

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES is made and entered into this 10th day of May, 2012 (this "Agreement"), 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, Hawai'i 96813, hereinafter referred to as "HART", and MARSH USA, INC., a Delaware Corporation, whose principal place of business and mailing address is 745 Fort Street, Suite 1100, Honolulu, Hawai'i 96813, hereinafter referred to as the "CONSULTANT." HART and the CONSULTANT are hereinafter collectively referred to as the "Parties" and either may be referred to individually as a "Party," all as governed by the context in which such words are used.

WITNESSETH THAT:

WHEREAS, HART desires to engage the CONSULTANT to provide professional services for the purposes of providing consulting services to assist HART to design, develop, procure coverage, implement, and administer a comprehensive Owner Controlled Insurance Program and assist in the overall strategic risk financing plan for the Honolulu Rail Transit Project, hereinafter called the "PROJECT";

WHEREAS, the services entered hereunder are technical and professional in nature and HART personnel are not able to provide these services; and

WHEREAS, the CONSULTANT has been selected pursuant to Section 103D-303 of the Hawaii Revised Statutes ("HRS"), as amended, and related Hawaii Administrative Rules ("HAR"), relating to competitive sealed proposals; and

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

NOW, THEREFORE, HART and the CONSULTANT, 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 as follows:

1. The CONSULTANT shall perform and complete in a professional manner all of the services required for the PROJECT in accordance with and as set forth in the Contract Documents as hereinafter described, shall furnish all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of the PROJECT and work contemplated under the Contract Documents (the "Work"), and the CONSULTANT shall receive and accept as full compensation for all of the Work the price for the various items of the Work as hereinafter set forth.

2. The CONSULTANT shall complete the technical and professional services and perform the Work in accordance with:

a. This Agreement and attachments as follows:

(i) The Special Provisions and its attachments, including Exhibit 1 (Scope of Services), Exhibit 2 (Compensation), Exhibit 3 (Federal Requirements) (collectively, "Special Provisions"); and all documents referenced and incorporated by reference;

- (ii) (The General Terms and Conditions for Professional Services for the City and County of Honolulu, dated 8/2000 ("General Terms and Conditions")); and
- (iii) The CONSULTANT's Proposal dated March 1, 2012;

all of which are collectively referred to as the "Agreement" or "Contract Documents," are attached hereto and incorporated herein, and are listed in order of controlling preference should there be any conflict in the terms of the Contract Documents, and any modifications, changes or amendments in connection therewith being specifically referred to and incorporated herein by reference and made a part hereof as though fully set forth herein, provided, those portions of the CONSULTANT's Proposal that exceed the requirements of the other Contract Documents become the new minimum Contract requirements.

3. The CONSULTANT shall complete the Work required under the Contract Documents and specifically as provided for in the Special Provisions.

4. This is a firm fixed-price contract, and subject to the provisions of this paragraph and in accordance with Section 8 of the General Terms and Conditions, HART agrees to pay the CONSULTANT for the satisfactory performance and completion of the Work in accordance with the schedule of payments, all as set forth in the Special Provisions. The total aggregate amount of these lump sum payments shall not exceed ONE MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$1,250,000.00), which is the maximum payable under this Agreement and is subject to the Special Provisions and the General Terms and Conditions, including the provisions thereof relating to reducing or increasing the compensation of the CONSULTANT. The lump sum payments for services and the Work performed under this Agreement are all inclusive of direct labor, overhead, general and administrative expenses, other direct costs, subcontractor costs, fixed fees, and all applicable taxes, including State general excise and use tax ("GET") and county one-half percent (0.5%) GET surcharge. CONSULTANT shall not pass through any increases in taxes to HART.

5. 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, HAR, 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 Agreement, is accurate, complete and current as of the date of this Agreement. This certification includes the cost or pricing data supporting any advance agreement(s) between the CONSULTANT and HART which are part of the CONSULTANT's proposal.

6. Unless notified otherwise by the Officer-in-Charge in writing, 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, Hawai'i 96813
Attention: Executive Director

7. Unless mutually agreed to otherwise in writing, when notice is to be given to the CONSULTANT, it shall be mailed or delivered to:

Marsh Rocco Sansone, CPCU
March USA, Inc. 
745 Fort Street, Suite 1100
Honolulu, Hawai'i 96813

8. This Agreement and its integrated attachments constitute the entire agreement of the Parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed to be consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement or the Contract Documents, no modification or amendment to this Agreement or the Contract Documents shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto.

IN WITNESS WHEREOF, HART and the CONSULTANT have executed this Agreement by their duly authorized officers or agents on the day and year first above written.

HONOLULU AUTHORITY FOR RAPID
TRANSPORTATION



By: Daniel A. Grabauskas
Its: Executive Director and CEO

MARSH USA, INC.



By: Rocco Sansone
Its: Managing Director

ADDRESS:

APPROVED AS TO FORM AND
LEGALITY

NICOLE R. CHAPMAN
Deputy Corporation Counsel

745 Fort Street, Suite 1100
Honolulu, HI 96813

Attach Notary Page

HART-12 (11/11)

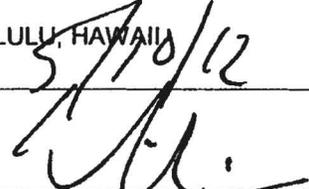
Certificate

The attached contract for consultant services to assist in the procurement of insurance coverages, to provide insurance administration services, and to provide risk management services in connection with the Honolulu Rail Transit Project (HRTTP) in the amount of

\$ (1,250,000.00) *

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-HRT-1200074
FUNDS Transit Fund (690)
ACCOUNT NO. 690/7790-12 (4063)

HONOLULU, HAWAII
Date: 5/10/12

Executive Director and CEO
Honolulu Authority for Rapid Transportation

\$ 437,500.00 690/7790-12 (4063)

\$ 812,500.00 * Subject to availability of future years' funding

\$ 1,250,000.00 TOTAL MAXIMUM AGGREGATE CONTRACT AMOUNT

***SUBJECT TO AVAILABILITY OF FUTURE YEARS' FUNDING IN THE AMOUNT OF \$812,500.00**

HART-12 (11/11)

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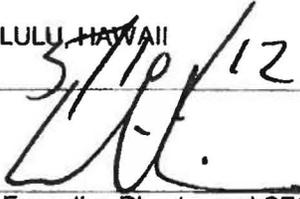
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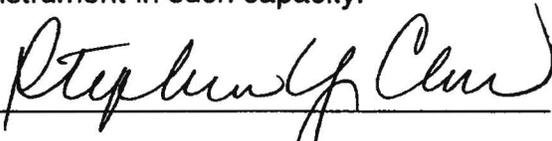
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\$ 1,250,000.00 TOTAL MAXIMUM AGGREGATE CONTRACT AMOUNT

***SUBJECT TO AVAILABILITY OF FUTURE YEARS' FUNDING IN THE AMOUNT OF \$812,500.00**

STATE OF HAWAII)
)
CITY & COUNTY OF HONOLULU) SS.

On this 3rd day of May, 2012, before me appeared Rocco Sansone, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Stephanie Y. Chow

Notary Public

State of Hawaii

First Judicial Circuit

My commission expires: 3/21/2014



Doc Date: MAY 3 2012 # Pages: 66
Name: Stephanie Y. Chow First Circuit
Doc. Description: OCID Professional
Service Contract Agreement
Stephanie Y. Chow 5/3/12
Signature Date
NOTARY CERTIFICATION

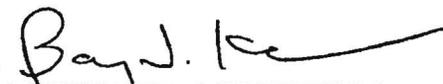
CERTIFICATION

Pursuant to a written consent executed by all of the Directors of the Board of Marsh USA Inc. (the "Corporation"), effective July 29, 2011, the Board adopted resolutions authorizing any Managing Director of the Corporation to execute contracts and other instruments in the name and on behalf of the Corporation, and such execution of any contract or instrument in the name of and on behalf of the Corporation by a Managing Director is valid and binding upon the Corporation.

I hereby certify that I am the Secretary of the Corporation, that Rocco Sansone is a duly elected Managing Director of said Corporation, and that the authorization referred to above has not been amended or rescinded and remains in full force and effect.

This 1st day of March 2012

ATTEST



Barry J. Kerschner
Secretary

Place of business: 1166 Avenue of the Americas
New York, New York 10036

SPECIAL PROVISIONS

HONOLULU RAIL TRANSIT PROJECT

**RISK MANAGEMENT/ OWNER CONTROLLED INSURANCE PROGRAM
(OCIP)**

PROFESSIONAL SERVICES CONTRACT

SPECIAL PROVISIONS TABLE OF CONTENTS

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SPECIAL PROVISIONS

This Special Provisions and the General Terms and Conditions for Professional Services for the City and County of Honolulu, dated 8/2000 ("General Terms and Conditions") shall apply to, and are incorporated by reference into the Agreement, except as modified by reference herein. All defined terms in the Agreement shall have the same meaning in this Special Provisions.

I. PROJECT

The Honolulu Rail Transit Project ("HRTTP") is identified in the Final Environmental Impact Statement as a twenty (20) mile grade-separated fixed guideway transit system between East Kapolei and Ala Moana Center. HART will be contracting for services related to the implementation of a comprehensive, state-of-the-art, risk financing program to address the needs and risks of the HRTTP. These services include, but are not limited to, assisting in the procurement of insurance coverage, to provide insurance administration services and to perform related risk management services, as required and in compliance with Federal, State and City laws, rules, regulations, and the policies and procedures for the HRTTP (the "Project").

II. SERVICES

The basic services that the CONSULTANT shall provide under the Agreement are set forth in the Scope of Services, attached hereto and incorporated herein as Exhibit 1.

III. DELIVERY

The CONSULTANT shall complete the Work required under this Agreement pursuant to the agreed schedule of milestones, which shall be incorporated into this Agreement.

IV. RESERVED

V. MODIFICATIONS TO THE GENERAL TERMS AND CONDITIONS FOR CONTRACTS FOR PROFESSIONAL SERVICES FOR THE CITY AND COUNTY OF HONOLULU (8/2000)

The General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu (8/2000) shall apply to, and are incorporated by reference into this Agreement, except as modified herein.

A. DEFINITIONS

The following definitions are added to the General Terms and Conditions:

"C.F.R." means the Code of Federal Regulations.

"FEDERAL GOVERNMENT" means the United States of America and any executive department or agency thereof.

"FTA" means the Federal Transit Administration, United States Department of Transportation. The Federal Transit Administration is the current designation for the former Urban Mass Transportation Administration. Any reference in any law, map

Owner Controlled Insurance Program (OCIP) Professional Services Contract

regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration or its acronym UMTA is deemed as reference to the Federal Transit Administration.

“**HART**” means the Honolulu Authority for Rapid Transportation. The acronym “**HART**” shall be substituted for the “City and County of Honolulu”, “**CITY**”, “Rapid Transit Division”, and “**RTD**” wherever those terms appears in the General Terms and Conditions, unless the context clearly indicates otherwise.

“**PMOC**” means the FTA’s Project Management Oversight Contractor.

“**STANDARD OR REQUIREMENT**” means any provision of any Federal, State or local law, including City law, ordinance, code, rule, regulation, guideline, directive, order, circular, agreement, practice, policy, notice, plan, statement, or other standard or requirement, and any amendment or revision thereto made in the future, including any mandatory provision, term, condition, clause, representation, certification, assurance, or other statement required thereunder.

“**U.S.C.**” means the United States Code.

“**U.S. DOT**” means the United States Department of Transportation, including its operating administration.

“**WORK**” means work performed as set forth in the Agreement, including furnishing all services, labor, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of the Work contemplated under the Agreement.

The following definitions in the General Terms and Conditions are modified as follows:

“**AGREEMENT**” shall have the same meaning as “**CONTRACT.**”

“**CHANGE ORDER**” means a written order signed by the officer-in-charge and approved by the HART Executive Director, directing the contractor to make changes, which the officer-in-charge may order without the consent of the contractor.

“**CONSULTANT**” or “**CONTRACTOR**” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity engaged by HART to perform the Work under this Agreement.

“**OFFICER-IN-CHARGE**” means the HART Executive Director or designee.

B. **INSURANCE**

Section 4.3 of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

“**4.3. INSURANCE REQUIREMENTS.** Insurance coverage shall be provided by insurers authorized to provide insurance in the State of Hawai‘i, and with a current A.M. Best’s rating of not less than A-, or otherwise as approved by HART.

- (a) Unless otherwise specified in the Contract Documents, the **CONSULTANT** shall procure or cause to be procured and maintain (as provided herein), at no cost to HART, during the life of this contract and any extensions thereof, all insurance to cover the operations under this contract, that may be required under the laws, ordinances or regulations of any governmental authority, including but not limited to the coverages below. The **CONSULTANT** shall either include all tiers of subcontractors, if any, under the policies required under paragraphs 2 and 3, to the

extent permitted by law, and/or shall require all subcontractors to maintain coverages described in paragraphs 1 through 3.

1. **Workers Compensation and Employers Liability Insurance.** The CONSULTANT shall maintain workers compensation and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability coverage shall provide limits of not less than \$100,000 each accident for bodily injury by accident or \$100,000 each employee, \$100,000 aggregate, for bodily injury by disease.
2. **Commercial General and Umbrella Liability Insurance.** The CONSULTANT shall maintain 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 shall be included as an additional insured 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.
3. **Business Automobile and Umbrella Liability Insurance.** The CONSULTANT shall maintain business auto liability (including no-fault coverage) and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used by the CONSULTANT in the performance of this Agreement. Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

(b) The insurance specified above shall:

1. Provide that such insurance is primary coverage with respect to all insureds for claims arising from the CONSULTANT's negligent acts and/or omissions or misconduct; and that any insurance (or self-insurance) carried by HART shall be excess and non-contributing;
2. Contain a standard Cross Liability endorsement providing that the insurance applies separately to each insured, applicable to policies specified in 4.3 a.2. and 4.3 a.3. above;
3. Not be terminated, canceled, not renewed or substantially changed without THIRTY (30) DAYS prior written notice to HART, except for non-payment of premium;
4. Insurance required in 4.3. a. above, be written on an "Occurrence" form of policy, unless otherwise specifically approved by HART.

(c) Certificate of insurance:

Owner Controlled Insurance Program (OCIP) Professional Services Contract

1. The CONSULTANT will provide and thereafter maintain current and renewal certificates of insurance, prepared by a duly authorized agent, or if requested, copies of the policies, evidencing the insurance in effect at all times during the term of this Agreement as required herein to HART.
2. Certificates shall clearly identify the project by name and/or contract number.
3. Certificates shall show the Certificate Holder as the Honolulu Authority for Rapid Transportation, and be delivered to the Executive Director, 1099 Alakea Street, Suite 1700, Honolulu, Hawai'i 96813."

C. **SECTION 5.2 PRICE ADJUSTMENTS** of the General Terms and Conditions shall be amended to include the following:

"(7) By compliance with the requirements of OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments (05/10/2004)."

D. **SECTION 8.1 and SECTION 8.2 – COMPENSATION and PROGRESS PAYMENT** of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

"8.1 COMPENSATION AND INVOICING

- (a) Subject to the provisions set forth in this Agreement, the CONSULTANT will be paid on a monthly basis by HART for authorized and satisfactorily completed Work and services rendered under this Agreement and in accordance with the schedule of milestones to be agreed upon within ten (10) days from execution of the 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 hereafter set forth; provided that such payment shall not exceed the Total Price amount of ONE MILLION TWO HUNDRED FIFTY THOUSAND and NO/100 DOLLARS (\$1,250,000.00), which includes all costs and fees associated with this Agreement. CONSULTANT shall not pass through any future increases in taxes to HART. 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 HART shall not be required to pay any part of such excess and the CONSULTANT shall have no claim against HART on account thereof.
- (b) Compensation for work and services shall be lump sum basis, but not to exceed the Total Price. Compensation, and shall be calculated using Exhibit 2, attached hereto and incorporated herein and in accordance with milestones agreed upon after contract execution.
- (c) Progress Report. The CONSULTANT shall submit a progress report along with the monthly invoice. The progress report will identify the Work activities for which compensation is being requested.
- (d) Payment Schedule. Each month the CONSULTANT shall submit to HART an invoice for payment for milestones completed in the previous month in a form and in reasonable detail as determined by HART and in accordance with the

agreed milestone schedule. 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. Within thirty (30) days of receipt of an invoice and upon approval of the Work satisfactorily completed and amount billed, HART will pay the invoice as approved. At no time shall the total cumulative amount paid for the Work exceed the Total Price.

8.2 Reserved

E. SECTION 8.6 PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

“8.6 PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS

- (a) Prompt Payment to Subcontractors. Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes.
- (b) Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract. *See HAR § 3-125-33.*
- (c) A payment request made by a contractor to the Officer-in-Charge that includes a request for sums that were withheld or retained from a subcontractor and are due to the subcontractor may not be approved, unless the payment request includes:
 1. Substantiation of the amounts requested; and
 2. Certification by the contractor, to the best of the contractor's knowledge and belief; that:
 - i) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Agreement;
 - ii) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the Agreement and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
 - iii) The payment request does not include any amounts that the contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

- (d) Prompt Payment of Retainage to Subcontractors upon Satisfactory Completion of Subcontractor Work. Upon satisfactory completion of accepted work by a subcontractor, the contractor shall request sums that were withheld or retained from a subcontractor and are due to the subcontractor pursuant to subsection (c). The contractor shall pay all retainage owed to the subcontractor within ten (10) days after payment to the contractor.”

VI. FEDERAL CLAUSES

FEDERAL FUNDING, INCORPORATION OF FTA TERMS, AND CHANGES TO FEDERAL REQUIREMENTS

This Agreement includes, in part, certain standard terms and conditions required by the Federal Transit Administration (“FTA”), whether or not expressly set forth in the Agreement provisions. All provisions required by the FTA, as set forth in FTA Circular 4220.1F, dated November 1, 2008 (including any changes), are herein incorporated by reference. Anything to the contrary notwithstanding, all FTA mandated terms and conditions will be deemed to control in the event of a conflict with other provisions contained in the Agreement. The CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any HART request which would cause HART to be in violation of FTA terms and conditions. This Agreement will be subject to any financial assistance agreement between HART and the FTA and all laws, regulations, guidelines, and provisions of the financial assistance agreement will apply to the Agreement and will be incorporated by reference as if fully set forth therein.

The CONSULTANT shall at all times comply with all applicable Federal Government laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between HART and FTA, as they may be amended or promulgated from time to time during the term of the Agreement (collectively, “Federal Requirements”). These Federal Requirements may change and the changed Federal Requirements will apply to this Agreement as required unless the Federal Government determines otherwise. The CONSULTANT’s failure to comply with the Federal Requirements shall constitute a material breach of the Agreement.

The Federal Requirements are contained in Exhibit 3, attached hereto and incorporated by reference.

VII. ASSIGNMENT

This is non-transferable and non-assignable in whole or in part, except by an instrument, in writing, signed by each of the Parties.

VIII. HEADINGS; GENDER; NUMBER

The titles of headings of Sections, Subsections and Paragraphs are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

All words used in the singular shall extend to and include the plural. All words used in the plural

shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

IX. REFERENCES TO THE CITY AND COUNTY OF HONOLULU

The acronym "HART" shall be substituted for "City and County of Honolulu", "CITY", "Rapid Transit Division", and "RTD" wherever those terms appear in the Owner Controlled Insurance Program Professional Services Contract and Contract Documents inclusive of all Addenda, unless the context clearly indicates otherwise.

**SPECIAL PROVISIONS
EXHIBIT 1**

**HONOLULU RAIL TRANSIT PROJECT
RISK MANAGEMENT/OWNER CONTROLLED INSURANCE PROGRAM (OCIP)
PROFESSIONAL SERVICES CONTRACT**

SCOPE OF SERVICES

EXHIBIT 1
SCOPE OF SERVICES

1.0 INTRODUCTION

1.1 HONOLULU RAIL TRANSIT PROJECT (HRTP) DESCRIPTION

The Honolulu Authority for Rapid Transportation (HART) is a semi-autonomous authority established July 1, 2011 in accordance with the Revised Charter of the City and County of Honolulu as amended, responsible for the planning, construction, operation, maintenance and expansion of the HRTP. The HRTP is approximately twenty (20) miles of elevated guideway with the exception of 3,700 linear feet (0.7 miles) that is at-grade at the Leeward Community College Station. There are twenty one (21) stations, one Maintenance and Storage Facility (MSF), three (3) park-and-ride lots and one (1) park-and-ride structure. The HRTP is broken into four (4) sections.

The first section of the HRTP, the West O'ahu/Farrington Highway (WOFH) Section, extends from East Kapolei to Pearl Highlands. The alignment begins at North-South Road; proceeding to Farrington Highway and just south of H-1 Freeway, the alignment descends to at-grade at the proposed MSF and from there continues to Leeward Community College. In order to cross the H-1 Freeway the alignment returns to an elevated structure. The DB Contract for the WOFH Section Guideway was awarded and limited Notices to Proceed for preliminary engineering have been issued. The DB Contract for the MSF has also been awarded. The six (6) stations for the WOFH Section are currently being designed.

The second section of the HRTP extends from Pearl Highlands to Aloha Stadium along Kamehameha Highway. The Kamehameha Highway Guideway (KHG) DB Contract was awarded. There are two (2) stations and one (1) park-and-ride and one (1) transit center planned in this section.

The third section of the HRTP extends from Aloha Stadium to just east of Middle Street Transit Center Station (Airport Section). Leaving Aloha Stadium, the elevated route reenters the median of Kamehameha Highway continuing to its intersection with Nimitz Highway. The route runs along Nimitz Highway turning Makai into Aolele Street, then transfers onto Ualena Street west of Lagoon Drive to Waiwai Loop, reconnects to Nimitz Highway near Moanalua Stream and continues to just after the Middle Street Transit Center. There are four (4) stations planned in the Airport Section: Pearl Harbor Naval Base, Airport, Lagoon Drive and Middle Street Transit Center

The final section of the HRTP extends from just east of the Middle Street Transit Center Station to Ala Moana Center (City Center Section). Beginning from east of the Middle Street Transit Center, the elevated route follows Dillingham Boulevard, crosses Kapalama Canal, then leaves Dillingham Boulevard at Ka'a'ahi Street, and crosses Iwilei Road. The alignment follows Nimitz Highway to Halekauwila Street and continues southeast along Halekauwila Street past Ward Avenue, where it transitions onto Queen Street. At the end of Queen Street, the alignment crosses Waimanu Street and crosses over to Kona Street and ends with a tail track along Kona Street. There are eight (8) stations planned for the City Center Section.

Honolulu Rail Transit Project

1.2 SCOPE OF SERVICES

Contractor shall provide services as set forth in this Agreement. Including, but not limited to the tasks enumerated, and listed below. HART's objective is to implement a comprehensive, state-of-the-art risk financing program to address the needs and risks of the HRTP including insurance, self-insurance and other risk financing resources and related risk management services. In addition, the risk financing program must meet the guidelines of the Federal Transit Administration's ("FTA") Best Practices Procurement Manual ("BPPM").

NOTICE: The cost of premiums is excluded from this contract. Offerors shall not include the cost of premiums in their proposed costs.

The Scope of Services includes, but is not limited to, the tasks and basic work elements required for executing the work. If specific services will be provided through another agent, broker, insurer or any other subcontractor, Offeror shall provide the name of the subcontractor, the services to be provided and how Offeror will coordinate those services. The selected Offeror shall perform the following services in connection with the Agreement in compliance with all applicable State and Federal laws and regulations.

The Consultant shall perform, develop, for HART approval, and implement the following tasks:

1.2.1 TASK 1: RISK ASSESSMENT

A. HRTP Risk Assessment: Working closely with HART's risk management team, the Consultant shall analyze and assess the insurance risks associated with HART operations and the HRTP and determine the level of coverage needed to protect HART, its Consultants, Subcontractors, and business partners from financial loss.

i. Deliverable: HRTP Risk Assessment Report

B. Master Risk Financing Plan (Master Plan): Based on Consultant's Risk Assessment Report, Consultant shall develop a Master Risk Financing Plan to address the elements of the Risk Assessment. The Master Plan shall include a discussion of the risk financing options available along with justification for the recommendations. The Master Plan shall consider the feasibility of OCIP for the entire HRTP. The Master Plan shall include, but not be limited to, setting forth all program elements, acquisition plan, implementation plan, administration activities and milestones required to secure, implement, and administer the Master Plan. The Master Plan should include the placement of traditional and nontraditional coverages that will protect the financial interests of HART, its contractors, subcontractors, and Project partners. The Master Plan shall be considered Consultant's recommendation and should include sufficient documentation to evidence Consultant's business rationale for the recommendation.

i. Deliverables: Master Risk Financing Plan and Implementation Plan

1.2.2 TASK 2: IMPLEMENTATION

A. Based on the approved Master Plan, Consultant shall develop specifications and other information to support a Request for Proposal for appropriate brokerage services for the ultimate placement of insurance.

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- B. Based on the approved Master Plan , the Consultant shall direct and coordinate the marketing and procurement of the insurance as approved by HART. Consultant shall develop coverage specifications and solicitation documents to provide the insurance markets sufficient information to underwrite and price the program in the best interest of HART. Consultant, in coordination with the broker shall support HART in negotiations with insurers, underwriters, regulatory authorities and other parties in connection with the HART insurance program.
- C. Consultant will develop specifications and complete Solicitation documents to procure any and all third-party services required to support the overall Master Plan.
 - i. Deliverables: Solicitation Documents

1.2.3 TASK 3: ADMINISTRATIVE SERVICES

A. Safety and Loss Control:

- 1. Consultant will review and coordinate HART safety and loss control programs. Consultant shall serve on the HRTP Safety Committee and monitor and analyze program loss runs to identify developing loss trends and patterns on an ongoing basis. Consultant shall make recommendations and initiate solutions as approved by HART. Consultant shall review and recommend revisions to safety language for procurement specifications and contract language, as requested.
- 2. Coordinate and establish a Safety Incentive Program (SIP) to be funded through Worker Safety Incentive Program Funds. Any costs associated with administration of the SIP are to be included in the fixed price for Safety and Loss Control services. Costs proposed shall reflect the price to design and administer a possible SIP, but NOT fund the SIP.
- 3. Monitor, consolidate and analyze program loss runs to identify developing loss problems and patterns on an ongoing basis and in conjunction with claims personnel. Recommend and initiate solutions as approved by HART.
 - i. Deliverables:
 - 1. Safety Incentive Program
 - 2. Monthly Safety and Loss Control Report and Recommendations

B. Claims Administration

- 1. Develop and procure a favorable claims service agreement for the adjustment of all claims to conclusion.
- 2. Establish special handling procedures to ensure proper recognition of each claim as an OCIP-related claim and to ensure that claims are assigned to the correct contractor or subcontractor.
- 3. Conduct quarterly claim review meetings with HART and its consultants and semi-annual claims reviews with HART, its consultants and insurer representatives.
- 4. Serve as liaison between HART and the OCIP insurers for each OCIP claim.
- 5. Provide claims status reports in a format and frequency as requested by HART.

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6. Recommend program deductible levels and apply obligation assessments to appropriate contractor(s) for each claim.
7. Maintain consolidated and accurate claim data by line of business, accident date, contractor, project, and other criteria relevant or as requested by HART.
 - i. Deliverables:
 1. Claims Service Agreement
 2. Claim Reporting Procedures
 3. Quarterly Claim Review Report
 4. Monthly Claim Status Reports
 5. Meeting Minutes

C. Records Management Utilizing HART's Contract Management System (CMS)

Consultant shall use HART's Contract Management System (CMS) to create, submit, for HART's review and approval, implement and administer a detailed Risk Management Information Services Program and all associated deliverables, to include, but not be limited to:

1. Provide monthly and annual stewardship reports summarizing progress, financial information, relevant activities, safety, claims, and other pertinent information. Provide reports in an electronic format.
2. Maintain HRTTP contractor data by each individual contract to include all pertinent information, including, but not limited to:
 - a. An alphabetical listing of all HRTTP contractors including name, address and phone numbers;
 - b. Lists of Project contractors by tiers of relationships, e.g., General Contractor, subcontractor, sub-subcontractor, etc;
 - c. Policy type, policy numbers, and term; and
 - d. Monthly payroll report(s).
3. Track receipt of required forms for the Work, track enrollment status, and print reports highlighting any missing information.
4. Provide tracking of receipt and transmittal of certificates, policies and endorsements.
5. Record and consolidate loss information on injuries to persons and damage to property from all insurers in the OCIP.
6. Record all deductible payment information.
7. Provide exception reporting which identifies contractors who are not submitting required underwriting data, applications, payroll reports, certificates of insurance, and termination of work forms.
8. Consultants record keeping responsibilities using HART's Contract Management System:

The Consultant shall use HART's hosted Oracle Primavera Contract Management in accordance with the HART procedures and protocols to manage all documents submitted to HART including but not limited to correspondence, transmittals, meeting minutes, requests, deliverables, daily logs, payments, and change management documents as follows:

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- a Submittals - Consultant is responsible for managing all contract submittals, maintaining submittal logs, and follow-up responses/actions to HART-comments until satisfactorily resolved. Submittal documents for transmittal to HART shall be created using Oracle Primavera Contract Management.
- b Correspondence Logs – The Oracle Primavera Contract Management “Correspondence Received” and “Sent Logs” shall serve as the repository for all correspondence generated during this Project between the Consultant and HART. All attached files shall automatically be stored in the content repository software located on the HART-hosted site which is the designated file repository. All correspondence created from the Consultant in Oracle Primavera Contract Management shall be logged into the “Correspondence Sent” log.
- c Requests – All requests for review, information or changes shall be entered into the “Requests” log by the Consultant. The Consultant shall have the security rights to enter the request/comment and pertinent details. An email automatically shall be sent to the “ball-in-court” (BIC) entered by the Consultant. When the answer is returned via an email alert, the Consultant shall enter the closed date and status as appropriate to close the document.
- d Meeting Minutes – Consultant shall prepare and input meeting minutes for the contract designated meetings into the “Meeting Minutes” log of the HART Contract Management System. All attendees with their email shall be entered. All items discussed shall include a narrative, a BIC and due date if a follow-up action is necessary. All open meeting minute items shall be copied to the next meeting and closed when appropriate. Meeting minutes shall be distributed via email using the designated form provided in Oracle Primavera Contract Management.
- e Baselines and Deliverables – All deliverables as specified in the contract documents shall be listed into Oracle Primavera Contract Management log. The Consultant shall input submissions as they are made to HART, entering the latest revision, current status and attaching a .pdf file of the document.
- f Change Management – The Change Management log is used by HART to manage all contract changes. The Consultant shall be given limited access to enter Consultant quotes or proposals and view the latest status of contract changes.
- g Payment Request – All monthly payment requests shall be prepared using Oracle Primavera Contract Management. The Schedule of Payment Milestones shall be imported into the Payment Requisitions log.
- h Software and Computer Requirements. HART hosts a Collaborative Contract and Project Management System called Oracle Primavera Contract Management v.16 (also know as CMS). The Consultant is required to input all specified documents into HART’s Contract and Project Management system, accessible via the World Wide Web. The consultant shall procure one software license that will reside on HART’s hosted system servers. It is the Consultant’s responsibility to procure adequate computer hardware and software to perform its tasks.
- i HART staff shall be available for technical advice but shall not operate, install, or troubleshoot any software or hardware of the Consultant’s that does not function as

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intended, or adequately, for this application. All of the responsibilities for these activities are exclusively the Consultant's. HART shall accept no liabilities arising from the Consultant's training and use of this software. All scanned documents submitted by the consultant must be via OCR compliant scanner.

- j Detailed procedures and workflows for using HART's CMS System shall be discussed during the post award meeting. Except where noted, the system shall eliminate the need to submit multiple hard copies, CDs, etc. for required contract submittals. Instead, most documents can be submitted electronically with physical copies required only when copying is impractical or not possible. Original documents may also be necessary when original signatures are required; otherwise, electronic transmittals and documentation shall be used. The detailed requirements shall be worked out following contract award. Once the contract is awarded, the Consultant shall provide to the HART, Oracle Primavera Contract Management licenses for their designated personnel. Once the licenses are received, the Consultant shall be given restricted access to HART's Contract and Project Management system.
- k Any data collected by the Consultant is the property of HART, and shall be available to HART in CMS.

- i. Deliverables:

- 1. Monthly Stewardship Report
 - 2. Annual Stewardship Report
 - 3. Master Contractor Data File
 - 4. Tracking Documentation
 - 5. Monthly Loss Reports
 - 6. Monthly Exception Reports
 - 7. Inputs to FTA Monthly Report
 - 8. Other Reports as required

D. Program Administration

Office space may be available for Consultant's use for activities and services to be provided under this Agreement. The office space and equipment shall be used only for servicing this Agreement. The Consultant is responsible for providing the required resources to properly administer the Agreement.

E. OCIP Administration

Upon establishment of an OCIP (after Consultant's analysis and approval by HART as set forth in the Agreement), Consultant shall provide the following OCIP administrative services throughout the entire period of contract performance, to include but not be limited to:

- A) Monitor exposures and recommend improvements to the OCIP.
- B) Answer questions from HART about insurance and related matters.
- C) Request underwriters to make amendments to the OCIP as deemed necessary.
- D) Attend meetings with HART Board or with other HART personnel as required.
- E) Submit an annual report documenting OCIP earned premiums and incurred losses by year and coverage line. Update HART on anticipated renewal terms and

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conditions and other indications of market conditions, trends, and anticipated changes.

- F) Meet quarterly with HART to provide an OCIP financial update.
- G) Attend monthly OCIP review meetings during the first year of the Agreement to ensure the OCIP and administrative services comply with contractual requirements.
- H) Review monthly billings from insurers for accuracy and compliance with the OCIP.
- I) Identify problems in areas such as claims handling, safety hazards, uninsured risks, etc.
- J) Verify the accuracy of all rates, premiums charged, and the accuracy of all audits.
- K) Ensure that the OCIP complies with all relevant laws and regulations.
- L) Monitor insurer's financial status and advise immediately of any downgrading of insurer's financial status. Evaluate the potential impact to HART of such downgrade and recommend action to protect HART's interest.
- M) **Coordinate ongoing services between HART and the insurance carriers, including safety, claims management, risk management information system reporting and access, and other services as applicable.**
- N) Conduct seminars and training sessions related to the OCIP to HART staff and others as required by HART.
- O) Cooperate in any transition to a succeeding Consultant at the expiration of the Agreement and any extensions thereof. Deliver all data and/or documents as directed.
- P) Act as a liaison for HART in all negotiations with brokers, insurers, underwriters, insurance regulatory authorities, and other parties on an ongoing basis.
- Q) Administer and adhere to all duties and responsibilities described in each plan submitted to, and approved by HART.

1.2.4 TASK 4: GENERAL CONSULTANT SERVICES

A. OCIP Market Research: Consultant shall engage in market research to identify potential carriers for the OCIP and create a bidder's list. Consultant shall ensure all insurers are reputable and financially responsible. All insurance placements must be underwritten by insurers with an A.M. Best rating of "A-" or better and a Standard and Poor's rating of no less than "A". Consultant shall organize and host a pre-marketing meeting and site visit of the HRTTP with potential insurers.

- i. Deliverables:
 - a. Bidders List
 - b. Meeting Agenda
 - c. Meeting Minutes
 - d. Site Visit Report

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B. Requirements Development: Consultant shall develop appropriate specifications for coverages providing the broadest available protection and appropriate extensions of coverage. Produce a comprehensive plan and Solicitation document that provides the insurance markets sufficient information to underwrite and price the program in the best interest of HART. Provide a copy of the coverage specifications and Solicitation/bid sheet to HART for review and approval prior to distribution to underwriters.

- i. Deliverables: Specifications, Solicitation, Bid Sheet and other data as required

C. Analysis and Recommendation: Based on Consultant's analysis of their marketing efforts, Consultant shall prepare and submit an OCIP Plan. Consultant shall determine the best OCIP insurance solution including, but not limited to, appropriate coverage, policy limits, and risk financing structure for HART review and approval. The OCIP Plan may also include the placement of nontraditional OCIP coverages that will protect the financial interests of HART, its Contractors, Subcontractors, and Project partners. The OCIP Plan shall be considered Consultant's OCIP recommendation and should include sufficient documentation to evidence Consultant's business rationale for the recommendation.

- i. Deliverables: OCIP Plan

D. Negotiations: Once the OCIP Plan is approved, Consultant shall support HART in all negotiations with insurers, underwriters, insurance regulatory authorities and other parties with regard to HART's OCIP. At HART's direction, Consultant shall bind coverage on behalf of HART. Consultant shall verify the wording and accuracy of each policy, binder, certificate, endorsement or other documents received from insurers to verify conformance with the specifications and negotiations. Prepare and submit a written analysis to HART verifying the accuracy of all negotiated rates and premiums. The analysis shall document that the rates and premiums meet the specifications and that the price is fair and reasonable.

- i. Deliverables:
 - 1. Pre-negotiation Memoranda (for each major insurance type including high, mid and low positions)
 - 2. Negotiation Memoranda including Price/Cost Analysis
 - 3. Financial Responsibility Determination
 - 4. Recommendation for Award

E. OCIP Structure: Consultant shall finalize the OCIP structure incorporating appropriate insurance requirements for enrolled and non-enrolled Consultants. Provide a narrative and graphical depiction of the OCIP structure including coverages, responsible underwriter/carrier, etc.

- i. Deliverable: OCIP Structure Report

F. Promptly submit originals of all policies and endorsements to HART and prepare and issue insurance certificates and endorsements as requested.

**SPECIAL PROVISIONS
EXHIBIT 2**

HONOLULU RAIL TRANSIT PROJECT

**OWNER CONTROLLED INSURANCE PROGRAM (OCIP) PROFESSIONAL
SERVICES CONTRACT**

COMPENSATION

Honolulu Rail Transit Project

EXHIBIT 2
COMPENSATION

Lump Sum/Firm-Fixed Price Tasks				
Item	Description – OCIP Assessment and Implementation	Unit of Measure	Price	Scope of Services Reference
1	TASK 1: Risk Assessment, Master Risk Financing Plan and Implementation Plan	LS	\$105,000	1.2.1.A & B
2	TASK 2: Implementation	LS	\$35,000	1.2.2.A – C
Sub-Total OCIP Assessment & Implementation (Items 1+2)			\$140,000	

Yearly Lump Sum Rate Tasks				
Item	Description – Administrative and Consulting Services	Unit of Measure	Total Price	Scope of Services Reference
3	TASK 3 – 5 (YEAR 1): Contractor shall provide all required labor to fulfill the taskings and reporting requirements set forth in Tasks 3 – 5 of the Scope of Services	LS/Year	\$277,500	1.2.3 – 1.2.5
4	TASK 3 – 5 (YEAR 2): Contractor shall provide all required labor to fulfill the taskings and reporting requirements set forth in Tasks 3 – 5 of the Scope of Services	LS/Year	\$208,125	1.2.3 – 1.2.5
5	TASK 3 – 5 (YEAR 3): Contractor shall provide all required labor to fulfill the taskings and reporting requirements set forth in Tasks 3 – 5 of the Scope of Services	LS/Year	\$208,125	1.2.3 – 1.2.5
6	TASK 3 – 5 (YEAR 4): Contractor shall provide all required labor to fulfill the taskings and reporting requirements set forth in Tasks 3 – 5 of the Scope of Services	LS/Year	\$208,125	1.2.3 – 1.2.5
7	TASK 3 – 5 (YEAR 5): Contractor shall provide all required labor to fulfill the taskings and reporting requirements set forth in Tasks 3 – 5 of the Scope of Services	LS/Year	\$208,125	1.2.3 – 1.2.5
Sub-Total Administration Tasks (Items 3+4+5+6+7)			\$1,110,000	

Total Price (Subtotal Implementation + Subtotal Administration Tasks)			\$1,250,000	
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**SPECIAL PROVISIONS
EXHIBIT 3**

HONOLULU RAIL TRANSIT PROJECT

**OWNER CONTROLLED INSURANCE PROGRAM (OCIP) PROFESSIONAL
SERVICES CONTRACT**

FEDERAL REQUIREMENTS

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NOTE: This Exhibit 3 is intended to be incorporated as part of the Special Provisions to the Agreement and is being provided in this Request For Proposals for information purposes for this solicitation and may be modified.

FEDERAL REQUIREMENTS

1.0 GENERAL

The CONSULTANT understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date signed may be modified from time to time. The CONSULTANT agrees that the most recent of such Federal requirements will govern the administration of the Agreement at any particular point in time, except if HART issues a written determination otherwise. To achieve compliance with changing Federal requirements, the CONSULTANT agrees to include notice in each subcontract that Federal requirements may change and that the changed requirements will apply to the subcontract as required.

1.1 No Government Obligation to Third Parties

(a) HART and the CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, 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 HART, the CONSULTANT, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

(b) The CONSULTANT agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

1.2 Program Fraud and False or Fraudulent Statements and Related Acts

(a) The CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the 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 the underlying Agreement or the Federal Transit Administration (FTA) assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the 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 the CONSULTANT to the extent the Federal Government deems appropriate.

(b) The 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 an Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the CONSULTANT, to the extent the Federal Government deems appropriate.

(c) The CONSULTANT shall include the above two clauses in each subcontract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

1.3 Access to Records and Reports

(a) The CONSULTANT shall provide HART, 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. The CONSULTANT shall, pursuant to 49 C.F.R. § 633.17, provide the FTA Administrator or his authorized representatives, including any Project Management Oversight Contractor, access to the CONSULTANT's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

(b) The CONSULTANT shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) The CONSULTANT shall maintain all books, records, accounts and reports required under this Agreement for a period of not less than three 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 the CONSULTANT shall maintain the same until HART, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

1.4 Federal Changes

The 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 the Master Agreement between HART and the FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The CONSULTANT's failure to so comply shall constitute a material breach of this Agreement.

1.5 Civil Rights Requirements

The CONSULTANT shall comply with the following requirements and include the following requirements in each subcontract, modified only if necessary to identify the affected parties:

(a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, 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, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONSULTANT shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying Agreement:

(1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONSULTANT shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (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), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The 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, the CONSULTANT shall comply with any implementing requirements FTA may issue.

(2) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CONSULTANT shall refrain from discrimination against present and prospective employees for reason of age. In addition, the CONSULTANT shall comply with any implementing requirements FTA may issue.

(3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONSULTANT shall comply with the requirements of the U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONSULTANT shall comply with any implementing requirements FTA may issue.

(4) Access for Individuals with Disabilities. The CONSULTANT shall comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities.

1.6 Disadvantaged Business Enterprises (DBE)

(a) DBE Assurances. The CONSULTANT and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted Agreements. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in termination of this Agreement or such other remedy, as HART deems appropriate.

The above paragraph shall be included in each subcontract the CONSULTANT signs with a subcontractor.

(b) Prompt Payment. The CONSULTANT shall pay all subcontractors (DBEs and non-DBEs) for satisfactory performance of their subcontracts no later than ten (10) days from receipt of payment by HART. Full and prompt payment by the CONSULTANT to all subcontractors shall include retainage, if applicable.

(c) DBE Goal. The City has established a race neutral overall DBE goal of 3.83% for fiscal year 2012. Although HART has not established a DBE Agreement goal for this Project, DBE firms and small businesses shall have an equal opportunity to participate in the Agreement. The CONSULTANT shall adhere to the following requirements:

(1) Take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 C.F.R. § 26.51(b) as practicable to afford opportunities to DBEs to participate in the Agreement. A race-neutral measure is one that is, or can be, used to assist all small businesses.

(2) A DBE firm must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work; and

(3) A DBE firm must be certified by the Hawai'i State Department of Transportation before its participation is reportable under paragraph (d) below;

(d) Reports to HART. The CONSULTANT shall report its DBE participation obtained through race-neutral means throughout the period of performance. The CONSULTANT shall submit the "DBE PARTICIPATION REPORT" reflecting payments made by the CONSULTANT to DBE subcontractors. Payments to the CONSULTANT will not be processed if the DBE PARTICIPATION REPORT is not properly completed and attached. The DBE PARTICIPATION REPORT shall be prepared in the format set forth in ATTACHMENT 1.6 a) of this Exhibit.

(e) Records. On request, the CONSULTANT shall make available for inspection, and assure that its subcontractors make available for inspection:

- (1) Records of prompt payments made in accordance with Section 1.6(b), above;
- (2) The names and addresses of DBE subcontractors, vendors, and suppliers under this Agreement;
- (3) The dollar amount and nature of work of each DBE subcontractor;
- (4) The social/economic disadvantaged category of the DBE firms, i.e. Black American, Hispanic American, Native American, Subcontinent Asian American, Asian Pacific American, Non-Minority Women, or Other; and
- (5) Other related materials and information.

(f) The CONSULTANT shall promptly notify HART, whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work. The CONSULTANT shall also promptly notify HART of a DBE subcontractor's inability or unwillingness to perform and provide reasonable documentation.

1.7 Government-Wide Debarment and Suspension (Non-procurement)

(a) This Agreement is a covered transaction for purposes of 2 C.F.R. § 180.220(b) and 2 C.F.R. § 1200.220. As such, the CONSULTANT is required to verify that none of the CONSULTANT, its principals, as defined at 2 C.F.R. § 180.995, or affiliates, as defined at 2 C.F.R. § 180.905, are excluded or disqualified as defined at 2 C.F.R. § 180.940 and 2 C.F.R. § 180.935.

(b) The CONSULTANT is required to comply with 2 C.F.R. § 180 Subpart C, as supplemented by 2 C.F.R. § 1200 Subpart C, and must include the requirement to comply with 2 C.F.R. § 180, Subpart C, as supplemented by 2 C.F.R. § 1200 Subpart C, in any lower tier covered transaction equal to or exceeding \$25,000 it enters into. By signing the Agreement, the CONSULTANT certifies as follows:

The certification in this clause is a material representation of fact relied upon by HART and the City and County of Honolulu ("The City"). If it is later determined that the CONSULTANT knowingly rendered an erroneous certification, in addition to remedies available to HART and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The CONSULTANT agrees to comply with the requirements of 2 C.F.R. § 180, Subpart C, as supplemented by 2 C.F.R. §

1200 Subpart C, throughout the Agreement period. The CONSULTANT further agrees to include a provision requiring such compliance in its lower tier covered transactions equal to or exceeding \$25,000.

1.8 Lobbying

The "CERTIFICATION REGARDING LOBBYING," as executed by the CONSULTANT in Exhibit 5 of the Instructions to Offerors, is incorporated herein by this reference. The CONSULTANT and its subcontractors at every tier shall comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, which requires that no Federal appropriated funds shall be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Agreement, grant, or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to HART.

1.9 Clean Air Requirements

(a) The CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* The CONSULTANT shall report each violation to HART and understands and agrees that HART will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The CONSULTANT shall include the above clause in each subcontract exceeding \$100,000.

1.10 Clean Water Requirements

(a) The 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.* The CONSULTANT shall report each violation to HART and understands and agrees that HART will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The CONSULTANT shall include the above clause in each subcontract exceeding \$100,000.

1.11 Fly America Requirements

(a) The CONSULTANT shall comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. Parts 301-10, which provide that HART and sub-recipients of Federal funds and their consultants 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. The 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.

(b) The CONSULTANT shall include the requirements of this section in all subcontracts that may involve international air transportation.

1.12 Energy Conservation Requirements

(a) The CONSULTANT shall comply with mandatory standards and policies relating to energy

efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

(b) The CONSULTANT shall include the above clause in each subcontract at every tier. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

1.13 Recycled Products

The CONSULTANT agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act as amended (42 U.S.C. § 6962), including, but not limited to, the regulatory provisions of 40 C.F.R. Part 247, and Executive Order No. 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

1.14 ADA Access

The CONSULTANT shall comply with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the CONSULTANT agrees to comply with all applicable implementing Federal regulations and directives and any subsequent amendments thereto.

1.15 Seismic Safety

The CONSULTANT shall ensure that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in the U.S. Department of Transportation's Seismic Safety Regulations (49 C.F.R. Part 41) and shall certify to compliance to the extent required by the regulation. The CONSULTANT also agrees to ensure that all work performed under this Agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

1.16 Text Messaging While Driving

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and U.S. DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the CONSULTANT is encouraged to comply with the terms of the following:

(a) Definitions.

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

(b) Safety. The Grantee is encouraged to:

- (1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving:
 - (A) Grantee-owned or Grantee-rented vehicles or Government-owned, leased or rented vehicles;
 - (B) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or
 - (C) Any vehicle, on or off duty, and using an employer supplied electronic device.
- (2) Conduct workplace safety initiatives in a manner commensurate with the CONSULTANT's size, such as:
 - (A) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - (B) Education, awareness, and other outreach to employees about the safety risks associated with text messaging while driving.
- (3) Include this Special Provision in its subagreements with its subrecipients and third party contracts and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision and include this clause in each subagreement, lease, and subcontract at each tier financed with Federal assistance provided by the Federal Government.

1.17 Sensitive Security Information

The CONSULTANT, as a third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information", 49 CFR Part 1520.

1.18 Incorporation of FTA Terms

(a) The Special Provisions to the Agreement are to include, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause HART to be in violation of the FTA terms and conditions.

(b) The CONSULTANT shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

ATTACHMENT 1.6 a) – DBE PARTICIPATION REPORT

DBE PARTICIPATION REPORT				
This report shall be submitted with each invoice as a condition of payment under this Contract.				
Project Name:				
Contract No:		Consultant Name:		
Federal ID No.: (OWP WE #, FTA Grant #, FHWA Project #)		Contract Amount (including amendments):		\$
Period Covered By This Report:	Current (Invoice # _____)		Total to Date	
Total Invoice Amount	(A) \$		(B) \$	
Payment Requested:	DBE? (Yes/No) DBE Code (if "Yes")	*Prior Amount	*Current Amount	*Total Amount to Date
Prime Consultant		\$	\$	\$
Subcontractors (attach additional sheets as needed):				
Name: Type of Work:		\$	\$	\$
Name: Type of Work:		\$	\$	\$
Name: Type of Work:		\$	\$	\$
Name: Type of Work:		\$	\$	\$
TOTALS		\$	\$	(C) \$
DBE Participation to Date (C/B)	%			

*Only enter dollar amounts for DBEs.

ATTACHMENT 1.6 b) - FINAL REPORT OF DBE PARTICIPATION

This report must be submitted by the Consultant with the final invoice or request for payment under this contract.

Project Title: _____

Consultant Name: _____

Project No.: _____ Contract No.: _____

Period Covered by this Report: _____

Contract Amount (including amendments): \$ _____

Final Payment Amount: \$ _____ Invoice No.: _____

Total Payment to DBE: \$ _____

All Subcontractors (DBE and non-DBE) & DBE Suppliers or Manufacturers	Type of Service or Materials Provided	Subcontract Amount
Name Address Telephone No.		

Add additional sheets as necessary.

Signature

Print Name & Title

**ATTACHMENT 1.6 b) - INSTRUCTIONS FOR COMPLETING THE
FINAL REPORT OF DBE PARTICIPATION**

All subcontractors, suppliers and manufacturers should be listed on the FINAL REPORT OF DBE PARTICIPATION in the same order as listed in the proposal.

Project Title:	Self Explanatory
Project No.:	Self Explanatory
Period Covered by this Report:	Same period as invoice period
Consultant Name:	Self-Explanatory
Contractor No:	Self-Explanatory
Contract Amount (including amendments):	Less Mobilization, Force Account Items and Allowance Items Amendments should be listed separately with an explanation of how it was allocated to DBEs and non-DBEs
Invoice No.:	Self-Explanatory
Final Payment Amount:	Self-Explanatory
Total Payment to DBE	Total \$ amount paid to DBE

HONOLULU RAIL TRANSIT PROJECT

**OWNER CONTROLLED INSURANCE PROGRAM (OCIP) PROFESSIONAL
SERVICES CONTRACT**

**GENERAL TERMS AND CONDITIONS FOR CONTRACTS FOR
PROFESSIONAL SERVICES FOR THE CITY AND COUNTY OF
HONOLULU (8/2000)**

(8/00)

**GENERAL TERMS AND CONDITIONS
FOR CONTRACTS FOR PROFESSIONAL SERVICES
FOR THE
CITY AND COUNTY OF HONOLULU**

SECTION 1 - DEFINITIONS; GENERAL PROVISIONS

1.1 DEFINITIONS. Terms as used in these General Terms and Conditions and the contract, unless the context requires otherwise, shall have the following meaning:

"Amendment" means modification.

"Change order" means a written order signed by the officer-in-charge and approved by the Director of Budget and Fiscal Services, directing the contractor to make changes which the changes clause of the contract authorizes the officer-in-charge to order without the consent of the contractor.

"City" means the City and County of Honolulu, State of Hawaii.

"Contract" means the written agreement between the City and the successful contractor.

"Contractor" or "consultant" means the person having a contract with the City.

"Day" means calendar day unless otherwise specified.

"Design and plans" means any and all designs, plans, construction drawings, specifications, cost estimates, work schedules, proposals, studies, reports and other items.

"Designee" means a person appointed by the Director of Budget and Fiscal Services or the officer-in-charge to act on his/her behalf with delegated authority.

"Director of Budget and Fiscal Services" means the chief procurement officer of the executive branch of the City and County of Honolulu, or the director's designee.

"General terms and conditions" means these General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu.

"HRS" means the Hawaii Revised Statutes of the State of Hawaii.

"Modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of the contract accomplished by mutual action of the parties to the contract.

"Notice to proceed" means the written document indicating the official commencement date of services.

"Officer-in-charge" means the head of the department or a designee of the officer-in-charge for which services are being rendered.

"Professional services" means those services within the scope of the practice of architecture, landscape architecture, professional engineering, land surveying, real property appraisal, law, medicine, accounting, dentistry, or any other practice defined as professional pursuant to section 415A-2, HRS, or the professional and scientific occupation series contained in the United States Office of Personnel Management's Qualifications Standards Handbook.

"Qualified list method" means the method of source selection for professional services under HRS 103D-304.

1.2 GENERAL PROVISIONS

1.2.1 Nondisclosure of designated trade secrets or proprietary information. A person shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. *Such data shall accompany the proposal, be clearly labeled as confidential, and shall be readily separable from other data in order to facilitate eventual public inspection of the nonconfidential portion of the data.* [3-122-46, HAR]

1.2.2 Independent price determination. By submitting an offer or price, the person certifies that the price submitted for the contract was independently arrived at without collusion. [3-122-192, HAR]

1.2.3 No reimbursement. The City shall not provide any reimbursement for the cost of developing or presenting proposals in response to the request for proposal. Failure to include the requested information may have a negative impact on the evaluation of the offeror's proposal.

1.2.4 Cancellation of solicitation. Solicitations may be canceled in whole or in part when in the best interest of the agency. [3-122-95, HAR]

1.2.5 Determination of contractual terms and conditions. The Director of Budget and Fiscal Services is authorized to determine the contractual provisions, terms, and conditions of solicitations and contracts, provided such provisions, terms, and conditions are not contrary to statutory or Chapter 91, HRS, administrative rule requirements governing the procurement. [3-122-7, HAR]

1.2.6 Any notice required or permitted by the provisions hereunder or under the contract to be given by a party to any other party, shall be written and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to each other party at the address and to the person designated by each party in the contract. No other method of notice shall be effective. If notice is given by mail, it shall be effective one business day following the date it is mailed. If notice is hand delivered, it shall be effective upon receipt. Any change of address of either of the parties shall be effective upon receipt of written notice of such change by the other party.

1.2.7 If any term, condition, provision, covenant or agreement of the terms hereunder or under the contract or the application thereof to any person or circumstance is rendered or held invalid, illegal or unenforceable under the laws of the State of Hawaii or the United States of America, such part of the terms hereunder or under the contract as shall have been rendered or held to be invalid, illegal or unenforceable shall not affect the validity of the terms hereunder or under the contract as a whole or the remainder of the terms hereunder or under the contract and the application of such part to other persons and circumstances, but shall be given effect and enforced without such part to the greatest extent permitted by applicable law.

1.2.8 The provisions of this document and the contract shall be interpreted in accordance with the laws of the State of Hawaii as those laws are construed and amended from time to time.

1.2.9 The titles of headings of sections, subsections and paragraphs are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

1.2.10 All words used in the singular shall extend to and include the plural. All words used in the plural shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

1.2.11 Managed Competition Review. All contracts executed on or after July 20, 1998 which will extend beyond June 30, 2001 (including contracts which have initial terms ending before June 30, 2001, with options to extend beyond June 30, 2001) will be subject to the Managed Competition Review, as defined below.

During its term, the contract shall be subject to a single review by the City pursuant to the managed process for public-private competition to be developed under Part III, Section 6 of Act 230, Session Laws of Hawaii 1998. It is the understanding of the parties that, as a result of the managed process review, the Agreement may be terminated by the City, renegotiated by mutual agreement of the parties, or continued in its current form. Any termination pursuant to this Section shall be deemed a termination for convenience.

1.2.12 Cooperation. The contractor shall cooperate and coordinate with other contractors who may be employed by the City on the same or related projects of the City, and to the extent possible, shall avoid interference therewith, and shall cooperate with the other contractors so as to avoid unnecessary delay or hindrance in the performance of their respective contracts. Any difference or conflict which may arise between the contractor and the other contractors of the City shall be resolved by the officer-in-charge, whose decision shall be final and binding.

1.2.13 Confidentiality. When dealing with the news media, the contractor is expected to be circumspect and to treat all matters falling within the scope of the contract with the utmost confidentiality. The contractor shall consult with and/or obtain the consent of the officer-in-charge prior to having conversations with or giving public interviews to the news media or any other members of the public.

SECTION 2 - HAWAII ADMINISTRATIVE RULES (HAR)

The Public Procurement Code (HRS Chapter 103D) and the Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, State of Hawaii (HAR), govern the procurement of goods and services and are by reference incorporated herein and made a part of the request for proposals and contract documents.

Wherever "chief procurement officer" appears in the HAR, for the Board of Water Supply (BWS), it shall mean the Manager and Chief Engineer of the BWS, for all others it shall mean the Director of Budget and Fiscal Services.

Wherever "head of the purchasing agency" and "procurement officer" appear in the HAR, both shall mean the officer-in-charge, or their authorized designees. For all agencies except the Board of Water Supply, the officer-in-charge shall have authority to act as specified herein.

Sections of the HAR are provided in whole or in part in these general terms and conditions for convenience only and the applicable section numbers are indicated in brackets. These provisions are not intended to relieve the contractor from the responsibility of familiarizing themselves with the HAR relating to this contract. Should any provision of these general terms and conditions be found to be inconsistent with the HAR, the provision in the HAR shall take precedent.

SECTION 3 - AWARD AND EXECUTION OF CONTRACT

3.1 AWARD OF CONTRACT. The contractor, upon being selected to render the services for the project, will be notified of its commission by the officer-in-charge. Said notice shall not be construed to be authorization to proceed with the performance of services under the contract.

3.2 EXECUTION OF CONTRACT

3.2.1 If the contractor is an individual, or partnership, the contractor shall cause the contract to be signed before a notary public duly acknowledged. If the contractor is a corporation, or if the joint venture is made up of two or more corporations, the contractor shall cause the contract to be signed and sealed before a notary public who shall acknowledge the person(s) signing, their titles, and shall affix thereto their corporate resolution, or other instrument vesting such officer with authority to sign the contract on their behalf.

3.2.2 If performance and payment bonds are required in the solicitation or contract, such documents shall be executed in the same manner above.

3.2.3 The signed contract, bonds, if any bonds are required, shall be returned together with evidence of insurance coverages as may be required, to the officer-in-charge for further processing, within ten days after notification of award.

3.3 CONTRACT NOT BINDING UNLESS PROPERLY EXECUTED AND APPROPRIATION AVAILABLE. The contract shall not be binding or of any force and effect without an endorsement by the Director of Budget and Fiscal Services that there is an appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract.

3.3.1 Exceptions to the certification of funds required above are:

- (1) If a contract is a multi-term contract pursuant to section 3-122-149, HAR, the Director of Budget and Fiscal Services shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts that is sufficient to cover the amount required to be paid under the contract during the current fiscal year or remaining portion of the current fiscal year of the first term of the multi-term contract. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore from sources which are identified in writing;
- (2) If the contract is one under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded; and

- (3) If there is no direct expenditure of public funds from the City to the contractor.
- (4) Certification of a portion of the total funds required for a contract may be permitted when an immediate solicitation will result in significantly more favorable contract terms and conditions to the City than a solicitation made at a later date; provided that certification for partial funding shall be permitted only if the Director of Budget and Fiscal Services states in the certificate that the availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special fund revenues. All contracts partially funded shall be enforceable only to the extent to which funds have been certified as available.

3.3.2 Contracts involving federal funds. Unless otherwise specified in the solicitation, for any contract supplemented by federal funds or receiving one hundred per cent federal funds, payment shall be made upon receipt of federal funds. The obligation of the City shall extend only to that portion of funds certified to and payable out of City funds. [3-122-102; 3-122-103, HAR]

3.4 COMMENCEMENT OF WORK. Work shall not commence until a contract has been executed and availability of funds certified by the Director of Budget and Fiscal Services, and the officer-in-charge has issued a written notice to proceed or the executed contract specifies the official commencement for services to begin.

SECTION 4 - LEGAL RELATIONS AND RESPONSIBILITY

4.1 INDEPENDENT CONTRACTOR

4.1.1 The contractor shall perform the work as an independent contractor and shall indemnify and hold harmless the City, its departments, and all of their officers, employees or agents, from any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, suits, action and liability therefor 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 contract..

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

4.1.2 Laws, regulations. The contractor shall keep itself fully informed of all laws, ordinances, codes, rules and regulations, governmental general and development plans, setback limitations, rights-of-way, and all changes thereto, which in any manner affect the contract and the performance thereof. The contractor shall comply with all such laws, ordinances, codes, rules and regulations, governmental general and development plans, setback limitations, rights-of-way, including the giving of all notices necessary and incident to the proper and lawful prosecution of the work, and all changes thereto. If any discrepancy or inconsistency is discovered between the contract and any such law, ordinance, code, rule, regulation, design standard, design criterion, governmental general and development plans, setback limitation, rights-of-way, the contractor shall forthwith report the same in writing to the officer-in-charge.

4.2 COPYRIGHT OR PATENT

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 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 any trademark or copyright in connection with the work to be performed under the contract, and shall indemnify the City and its departments, and all of their 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.

4.2.2 The City shall have an unrestricted, royalty-free, nonexclusive and irrevocable license to reproduce, publish, translate or otherwise use and to authorize others to publish and use all materials obtained or produced in connection with the work hereunder which may be copyrighted by the contractor prior to the completion of the contract.

4.3 INSURANCE

4.3.1 Unless otherwise specified in contract documents, the contractor shall procure or cause to be procured and maintain (as provided herein), at no cost to the City, during the life of this contract and any extensions thereof, all insurance to cover the operations under this contract, that may be required under the laws, ordinances or regulations of any governmental authority, including but not limited to the coverages below. The contractor shall either include all tiers of subcontractors, if any, under the policies required under paragraphs 2 through 4, to the extent permitted by law, or shall require all subcontractors to maintain coverages described in paragraphs 1 through 4.

1. Workers Compensation and Employers Liability Insurance. Contractor shall maintain workers compensation and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability coverage shall provide limits of not less than \$100,000 each accident for bodily injury by accident or \$100,000 each employee, \$100,000 aggregate, for bodily injury by disease.
2. Commercial General and Umbrella Liability Insurance . Contractor shall maintain 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). The City shall be included as an additional insured 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 the City.
3. Business Automobile and Umbrella Liability Insurance . Contractor shall maintain business auto liability (including no-fault coverage) and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used by contractor in the performance of this contract. Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

4. Professional Liability Insurance . The contractor shall maintain professional liability insurance with limits of not less than \$1,000,000 per claim/annual aggregate, covering the contractor, the contractor's employees or agents for liability arising out of errors, omissions, or negligence in the performance of professional services under the contract. Such insurance shall remain in full force and effect continuously for the period of design and construction of the work, and for a period of 1 year following substantial completion of construction, provided that such coverage is reasonably available at commercially affordable premiums, as mutually determined and agreed.

4.3.2 The insurance specified above shall:

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 the City shall be excess and non-contributing;
2. Contain a standard Cross Liability endorsement providing that the insurance applies separately to each insured, applicable to policies specified in 4.3.1.2 and 4.3.1.3 above;
3. Not be terminated, canceled, not renewed or substantially changed without THIRTY (30) DAYS prior written notice to the City, except for non-payment of premium;
4. Except for Professional Liability insurance required in 4.3.1.4 above, be written on an "Occurrence" form of policy, unless otherwise specifically approved by the City.
5. Be provided by insurers authorized to do business in the State of Hawaii, and with a current Best's rating of not less than A-, or otherwise as approved by the City;

4.3.3 Certificate of insurance:

1. The contractor will provide and thereafter maintain current and renewal certificates of insurance, prepared by a duly authorized agent, or if requested, copies of the policies, evidencing the insurance in effect at all times during the term of this contract as required herein to the City.
2. Certificates shall clearly identify the project by name and/or contract number.
3. Certificates shall show the Certificate Holder as the City and County of Honolulu, and be delivered to the Director of Budget and Fiscal Services, 530 South King Street, Honolulu, Hawaii 96813.

SECTION 5 - MODIFICATIONS

5.1 MODIFICATIONS OF CONTRACTS. The City may at any time make such modifications in the contract, and the services, designs and plans, or studies prepared by the contractor as the officer-in-charge deems necessary and advisable. Such modifications shall be made by a supplemental agreement in writing or by a written order of the Director of Budget and Fiscal Services; provided that modifications by such a written order shall be limited to modifications in the scope of

services and in the designs, plans and studies; and provided further that modifications involving no reduction or increase in compensation of the contractor may be made by written order of the officer-in-charge.

5.1.1 Change order. (a) The officer-in-charge, with the approval of the Director of Budget and Fiscal Services, may at any time, and without notice to any surety, unilaterally, order of the contractor:

- (1) Changes in the work within the scope of the contract; and
- (2) Changes in the time of performance of the contract that do not alter the scope of the contract work.

(b) If any change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under the contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with subsection 5.2, Price adjustment, or as negotiated. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the officer-in-charge promptly and duly makes the provisional adjustments in payment or time for the direct costs of the work as the City deems reasonable. The right of the contractor to dispute the contract price or time or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the contract or these provisions.

(c) *Within ten days* after receipt of a written change order, unless the period is extended by the officer-in-charge in writing, the contractor shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.

(d) Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if written response is not given prior to final payment under the contract.

(e) Claims not barred. In the absence of a change order, nothing in this subsection shall be deemed to restrict the contractor's right to pursue a claim under the contract or for breach of contract. [3-125-2, HAR]

5.1.2 Modifications. (a) By written order, the officer-in-charge, with the approval of the Director of Budget and Fiscal Services, may at any time, and without notice to any surety, subject to mutual agreement of the parties to the contract and all appropriate adjustments, make modifications within the general scope of the contract to include any one or more of the following:

- (1) Drawings, designs, or specifications, for the goods to be furnished;
- (2) Method of shipment or packing;
- (3) Place of delivery;
- (4) Description of services to be performed;
- (5) Time of performance (i.e., hours of the day, days of the week, etc.);

- (6) Place of performance of the services; or
- (7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

(b) If any modification increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under the contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with subsection 5.2, Price adjustment or as negotiated.

(c) Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if written agreement of modification is not made prior to final payment under the contract.

(d) Claims not barred. In the absence of a contract modification, nothing in this subsection shall restrict the contractor's right to pursue a claim arising under the contract or for breach of contract. [3-125-3, HAR]

5.1.3 Variations in definite quantities. Upon the agreement of the parties, the quantity of goods or services or both specified in the contract may be increased by a maximum of ten percent provided the unit prices will remain the same except for any price adjustments otherwise applicable and the officer-in-charge makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract. [3-125-8, HAR]

5.1.4 Order to stop work. (a) The officer-in-charge may, with the approval of the Director of Budget and Fiscal Services, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by the contract. ***This order shall be for a specified period not exceeding sixty days*** after the order is delivered to the contractor, unless the parties agree to any further period. Any order shall be identified specifically as a stop work order issued pursuant to this subsection. Upon receipt of an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the officer-in-charge, with the approval of the Director of Budget and Fiscal Services, shall either:

- (1) Cancel the stop work order, or
- (2) Terminate the work covered by the order as provided in subsection 9.2, Termination for default, or subsection 9.3, Termination for convenience.

(b) Cancellation or expiration of the order. If a stop work order issued under this subsection is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

- (1) The stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of the contract; and

- (2) The contractor asserts a claim for such an adjustment *within thirty days* after the end of the period of work stoppage; provided that, if the officer-in-charge decides that the facts justify such action, any claim asserted may be received and acted upon at any time prior to final payment under the contract.

(c) Termination of stopped work. If a stop work order is not canceled and the work covered by the order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowable by adjustment or otherwise.

(d) Adjustment of price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with subsection 5.2, Price adjustment. [3-125-6, HAR]

5.2 PRICE ADJUSTMENT. Any adjustment in contract price pursuant to a clause in the contract shall be made in one or more of the following ways:

- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (2) By unit prices specified in the contract or subsequently agreed upon;
- (3) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- (4) In such other manner as the parties may mutually agree; or
- (5) In the absence of agreement between the parties, by a unilateral determination by the Director of Budget and Fiscal Services upon the recommendation of the officer-in-charge of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the officer-in-charge in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- (6) The contractor shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, subchapter 15, HAR. [3-125-12, HAR]

5.3 NOVATION OR CHANGE OF NAME

5.3.1 No assignment. No contract is transferable, or otherwise assignable, without the written consent of the Director of Budget and Fiscal Services.

5.3.2 Recognition of a successor in interest; assignment. When in the best interest of the City, a successor in interest may be recognized in an assignment agreement in which the transferor, the transferee and the City shall agree that:

- (1) The transferee assumes all of the transferor's obligations;
- (2) The transferor remains liable for all obligations under the contract but waives all rights under the contract as against the City; and

- (3) The transferor shall continue to furnish, and the transferee shall also furnish, all required bonds.

5.3.3 Change of name. When a contractor requests to change the name in which it holds a contract with the City, the Director of Budget and Fiscal Services shall, upon receipt of a document indicating such change of name (for example an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed. [3-125-14, HAR]

5.4 CLAIMS BASED ON THE OFFICER-IN-CHARGE'S ACTIONS OR OMISSIONS.

(a) If any action or omission on the part of an officer-in-charge or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) The contractor shall have given written notice to the officer-in-charge;
 - (A) *Prior to the commencement* of the work involved, if at that time the contractor knows of the occurrence of the action or omission;
 - (B) *Within thirty days after* the contractor knows of the occurrence of the action or omission, if the contractor did not have knowledge prior to the commencement of the work; or
 - (C) Within further time as may be allowed by the officer-in-charge in writing.
- (2) This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The officer-in-charge or designee of such officer, upon receipt of the notice may rescind the action, remedy the omission, or take other steps as may be deemed advisable in the discretion of the officer-in-charge or designee of such officer;
- (3) The notice required by paragraph (1) describes as clearly as practicable, at the time, the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and
- (4) The contractor maintains and, upon request, makes available to the officer-in-charge within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with the changes.

(b) Nothing herein contained, however, shall excuse the contractor from compliance with any rules of law precluding any City officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(c) Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with subsection 5.2, Price adjustment. [3-125-15, HAR]

SECTION 6 - PERFORMANCE OF CONTRACT

6.1 TIME. Time is of the essence of the contract. Performance of the services under the contract shall be commenced on the date designated in the notice to proceed or in the contract and the services as required in the contract shall be completed within the number of days or on the date specified.

6.2 DELAY. If any excusable delay occurs, it shall be dealt with in accordance with subsection 9.2.3, Excuse for nonperformance or delayed performance. No extension of time however, shall be granted unless the written application therefor stating in detail the cause or causes of delay is filed by the contractor with the officer-in-charge *within fifteen days* after the commencement of the delay. No such extension shall be deemed a waiver of the right of the officer-in-charge to require the completion of services under the contract within the time required herein as so extended by the specific terms of such extension or extensions, nor a waiver of right to terminate the contract for any other or additional delay not covered by the specific terms of such extension or extensions. The number of days of each extension of time shall be determined by the Director of Budget and Fiscal Services upon the recommendation of the officer-in-charge.

6.3 EXTENSION OF TIME ON CONTRACTS. If a contract has exhausted its provision for extension(s) of time of performance, or if the contract does not include a provision for extension(s) of time of performance, the contract may be extended upon approval of the Director of Budget and Fiscal Services, provided:

- (1) The period of each extension is for one hundred eighty calendar days or less;
- (2) The officer-in-charge makes a written determination that it is not practical to award another contract at the time of the expiration of the contract for reasons to include but be limited to the following:
 - (A) A new contract cannot be executed by the time the contract expires; or
 - (B) The need for the good or service is short term;
- (3) All parties agree to the extension of time of performance; and
- (4) The price or conditions of the contract remain the same as the original contract, or as amended per the contract; or if not the same or as amended, they are fair and reasonable.
[3-122-3, HAR]

6.4 PROSECUTION OF THE WORK. The contractor shall be available upon reasonable demand to discuss the progress of the services being performed under the contract. The contractor shall also remain available through any applicable alternative means of contact, such as pager or cellular phone, in the event of an emergency or other event that necessitates immediate communication with the contractor. All questions arising during the performance of the contract which must be resolved by the officer-in-charge shall be brought to the officer-in-charge's immediate attention.

The contractor shall direct its work to relate appropriately to, and in accordance with, established principles, practices and standards for such work. The contractor shall direct its work to relate appropriately to, and in accordance with, established engineering, planning and/or architectural design principles and practices for good exterior appearance, and the natural and man-made environment.

The contractor shall furnish sufficient technical supervision and administrative personnel to insure the proper performance of the services under the contract.

The contractor shall be responsible for the accuracy of all computations and completeness of all studies, designs and plans.

All notes, deliverables, plans, specifications, calculations, field notes, and other data produced in the performance of the contract shall be the property of the City.

The officer-in-charge shall have access, at all reasonable times, to all notes, designs, drawings, tracings or other technical data pertaining to the services being performed under the contract for the purpose of inspection and making copies of them. Upon completion of the services under the contract, any or all of such notes, studies, designs, drawings, tracings or other technical data shall be delivered and surrendered to the officer-in-charge on demand, provided that copies of notes, studies and other technical data may be delivered and surrendered instead of the originals.

6.5 AUTHORITY OF THE OFFICER-IN-CHARGE AND DIRECTOR OF BUDGET AND FISCAL SERVICES. The decisions of the officer-in-charge shall be final and binding upon parties unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence, provided that decisions on questions or disputes relating to the acceptance of the services performed under the contract, suspension or termination of the contract, extension of time, reduction or increase in the compensation of the contractor and payment shall become final and binding upon all parties only upon approval of the Director of Budget and Fiscal Services, and provided further that nothing herein shall be construed as making final and binding any decision of the officer-in-charge and/or Director of Budget and Fiscal Services on a question of law. Pending final decision of any dispute or question, the contractor shall proceed diligently with the performance of services under the contract in accordance with the decision of the officer-in-charge and/or Director of Budget and Fiscal Services.

6.6 LIQUIDATED DAMAGES. The amount of damage to the City as a result of failure to complete performance of specified services under the contract within the time fixed or any extension thereof, exclusive of overhead expenses, being certain but difficult, if not impossible to ascertain, the contractor agrees to pay the sum stated in the contract as liquidated damages, and not by way of penalty, for every calendar day of delay until the services are completed and accepted, or a reasonable time has expired for completion and acceptance of the services remaining to be performed.

When the contractor is given notice of delay or nonperformance as specified in subsection 9.2, Termination for default, and fails to cure in the time it is agreed specified, the contractor shall pay to the City the amount specified in the contract per calendar day from the date set for cure until either the officer-in-charge reasonably obtains similar goods or services if the contractor is terminated for default, or until the contractor provides the goods or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under 9.2.3, Excuse for nonperformance or delayed performance of the termination for default clause, liquidated damages shall not be due the City. The contractor remains liable for damages caused other than by delay. [3-125-19, HAR]

6.7 SUBCONTRACTING. The contractor shall not subcontract all or any part of the services under the contract without the prior written consent of the officer-in-charge. Any consent by the officer-in-charge to subcontract or otherwise dispose of any portion of the contract shall not be construed to relieve the contractor of any responsibility for the performance of the contract.

SECTION 7 - SERVICES TO BE PERFORMED BY THE CITY

7.1 COOPERATION BY THE CITY. The City shall, without cost to the contractor, through the officer-in-charge, cooperate fully with the contractor and will promptly place at the disposal of the contractor all available pertinent information which the City may have in its possession. The officer-in-charge will certify to the accuracy of certain information in writing whenever it is possible to do so. The officer-in-charge does not represent that other information not certified as accurate is so and takes no responsibility therefor, and the contractor shall rely on such information at the contractor's own risk.

7.2 REVIEW BY THE OFFICER-IN-CHARGE. The officer-in-charge shall review all submittals and other work and data required to be made by the contractor and reject or approve such submittals in their entirety or approve the same subject to such deletions, additions and revisions as the officer-in-charge may deem necessary and proper. In submittals specified in the special provisions, all items not required by the contractor to be deleted, added, or revised after review by the contractor and not defective by reason or error, omissions or negligence on the part of the contractor, his subcontractor, agents or employees shall be deemed to have been approved.

SECTION 8 - COMPENSATION

8.1 COMPENSATION. The contractor shall be paid the amount stated in the contract or the amount determined in accordance with the special provisions, whichever is lower, as full compensation for the performance of the services under the contract.

8.2 PROGRESS PAYMENT. The contractor's compensation shall be paid as set forth in the contract.

8.3 ACCEPTANCE AND FINAL PAYMENT. The officer-in-charge shall approve and accept completion of the contract upon the satisfactory fulfillment of the terms of the contract and receipt of a certificate from the State Director of Taxation and the Internal Revenue Service, as provided in section 103-53, HRS, relating to prerequisite for final settlement of contracts, provided that final payment will be made upon approval of the Director of Budget and Fiscal Services. The tax clearances required at final settlement of a contract shall be on an original certificate or certified copy and valid for a period of 6 months from the later date stamped on the form, provided that the contractor does not delay in obtaining clearance from both agencies.

8.3.1 In the event equipment is provided under the contract, which received prior approval from the Director of Budget and Fiscal Services, the contractor shall also provide a written list of equipment installed or provided, listing the description, make, model, serial number, cost, and location of the equipment or room number in which the equipment is located.

For purposes of this subsection, "equipment" means any item such as a water heater that can be removed with a hand tool, or like an air conditioner, is capable of being moved or transferred to another location and is accessible to tagging with an identification number.

8.3.2 Acceptance by the contractor of the final payment shall constitute payment in full for all services performed under the contract.

8.4 AUTHORITY TO WITHHOLD MONEY DUE OR PAYABLE. The officer-in-charge may withhold such amounts from the money due or to become payable under the contract to the contractor, or any assignee under subsection 5.3, Novation or change of name, as may be necessary to protect the City against liability or to satisfy the obligations of the contractor to the City, State Department of Taxation, Internal Revenue Service, and to employees, subcontractors and material suppliers who have performed labor or furnished material and equipment under the contract and may make such payments from such amounts as may be necessary to discharge such obligations and protect the City.

8.5 RETAINAGE. In accordance with HRS 103-32.1, the officer-in-charge may determine the need for retainage of a portion of the monthly payments to the contractor or payments made upon completion of phases of the contract to insure the proper performance of the contract; provided that the sum withheld shall not exceed five per cent of the amount due the contractor and that after fifty per cent of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the officer-in-charge may continue to withhold as retainage, sums not exceeding five per cent of the amount due the contractor.

For federally funded contracts, the amount of retainage shall be the amount allowed by federal regulations.

8.6 PROMPT PAYMENT TO SUBCONTRACTORS.

- (1) Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
- (2) Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract. [3-125-23, HAR]

8.7 PAYMENT FOR REIMBURSABLE EXPENSES.

Payment requests for all reimbursable expenses shall be accompanied and supported by receipted invoices for all charges. The City must approve of all reimbursable expenses in writing. Payment for reimbursable items shall be made for allowable costs in accordance with the Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Chapter 3-122, Subchapter 15, cost or pricing data, and Chapter 3-123, cost principles.

Reimbursable amounts stated in the contract shall not be exceeded without a contract amendment. Any balance remaining from the reimbursable expense funds at the completion of the Agreement shall revert to the City.

SECTION 9 - TERMINATION OF CONTRACTS

9.1 RIGHT OF THE CITY TO TERMINATE. The City shall have the right to suspend performance of the services under the contract or terminate the contract in whole or in part at any time by written notice to the contractor. If the termination is for reasons other than default of the contractor as provided in subsection 9.2, the contractor shall be compensated in accordance with subsection 9.3, Termination for convenience.

9.2 TERMINATION FOR DEFAULT. If the contractor refuses or fails to perform any of the provisions of the contract with such diligence as will ensure its completion within the time specified in the contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of the contract, the officer-in-charge may notify the contractor in writing of the delay or nonperformance, and *if not cured in ten days* or any longer time specified in writing by the officer-in-charge, the officer-in-charge may, with the approval of the Director of Budget and Fiscal Services, terminate the contractor's right to proceed with the contract or a part of the contract as to which there has been delay or other breach of contract. In the event of termination in whole or in part, the Director of Budget and Fiscal Services may procure similar goods or services in a manner and upon terms deemed appropriate by the Director of Budget and Fiscal Services. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

Notwithstanding the above, in the event the contract is terminated, in whole or in part, by the City as the result of a default by the contractor, the City may secure, on any terms and in any manner that the City deems appropriate, supplies, materials, equipment and/or services similar to those required under the work terminated. The contractor shall be liable to the City for any excess costs for such similar supplies, materials, equipment and/or services, and the City may withhold and apply any monies due or to become due to the contractor under the contract for the completion of the work and/or for the payment of an additional contractor or contractors. This provision shall survive the termination of the contract. In case an additional contract or contracts let after such termination for default are let in an amount or amounts in excess of the amount remaining available for the contract in the hands of the City, free from all claims by laborers or material providers for work performed or materials furnished for the contract prior to the termination for default or any deductions authorized by the terms hereunder or the contract in favor of the City, then the contractor shall deposit, within ten (10) days from the receipt of each notice of any such reletting, to the credit of the City, solely for the prosecution and completion of the work, a sum of money equal to such excess; and in case the City desires to complete the work in any other manner than by contract, then the contractor shall deposit within ten (10) days from the receipt of each notice of the final completion of the work, to the credit of the City, the amount of any excess cost occasioned by such completion over the amount available under the contract in the hands of the City, free from all claims or deductions as aforesaid, all without prejudice to any other or additional rights or remedies the City may have against the contractor under the terms hereunder or the contract or under any applicable law, statute, ordinance, rule, regulation or other standard or requirement.

9.2.1 Contractor's duties. Notwithstanding termination of the contract and subject to any directions from the Director of Budget and Fiscal Services or the officer-in-charge, the contractor shall take timely and necessary action to protect and preserve property in the possession of the contractor in which the City has an interest.

9.2.2 Compensation. Payment for completed goods delivered and accepted by the City shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the contractor and the officer-in-charge; if the parties fail to agree, the Director of Budget and Fiscal Services, upon recommendation of the officer-in-charge, shall set an amount subject

to the contractor's rights under chapter 3-126, HAR. The City may withhold from amounts due the contractor as the Director of Budget and Fiscal Services deems to be necessary to protect the City against loss because of outstanding liens or claims of former lien holders and to reimburse the City for the excess costs incurred in procuring similar goods and services.

9.2.3 Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of the contract in accordance with its terms, if the contractor has notified the officer-in-charge *within fifteen days* after the cause of the delay and the failure arises out of causes including but not limited to: acts of God; acts of the public enemy; acts of the City and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if the failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements.

Upon request of the contractor, the officer-in-charge shall ascertain the facts and extent of the failure, and, if the officer-in-charge determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the completion date or delivery schedule shall be revised accordingly, subject to the rights of the City under subsection 9.3, Termination for convenience. As used in this paragraph, the term "subcontractor" means subcontractor or subconsultant at any tier.

9.2.4 Additional rights and remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law. [3-125-17, HAR]

9.3 TERMINATION FOR CONVENIENCE. The Director of Budget and Fiscal Services may, upon recommendation of the officer-in-charge, when the interests of the City so require, terminate the contract in whole or in part, for the convenience of the City. The Director of Budget and Fiscal Services shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

9.3.1 Contractor's obligations. The contractor shall incur no further obligations in connection with the terminated work and on the dates set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the City's approval. The contractor may be directed to assign the contractor's right, title, and interest under terminated orders or subcontracts to the City. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

9.3.2 Right to goods.

- (1) The contractor may be required to transfer title and deliver to the City in the manner and to the extent directed by the officer-in-charge or the Director of Budget and Fiscal Services: any completed goods; and the partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights, hereinafter

called "manufacturing material," as the contractor has specifically produced or specially acquired for the performance of the terminated part of the contract.

- (2) The contractor shall, upon direction of the officer-in-charge, protect and preserve property in the possession of the contractor in which the City has an interest. If the officer-in-charge does not exercise this right, the contractor shall use the contractor's best efforts to sell such goods and manufacturing materials. Use of this section in no way implies that the City has breached the contract by exercise of the termination for convenience clause.

9.3.3 Compensation

- (1) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, bearing on such claim. If the contractor fails to file a termination claim *within one year* from the effective date of termination, payment may be made to the contractor, if at all, in accordance with paragraph (3) below.
- (2) A settlement may be agreed to by both parties provided the contractor has filed a termination claim supported by cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the City, the proceeds of any sales of goods and manufacturing materials under paragraph 9.3.2, Right to goods, and the contract price of the work not terminated.
- (3) Absent complete agreement under paragraph (2), the contractor shall be paid the following amounts, provided payments agreed to under paragraph (2) shall not duplicate payments under this paragraph for the following:
 - (A) Contract prices for goods or services accepted under the contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the work plus a five percent markup on actual direct costs on such portion of the work, the markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Subject to the prior approval of the Director of Budget and Fiscal Services the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph 9.3.1, contractor's obligations. Subcontractors shall be entitled to a markup of no more than ten percent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with subparagraph (3)(B).
 - (D) The total sum to be paid the contractor under this paragraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subsection 9.3.2, Right to goods, and the contract price of work not terminated.

- (4) Cost claimed, agreed to, or established under paragraphs (2) and (3) shall be in accordance with Chapter 3-123, HAR. [3-125-21, HAR]

**SECTION 10 - DISPUTES ON CONTRACT
AND BREACH OF CONTRACT CONTROVERSIES.**

10.1 FINAL DECISION. (a) When a controversy cannot be resolved by mutual agreement between the officer-in-charge and the contractor, the Director of Budget and Fiscal Services shall, upon recommendation by the officer-in-charge, after written request by the contractor for a final decision, promptly issue a written decision.

(b) Any such decision shall be final and conclusive, unless fraudulent, or unless the contractor brings an action seeking judicial review of the decision in a circuit court of this State *within the six months* from the date of receipt of the decision.

10.1.1 The Director of Budget and Fiscal Services shall issue a written decision within the following time limitations:

- (1) For claims not exceeding fifty thousand dollars: *ninety calendar days* after receipt of the claim.
- (2) For claims exceeding fifty thousand dollars: *ninety calendar days* after receipt of the claim; provided that if a decision is not issued within ninety calendar days, the Director of Budget and Fiscal Services shall notify the contractor of the time within which a decision will be made.

If the Director of Budget and Fiscal Services fails to issue a decision on a claim not exceeding fifty thousand dollars within ninety calendar days after receipt, or does not issue a decision within the time promised for a claim in excess of fifty thousand dollars, the contractor may proceed as if an adverse decision had been received.

10.2 PAYMENT. The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting contractor action concerning appeal. Such payments shall be without prejudice to the rights of either party and where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment.

10.3 CLAIMS AGAINST THE CONTRACTOR. All controversies involving claims asserted by the City against a contractor which cannot be resolved by mutual agreement shall be the subject of a decision by the Director of Budget and Fiscal Services, upon recommendation by the officer-in-charge. [3-126-29, HAR]

10.4 CONTINUED PERFORMANCE OF THE CONTRACT. The contractor shall comply with any decision of the Director of Budget and Fiscal Services and proceed diligently with performance of the contract pending final resolution by a circuit court of this State of any controversy arising under, or by virtue of, the contract, except where there has been a material breach of contract by the City; provided that in any event the contractor shall proceed diligently with the performance of the contract where the Director of Budget and Fiscal Services has made a written determination that

continuation of work under the contract is essential to the public health and safety. [3-126-28, 3-126-29, 3-126-31, HAR]

10.5 REMEDIES. Any dispute arising under or out of the contract is subject to chapter 3-126, HAR. The procedures and remedies provided for shall be the exclusive means available for persons aggrieved in connection with the solicitation or award of a contract, a suspension or debarment proceeding, or in connection with a contract controversy, to resolve their claims or differences. The contested case proceedings set out in chapter 91, HRS, shall not apply to protested solicitations and awards, debarments or suspensions, or the resolution of contract controversies. [HRS 103D-704]

SECTION 11 - COST OR PRICING DATA

11.1 COST OR PRICING DATA. Pursuant to chapter 3-122, subchapter 15, HAR, cost or pricing data may be required as determined by the officer-in-charge or by chapter 3-122, subchapter 15, HAR, along with the certification of current cost or pricing data, substantially in the form attached hereto as Exhibit "A".

11.1.1 Cost and pricing data means all facts as of the date of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of a prospective contractor's judgment about future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all facts that can reasonably be expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as:

- (1) Vendor quotations;
- (2) Nonrecurring costs;
- (3) Information on changes in production methods and in production or purchasing volume;
- (4) Data supporting projections of business prospects and objectives and related operations costs;
- (5) Unit cost trends such as those associated with labor efficiency;
- (6) Make or buy decisions;
- (7) Labor union contract negotiations; and
- (8) Information on management decisions that could have a significant bearing on costs.

11.1.2 When cost or pricing data are required, they shall be submitted to the officer-in-charge prior to beginning price negotiations at any reasonable time and in any reasonable manner prescribed by the officer-in-charge. Such data shall either be actually submitted or specifically identified in writing. The contractor is required to keep such submission current until the negotiations are concluded.



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

CERTIFICATE OF VENDOR COMPLIANCE

This document presents the compliance status of the vendor identified below on the issue date with respect to certificates required from the Hawaii Department of Taxation (DOTAX), the Internal Revenue Service, the Hawaii Department of Labor and Industrial Relations (DLIR), and the Hawaii Department of Commerce and Consumer Affairs (DCCA).

Vendor Name: MARSH USA Inc.
DBA/Trade Name: MARSH USA Inc.
Issue Date: 04/09/2012
Status: Compliant
Hawaii Tax#: 10011941
FEIN/SSN#: XX-XXX6000
UI#: XXXXXX6317
DCCA FILE#: 3385

Status of Compliance for this Vendor on issue date:

Form	Department(s)	Status
A-6	Hawaii Department of Taxation Internal Revenue Service	Compliant Compliant
COGS	Hawaii Department of Commerce & Consumer Affairs	Compliant
LIR27	Hawaii Department of Labor & Industrial Relations	Compliant

Status Legend:

Status	Description
Exempt	The entity is exempt from this requirement
Compliant	The entity is compliant with this requirement or the entity is in agreement with agency and actively working towards compliance
Pending	The entity is compliant with DLIR requirement
Submitted	The entity has applied for the certificate but it is awaiting approval
Not Compliant	The entity is not in compliance with the requirement and should contact the issuing agency for more information



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/03/2012

PRODUCER First Insurance Company of Hawaii, Ltd. Agent 053 1100 Ward Avenue Honolulu, Hawaii 96814	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED First Insurance Company of Hawaii, Ltd., Etal. 1100 Ward Avenue Honolulu, Hawaii 96814	INSURER A:	First Security Insurance of Hawaii, Inc.
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

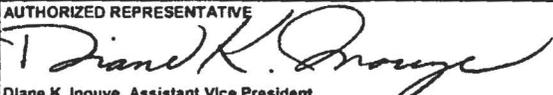
COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/>	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC POLICY CONTAINS A BLANKET ADDITIONAL INSURED ENDORSEMENT.	CPP 7029659	11/1/11	11/1/12	EACH OCCURRENCE	\$1,000,000.
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000.
						MED EXP (Any one person)	\$5,000.
						PERSONAL & ADV INJURY	\$1,000,000.
						GENERAL AGGREGATE	\$2,000,000.
						PRODUCTS - COMP/OP AGG	\$ 0
A	<input checked="" type="checkbox"/>	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> _____ <input type="checkbox"/> _____	CBA 6360654	11/1/11	11/1/12	COMBINED SINGLE LIMIT (Each Occurrence)	\$
						BODILY INJURY (Per person)	\$1,000,000.
						BODILY INJURY (Per accident)	\$1,000,000.
						PROPERTY DAMAGE (Per accident)	\$1,000,000.
	<input type="checkbox"/>	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> _____				AUTO ONLY - EA ACCIDENT	\$
						OTHER THAN AUTO ONLY:	EA ACC \$
						AGG	\$
		EXCESS / UMBRELLA LIABILITY OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION				EACH OCCURRENCE	
						AGGREGATE	
							\$
							\$
							\$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	FWC 7129912	8/1/11	8/1/12	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
						E.L. EACH ACCIDENT	\$1,000,000.
						E.L. DISEASE - EA EMPLOYEE	\$1,000,000.
						E.L. DISEASE - POLICY LIMIT	\$1,000,000.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Contract No. SC-HRT-1200074; Owner-Controlled Insurance program (OCIP) Consulting Services Contract for the Honolulu Rail Transit Project
THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION (HART) IS ALSO NAMED AS AN ADDITIONAL INSURED AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT BUT ONLY TO THE EXTENT SET FORTH IN THE GENERAL LIABILITY POLICY PROVISIONS.

CANCELLATION

Honolulu Authority for Rapid Transportation Attention: Executive Director 1099 Alakea Street, Suite 1700 Honolulu, Hawaii 96813	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  Diane K. Inouye, Assistant Vice President