

**SPECIAL PROVISIONS TO THE
AGREEMENT FOR PROFESSIONAL SERVICES**

HONOLULU RAIL TRANSIT PROJECT

PROGRAM MANAGEMENT CONSULTANT CONTRACT

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These Special Provisions to the Agreement for Professional Services (“Special Provisions”), shall be incorporated into and be a part of that certain Agreement for Professional Services, by and between the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION (“HART”) and INFRACONSULT, LLC, a Delaware limited liability company, whose office and mailing address is 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813 (the “CONSULTANT”), dated FEB 28 2012 (the “Agreement”). 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. These Special Provisions and the General Terms and Conditions for Contracts 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 as in these Special Provisions.

I. PROJECT

The Honolulu Rail Transit Project (“HRTP”), hereinafter referred to as the “PROJECT”, is identified in the Final Environmental Impact Statement. It is described as a twenty (20) mile grade-separated fixed guideway transit system between East Kapolei and Ala Moana. The CONSULTANT will provide project management support services in accordance with the Contract Documents and as required in support of the HRTP.

II. SERVICES

The CONSULTANT shall provide the required services under the Agreement as set forth in the Scope of Work attached hereto and incorporated herein as Exhibit 1.

III. TIME

- A. The term of this Agreement is for three (3) years (“Initial Term”) commencing with a Notice to Proceed. HART may extend the period of performance of this Agreement for up to an additional two (2) years if the Parties reach agreement on pricing and compensation to the CONSULTANT is provided. The Agreement may be extended pursuant to Section 5 of the General Terms and Conditions at any time prior to the end of the Initial Term by an amendment to the Agreement.
- B. This is a multi-term Agreement subject to the availability of funds in accordance with HAR § 3-122-149. Funds are available for only the initial year of the Agreement. The contractual obligation of both Parties in each fiscal period succeeding the first will be subject to the appropriation and availability of funds. HART shall notify the CONSULTANT, on a timely basis, whether or not funds are available for the continuation of the Agreement for each succeeding fiscal period.

The Agreement will be terminated if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the initial year of the Agreement; however, this does not affect either HART's rights or the CONSULTANT's rights under any termination clause of the Agreement. If funds are not

appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the Agreement shall be terminated and the CONSULTANT shall be reimbursed for the unamortized, reasonably incurred, nonrecurring costs.

IV. LIQUIDATED DAMAGES

Liquidated damages are not applicable to this Agreement.

V. INSURANCE REQUIREMENTS

See Paragraph 4.3., Insurance, of the General Terms and Conditions as modified by Section VII (E) below.

VI. COMPENSATION AND INVOICING

A. Subject to the General Terms and Conditions, the compensation of the CONSULTANT shall be the amount stated in the Agreement and upon submission and acceptance of each invoice, payment shall be made in accordance with Exhibits 2A, 2B and 2B-1, attached hereto and incorporated herein, inclusive of all taxes.

B. Final acceptance of the Work contracted for herein and payment therefore shall not excuse the CONSULTANT from any liability for defects in performance of the Work which may subsequently appear.

VII. 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, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration or its acronym UMTA is deemed a 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 appear in the General

Terms and Conditions, unless the context clearly indicated otherwise.

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

“**PROJECT**” 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.

“**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 administrations.

“**WORK**” in addition to the definition described in the Agreement for Professional Services, paragraph 1, means all of the Work required to successfully complete the Scope of Work covered under this Agreement (Exhibit 1) and all Contract Documents. In certain cases, the term is also used to mean the products of the Work.

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

“**CONTRACT**” shall be replaced with the term “Agreement”.

“**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. For the purposes of this Agreement, “Contractor” shall mean “CONSULTANT”.

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

B. DESIGNATION OF PROJECT MANAGERS

The Officer-in-Charge shall designate, in writing, a key representative to coordinate the Work under this Agreement, to coordinate work under other HART contracts with the Work under this Agreement, and to act as the liaison between HART and the CONSULTANT in order to assist in expediting the resolution of questions or controversies, the making of HART decisions, and the review and approval by HART of documents, progress reports, requests, and other matters as required.

The CONSULTANT shall, subject to written approval from HART, designate a key representative, who shall maintain close and frequent communications with HART’s key representative and be authorized to act on behalf of the CONSULTANT. Any change in the CONSULTANT's key representative will be made by request, in writing, to be

approved by HART. The CONSULTANT's key representative shall be experienced and qualified in the type of work involved and shall be directly responsible for the prosecution of the Work under this Agreement.

The Parties to this Agreement will make all reasonable efforts to retain the same key representative in order to maintain continuity of effort and control.

C. NO THIRD PARTY BENEFICIARY

The Parties are entering into this Agreement for the sole benefit of the Parties in exclusion of any third party, and no third party beneficiary is intended or created by execution of this Agreement.

D. LEGAL RELATIONS AND RESPONSIBILITY

Section 4.1.1, "Independent Contractor", of the General Terms and Conditions is hereby revised to include the paragraph set forth below:

"Secured Contractor employees shall comply with and be subject to the requirements of the Revised Charter of Honolulu, Article 11, "Standards of Conduct".

E. INSURANCE

Section 4.3.2, paragraph 5 of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following:

"5. Be provided by insurers authorized to provide insurance in the State of Hawaii, and with a current A.M. Best's rating of not less than A-, or otherwise as approved by HART;"

F. CHANGE ORDERS

Section 5.1.1 (c) of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following:

"(c) *Within thirty (30) days* after receipt of a written change order, unless the period is extended by the officer-in-charge in writing, the CONSULTANT 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."

G. DELAY

Section 6.2 of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following:

"**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 therefore stating in detail the cause or causes of delay is filed by the CONSULTANT with the officer-in-charge *within thirty (30) 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 Chief Procurement Officer upon the recommendation of the officer-in-charge.”

G. LIQUIDATED DAMAGES

Section 6.6 of the General Terms and Conditions, entitled "LIQUIDATED DAMAGES", is hereby deleted in its entirety.

H. AUTHORITY OF THE OFFICER-IN-CHARGE AND DIRECTOR OF BUDGET AND FISCAL SERVICES

General Terms and Conditions, Section 6.5. Delete this section in its entirety and substitute in lieu thereof the following:

"6.5 AUTHORITY OF THE OFFICER-IN-CHARGE AND/OR HIS DESIGNEE.

The decisions of the officer-in-charge shall be final 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 only upon approval of the officer-in-charge and/or his designee, and provided further that nothing herein shall be construed as making final and binding any decision of the officer-in-charge and/or his designee 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 his designee."

I. PAYMENT

Section 8.2 of the General Terms and Conditions, entitled "PROGRESS PAYMENT", is hereby deleted in its entirety and replaced with the following:

"8.2 PAYMENT

HART reserves the right to direct removal from the PROJECT of any CONSULTANT or SUBCONSULTANT employee for any reason and at any time.

- (a) Payments to the CONSULTANT for Work satisfactorily performed will be made monthly:
- a. The CONSULTANT shall submit invoices to HART on a monthly basis for labor-related Work rendered under the Agreement in a format approved by HART and at a minimum shall include:
 - i. The CONSULTANT's certification that the invoices and schedule includes only employees authorized by HART to charge the PROJECT and that the information ties to the CONSULTANT's general ledger.
 - ii. The invoices shall be substantiated with timesheets and approved reimbursement expense forms for CONSULTANT employees, and invoices from CONSULTANT subconsultants and vendors.
 - iii. The monthly invoice shall be accompanied by:
 1. A progress report describing the Work accomplished during the invoice period.
- (b) An Allowance for extra work in the amount of TWO HUNDERED FIFTY-FIVE THOUSAND ONE HUNDRED SIXTY-SIX AND 00/100 DOLLARS (\$255,166.00) is established for additional work, including additional staffing needed to satisfy the requirements of an FTA-approved Project Management Plan, and shall not be exceeded without a contract amendment. Any funds remaining at the end of the Agreement shall revert back to HART.
- (c) An Allowance for reimbursable expenses in the amount of ONE HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS (\$120,000.00) is established for other direct costs and shall not be exceeded without prior written approval of HART and a contract amendment. Any funds remaining at the end of the Agreement shall revert back to HART. The Allowance for reimbursable expenses shall be the same amount as the "Total Allowance for Reimbursable Expenses" in Exhibit 2A, Cost Proposal Summary Form.
- a. Compensation for travel cost as a reimbursable expense shall be made as follows:
 - i. HART written approval is required prior to incurring any expense. Reimbursement to the CONSULTANT shall be made upon submission, and HART approval, of an Expense Reimbursement Invoice, which shall

include copies of pertinent vendor bills, invoices or payment receipts.

- ii. Any allowable expense shall be reimbursed at the actual cost incurred with no additional markup.

J. RETAINAGE

Section 8.5 of the General Terms and Conditions, entitled "RETAINAGE", is hereby deleted in its entirety.

K. PROMPT PAYMENT TO SUBCONTRACTORS

Section 8.6 of the General Terms and Conditions, entitled "PROMPT PAYMENT TO SUBCONTRACTORS," is hereby deleted in its entirety and replaced with the following:

"8.6 PROMPT PAYMENT TO SUBCONTRACTORS

- (a) 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.

(e) References to "Subcontractor(s)" and/or "Subconsultant(s)" shall be used interchangeably."

VIII. 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 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, as amended, will be 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 requests 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 the City 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 8, attached hereto and incorporated herein by reference.

IX. COMPLIANCE WITH OMB CIRCULAR A-87 - OFFICE OF MANAGEMENT AND BUDGET

The CONSULTANT shall at all times comply with the Office of Management and Budget (OMB) Circular A-87, Revised 05/10/2004, which establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State, Local, and Indian Tribal Governments. This Circular and its Attachments (A -E) establish the principles and standards to provide a uniform approach for determining allowable costs.

X. ASSIGNMENT

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

XI. 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.

XII. 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 Request for Qualifications and Contract Documents inclusive of all Addendums, unless the context clearly indicates otherwise.

**SPECIAL PROVISIONS
EXHIBIT 1**

**HONOLULU RAIL TRANSIT PROJECT
PROGRAM MANAGEMENT CONSULTANT CONTRACT**

INDICATIVE LISTING OF TASKS

SPECIAL PROVISIONS

EXHIBIT 1 - INDICATIVE LISTING OF TASKS

The Program Management Consultant (PMC) provides in-house project management services and functions as an extension of the Honolulu Authority for Rapid Transportation's (HART) staff. Such services shall include professional, technical, managerial and other support services to initiate and complete the Preliminary Engineering/Environmental Impact Statement (PE/EIS) phase of the Project and initiation and completion of final design and construction. PMC staff is seconded into HART positions in the overall organizational structure.

The following is an indicative listing of tasks relating to the scope of work for the PMC. All PMC levels of effort, work scope, responsibilities, and staffing are subject to the review and approval of HART, and may be subject to change.

- Project Management. The PMC is required to provide experienced personnel to prepare and update the Project Management Plan (PMP) and related Appendices in accordance with the requirements of the Federal Transit Administration (FTA). The PMC will assist HART in updating the Honolulu Rail Transit Project (the "Project") Plans and Procedures and assist HART in coordinating, updating and control of FTA-mandated Project documents including:
 - a. Project Management Plan.
 - b. System Safety and Security Management Plan.
 - c. Right-of-Way Acquisition Plan.
 - d. Quality Plan.
 - e. Capital Financial Plan.
 - f. Operating and Maintenance Financial Plan.
 - g. Configuration Management Plan.
 - h. Contingency Management Plan.
 - i. Rail Fleet Management Plan.
 - j. Bus Fleet Management Plan.
 - k. Operations Plan.
 - l. Contract Packaging Plan.
 - m. Permitting and Agency Coordination Plan.
 - n. Design Claims Avoidance Plan.
 - o. Construction Claims Avoidance Plan.
 - p. Before and After Study documentation.
 - q. Other documents as required.

- Procurement and Contracts. A total of fifty (50) design and construction packages are currently identified under the Contract Packaging Plan; however, other contracts are expected to be added as the program definition is further developed.

The PMC is required to provide experienced personnel to direct, advise and assist HART personnel and third party contractors including the General Engineering Consultant (GEC), to assure that all Project procurements, including Design-Build, Design-Bid-Build, Design-Build-Operate and Maintain contracts, professional services contracts, material and equipment procurements and others as required, will be prepared, solicited, and managed in accordance with all Federal, FTA programmatic, State and HART requirements. The PMC will participate in the evaluation, selection and negotiation of all professional services, design, and construction management contracts and in the evaluation and award of construction contracts. As required, the PMC will assist HART in contractor debriefings and bid protests.

- **Project Controls.** The PMC is responsible for providing oversight on all project control elements as related to scope, schedule, and budget including cost control, cost and Work Breakdown Structure (WBS) codes, schedule development and control, risk analysis, HART's contract management & document system (CMS), change control, claims management, and progress reporting. The PMC also oversees the GEC, Right-of-Way (ROW) and procurement scheduling. When changes to any part of the program schedule or budget are required or proposed, the PMC assists the Configuration Manager by overseeing the performance of an impact assessment to advise senior management of the overall consequences. If requested, the PMC assesses possible alternative approaches to maintain budget and or schedule. Under the direction of HART, the PMC provides all necessary support to oversee and support the HART administrative functions such as providing monthly progress reports, scheduling monthly coordination meetings, and related tasks.
- **Project Risk.** The PMC is required to provide experienced personnel to oversee the Risk Contingency Management Plan, the preparation and implementation of Contractor and GEC Mitigation Action Plans and all insurance programs required of the Project.
- **Right-of-Way.** The PMC is required to provide experienced personnel to direct HART, the GEC, and other consultants in identification, appraisal, acquisition of properties, relocation of displacees, right of entry, property management and all other matters relating to securing the Right-of-Ways required for the Project. The PMC will assist HART in updating, implementing and compliance with the Real Estate Acquisition Management Plan (RAMP), a document which contains HART policies and procedures in conformance with Federal and State laws, regulations and statutory requirements and guidelines related to securing ROW.
- **Design Management.** The PMC is required to provide experienced personnel to:
 - a. Conduct technical reviews of the work products submitted by GEC third-party consultants and contractors including the preparation of written comments and recommendations.
 - b. Coordinate engineering and design activities, including utility requirements, ROW requirements, geotechnical information, base mapping, and constructability reviews,

- studies and analyses.
 - c. Coordinate and manage value engineering and peer review activities.
 - d. Attend agency coordination meetings.
 - e. Attend public meetings and hearings, and participate, as required, in the Project's public information program.
 - f. Respond to comments and requests for information.
 - g. Assist in the development of an early action program to perform long lead or critical path activities.
 - h. Participate in discussions with utility owners leading towards signed Utility Engineering Services Agreement(s) for design.
 - i. Perform other duties as required.
- **Construction Management.** The PMC is required to provide experienced personnel to oversee the construction management activities of the GEC and construction, engineering and inspection services (CEI) contracts including:
 - a. Supervision of HART's field contract managers and staff support personnel.
 - b. Preparation of the Construction Management Manual for the Project and review and comment on the Contract Resident Engineer's Manual prepared by the GEC.
 - c. Review of all requests for information (RFI), requests for change (RFC), and other contractor communications.
 - d. Participation in the contract change management process including the negotiation of contract change orders.
 - f. Coordination of construction activities, including permits, utility requirements, ROW requirements, geotechnical information, constructability reviews, studies and analyses.
 - g. Participation in Pre-Design/Construction contract meetings, prepare and issue notices to proceed (NTP's), review monthly contract status reports, process in conjunction with the GEC and HART all consultant/contractor invoices.
 - h. Oversee the Interface and Integration management activities of the GEC with respect to all Project contracts.
 - i. Oversee the Quality Assurance/Quality Control of all Project contracts.
 - j. Perform other duties as required.
- **Configuration Management.** The PMC is required to provide experienced personnel to oversee the configuration management activities for the Project including:
 - a. Establishing and processing all changes to baseline documents in conformance with the Project Configuration Management Plan.
 - b. Participation in all Contract Change Committee Meetings.
 - c. Conduct the Change Control Committee Meetings including preparation of documentation, incorporating technical support, meeting minutes, and issuance of Contract Change Orders.
 - d. Direct the Change Control Group consisting of HART personnel in processing RFCs from inception to completion using the Contract Management System.
 - e. Perform other duties as required.

- Planning, Environmental Assessment, and Mitigation Monitoring. The PMC will assist HART with:
 - a. Coordination with various agencies and stakeholders throughout the project development process for environmental compliance.
 - b. Efforts to ensure that mitigation measures identified in the environmental documents are effectively incorporated into the design, construction and technical specifications as appropriate.
 - c. Coordination of HART, the GEC, project contractors and state and federal regulatory/resource agencies for the implementation of the Mitigation Monitoring Program which defines the monitoring actions, criteria and responsible parties to ensure conformance.
 - d. Perform other duties as required.

- Public Communication and Involvement:
 - a. Attend public meetings and hearings, and participate, as required, in the Project's public information program.
 - b. Respond to comments and requests for information.
 - c. Participate in the development of a brand identity of the Project.
 - d. Review and comment upon contractors' plans for providing community public information during construction.
 - e. Recommend additional public information activities to supplement ongoing activities and improve responses to concerns of the general public and those directly affected by construction activities.
 - f. Perform other duties as required.

- Document Control:
 - a. Oversee, establish, maintain and control the receipt, routing, and storage of hardcopy and digital Project data.
 - b. Supervise and train HART personnel assigned to Document Control.
 - c. Perform other duties as required.

- Safety and Security:
 - a. Develop and implement the Safety and Security Management Plan (SSMP) and the Safety and Security Certification Plan.
 - b. Establish and implement Safety and Security Committees and working groups.
 - c. Perform safety and security analyses and identify hazards to closure.
 - d. Integrate operations and maintenance requirements into design.
 - e. Develop and implement safety and security certifiable elements.
 - f. Develop design criteria conformance checklists and perform design certification.
 - g. Oversee construction contractor execution of approved site safety and security plans (SSSPs).

- h. Develop and implement System Integration Test Plan (SITP), Rail Activation Plan (RAP), and Pre-Revenue Operation (PRO) Plan.
 - i. Develop and implement Safety and Security Public Information/Awareness Plan.
 - j. Develop and secure approval of operational safety and security plans.
 - k. Complete training and certification for all identified operations and maintenance plans and verify completion.
 - l. Complete safety and security certification and issue Safety and Security Certification Verification Report (SSCVR).
 - m. Perform other duties as required.
- Management Reporting and Coordination:
 - a. The Monthly Progress Report is to be prepared by the Project Controls Manager and distributed to HART management, the FTA and the PMOC; the report covers the following topics:
 - i. Project budget versus expenditures;
 - ii. Projections of costs to complete and total cost;
 - iii. Progress made to date versus schedule progress;
 - iv. Issues and changes;
 - v. Safety and security updates;
 - vi. Quality updates;
 - vii. Design changes under consideration;
 - viii. Financial status of the Project;
 - ix. Cash flow status and projections;
 - x. Anticipated funding shortfalls; and
 - xi. Other information.
 - b. Assist with other reporting requirements to the HART Board of Directors, the FTA, the PMOC, and other agencies as required.
 - c. Participate in Progress Review Meetings and Coordination Meetings with HART management and the GEC.
 - d. Participate in regular weekly design coordination meetings and other technical coordination meetings as necessary.
 - e. Oversee preparation of responses to Hawaii Revised Statutes Chapter 92F inquiries, City Council requests for information and other information requests as necessary.
 - f. Assist HART in the preparation of submittals such as programmatic waiver requests to FTA and with negotiation of the FTA Full Funding Grant Agreement.
 - g. Perform other duties as required.

**SPECIAL PROVISIONS
EXHIBIT 2A**

**HONOLULU RAIL TRANSIT PROJECT
PROGRAM MANAGEMENT CONSULTANT CONTRACT
CONTRACT COST ESTIMATE**

**EXHIBIT 2A
CONTRACT COST ESTIMATE**

Program Management Consultant Contract
Honolulu Rail Transit Project

**EXHIBIT 2A
CONTRACT COST ESTIMATE**

REDACTED IAW HRS 92F -13 (3) – DESIGNATED CONFIDENTIAL

ORIGINAL IN CONTRACT FILE

Program Management Consultant Contract
Honolulu Rail Transit Project

**SPECIAL PROVISIONS
EXHIBIT 2B**

**HONOLULU RAIL TRANSIT PROJECT
PROJECT MANAGEMENT SUPPORT SERVICES CONTRACT**

COMPENSATION AND INVOICING

**EXHIBIT 2B
COMPENSATION AND INVOICING**

This is a cost-reimbursement contract, and subject to the provisions of this paragraph and in accordance with Section 8 of the General Terms and Conditions, as amended by Section VI, Compensation and Invoicing, and Section VII (I), Payment, of the Special Provisions, HART agrees to pay the CONSULTANT for the satisfactory performance and completion of the Work the payments in accordance with invoices received. The Total Aggregate Amount of such payments for the Work shall not exceed THIRTY-THREE MILLION THREE HUNDRED SEVENTY-SIX THOUSAND EIGHT HUNDRED NINETY-SEVEN AND 00/100 DOLLARS (\$33,376,897.00). The 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.

Such payments shall be provided from the following funds:

City Funds	\$33,376,897.00
Federal Funds	\$ 0.00
Total	\$33,376,897.00

HART agrees to pay the CONSULTANT, for the satisfactory performance of the CONSULTANT'S staff and related services of subconsultants, in accordance with invoices received, and further as set forth in the Special Provisions attached hereto. The Total Contract Amount of such payments for labor-related services shall not exceed THIRTY-THREE MILLION ONE THOUSAND SEVEN HUNDRED THIRTY-ONE AND 00/100 DOLLARS (\$33,001,731.00) for the CONSULTANT's staff services and related services of subconsultants, inclusive of GET. Payments of labor-related services performed by the CONSULTANT's employees and subconsultants under this Agreement shall include salary, overhead, general and administrative expense, fixed fees, and GET and county one-half percent (0.5%) GET Surcharge which shall be invoiced to HART in accordance with the hourly professional services rates as set forth in Exhibits 2A, 2B, and 2B-1 attached hereto.

HART agrees to establish an Allowance for Reimbursable Expenses of Other Direct Costs in the amount of ONE HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS (\$120,000.00), which amount shall not be exceeded without prior written approval of HART and a contract amendment. This reimbursable allowance is provided for items such as project-related expenses incurred in the performance of the Work. HART written approval is required prior to incurring any expense. Reimbursement to the CONSULTANT shall be made upon submission and HART approval of an Expense Reimbursement Invoice, which shall include copies of pertinent vendor bills and/or invoices. Any allowable reimbursements will be for actual costs incurred with no additional markup. Any funds remaining at the end of this Agreement shall revert back to HART.

HART agrees to establish an Allowance for Extra Work of TWO HUNDRED FIFTY-FIVE THOUSAND ONE HUNDRED SIXTY-SIX AND 00/100 DOLLARS (\$255,166.00),

Program Management Consultant Contract
Honolulu Rail Transit Project

which amount shall not be exceeded without a contract amendment. Extra Work requested by HART within this Allowance shall be set forth in writing through execution of a contract amendment. Each such amendment shall include a description of the additional services to be provided and the estimated price of such services. Any funds remaining at the end of this Agreement shall revert back to HART.

**EXHIBIT 2B-1
LABOR RATE SCHEDULE YEARS 1-3**

REDACTED IAW HRS 92F -13 (3) – DESIGNATED CONFIDENTIAL

ORIGINAL IN CONTRACT FILE

EXHIBIT 3
CERTIFICATION REGARDING CONFLICT OF INTEREST

“Organizational conflict of interest” means that, because of other activities or relationships with other persons or firms, a Consultant (including its principal participants, directors, proposed consultants or subcontractors) would be unable or potentially unable to render impartial, technically sound assistance or advice to the Honolulu Authority for Rapid Transportation (HART); or the Consultant’s objectivity in performing the Work would or might be otherwise impaired.

On behalf of Infraconsult LLC, I certify that:
(Named Consultant)

(Check one)

The Consultant does not have any relationships with any firms or individuals that are or appear to be an organizational conflict of interest.

The Consultant has had the following relationships with the specific firm(s)/individual(s), identified on the attached sheet, which may be determined to be an organizational conflict of interest. I understand that based on the information I have provided, HART may exclude the Offeror from further consideration and may withdraw its selection if the real or apparent organizational conflict of interest cannot be avoided or mitigated. I further certify that the degree and extent of the relationship of the Consultant with these named firm(s)/individual(s) have been fully disclosed on the attached sheet.



(Signature of Authorized Official)

Simon Zweighaft

(Print Name)

2/8/12

(Date)

EXHIBIT 5
CERTIFICATE REGARDING INELIGIBLE CONTRACTORS

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
INELIGIBILITY AND VOLUNTARY EXCLUSION FROM TRANSACTIONS
FINANCED IN PART BY THE U.S. GOVERNMENT**

I, Simon Zweighaft, Principal-in-charge, hereby
(Name of Certifying Officer) (Title of Certifying Officer)

certify that InfraConsult LLC :
(Name of Contractor/Consultant)

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency or from participation in Project No. SC-HRT-1200042;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
4. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

If any Principal Participant is unable to certify to any of the statements in this certification, such prospective Principal Participant shall attach an explanation to this certification.

I hereby certify and affirm the truthfulness and accuracy of the above statement, and I understand that the provisions of 31 United States Code (U.S.C.) §3801 et seq., (Administrative Remedies for False Claims and Statements) are applicable hereto.



Signature of Certifying Officer

InfraConsult LLC
Name of Consultant
1099 Alakea St. #1700
Street Address
Honolulu, Hi 96803 NW/NSP
City, State, Zip
(808) 768-6159
Telephone Number

(Note: The above certification merely certifies that the Consultant and its subcontractors are not declared by the Federal Government or have not voluntarily declared themselves debarred, suspended, or declared ineligible from doing transactions with the Federal Government or any of its agencies.)

EXHIBIT 7

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) **No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned**, to any person 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

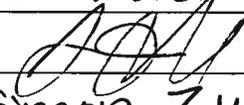
- (2) **If any funds other than Federal appropriated funds have been paid or will be paid** to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].

- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The CONSULTANT, ~~InfraConsult LLC~~, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONSULTANT understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Company Name: InfraConsult LLC
Signature: 
Print Name: Simon Zweighaft
Title: Principal - in - charge
Date: 2/8/12

NOTE: THE CONSULTANT IS REQUIRED PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.

**SPECIAL PROVISIONS
EXHIBIT 8**

**HONOLULU RAIL TRANSIT PROJECT
PROGRAM MANAGEMENT CONSULTANT CONTRACT**

FEDERAL REQUIREMENTS

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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 the City 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 2011-2013. 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) to 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. If it is later determined that the CONSULTANT knowingly rendered an erroneous certification, in addition to remedies available to HART, 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 7 of the Special Provisions is incorporated herein by 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 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 CONSULTANT 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:

(i) CONSULTANT -owned or CONSULTANT -rented vehicles or Government-owned, leased or rented vehicles;

(ii) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or

(iii) 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:

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with text messaging while driving.

(3) Include this Special Provision in its agreements with its subcontractors and also encourage its subcontractors to comply with the terms of this Special Provision and include this clause in each subcontract at each tier financed with Federal assistance provided by the Federal Government.

1.16 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. § 40119(b) and implementing U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. § 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information", 49 C.F.R. Part 1520.

1.17 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 HART 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:		Consultant Name:	
Contract No:	Contract Amount (including amendments): \$		
Federal ID No.: (OWP WE #, FTA Grant #, FHWA Project #)	Total to Date		
Period Covered By This Report:	Current		
	(Invoice # _____)		
Total Invoice Amount	(A) \$	(B) \$	
Payment Requested:	DBE? (Yes/No) DBE Code (if "Yes")	Prior Amount*	Current Amount*
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)		%	

***Insert dollar amounts for DBEs only**

Program Management Consultant Contract

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: _____

Contractor 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