing provisions of this paragraph (e) shall apply only if Consultant causes each of the subconsultants to confirm in writing to Authority that the subconsultant owes directly to Authority a duty of professional care and competence in carrying out its scope of work and carries professional liability insurance coverage reasonably acceptable to Authority, and Authority receives such written confirmation and proof of insurance. If any proposed subconsultant does not provide such written confirmation and proof of insurance, Consultant shall not retain such proposed subconsultant to perform any services under this Agreement.

13. 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-, or otherwise approved by the Authority's Chief Financial Officer ("CFO"):

(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 \$500,000 per accident, combined single limit;

(3) Worker's compensation on a state-approved policy form providing statutory benefits as required by law.

(4) Professional liability coverage with a minimum limit of liability of \$1,000,000 per claim and \$2,000,000 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 \$1,000,000 per claim.

(b) Consultant shall endorse the general liability coverage required herein to include as additional insureds Authority, its members, officers, employees, agents, attorneys, representatives, consultants and volunteers, and the Los Angeles County Metropolitan Transportation Authority ("MTA"), its members, officers, employees and agents. Consultant shall require the same of all subcontractors 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) No coverage required herein shall prohibit Consultant, or Consultant's employees or agents, from waiving the right of subrogation prior to a loss. Consultant shall waive its right of subrogation against Authority.

(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.

(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 subcontractors 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 13 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 one day prior to beginning of performance under this Agreement. Consultant shall, upon Authority's request, provide 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 13 are intended to be separate and distinct from any other provision in this Agreement and are intended to be interpreted as such.

14. 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.

(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 14.

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. If requested, 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 the CFO that Consultant is in at least as sound a financial position as Consultant was prior to executing this Agreement. The CFO shall return all financial statements and documentation submitted by Consultant after review and shall not retain said financial information.

17. Non-Discrimination and Equal Employment Opportunity.

(a) 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.*).

(1) Consultant shall cause the foregoing Subsection (a) of this Section 17 to be inserted in all agreements with subcontractors entered into as a result

of this Agreement, except agreements for standard commercial supplies or raw materials.

18. NOT USED.

19. 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, 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:

(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.

(e) Other remedies as provided by law.

20. 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.

21. Prompt Payment Clause.

(a) Consultant shall pay each subcontractor (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 subcontractor within 30 calendar days after the subcontractor's work is satisfactorily completed.

(b) In accordance with Revised § 26.29 "Prompt Payment Provisions" (Federal Register – dated June 16, 2003) 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 subcontractor.

(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 subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

(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 subcontractor for satisfactory completion of the accepted work within 30 days after payment to Consultant.

(c) Failure to comply with this Section 21 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 subcontractor agreements entered into as a result of this Agreement.

22. Business and Travel Expenses. The Authority shall not reimburse business and travel expenses except as set forth in Exhibit C.

23. Accounting Requirements. Consultant and its subcontractors (if any) 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, as may be directed by Authority from time to time. The accounting system shall conform to the Generally Accepted Accounting Principles ("GAAP"), 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.

24. Records Retention and Access to Records. For all purposes related to Consultant's and its subcontractor's (if any) 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, when applicable, 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 subcontractors (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 subcontractors (if any) 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 subcontractors (if any) under this Agreement. Consultant shall make such materials available and grant access to the following entities and their respective designees: the Authority, 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 of such materials shall be furnished by Consultant if requested.

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

26. 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.

27. Termination. Authority may terminate this Agreement with or without cause upon 15 days' 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 set forth in Exhibit C. Consultant shall not be paid for any terminated services and expenses performed subsequent to the effective date of termination.

28. 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.

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

30. Integration. This Agreement and the all attached Exhibits shall constitute the full and complete agreement of the parties and shall supersede any other written or oral statements of either party. 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.

31. Arbitration. In the event of any dispute between the parties, the dispute shall be submitted to binding arbitration. In the event the parties are unable to agree upon an arbitrator, an arbitrator shall be selected through the American Arbitration Association.

32. Attorney's Fees. In the event that either party to this Agreement shall commence any legal or equitable 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 its costs of suit, including reasonable attorney's, expert witnesses' and consultants' fees, and costs on appeal.

33. 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 this Section 33, or to such other addresses as the Authority and Consultant may designate in writing pursuant to the provisions of this Section 33.

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:

[_____]

34. 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 California 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) 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.

(d) 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.

35. Federal Requirements. Consultant, to the extent applicable to the services provided pursuant to this Agreement, shall comply with all applicable Federal regulations, policies, procedures and directives, including without limitation those of the Federal Transportation Administration (“FTA”) and those listed in Exhibit F, as they may be amended or promulgated from time to time during the term of this Agreement. Consultant’s failure to so comply shall constitute a material breach of this Agreement.

36. Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of California.

37. 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.

38. Agreement to Control. In the event of any inconsistency between the provisions of this Agreement and Consultant’s proposal to the Authority, the provisions of this Agreement shall control.

39. 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, and approved by the Agency Board of Directors. Amendments shall be signed by the CEO or the Chairman of the Authority Board on behalf of Authority.

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

41. 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.

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IN WITNESS WHEREOF, the parties have executed this Strategic Media and Public Relations Consulting Services Agreement effective as of the date first written above.

“Authority”

METRO GOLD LINE FOOTHILL EXTENSION
CONSTRUCTION AUTHORITY

By: _____
Habib F. Balian
Chief Executive Officer

“Consultant”

[_____]

By: _____
[_____]
[_____]

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

**EXHIBIT A
SCOPE OF WORK**

[Insert from RFP]

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**EXHIBIT B
NOT USED**

**EXHIBIT C
COMPENSATION**

COMPENSATION SCHEDULE:

Compensation shall be based on hourly rates of Consultant personnel as set forth below, subject to a maximum amount of \$[_____]. Individuals other than those listed below may be added to the contract with Authority's prior written approval.

HOURLY RATES:

Hourly rates are inclusive of all expenses, overhead, profit, managerial support, etc.

[INSERT TABLE OF PERSONNEL AND RATES]

Exceptions: Notwithstanding anything else in the agreement to the contrary:

- (a) Mail. Authority shall reimburse for the cost of overnight mail or messenger services when requested or approved by Authority prior to use.
- (b) Other Expenses. Authority shall only reimburse business, travel or other expenses on an exceptional basis when Authority 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 specifically stated or less.

**EXHIBIT D
SUBCONTRACTORS**

[_____]

EXHIBIT E

NOT USED

EXHIBIT F FEDERAL REQUIREMENTS

Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those set forth below.

1. **Incorporation of FTA Terms:** The following provisions include, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the following provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Notwithstanding anything to the contrary herein, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation, those listed directly or by reference in this Agreement, as they may be amended or promulgated from time to time during the term of this Agreement. Consultant shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests, which would cause Authority to be in violation of FTA terms and conditions. Consultant's failure to so comply shall constitute a material breach of this Agreement.

2. **Energy Conservation:** Consultant shall comply with mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201 *et seq.*).

3. **No Government Obligation to Third Parties:** Authority and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to Authority, Consultant, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from this Agreement. Consultant shall include the above clause in each subconsultant agreement financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subconsultant subject to this clause.

4. **Program Fraud and False or Fraudulent Statements or Related Acts:**

a. Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended (31 U.S.C. § 3801 *et seq.*) and the U.S. DOT regulations (49 C.F.R. Part 31), apply to Consultant's actions pertaining to this Project. Upon execution of the this Agreement, Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the FTA assisted project for which the work is being performed under this Agreement. In addition to other penalties that may be applicable, Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal

Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Consultant to the extent the Federal Government deems appropriate.

b. Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by the FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 on Consultant, to the extent the Federal Government deems appropriate.

c. Consultant shall include the above clauses in each subconsultant agreement financed in whole or in part with Federal assistance provided by the FTA. Consultant shall not modify the above clauses, except to identify the subconsultant who will be subject to the provisions.

5. Civil Rights:

a. Nondiscrimination – In accordance with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d et seq.), section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102), section 202 of the Americans with Disabilities Act of 1990 (“ADA”), as amended (42 U.S.C. § 12132), and the Federal Transit Law at 49 U.S.C. § 5332, Consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. In addition, Consultant shall comply with applicable Federal implementing regulations and other implementing requirements the FTA may issue.

b. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e et seq.), and the Federal Transit Laws at 49 U.S.C. § 5332, Consultant shall comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor regulations (41 C.F.R. Chapter 60), which implement Executive Order No. 11246 (“Equal Employment Opportunity”) as amended by Executive Order No. 11375 (“Amending Executive Order 11246, Relating to Equal Employment Opportunity”) (42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the Project. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Consultant shall comply with any other implementing requirements the FTA may issue.

c. Age – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. § 623) and the Federal Transit Law at

49 U.S.C. § 5332, Consultant shall refrain from discrimination against present and prospective employees for reason of age. In addition, Consultant shall comply with any other implementing requirements the FTA may issue.

d. Disabilities – In accordance with section 102 of the ADA, as amended (42 U.S.C. § 12112), Consultant shall comply with the requirements of the U.S. Equal Employment Opportunity Commission regulations (29 C.F.R. Part 1630), pertaining to employment of persons with disabilities. In addition, Consultant shall comply with any other implementing requirements the FTA may issue.

e. Consultant shall include these requirements in each subconsultant agreement financed in whole or in part with Federal assistance provided by the FTA, modified only if necessary to identify the affected parties.

6. Conformance With National Intelligent Transportation Systems (ITS) Architecture: To the extent applicable, the contactor agrees to conform to the National ITS Architecture and Standards as required by Section 5206(e) of the Transportation Equity Act for the 21st Century (23 U.S.C. § 502 note), and comply with FTA Notice, "Federal Transit Administration National ITS Architecture Policy on Transit Projects" (66 Fed. Reg. 1455-01 (January 8, 2001)), and other Federal requirements that may be issued.

7. Debarment and Suspension: This contract is a covered transaction for purposes of 49 C.F.R. Part 29. As such, Consultant is required to verify that none of Consultant's principals, as defined at 49 C.F.R. § 29.995, or affiliates, as defined at 49 C.F.R. § 29.905, are excluded or disqualified as defined at 49 C.F.R. §§ 29.940 and 29.945. Consultant is required to comply with 49 C.F.R. § 29, Subpart C and must include the requirement to comply with 49 C.F.R. § 29, Subpart C in any subconsultant agreement it enters into as a result of this Agreement. By signing this Agreement, Consultant certifies as follows:

The certification in this clause is a material representation of fact relied upon by Authority. If it is later determined that Consultant knowingly rendered an erroneous certification, in addition to remedies available to Authority, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Consultant agrees to comply with the requirements of 49 C.F.R. § 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. Consultant further agrees to include a provision requiring such compliance in its subcontracts.

8. Clean Water: Consultant shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*). Consultant shall report each violation to Authority. Consultant acknowledges and agrees that Authority shall, in turn, report each violation as required to assure notification to the FTA and the appropriate United States Environmental Protection Agency ("EPA") regional office. Consultant shall also

incorporate these requirements in all subconsultant agreements entered into as a result of this Agreement exceeding One Hundred Thousand Dollars (\$100,000) financed in whole or in part with Federal assistance provided by the FTA.

9. Clean Air: Consultant shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ("CAA"), as amended (42 U.S.C. § 7401 *et seq.*). Consultant shall report each violation to Authority and acknowledges and agrees that Authority shall, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office. Consultant shall also incorporate these requirements in all subconsultant agreements entered into as a result of this Agreement exceeding One Hundred Thousand Dollars (\$100,000) financed in whole or in part with Federal assistance provided by the FTA.

10. Lobbying: Pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352), as amended by the Lobbying Disclosure Act of 1995 (Pub. L. 104-65; 2 U.S.C. § 1601 *et seq.*), Consultants who apply or bid for an award of One Hundred Thousand Dollars (\$100,000) or more shall file the certification and disclosure form required under 49 C.F.R. Part 20 (Restrictions Upon Lobbying). Subconsultant(s) shall certify to Consultant and Consultant shall certify to Authority that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Consultant shall also incorporate these requirements in all subconsultant agreements entered into as a result of this Agreement.

11. Access to Records and Reports:

a. Consultant agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this agreement for the purposes of making audits, examinations, excerpts and transcriptions. As reasonably may be required, Consultant shall, pursuant to 49 C.F.R. § 633.15, provide the FTA Administrator or his or her designee and the Project Management Oversight ("PMO") contractor access to Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), that is receiving Federal funds through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

b. Consultant shall permit the FTA Administrator and the PMO contractor to reproduce Consultant's records or to copy excerpts and transcriptions as reasonably needed.

c. Consultant shall maintain all records required under this Section 11 for a period of not less than three (3) years after the date of termination or expiration of

this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Consultant agrees to maintain same until Authority, the FTA Administrator, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

12. Fly America: Consultant shall comply with the Fly America Act (49 U.S.C. § 40118) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Consultant shall also incorporate these requirements in all subconsultant agreements entered into as a result of this Agreement that may involve international air transportation.

13. Drug Free Workplace: Consultant shall comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 *et seq.*).

14. Interest of Members of or Delegates to Congress: In accordance with 18 U.S.C. § 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising there from.

15. Environmental Protection: Consultant shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 *et seq.*) consistent with Executive Order No. 11514 ("Protection and Enhancement of Environmental Quality"), as amended (42 U.S.C. § 4321 note).

16. Access Requirements For Persons With Disabilities: Consultant shall comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. Consultant shall also comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibits discrimination on the basis of handicaps, with the ADA, as amended (42 U.S.C. § 12101 *et seq.*), which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

a. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)" (49 C.F.R. Part 37);

b. U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving Federal Financial Assistance" (49 C.F.R. Part 27);

c. U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs" (49 C.F.R. Part 26);

d. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services" (28 C.F.R. Part 35);

e. FTA regulations, "Transportation for Elderly and Handicapped Persons" (49 C.F.R. Part 609); and

f. Any implementing requirements the FTA may issue.

17. Contract Work Hours and Safety Standards:

a. Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

b. Violation; Liability For Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

c. Withholding For Unpaid Wages And Liquidated Damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

d. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this section and also

a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

