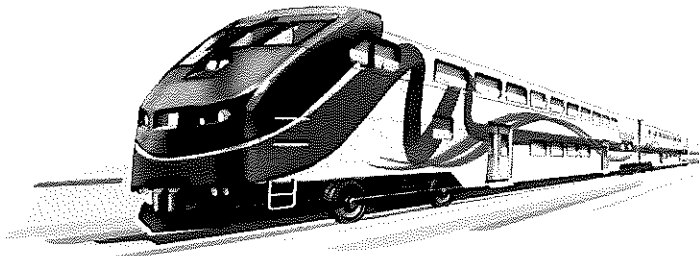


# METROLINK

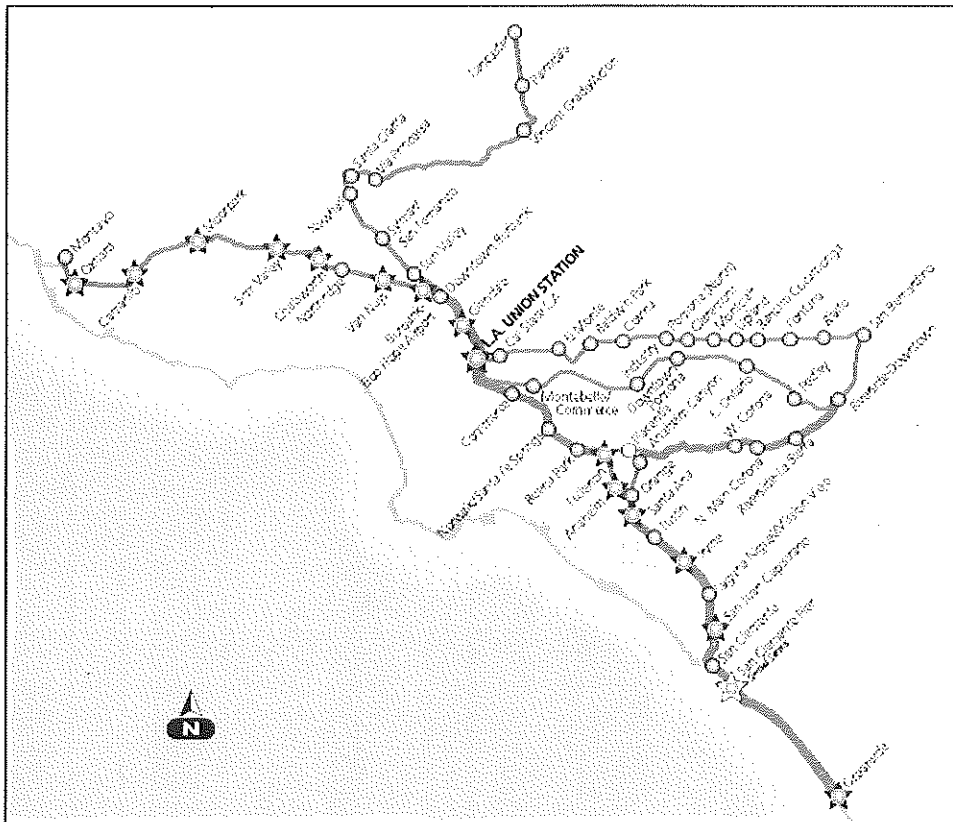
## Southern California Regional Rail Authority



**CONFORMED CONTRACT**

**NO. RM114-17**

**INSURANCE BROKERAGE SERVICES**



### MEMBER AGENCIES

Los Angeles County  
*Metropolitan Transportation Authority*

Orange County  
*Transportation Authority*

Riverside County  
*Transportation Commission*

San Bernardino  
*Associated Governments*

Ventura County  
*Transportation Commission*

**CONTRACT AGREEMENT**

between

Marsh Risk and Insurance Services  
17901 Von Karman, Suite 1100  
Irvine, CA 92614

Project Manager: Marc Urias  
Telephone: (949) 399-5830  
Fax: (949) 399-5964

And

Southern California Regional Rail Authority  
One Gateway Plaza, 12<sup>th</sup> Floor  
Los Angeles, California 90012  
(hereinafter "Authority")

) **CONTRACT DOCUMENTS**

) **CONTRACT NO. RM114-17**

) **INSURANCE BROKERAGE**  
) **SERVICES**

) Contract Amount: \$127,000

) SCRRA Project Manager:

) Name: William E. Garrett

) Title: Senior Counsel, Risk Manager

) Telephone: (213) 452-0225

) Email: GarrettW@scrra.net

) Contract Administrator:

) Name: Manchi Yi

) Title: Principal Contract &

) Compliance Administrator

) Telephone: (213) 452-0469

) Email: yim@scrra.net

)

**SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY  
METROLINK COMMUTER RAIL SYSTEM**

**CONTRACT NO. RM114-17**

**INSURANCE BROKERAGE SERVICES**

**TABLE OF CONTENTS**

<b><u>ARTICLE NO.</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>PAGE NO.</u></b>
1.	SCOPE OF WORK .....	1
2.	PERIOD OF PERFORMANCE .....	1
3.	PAYMENT .....	1
4.	AUDIT AND INSPECTION OF RECORDS .....	2
5.	NOTIFICATION .....	3
6.	AUTHORITY AND CONTRACTOR'S REPRESENTATIVES .....	3
7.	TERMINATION FOR CONVENIENCE .....	4
8.	TERMINATION FOR BREACH OF AGREEMENT .....	4
9.	ASSIGNMENT .....	5
10.	SUBCONTRACTING .....	5
11.	INDEPENDENT CONTRACTOR .....	6
12.	INSURANCE .....	6
13.	INDEMNITY .....	9
14.	REVISIONS IN SCOPE OF WORK .....	9
15.	RIGHTS IN TECHNICAL DATA .....	9
16.	OWNERSHIP OF REPORTS AND DOCUMENTS .....	10
17.	OWNERSHIP RIGHTS .....	10

Table of Contents (continued)

<u>ARTICLE NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
18.	SUBMITTAL OF CLAIMS BY CONTRACTOR .....	11
19.	EQUAL OPPORTUNITY .....	11
20.	STANDARD OF PERFORMANCE.....	11
21.	NOTIFICATION OF EMPLOYMENT OF SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY BOARD MEMBERS/ALTERNATES AND EMPLOYEES.....	12
22.	DISQUALIFYING POLITICAL CONTRIBUTIONS.....	12
23.	COMPLIANCE WITH LAW .....	12
24.	COMPLIANCE WITH LOBBYING POLICIES .....	12
25.	PUBLIC RECORDS ACT .....	12
26.	WAIVER/INVALIDITY.....	13
27.	FORCE MAJEURE .....	13
28.	CONFIDENTIALITY .....	13
29.	CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC.....	14
30.	GOVERNING LAW .....	14
31.	MODIFICATIONS TO AGREEMENT .....	14
32.	PRECEDENCE .....	14
33.	ENTIRE AGREEMENT .....	15
34.	CONFIDENTIALITY AND CLARIFICATION OF SCOPE OF WORK.....	15
35.	LIMITATION OF LIABILITY.....	15

**Exhibit 1 – Cost Schedule**  
**Attachment A – Scope of Services**

This Agreement is made and entered into as of this 28<sup>th</sup> day of October, 2016 by and between the SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (hereinafter referred to as "AUTHORITY") and MARSH RISK AND INSURANCE SERVICES (hereinafter referred to as "CONTRACTOR").

## RECITALS

WHEREAS, AUTHORITY is a joint powers AUTHORITY organized under Sections 6500 et seq. of the California Government Code and Section 130255 of the California Public Utilities code with power to contract for services described in Attachment A to this Agreement entitled "Attachment A - Scope of Work" (hereinafter referred to as "Work");

WHEREAS, CONTRACTOR has indicated it is qualified to perform such Services and (1) has reviewed all the available data furnished by AUTHORITY pertinent to the Work to be rendered; (2) has inspected and reviewed the Work to be rendered; (3) will exercise the ordinary care and skill expected of a practitioner in its profession; and (4) is willing to accept responsibility of performing the Work set forth in this Agreement for the compensation and in accordance with the terms, requirements and conditions herein specified;

NOW, THEREFORE, for the consideration hereinafter stated, the parties agree as follows:

### 1. SCOPE OF WORK

- A. CONTRACTOR will perform the Work and related tasks as described in ATTACHMENT A - SCOPE OF WORK attached hereto and is incorporated by reference into and made a part of this Agreement.
- B. This is a non-exclusive Agreement, whereby AUTHORITY may, at its sole discretion, augment or supplant the work with its own forces or forces of another Contractor or entity. CONTRACTOR will cooperate fully with AUTHORITY's staff or other CONTRACTOR or entity that may be providing similar or the same Work for AUTHORITY.

### 2. PERIOD OF PERFORMANCE

The period of performance shall be for three years from January 1, 2017 to December 31, 2019, with a single two-year option that may be exercised at the sole discretion of the Authority.

### 3. PAYMENT

- A. For CONTRACTOR's full and complete performance of its obligations under this Agreement, the AUTHORITY shall pay CONTRACTOR an employee benefit consulting service fee specified in Exhibit 1, Cost Schedule, and subject to the maximum cumulative payment obligation. In addition, CONTRACTOR shall be entitled to receive commissions based on premiums expended price at the rates

established between CONTRACTOR and carriers subject to the cap specified in Exhibit 1, Cost Schedule.

B. AUTHORITY's maximum cumulative payment obligation under this Agreement for employee benefits consulting service fee shall not exceed One Hundred Twenty-Seven Thousand Dollars (\$127,000), including all amounts payable to CONTRACTOR for all costs, including but not limited to direct labor, other direct costs, subcontracts, indirect costs including but not limited to leases, materials, taxes, insurance, and profit.

C. Invoicing

CONTRACTOR shall invoice AUTHORITY on a monthly basis no later than the 15<sup>th</sup> of each month. CONTRACTOR shall furnish information as may be requested by AUTHORITY to substantiate the validity of an invoice.

Contractor/Consultant shall submit invoices via e-mail to:

[accountspayable@scrra.net](mailto:accountspayable@scrra.net)

Each invoice shall include the following information:

- Contract number
- PO Number
- Detail description of the Work rendered
- Time period covered by the invoice
- Amount of payment requested
- Information as requested by Authority

D. Payment

AUTHORITY shall remit payment within thirty (30) calendar days of approval of the invoices by AUTHORITY's Project Manager.

At its sole discretion, AUTHORITY may decline to make full payment for any Work until such time as CONTRACTOR has documented, to AUTHORITY's satisfaction, that CONTRACTOR has fully completed all required Work.

In the event the AUTHORITY should overpay CONTRACTOR, such overpayment shall not be construed as a waiver of AUTHORITY's right to obtain reimbursement for the overpayment. Upon discovering any overpayment, either on its own or upon notice of AUTHORITY, CONTRACTOR shall immediately reimburse AUTHORITY the entire overpayment.

#### 4. **AUDIT AND INSPECTION OF RECORDS**

CONTRACTOR agrees that AUTHORITY or any duly authorized representative shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards, employment records or other records relating to this Agreement. Such material, including all pertinent cost, accounting, financial records and proprietary data must be kept and maintained by CONTRACTOR for a period of three (3) years after completion of this Agreement unless AUTHORITY's written permission is given to dispose of material prior to this time.

#### 5. **NOTIFICATION**

All notices hereunder concerning this Agreement and the Work to be performed shall be physically transmitted by courier, overnight, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

To the AUTHORITY:

Southern California Regional Rail Authority  
One Gateway Plaza, 12th Floor  
Los Angeles, CA 90012  
Attn: Manchi Yi,  
Principal Contract & Compliance Administrator

To the CONTRACTOR:

Marsh Risk and Insurance Services  
17901 Von Karman, Suite 1100  
Irvine, CA 92614  
Attn: Marc Urias,  
Senior Vice President

#### 6. **AUTHORITY AND CONTRACTOR'S REPRESENTATIVES**

##### A. **Authority's Project Manager**

The Authority's Project Manager under this Agreement shall be William E. Garrett.

- a. The Authority has the final approval in all matters relating to or affecting the Work. Except as expressly specified in the Agreement, the Contracting Officer may exercise any powers, rights and/or privileges that have been lawfully delegated by the Authority. Nothing in the Agreement should be construed to bind the Authority for acts of its officers, employees and/or agents that exceed the delegation of authority specified herein.
- b. The Contracting Officer has delegated to the Project Manager certain powers and duties in connection with the Agreement. The Project Manager is the authorized representative of the Contracting Officer for matters related to this Agreement. The Project Manager or his/her designee is empowered to:
  1. Have general oversight of the Work and the Agreement, including the power to enforce compliance with the Agreement.

2. Reserve the right to remove any portion of the Work from the Contractor which have not been performed to Authority's satisfaction.
  3. Subject to the review and acceptance by the Authority, negotiate with the Contractor all adjustments pertaining to contract for revisions.
- c. In addition to the foregoing, the Project Manager shall have those rights and powers expressly set forth in other sections of the Agreement.

**B. Contractor's Key Personnel**

The following are CONTRACTOR's key personnel, shown with their roles in the Work to be provided:

<u>Name</u>	<u>Role</u>
Marc F. Urias	Project Manager / Client Executive
Jim Michel, PE	Sr. Vice President / Senior Risk Consultant
Aly Mony	Vice President / Client Representative
Jonathan Clark	Vice President / Property Claims Advisor
Jim Wolfarth	Sr. Vice President / Rail Casualty Leader
Kristin Keefer	Sr. Vice President / Sr. Property Client Advisor
Stephanie Pelentay	Sr. Vice President / Casualty Advisor
Elsa Ching	Consultant, Mercer Health & Benefits Relationship Manager
Chintan Upadhyaya	Health & Benefits Analyst

AUTHORITY awarded this Agreement to CONTRACTOR based on AUTHORITY's confidence and reliance on the expertise of CONTRACTOR's key personnel described above. CONTRACTOR shall not reassign key personnel or assign other personnel to key personnel roles until AUTHORITY approves a replacement in writing.

**7. TERMINATION FOR CONVENIENCE**

AUTHORITY may terminate this Agreement for AUTHORITY's convenience at any time by giving CONTRACTOR ten (10) days written notice thereof. Upon receipt of said notice, CONTRACTOR shall immediately take action not to incur any additional obligations, cost or expenses, except as may be reasonably necessary to terminate its activities. AUTHORITY shall pay CONTRACTOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs



incurred by CONTRACTOR to effect such termination. Thereafter, CONTRACTOR shall have no further claims against AUTHORITY under this Agreement. All finished or unfinished documents and materials procured for or produced under this Agreement shall become AUTHORITY property upon date of such termination.

## **8. TERMINATION FOR BREACH OF AGREEMENT**

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, AUTHORITY may give CONTRACTOR written notice of such default. If CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to the AUTHORITY within the time permitted by AUTHORITY, then AUTHORITY may terminate this Agreement due to CONTRACTOR's breach of this Agreement.
- B. If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then AUTHORITY may immediately terminate this Agreement.
- C. If CONTRACTOR violates Article 25.0, Compliance with Lobbying Policies, then AUTHORITY may immediately terminate this Agreement.
- D. In the event AUTHORITY terminates this Agreement as provided in this Article, AUTHORITY may procure, upon such terms and in such manner as AUTHORITY may deem appropriate, Work similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to AUTHORITY for all of its costs and damages, including, but not limited, any excess costs for such Work.
- E. All finished or unfinished documents and materials produced or procured under this Agreement shall become AUTHORITY property upon date of such termination.
- F. If, after notice of termination of this Agreement under the provisions of this Article, it is determined for any reason that CONTRACTOR was not in default under the provisions of this Article, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Article 8, Termination for Convenience.
- G. The rights and remedies of AUTHORITY provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **9. ASSIGNMENT**

This Agreement, any interest herein or claim hereunder, may not be assigned by CONTRACTOR either voluntarily or by operation of law, nor may all or any part of this

Agreement be subcontracted by CONTRACTOR, without the prior written consent of AUTHORITY. Consent by AUTHORITY shall not be deemed to relieve CONTRACTOR of its obligations to comply fully with all terms and conditions of this Agreement.

**10. SUBCONTRACTING**

AUTHORITY hereby consents to CONTRACTOR's subcontracting of portions of the Work to the parties identified below for the functions described in CONTRACTOR's proposal. CONTRACTOR shall include in each subcontract agreement the stipulation that CONTRACTOR, not AUTHORITY, is solely responsible for payment to the subcontractor for the amounts owing and that the subcontractor shall have no claim, and shall take no action against AUTHORITY, Member Agencies or officers, directors, employees or sureties thereof for nonpayment by CONTRACTOR.

<b>Subcontractors Names and Addresses</b>	<b>Work to Be Performed</b>
Price Forbes Limited	Market access to London & Bermuda
Mercer	Employee Benefit Consulting Services

**11. INDEPENDENT CONTRACTOR**

CONTRACTOR's relationship to AUTHORITY in the performance of this Agreement is that of an independent Contractor. CONTRACTOR's personnel performing Work under this Agreement shall at all times be under CONTRACTOR's exclusive direction and control and shall be employees of CONTRACTOR and not employees of AUTHORITY. CONTRACTOR shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

**12. INSURANCE**

Throughout the duration of this Agreement, Contractor shall maintain the following insurance, which shall be full-coverage insurance not subject to self-insurance provisions. Contractor shall not of its own initiative cause such insurance to be canceled or materially changed during the course of this Agreement.

- A. Throughout the duration of this Contract, Contractor shall maintain the following insurance, which shall be first dollar-coverage insurance and, unless approved in writing by Authority, not subject to self-insurance. Contractor shall not of its own initiative cause such insurance to be canceled or materially changed during the course of this Contract.
- B. Within 10 days after receiving Notice of Award, Contractor shall furnish to Lia McNeil-Kakaris, Manager, Strategic Sourcing and Contracts, an endorsement

showing the required insurance coverages for Contractor and further providing that:

1. Authority and its member agencies, and their officers, directors, employees, and agents are named as an additional insured via endorsement on Commercial General Liability and Automobile Liability insurance with respect to performance hereunder.
  2. The coverage shall be primary and noncontributory as to any other insurance with respect to liability hereunder.
  3. Thirty (30) days prior written notice of cancellation or of material change in coverage shall be given to Authority by endorsement.
- C. "Occurrence," as used herein, means any event or related exposure to conditions which results in bodily injury or property damage.
- D. Any deductibles or self-insured retentions must be declared to and approved in writing by the Authority. At the option of the Authority, either the Contractor shall reduce or eliminate such deductibles or self-insured retentions with respect to this Contract to be awarded or shall procure a bond guaranteeing the amount of the deductible or self-insured retention. If the Authority agrees in writing to a deductible or self-insured retention, then the Contractor shall be responsible for the full cost of such deductible or self-insured retention.
- E. **Minimum Limits of Insurances.** The Contractor shall maintain limits no less than:
1. Commercial General Liability to include Products/Completed Operations, Independent Contractor, Contractual Liability, and Personal Injury Liability; with at least the following limits of liability:
    - a. Primary Bodily Injury Liability Limits of \$1,000,000 per occurrence and Primary Property Damage Liability Limits of \$1,000,000 per occurrence, or
    - b. Aggregate liability for both bodily injury and property damage liability of \$2,000,000
  2. **Professional Liability (Technology E&O)** with limits of \$1 million per occurrence.
  3. Automobile Liability: Automobile Liability with the following limits:
    - a. Primary Bodily Injury with limits of \$1,000,000 per occurrence and Primary Property Damage with limits of \$1,000,000 per occurrence, or

- b. Combined single limits of Liability for Primary Bodily and Primary Property Damage of \$2,000,000 per occurrence.
  4. Workers' Compensation Insurance with the limits established and required by the State of California, or other state in which Work will be performed.
  5. Employers' Liability with limits of \$1,000,000 per occurrence.
  6. Proof on Insurance will be required prior to commencement of work under the contract. A certificate of insurance will be required to be furnished to the Authority's Contract Administrator. The insurance coverage is subject to the following requirements:
    - a. The Authority, its member agencies, officers, directors, employees and agents are named as an additional insured via endorsement on Commercial General Liability and Automobile Liability insurance with respect to performance of work under the contract.
    - b. The coverage shall be primary and noncontributory as to any other insurance with respect to liability hereunder.
    - c. Thirty (30) days prior written notice of cancellation or of material changes in coverage is to be given to the Authority by endorsement.
    - d. Any deductibles or self-insured retentions (SIR) must be declared to and approved by the Authority. At the option of the Authority, either the Contractor shall reduce or eliminate such deductibles or self-insured retentions with respect to this Contract to be awarded or shall procure a bond guaranteeing the amount of the deductible or self-insured retention. If the Authority agrees in writing to a deductible or self-insured retention, then in the event of any claims or suits which may arise for which Authority seeks coverage under such policy as an additional insured, Contractor shall satisfy such deductible or self insured retention to the extent of any loss covered by such policy arising from or connected with any alleged act or omission of Contractor its officers, directors, employees, agents, Subcontractors, or suppliers, even if Contractor is not a named defendant in the lawsuit. Contractor's policies shall neither obligate nor prohibit the Authority or any Additional Insured, from paying any portion of any Contractor deductible or SIR.
- F. Contractor shall include the following as insured under its Certificate of Insurance:

Insured:

Southern California Regional Rail Authority (SCRRA)

Additionally Insured:

Burlington Northern Santa Fe Corporation (BNSF)  
Los Angeles County Metropolitan Transportation Authority (MTA)  
National Railroad Passenger Corporation (Amtrak)  
Orange County Transportation Authority (OCTA)  
Riverside County Transportation Commission (RCTC)  
San Bernardino Associated Government (SANBAG)  
Union Pacific Railroad Company (UPRR)  
Ventura County Transportation Commission (VCTC)  
Others at the request of Authority.

**13. INDEMNITY**

CONTRACTOR shall indemnify, defend and hold harmless AUTHORITY, and its member agencies, and their officers, directors, employees and agents from and against any and all liability, expense (including but not limited to defense costs and attorneys' fees), claims, causes of action, and lawsuits for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage (including property of CONTRACTOR) arising from or connected with any alleged negligent act and/or omission of CONTRACTOR, its officers, directors, employees, agents, subcontractors or suppliers. This indemnity shall survive termination of this Agreement and/or final payment thereunder.

**14. REVISIONS IN SCOPE OF WORK**

By written notice or order, AUTHORITY may, from time to time, order work suspension or make changes to this Agreement. The facilities to be maintained under this Agreement as listed in Attachment A, Scope of work may be increased or decreased during the term of the Agreement at the Authority's discretion. If and when this occurs, the Scope of Work and Cost Schedules will be adjusted accordingly, and changes in the Work shall be incorporated into an amendment to this Agreement. Upon execution of an amendment, CONTRACTOR shall perform the Work, as amended.

**15. RIGHTS IN TECHNICAL DATA**

- A. No material or technical data prepared by the CONTRACTOR under this Agreement is to be released by CONTRACTOR to any other person or entity except as necessary for the performance of the Work. All press releases or information concerning the Work that might appear in any publication or dissemination, including but not limited to newspapers, magazines, electronic media, shall first be authorized in writing by the AUTHORITY.
- B. The originals of all letters, documents, reports and other products and data produced under this Agreement shall become the property of the AUTHORITY without restriction or limitation on their use and shall be made available upon request to the AUTHORITY at any time. Original copies of such shall be delivered to the AUTHORITY upon completion of the work or termination of the

work. The CONTRACTOR shall be permitted to retain copies of such items for the furtherance of its technical proficiency; however, publication of this material is subject to the prior written approval of the AUTHORITY.

## 16. OWNERSHIP OF REPORTS AND DOCUMENTS

The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of AUTHORITY. Copies may be made for CONTRACTOR's records, but shall not be furnished to others without written authorization from AUTHORITY. Such deliverables shall be deemed works made for hire, and all rights in copyright therein shall be retained by AUTHORITY.

## 17. OWNERSHIP RIGHTS

- A. In the event the Authority rightfully obtains copies of Proprietary Data under the terms of the separate License Agreement and Escrow Agreement that govern rights in Documentation, Software and Intellectual Property created and/or developed by Contractor, its Third Party Software Contractors and its Suppliers as part of the Project, any derivative works and associated documentation created by or on behalf of the Authority by Permitted Programmers (as defined in the License Agreement) shall be the sole and exclusive property of the Authority (collectively, "Authority Intellectual Property"), and the Authority may use, disclose and exercise dominion and full rights of ownership, in any manner in the Authority Intellectual Property in connection with the use, operation and maintenance of a transportation system administered by the Authority. No use of the Authority Intellectual Property shall be made for any purpose other than in conjunction with a transportation system administered by the Authority, and the Authority shall not sell, lease, rent, give away or otherwise disclose any Authority Intellectual Property to any outside third party other than Permitted Programmers. To the extent there may be any question of rights of ownership or use in any Authority Intellectual Property, Contractor shall require all of its Subcontractors and Suppliers (including without limitation its Third Party Software Contractors) to assign to Authority, all worldwide right, title and interest in and to all Authority Intellectual Property in a manner consistent with the foregoing terms of this paragraph. Contractor shall execute any documents as Authority may from time to time reasonably request to effectuate the terms of this paragraph.
- B. All documentation and Software which predates this Contract and which otherwise owned by Contractor or its Third Party Software Contractors, and all Documentation and Software which is created by Contractor or its Third Party Software Contractors shall be Licensed Software or Licensed Documentation, as appropriate. All Licensed Software and Licensed Documentation shall be governed by the License Agreement by and between the parties of even date herewith.

## **18. SUBMITTAL OF CLAIMS BY CONTRACTOR**

CONTRACTOR shall file any and all claims with AUTHORITY's Project Manager in writing within thirty (30) days of the event or occurrence giving rise to the claim. The claim shall be in sufficient detail to enable AUTHORITY to ascertain the claim's basis and amount, and shall describe the date, place and other pertinent circumstances of the event or occurrence giving rise to the claim and the indebtedness, obligation, injury, loss or damages allegedly incurred by CONTRACTOR.

Even though a claim may be filed and/or in review by AUTHORITY, CONTRACTOR shall continue to perform in accordance with this Agreement.

## **19. EQUAL OPPORTUNITY**

CONTRACTOR shall not discriminate against, or grant preferential treatment to, any individual or group, or any employee or applicant for employment because of race, age, religion, color, ethnicity, sex, national origin, ancestry, physical handicap, mental condition, political affiliation, sexual orientation or marital status. CONTRACTOR shall take action to ensure that applicants and employees are treated without regard to the above.

## **20. STANDARD OF PERFORMANCE**

- A. CONTRACTOR shall perform and exercise, and require its subcontractors to perform and exercise due professional care and competence in the performance of the Work in accordance with the requirements of this Agreement. CONTRACTOR shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Work, it being understood that AUTHORITY will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Work. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement and/or final payment thereunder.
- B. All workers shall have sufficient skill and experience to perform the Work assigned to them. AUTHORITY shall have the right, at its sole discretion, to require the removal of CONTRACTOR's personnel at any level assigned to the performance of the Work at no additional fee or cost to AUTHORITY, if AUTHORITY considers such removal in its best interests and requests such removal in writing and such request is not done for illegal reasons. Further, an employee who is removed from performing Work under this Agreement under this Article shall not be re-assigned to perform Work under this Agreement without AUTHORITY's prior written authority.

**21. NOTIFICATION OF EMPLOYMENT OF SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY BOARD MEMBERS/ALTERNATES AND EMPLOYEES**

To ensure compliance with AUTHORITY's Ethics Policy, CONTRACTOR shall provide written notice to AUTHORITY disclosing the identity of any individual who CONTRACTOR desires to employ or retain under a contract, and who (1) presently serves as a Board Member/Alternate or an employee of the AUTHORITY, or (2) served as a Board Member/Alternate or an employee of the AUTHORITY within the previous 12 months of the date of the proposed employment or retention by CONTRACTOR. CONTRACTOR's written notice shall indicate whether the individual will be an officer, principal or shareholder of the entity and/or will participate in the performance of the Agreement.

**22. DISQUALIFYING POLITICAL CONTRIBUTIONS**

In the event of a proposed amendment to this Agreement, CONTRACTOR shall provide a written statement disclosing any contribution(s) of \$250 or more made by CONTRACTOR or its subcontractor within the preceding twelve (12) months of the date of the proposed amendment. Applicable contributions include those made by any agent/person/entity on behalf of CONTRACTOR or subcontractor.

**23. COMPLIANCE WITH LAW**

CONTRACTOR shall familiarize itself with and perform the Work required under this Agreement in conformity with requirements and standards of AUTHORITY, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and work may be affected by Work under this Agreement. CONTRACTOR shall also comply with all Federal, California and local laws and ordinances.

**24. COMPLIANCE WITH LOBBYING POLICIES**

- A. CONTRACTOR agrees that if it is a Lobbyist Employer or if it has retained a Lobbying Firm or Lobbyist, as such terms are defined by AUTHORITY in its Ethics Policy, it shall comply or ensure that its Lobbying Firm and Lobbyist complies with AUTHORITY's Ethics Policy.
- B. If CONTRACTOR (Lobbyist Employer) or its Lobbying Firm or Lobbyist fails to comply, in whole or in part, with AUTHORITY's Ethics Policy, such failure shall be considered a material breach of this Agreement and AUTHORITY shall have the right to immediately terminate or suspend this Agreement.

**25. PUBLIC RECORDS ACT**

- A. All records, documents, drawings, plans, specifications and other material relating to conduct of AUTHORITY's business, including materials submitted by CONTRACTOR in its proposal and during the course of performing the Work under this Agreement, shall become the exclusive property of AUTHORITY and



may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. AUTHORITY's use and disclosure of its records are governed by this Act.

- B. AUTHORITY will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of trade secret, confidential or proprietary. AUTHORITY will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" or "PROPRIETARY" as determined by CONTRACTOR. AUTHORITY will endeavor to notify CONTRACTOR of any request of the disclosure of such materials. Under no circumstances, however, will AUTHORITY be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistakes or negligence on the part of AUTHORITY or its officers, employees and/or CONTRACTORS.
- C. In the event of litigation concerning the disclosure of any material submitted by CONTRACTOR, AUTHORITY's sole involvement will be as a stake holder, retaining the material until otherwise ordered by a court. CONTRACTOR, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold AUTHORITY harmless from all costs and expenses, including attorneys' fees, in connection with such action.

## 26. **WAIVER/INVALIDITY**

No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach of the provision, or of any other breach of the provision of the Agreement. Failure of either party to enforce any provision of this Agreement at any time shall not be construed as a waiver of that provision.

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

## 27. **FORCE MAJEURE**

Performance of each and all CONTRACTOR's and AUTHORITY's covenants herein shall be subject to such delays as may occur without CONTRACTOR's or AUTHORITY's fault from acts of God, strikes, riots, or from other similar causes beyond CONTRACTOR's or AUTHORITY's control.

## 28. **CONFIDENTIALITY**

CONTRACTOR agrees that for and during the entire term of this Agreement, any information, data, figures, records, findings and the like received or generated by CONTRACTOR in the performance of this Agreement, shall be considered and kept as the private and privileged records of AUTHORITY and will not be divulged to any person, firm, corporation, or other entity except on the direct written authorization of

AUTHORITY. Further, upon expiration or termination of this Agreement for any reason, CONTRACTOR agrees that it will continue to treat as private and privileged any information, data, figures, records and the like, and will not release any such information to any person, firm, corporation or other entity, either by statement, deposition, or as a witness, except upon direct written authority of AUTHORITY.

## 29. **CONTRACTOR'S INTERACTION WITH THE MEDIA AND THE PUBLIC**

- A. AUTHORITY shall review and approve in writing all AUTHORITY related copy proposed to be used by CONTRACTOR for advertising or public relations purposes prior to publication. CONTRACTOR shall not allow AUTHORITY related copy to be published in its advertisements and public relations programs prior to receiving such approval. CONTRACTOR shall ensure that all published information is factual and that it does not in any way imply that AUTHORITY endorses CONTRACTOR's firm, service, and/or product.
- B. CONTRACTOR shall refer all inquiries from the news media to AUTHORITY, and shall comply with the procedures of AUTHORITY's Public Affairs staff regarding statements to the media relating to this Agreement or the Work.
- C. If CONTRACTOR receives a complaint from a citizen or the community, CONTRACTOR shall inform AUTHORITY as soon as possible and inform AUTHORITY of any action taken to alleviate the situation.
- D. The provisions of this Article shall survive the termination or expiration of this Agreement.

## 30. **GOVERNING LAW**

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of California, and the proper venue of any action brought hereunder is and shall be Los Angeles County, California.

## 31. **MODIFICATIONS TO AGREEMENT**

Unless specified otherwise in the Agreement, this Agreement may only be modified by written mutual consent evidenced by signatures of representatives authorized to enter into and modify the Agreement. In order to be effective, amendments may require prior approval by the AUTHORITY's Board of Directors, and in all instances require prior signature of an authorized representative of the AUTHORITY.

## 32. **PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, (2) Attachment A – Scope of Work, (3) provisions of RFP No. RM114-17 and (4) CONTRACTOR's proposal dated July 22, 2016.

### **33. ENTIRE AGREEMENT**

This Agreement, and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire agreement between AUTHORITY and CONTRACTOR and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written.

### **34. CONFIDENTIALITY AND CLARIFICATION OF SCOPE OF WORK**

Notwithstanding anything to the contrary in Section 4 of the Agreement, CONTRACTOR's obligation to provide (and AUTHORITY's right to examine, audit, copy or transcribe) pertinent records is limited to those records directly relating to the work under this Agreement and therefore does not include payroll records, personnel and time records, cost records, other records (including financial and accounting records) not directly related to placements or other work by CONTRACTOR for AUTHORITY and proprietary data of CONTRACTOR. Notwithstanding anything to the contrary in Sections 7, 8, 15, 16, and 17 of the Agreement, (a) CONTRACTOR retains all of its rights in its intellectual property (including methodologies, ideas, know-how, techniques, models, tools, skills, knowledge and experience and any graphic representations of any of these) used by it generally or provided generally to clients and shall not be restricted in any way thereto; (b) AUTHORITY shall not use the work product provided by CONTRACTOR to AUTHORITY for any purpose other than its internal risk management purposes; (c) there is no Licensed Software or Licensed Documentation with respect to this Agreement, (d) only completed documents and materials prepared specifically and exclusively for AUTHORITY will be owned by AUTHORITY, and (e) CONTRACTOR's analysis, advice, findings, opinions and recommendations are solely for the information of the AUTHORITY and, except to (i) insurers in connection with the services herein or (ii) otherwise required by law, may not be quoted in whole or in part or otherwise referred to, disclosed or delivered by the AUTHORITY to any other person or entity without the prior written consent of CONTRACTOR. CONTRACTOR's obligations in Section 23 are limited to its compliance with all Federal, California local laws and ordinances applicable to the work hereunder. The services provided by CONTRACTOR apply only to non-medical ancillary benefits as medical benefits are provided by CalPERS.

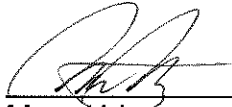
### **35. LIMITATION OF LIABILITY**

In no event shall either party be liable for any indirect, special, incidental, consequential or punitive damages or for any lost profits arising out of or relating to any services provided by CONTRACTOR or its affiliates. The aggregate liability of CONTRACTOR, its affiliates (except Mercer) and its and their employees to the AUTHORITY arising out of or relating to the provision of services by CONTRACTOR or its affiliates (except Mercer) shall not exceed \$10 million. This provision applies to the fullest extent permitted by applicable law. The aggregate liability of Mercer, its affiliates (except CONTRACTOR) and any officer, director or employee of it and its affiliates (except CONTRACTOR) ("Mercer Parties") to the AUTHORITY, its affiliates, its officers, directors or employees or those of its affiliates and any third party (including any benefit plan, its fiduciaries or any plan sponsor) for any and all liability arising out of or relating to the provision of any services at any time by any of the Mercer Parties shall not exceed the greater of one times the compensation for the services giving rise to such liability and \$100,000. Mercer shall have no liability for the acts or omissions of any third party (other than its subcontractors).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date shown below, and effective on the date first hereinabove written.

MARSH RISK AND INSURANCE  
SERVICES

SOUTHERN CALIFORNIA  
REGIONAL RAIL AUTHORITY



Marc Urias  
Senior Vice President



Arthur T. Leahy  
Chief Executive Officer

1-19-2017

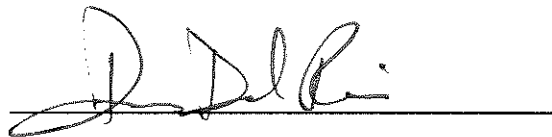
Date

Tax I.D. No. 3614360000

**APPROVED AS TO FORM:**

Don Del Rio  
General Counsel

By:



**EXHIBIT 1**  
**COST SCHEDULE**

**EXHIBIT 1**  
**COST SCHEDULE**

<b><u>EMPLOYEE BENEFIT CONSULTING SERVICES</u></b>	Proposed Fee
Consultant Services Fee – Year 1	\$42,000
Consultant Services Fee – Year 2	\$42,000
Consultant Services Fee – Year 3	\$43,000
<b>TOTAL FOR YEAR 1 – 3</b>	<b><u>\$127,000</u></b>
Consultant Services Fee – Option Year 1	\$43,000
Consultant Services Fee – Option Year 2	\$44,000

**EXHIBIT 1**  
**COST SCHEDULE**

**INSURANCE PLACEMENT FEE**

	<b>Percentage</b>		<b>Est. Cost</b>
<b>Year 1</b>	Commission Cap for Operating Liability	<u>3.5</u> x 8.5 mil	<u>\$ 297,500</u>
	Commission Cap for Property	<u>3.75</u> x 2.6 mil	<u>\$ 97,500</u>
	Commission Cap for Auto	<u>3.75</u> x 300,000	<u>\$ 11,250</u>
	Commission Cap for Workers Comp	<u>3.75</u> x 750,000	<u>\$ 28,125</u>
	Commission Cap for Crime, E&O, Security	<u>3.75</u> x 84,000	<u>\$ 3,150</u>
<b>Year 2</b>	Commission Cap for Operating Liability	<u>3.5</u> x 8.5 mil	<u>\$ 297,500</u>
	Commission Cap for Property	<u>3.75</u> x 2.6 mil	<u>\$ 97,500</u>
	Commission Cap for Auto	<u>3.75</u> x 300,000	<u>\$ 11,250</u>
	Commission Cap for Workers Comp	<u>3.75</u> x 750,000	<u>\$ 28,125</u>
	Commission Cap for Crime, E&O, Security	<u>3.75</u> x 84,000	<u>\$ 3,150</u>
<b>Year 3</b>	Commission Cap for Operating Liability	<u>3.5</u> x 8.5 mil	<u>\$ 297,500</u>
	Commission Cap for Property	<u>4</u> x 2.6 mil	<u>\$ 104,000</u>
	Commission Cap for Auto	<u>4</u> x 300,000	<u>\$ 12,000</u>
	Commission Cap for Workers Comp	<u>4</u> x 750,000	<u>\$ 30,000</u>
	Commission Cap for Crime, E&O, Security	<u>4</u> x 84,000	<u>\$ 3,360</u>
<b>Option (Year 1)</b>	Commission Cap for Operating Liability	<u>3.5</u> x 8.5 mil	<u>\$ 297,500</u>
	Commission Cap for Property	<u>4</u> x 2.6 mil	<u>\$ 104,000</u>
	Commission Cap for Auto	<u>4</u> x 300,000	<u>\$ 12,000</u>
	Commission Cap for Workers Comp	<u>4</u> x 750,000	<u>\$ 30,000</u>
	Commission Cap for Crime, E&O, Security	<u>4</u> x 84,000	<u>\$ 3,360</u>
<b>Option (Year 2)</b>	Commission Cap for Operating Liability	<u>3.5</u> x 8.5 mil	<u>\$ 297,500</u>
	Commission Cap for Property	<u>4.25</u> x 2.6 mil	<u>\$ 110,500</u>
	Commission Cap for Auto	<u>4.25</u> x 300,000	<u>\$ 12,750</u>
	Commission Cap for Workers Comp	<u>4.25</u> x 750,000	<u>\$ 31,875</u>
	Commission Cap for Crime, E&O, Security	<u>4.25</u> x 84,000	<u>\$ 3,570</u>

**ATTACHMENT A**  
**SCOPE OF SERVICES**



**SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY  
METROLINK COMMUTER RAIL SYSTEM**

**INSURANCE BROKERAGE SERVICES**

**ATTACHMENT A  
SCOPE OF SERVICES**

**1. BACKGROUND AND SCOPE OVERVIEW**

The Authority is a Joint Powers Authority established by the five counties of Los Angeles, Orange, Riverside, San Bernardino and Ventura to develop and maintain the Metrolink Commuter Rail System. Authority operates 137 Metrolink trains each weekday on approximately 512 route miles that provide service to 54 stations in six counties (Los Angeles, Orange, Riverside, San Bernardino, Ventura and San Diego).

The Authority has an on-going need for the service of an insurance brokerage firm to assist in assessing the various types and levels of insurance coverage required by the Authority specific to heavy rail operations and real and personal property including locomotives and passenger cars and to appropriately place these requirements on an annual basis. The Authority's insurance program shall be in place at the start of the fiscal year beginning on July 1<sup>st</sup>, and ending June 30<sup>th</sup> of the following year. The Authority's current insurance coverage requirements and limits are listed in Appendix A, to the Contract Agreement.

The services to be performed by Consultant shall consist of, but not be limited to the following:

**A. Basic Services**

1. Preparation of an annual marketing plan for the procurement of property and casualty insurance to include the outlining of goals and objectives, market trends, coverage specification, markets to be assessed, estimate of premium cost, time line for placement, information needs from the Authority and anticipated results.
2. Compile all necessary underwriting information and market the Authority's insurance and employee benefits coverage; and as directed by Authority, place said coverage as required.
3. Provide such consultation, technical advice in identifying and evaluating exposures to loss, including review of previous analysis and evaluations.
4. Issue certificates of insurance evidencing Authority coverage as may be required.

5. Place insurance underwriters on notice of loss/claim or potential loss/claim as required by the insuring agreements in policies maintained by the Authority.
6. Assist the Authority in compiling and submitting loss/claim information to the Authority's insurers as appropriate.
7. Assist the Authority Project Manager in identifying and evaluating exposures to loss, including review of previous analysis and evaluations.

**B. Other Services**

1. Provide consultation, technical advice, and recommendations regarding employee benefits related issues.
2. Draft benefits plan documents and summary plan descriptions as well as assist in preparation of employee benefit plan brochures and other benefits communications.
3. Prepare statistical reports regarding employee benefit plan performance.
4. Provide various benefit-related reports, including but not limited to cost/trend analyses, benchmarking analyses, plan utilization and performance analyses and cost sharing analyses.
5. Perform actuarial analysis and forecast of public liability, automobile liability and workers' compensation losses to assist the authority in establishing appropriate loss reserves.

**C. Responsibilities**

Broker shall:

1. By January 1 of each year begin evaluating the Authority's insurance requirements and provide Authority, no later than April 30<sup>th</sup> of that year, with an expected renewal premium cost and fees for the various coverage.
2. Assist Authority Project Manager in loss assessment, loss control on a weekly or on an as-needed basis.
3. Provide insurance policies 90 days after premiums have been paid.
4. Assist Authority Project Manager in compiling data for submission of annual applications of insurance.
5. Put applicable carriers on notice of claim promptly pursuant to policy requirements.

6. On an annual basis, evaluate the Authority's insurance requirements, compile census data, market the Authority's benefits, negotiate rates with insurance carriers, recommend plan design changes and provide the Authority with marketing results no later than October 1 of each year.