

HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT
CONTRACT NO. SC-DTS-0700001
AMENDMENT NO. 9

THIS AMENDMENT NO. 9 ("Amendment No. 9") is entered into and effective July 1, 2011, by and between the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a semi-autonomous agency of the City and County of Honolulu, whose principal place of business and mailing address is 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813, hereinafter referred to as "HART," 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 City and County of Honolulu (the "CITY") and CONSULTANT 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, Amendment No. 2 dated May 21, 2009, Amendment No. 3 dated January 22, 2010, Amendment No. 4 dated April 7, 2010, Amendment No. 5 dated October 6, 2010, Amendment No. 6 dated December 21, 2010, Amendment No. 7 dated April 19, 2011, and Amendment No. 8 dated June 30, 2011 (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 assigned the Agreement to HART effective July 1, 2011; and

WHEREAS, the parties desire 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 reflect the assignment of the Agreement from the CITY to HART;

NOW, THEREFORE, the parties, in consideration of the foregoing and of the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound, hereby mutually agree to amend the Agreement as follows:

1. "HART" shall be substituted for the "City and County of Honolulu," "CITY," "Rapid Transit Division," "RTD," "Department of Budget and Fiscal Services" and "DBFS" wherever those terms appear in the Agreement, unless the context clearly indicates otherwise.
2. "HART Executive Director or Designee" shall be substituted for the "Director," "Director of the Department of Transportation Services," and "Director of Budget and Fiscal Services" wherever those terms appear in the Agreement, unless the context clearly indicates otherwise.
3. "Chief Procurement Officer" shall mean and refer to the "HART Executive Director or Designee."

4. "Officer-in-Charge" shall mean and refer to the "HART Deputy Project Officer, Administration and Control."

5. Paragraph 8 in the Agreement for Professional Services shall be deleted in its entirety and replaced with the following:

8. Unless otherwise notified in writing by the HART Executive Director, when notice is to be given to HART, it shall be mailed or delivered to:

Honolulu Authority for Rapid Transportation
1099 Alakea Street, Suite 1700
Honolulu, Hawaii 96813
Attention: Executive Director

6. Section 4.1.1 of the General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu (8/2000) ("General Terms and Conditions") shall be deleted in its entirety and replaced with the following:

4.1.1 The contractor shall perform the work as an independent contractor and shall indemnify and hold harmless the Honolulu Authority for Rapid Transportation ("HART"), the City and County of Honolulu (the "City") and its departments, and all of their respective officers, employees or agents, from any and all deaths, injuries, losses, damages to persons or property, and any additional claims, demands, suits, action and liability therefore including reasonable attorney fees and cost of defense, caused by error, omissions or negligence in the performance of the contract by the contractor or the contractor's subcontractors, agents and employees and this requirement shall survive the termination of the contract.

The contractor is an independent contractor and shall not be deemed to be an agent, servant, representative or employee of HART or the City. The contract shall not be construed to create a partnership or joint venture between the contractor and HART or the City.

7. Section 4.2.1 of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

4.2.1 If the contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the right for such use shall be procured by the contractor from the patentee or owner. The contractor shall indemnify and hold harmless HART, the City and its departments, from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or trademark or copyright in connection with the work to be performed under the contract, and shall indemnify HART, the City and its departments, and all of their respective officers, employees or agents, for any costs, expenses and damages which it may be obliged to pay by

reason of any such infringement at any time during the prosecution or after the completion of the work.

Paragraph 2 of Section 4.3.1 of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

2. Commercial General and Umbrella Liability Insurance. Contractor shall maintain a commercial general liability (CGL) and if necessary commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence, and general aggregate. CGL insurance shall be written on ISO occurrence form, CG 00 01 (or a substitute form providing equivalent coverage), and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). HART and the City shall be included as additional insureds under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent), and under the commercial umbrella, if any. The policy(ies) shall contain a waiver of subrogation in favor of HART and the City.

9. Paragraphs 1 and 3 of Section 4.3.2 of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

1. Provide that such insurance is primary coverage with respect to all insureds for claims arising from contractor's negligent acts and/or omissions or misconduct; and that any insurance (or self-insurance) carried by HART and/or the City shall be excess and non-contributing;

3. Not be terminated, canceled, not renewed or substantially changed without THIRTY (30) DAYS prior written notice to HART and the City, except for non-payment of premium;

10. Paragraph 3 of Section 4.3.3 of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

3. Certificates shall show the Certificate Holders as the Honolulu Authority for Rapid Transportation, and the City and County of Honolulu. The Certificates shall be delivered to the Executive Director of HART, 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813, and to the Director of Budget and Fiscal Services, 530 South King Street, Honolulu Hawaii 96813.

11. In the event of any conflict or inconsistency between the provisions of this Amendment No. 9 and any provisions of the Agreement, the provisions of this Amendment No. 9 shall govern in all aspects.

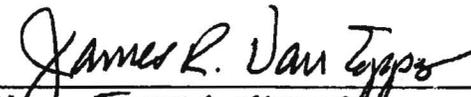
12. All other terms and conditions of the Agreement, not inconsistent with the terms and conditions of this Amendment No. 9, shall remain in full force and effect.

IN WITNESS WHEREOF, HART and the CONSULTANT have executed this Amendment No. 9 to the Agreement, by their duly authorized officers or agents, effective as of the day and year first written above.

HONOLULU AUTHORITY FOR RAPID
TRANSPORATION

PB AMERICAS, INC.

By: 
Its/Interim Executive Director

By: 
Name: JAMES R. VAN EPPS
Its: SR. VICEPRESIDENT and PROJECT MANAGER

APPROVED AS TO FORM AND LEGALITY:


Deputy Corporation Counsel

STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

State of Hawaii)
) S.S.
City and County of Honolulu)

On this 24th day of June, 2011, before me appeared James R. Van Epps, to me known, to be the person described in and, who, being by me duly sworn, did say that he is a Senior Vice President of PB Americas, Inc. the CONTRACTOR named in the foregoing instrument, and that he is authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he executed said instrument as the free act and deed of the CONTRACTOR.

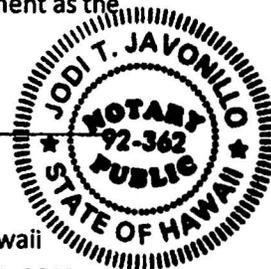


Jodi T. Javonillo

Notary Public

First Judicial Court, State of Hawaii

My commission expires: June 1, 2012



NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: Honolulu High-Capacity Transit Corridor Project, Contract No. SC-DTS-070001, Amendment No. 9

Doc. Date: (undated at time of notarization) No. of Pages: 5

Jurisdiction: First Judicial Court


Jodi T. Javonillo

24-JUN-11

Date of Certificate

