

HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT
CONTRACT NO. SC-DTS-0700001
AMENDMENT NO. 2

THIS AMENDMENT NO. 2 dated MAY 21 2009 (this "Amendment No. 2"), by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, hereinafter called the "CITY", and PB AMERICAS, INC., a New York Corporation, whose office and mailing address is 1001 Bishop Street, American Savings Bank Tower, Suite 2400, Honolulu, Hawaii 96813, hereinafter referred to as the "CONSULTANT", collectively referred to as the "parties."

WITNESSETH THAT:

WHEREAS, the parties entered into Agreement No. SC-DTS-0700001 for Professional Services (CONSULTANT Agreement No. 16471A), dated August 24, 2007, as amended by Amendment No. 1 dated June 23, 2008 (collectively, the "Agreement"), to provide general engineering consultant services for the Preliminary Engineering/Environmental Impact Statement (PE/EIS) for the Honolulu High-Capacity Transit Corridor Project (the "Project");

WHEREAS, the CITY now desires to further amend the Agreement as specified under the General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu (8/2000), Subsection 5.1 MODIFICATIONS OF CONTRACTS, incorporated by reference into the Agreement, to increase the amount in paragraph 5 of the Agreement by FIVE MILLION DOLLARS (\$5,000,000) to provide for additional services to assist the CITY to expand the Project public information and outreach activities; and

WHEREAS, the CONSULTANT is willing to provide the technical and professional services required if additional compensation is provided for;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the CITY and the CONSULTANT hereby mutually agree as follows:

1. Paragraph 5, AGREEMENT FOR PROFESSIONAL SERVICES. Delete the paragraph in its entirety and substitute in lieu thereof the following:

"5. This is a cost plus fixed fee contract, and is subject to the provisions of this paragraph. In accordance with Paragraph VI of the Special Provisions and Section 8 of the General Terms and Conditions, the CITY agrees to pay the

CONSULTANT, for the satisfactory performance and completion of the Work, in accordance with invoices received, and further as set forth in the Special Provisions attached hereto. The aggregate amount of such payments for the Work (the "Aggregate Amount") shall not exceed NINETY MILLION DOLLARS (\$90,000,000) for direct labor, overhead, subconsultants, and a fixed fee, inclusive of State General Excise and Use Tax. Payment shall be invoiced to the CITY in accordance with guidelines as set forth in the Special Provisions.

Such payments shall be provided from Federal and CITY funds.

Also included with the Aggregate Amount is an Allowance for Other Direct Costs of THREE MILLION FIVE HUNDRED TEN THOUSAND EIGHT HUNDRED SIXTY-EIGHT DOLLARS (\$3,510,868). This Allowance for Other Direct Costs is not to be exceeded without a contract amendment and any funds remaining at the end of the Agreement shall revert back to the CITY. The Allowance for Other Direct Costs is provided for expenses identified in Schedule B-1, Exhibit 2A-1 to the Special Provisions and such other expenses as are specifically approved by the CITY. Payment for Other Direct Costs is subject to the terms contained in the Special Provisions. Reimbursement shall be made for actual costs incurred without markup upon submission of a copy of the vendor invoice or other documentation satisfactory to the CITY.

The CITY agrees to establish an Allowance for Extra Work of ONE MILLION DOLLARS (\$1,000,000) which is not to be exceeded without a contract amendment. Payment for Extra Work will be negotiated and a contract amendment will be processed to reflect the change. Extra Work requested by the CITY shall be authorized as set forth in Section 5 of the General Terms and Conditions. Any funds remaining at the end of the Agreement shall revert back to the CITY.

In accordance with the paragraphs above, the total aggregate amount of NINETY-ONE MILLION DOLLARS (\$91,000,000) (the "Total Aggregate Amount") is established as the maximum payable under this Agreement and is subject to the Special Provisions and the General Terms and Conditions, including the provisions thereof related to reducing or increasing the compensation of the CONSULTANT."

2. SPECIAL PROVISIONS

a. Exhibit 2A – Cost Estimate:

- (1) Exhibit 2A – Cost Estimate, is deleted and is replaced in its entirety with Exhibit 2A-1 – Cost Estimate, attached hereto.
- (2) Schedule B – Other Direct Cost Details, Exhibit 2A – Cost Details, is deleted and is replaced in its entirety with Schedule B-1 – Other Direct Cost Details, Exhibit 2A-1 – Cost Estimate, attached hereto.
- (3) Schedule C – Subconsultant Cost, Exhibit 2A – Cost Estimate, is deleted and is replaced in its entirety with Schedule C-1 – Subconsultant Cost, Exhibit 2A-1 – Cost Estimate, attached hereto.

b. Exhibit 2B COMPENSATION AND INVOICING. Delete the paragraph in its entirety and substitute in lieu thereof the following:

**”Exhibit 2B-1
COMPENSATION AND INVOICING**

1. Subject to the provisions set forth in this Agreement, the CONSULTANT will be paid on a monthly basis by the CITY for authorized and satisfactorily completed work and services rendered under this Agreement. Such payment shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals. The amount to be paid to the CONSULTANT shall be computed as hereinafter set forth; provided that such payment shall not exceed the amount of \$90,000,000, (hereinafter called the “Total Price”), which includes all costs and fees associated with this Agreement, subject only to authorized adjustments as specifically provided in this Agreement. In the event the CONSULTANT incurs costs, fees or other compensation in excess of the Total Price, adjusted as provided herein, the CONSULTANT shall pay such excess from its own funds and the CITY shall not be required to pay any part of such excess and the CONSULTANT shall have no claim against the CITY on account thereof.
2. Compensation for work and services shall be on a cost plus fixed fee basis but not to exceed the Total Price. Compensation shall be the sum of direct labor costs, indirect costs, subconsultant costs, other direct costs, fixed fee and

General Excise and Use Tax as described below. Costs to be paid are identified in the "Cost Estimate" schedule, which is attached hereto as Exhibit 2A-1 and incorporated herein by this reference, and comprise the following:

- a. Direct Labor Costs. Direct labor costs shall be the total number of hours worked on the Project by each authorized employee multiplied by the employee's regular hourly rate. The CONSULTANT shall develop procedures to be approved by the CITY that limit charges by non-Project office employees to those in the CONSULTANT's cost estimate contained in Schedule A, Exhibit 2A-1. Advance CITY approval is required for all employee Project charges with a regular hourly rate of \$70 per hour or higher except for employees assigned to the Project Office. CITY approval is required for employee overtime labor charges. In no event shall the premium portion of overtime be classified or billed as direct labor.
- b. Indirect Costs. Indirect costs shall be the product of all direct labor costs multiplied by an overhead rate. The parties agree that the Overhead Rates shown in Exhibits 2 C.1, 2 C.2 and 2 C.3 shall be used on a provisional basis for the purpose of invoicing until the audited rate that is based on a "Report of Independent Auditors" for the period is agreed upon by the CITY at which time payment for services using the provisional rate will be adjusted to the audited rate accepted by the CITY. The CONSULTANT's overhead rates are to be calculated on an annual basis and are to be prepared on the basis of accounting practices prescribed by Part 31, Subparts 31.1 and 31.2 of the Federal Acquisition Regulations.

Facilities, services and equipment for Project Office CONSULTANT staff will be provided by the CITY. It is agreed that Project services by the CONSULTANT and employees assigned to the Project Office will be invoiced to the CITY at the provisionally approved Project Office overhead rate; Project services by employees that are not assigned, but are expected to work in the Project Office for twenty nine (29) or more continuous days shall be invoiced to the CITY at the CONSULTANT's provisionally approved Field Overhead Rate; and Project services by CONSULTANT employees not assigned to the Project Office and who are not expected to be working in the Project Office for twenty nine (29) or more continuous days shall be invoiced to the CITY at the CONSULTANT's provisionally approved General Service Office rate. The CONSULTANT's provisional overhead rates will be reviewed

annually by the CITY and adjusted if deemed acceptable to the CITY. The initial Provisional Overhead Rate schedules are contained in attached Exhibits 2 C.1, 2 C.2 and 2.C.3 and are incorporated by this reference.

- c. Other Direct Costs. Other direct costs shall be billed at cost without markup by the CONSULTANT and shall include actual authorized expenses incurred by the CONSULTANT for Project work that is identified in the CONSULTANT's Cost Estimate which is attached hereto as Schedule B-1, Exhibit 2A-1 and incorporated herein by this reference.
- d. Fixed Fee. The CITY shall pay the CONSULTANT a fixed fee of \$4,024,430. Such fixed fee is included in the Total Price set forth above. It is understood and agreed that the fixed fee is only due and payable for the Project work for which the CITY has given notice to proceed and for which the CONSULTANT has satisfactorily completed. The fixed fee will be prorated and paid monthly in proportion to the CONSULTANT's direct labor and overhead for work satisfactorily completed. The proportion of work completed shall be documented by invoices. A payment for an individual month shall include that approved portion of the fixed fee allocable to the Project work satisfactorily completed during said month and not previously paid. Any portion of the fixed fee not previously paid in the monthly payments shall be included in the final payment. The CITY may permit an increase in the fixed fee only due to "Additional Work" beyond that work covered by the scope of services that is contained in Exhibit 1 and is incorporated by this reference. In the event the CITY deletes work from the Scope of Services in Exhibit 1, a proportional decrease in the fixed fee may be required. The fixed fee shall not be increased or decreased for additional or lower level of effort for the work described in Exhibit 1.
- e. Subconsultant Costs. It is agreed that the CITY has the right to approve any CONSULTANT subcontract agreement related to the Project. The provisions contained in Exhibit 2B-1 shall apply to Subconsultant costs. Subconsultant costs shall be billed to the CITY at cost without markup by the CONSULTANT and shall include actual authorized expenses incurred by the CONSULTANT for Project work that is identified in the CONSULTANT's Cost Estimate which is attached hereto as Exhibit 2A-1 and incorporated herein by this reference.

- f. The CONSULTANT's Cost Estimate contained in Exhibit 2A-1 shall designate by employee the expected overhead rate schedule to be used for billing and any changes will require advance CITY approval.
3. Payment Schedule. Each month the CONSULTANT shall submit to the CITY an invoice for payment for Project work completed to the end of the previous month in a form and in reasonable detail as determined by the CITY. Such invoices shall be for work performed subsequent to that work covered by all previously submitted invoices and shall be completed pursuant to the rates and limitations set forth herein above. Invoices shall be supported by adequate documentation as determined by the CITY and shall detail the work, hours, and employee name for which payment is being requested, including subconsultant employees, and shall itemize, with receipts and invoices attached, the Other Direct Costs for which reimbursement is being requested. Within thirty (30) days of receipt of an invoice and upon approval of the work satisfactorily completed and amount billed, the CITY will pay the invoice as approved. At no time shall the total cumulative amount paid for the Project work exceed the Total Price. Copies of all invoices submitted by the authorized subconsultants identified in Schedule B-1, Exhibit 2A-1 for which payment is requested shall be submitted to the CITY. **The CONSULTANT shall notify the CITY Project Manager in writing no later than ten (10) days after expending seventy five percent (75%) of the Total Price or whenever the CONSULTANT believes the Project Work cannot be completed for the Total Price.**
3. By signing below, the CONSULTANT hereby certifies that, to the best of its knowledge and belief, cost or pricing data, as defined in Section 3-122-122, Hawaii Administrative Rules, and submitted pursuant to Section 3-122-125, HAR, either actually or by specific identification in writing to the Officer-in-Charge in support of this Amendment No. 2, is accurate, complete and current as of the date of this Amendment No. 2. This certification includes the cost or pricing data supporting any advance agreement(s) between the CONSULTANT and the CITY which are part of the proposal.
4. In the event of any conflict or inconsistency between the provisions of this Amendment No. 2 and any provisions of the Agreement, the provisions of this Amendment No. 2 shall govern in all aspects.
5. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No: 2 to the Agreement, effective as of the date first written above.

APPROVED AS TO CONTENT:
Department of Transportation Services

for Sharon A. A.
By: Its Director
Services
Department of Transportation Services

CITY & COUNTY OF HONOLULU

By: [Signature]
By: Director of Budget and Fiscal

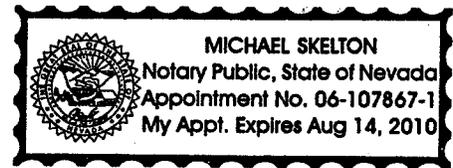
APPROVED AS TO FORM AND
LEGALITY:

[Signature]
Deputy Corporation Counsel

PB AMERICAS, INC.

By: [Signature]
Its: SR. V.P.

Federal ID No.



State of Nevada
County of Clark
This instrument was acknowledged
before me by Samuel Tso
on the 20th day of April.
[Signature]

Certificate

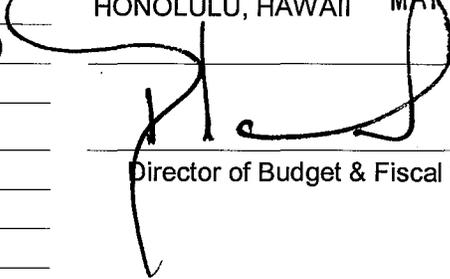
The attached contract for providing general engineering consultant services
for the Preliminary Engineering/Environmental Impact Statement for the Honolulu High-Capacity Transit
Corridor Project

Original Contract Amount	\$86,000,000.00
This Amendment (Increase)	5,000,000.00
New Contract Amount	<u>\$91,000,000.00</u>

is hereby approved as to availability and designation of funds, and certification is hereby made that there is a valid appropriation from which expenditures to be made under said contract may be made and that sufficient unencumbered funds are available in the Treasury of the City and County of Honolulu to the credit of such appropriation to pay the amounts of such expenditures when the same become due and payable.

CONTRACT NO. SC - DTS- 0700001- 3
FUND Sewer Revenue Bond Improvement Fund (670)
ACCOUNT NO. 690/7802-08-D (4064)

HONOLULU, HAWAII MAY 21 2009


Director of Budget & Fiscal Services *deh*

