

SPECIAL PROVISIONS
TO THE
AGREEMENT BETWEEN THE HONOLULU AUTHORITY
FOR RAPID TRANSPORTATION
AND
PARAGON PARTNERS, LTD.

REAL ESTATE PROFESSIONAL SERVICES
CONTRACT NO. SC-HRT-1200062

HONOLULU RAIL TRANSIT PROJECT

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

I. PROJECT

The Honolulu Rail Transit Project (“H RTP”), as identified in the Final Environmental Impact Statement, is described as a twenty (20) mile grade-separated fixed guideway transit system with twenty-one (21) stations between East Kapolei and Ala Moana Center. Contractor’s services under this Agreement relating to the acquisition and administration of real property, rights of way, and other property interests for the H RTP include, but are not limited to, title report preparation and closing services, appraisals and appraisal services, property negotiation, property acquisition, relocation assistance services and property management services, as required in compliance with Federal, State and City laws, rules, regulations, policies and procedures, and the Real Estate Management Plan for the H RTP (the “Project”).

II. SERVICES

Contractor’s services under this Agreement is for the acquisition and administration of real property, rights of way, and other property interests for the H RTP which include, but are not limited to, title report preparation and closing services, appraisals and appraisal services, property negotiation, property acquisition, relocation assistance services and property management services, as required in compliance with Federal, State and City laws, rules, regulations, policies and procedures, and the Real Estate Management Plan (or “RAMP” as defined in Exhibit 1, Scope of Services) for the H RTP. The Contractor’s services are more specifically detailed in Exhibit 1. The Contractor may be required to provide any of the services the included in Exhibit 1, Scope of Services upon issuance of a Task Order by HART. The Task Order process is described in the Task Order Procedures and Task Order Form – Sample, attached hereto and incorporated herein as Exhibit 2C and 2D. HART does not represent, expressly or by implication, that the actual work and services required under this Agreement will equal all of the Scope of Services included in Exhibit 1. HART reserves the right to direct the increase or decrease of any or all work and services, and to omit in its entirety, any or all of the work or services indicated in Exhibit 1.

III. TIME

- A. The term of this Agreement is for a maximum of five (5) years commencing with Notice to Proceed #1, subject to availability of funds.
- 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 (“Initial Term”). 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 CONTRACTOR, 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 CONTRACTOR'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 CONTRACTOR shall be reimbursed for the unamortized, reasonably incurred, nonrecurring costs.

IV. LIQUIDATED DAMAGES

Liquidated damages do not apply to this Agreement.

V. MODIFICATIONS TO THE GENERAL TERMS AND CONDITIONS FOR CONTRACTS FOR GOODS AND SERVICES FOR THE CITY AND COUNTY OF HONOLULU (01/18/2008)

The General Terms and Conditions for Goods and Services for the City and County of Honolulu, dated 01/18/2008, (the "General Terms and Conditions") 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:

"AIRPORT ALIGNMENT" means the approximately 20-mile minimum operable segment of the Locally Preferred Alternative identified by Honolulu City Council Resolution No. 08-261.

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

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

"FULL FUNDING GRANT AGREEMENT" ("FFGA") means the designated means for the FTA to provide New Starts funds to projects with a Federal share of \$25 million or more. An FFGA establishes the terms and conditions for Federal financial participation in a New Starts project; defines the project; sets the maximum amount of Federal New Starts funding for a project; covers the period of time for completion of the project; and facilitates efficient management of the project in accordance with applicable Federal statutes, regulations, and policy.

"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” including its Board of Directors, duly authorized officers and representatives.

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

“PMSC” means InfraConsult LLC, the HART Project Management Services Consultant or any successor entity.

“PROJECT” means all Work within the scope of services as described in the Agreement executed by the Parties and as further described in these Special Provisions for the Honolulu Rail Transit Project and its component elements, which include the 28-mile Locally Preferred Alternative and the 20-mile Airport Alignment.

“SUBCONSULTANT” means any subcontractor or subconsultant that is to furnish Work or services at any tier under this contract.

“STANDARD OR REQUIREMENT” means any provision of any Federal, State or local (including HART) 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” means the furnishing of all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary to the successful completion of the Agreement.

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

“CHIEF PROCUREMENT OFFICER” shall mean and refer to the HART Executive Director or Designee.

“CITY AND COUNTY OF HONOLULU”, “CITY”, shall be replaced by HART whenever those terms appear unless the context specifically indicates otherwise.

“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.

“DIRECTOR” or “DIRECTOR OF BUDGET AND FISCAL SERVICES” shall be replaced by HART’s Executive Director or the Director’s duly authorized representative or assignee, unless the context specifically indicates otherwise.

“OFFICER IN CHARGE” means HART’s Executive Director or the Director’s duly authorized representative or assignee.

B. DESIGNATION OF PROJECT MANAGERS

The Officer-in-Charge shall designate, in writing, a 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 CONTRACTOR 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 CONTRACTOR shall, with approval from HART, designate a representative, who shall maintain close and frequent communications with HART’s representative and be authorized to act on behalf of the CONTRACTOR. Any change in the CONTRACTOR’s representative will be made by request, in writing, to be approved by HART. The CONTRACTOR’s 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 representatives in order to maintain continuity of effort and control.

C. DELIVERY

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

"7. DELIVERY. The CONTRACTOR shall complete the Work required under this Agreement on an as-needed, task order, basis as directed by HART and in accordance with this Agreement and the Special Provisions."

D. CONTRACT ADMINISTRATION

Section 8 of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

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

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

E. INSURANCE REQUIREMENTS

Section 14 of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

"14. INSURANCE

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 contract documents, the CONTRACTOR 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 CONTRACTOR 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.** 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). HART and 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 policies shall contain a waiver of subrogation in favor of HART and 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 for 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.

b. 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 HART and/or 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 14.a.2 and 14.a.3 above;
3. Not be terminated, canceled, not renewed or substantially changed without THIRTY (30) DAYS prior written notice to HART and the CITY, except for non-payment of premium;
4. Insurance required in 14.a. above, be written on an 'Occurrence' form of policy, unless otherwise specifically approved by HART and the CITY.

c. 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 HART.
2. Certificates shall clearly identify the project by name and/or contract number.
3. Certificates shall show the Certificate Holders as the Honolulu Authority for Rapid Transportation and the City and County of Honolulu. The Certificates shall be delivered to the Executive Director of HART, 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813, and to the Director of Budget and Fiscal

Services, 530 South King Street, Honolulu, Hawaii
96813.”

F. PATENTED ARTICLE

Section 16 of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

“16. COPYRIGHT OR PATENT

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

G. CHANGE ORDERS

Section 17.c of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

“Time period for claim. *Within thirty (30) 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.”

H. PROMPT PAYMENT TO SUBCONTRACTORS

Section 19 of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

**“19 PROMPT PAYMENT BY CONTRACTORS 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."

I. PAYMENTS

Section 22 of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

“22. PAYMENT

- a. The CONTRACTORS' compensation and invoicing shall be subject to the provisions set forth in this Agreement and shall be solely based on approved and completed task orders. The CONTRACTOR will be paid by HART for authorized and satisfactorily completed work and services rendered under this Agreement. The amount to be paid to the CONTRACTOR shall be full compensation for authorized work performed and services rendered, for all supervision, labor, allowable expenses for supplies, materials, equipment or use thereof, taxes, and for all costs and fees associated with this Agreement, provided that such payment in the shall not exceed the amount of THREE MILLION AND 00/100 DOLLARS (\$3,000,000.00), (the "Total Aggregate Amount"), inclusive of State general excise and use tax (GET) and County one-half percent GET surcharge for the entire duration or term of this Agreement. Included in this amount is an allowance for reimbursable expenses of TWO HUNDRED THOUSAND 00/100 DOLLARS (\$200,000.00) which is not to be exceeded without a contract amendment. The allowance for reimbursable expenses is provided for expenses to be identified under task orders that are specifically authorized and approved by HART, and is subject to the terms and conditions contained in the Special Provisions. Any funds remaining at the end of this Agreement shall revert back to HART.
- b. This is a multi-term Agreement, thus the contractual obligation of both parties in each fiscal period succeeding the first will be subject to appropriation and availability of funds. Currently, funds are available for only the initial year of the Agreement. HART will notify the Contractor, on a timely basis, whether or not funds are available for each succeeding fiscal period.
- c. The Total Aggregate Amount is established as the maximum payable under this Agreement and any costs, fees or other compensation in excess of the Total Aggregate Amount incurred by the Contractor, shall be borne by Contractor from its own funds and HART shall not be required to pay any part of such excess and the CONTRACTOR shall have no claim

against HART or the City and County of Honolulu on account thereof.

- d. This is a time and materials contract, Work will be authorized pursuant to the task order procedures contained in Exhibit 2C, and will be priced according to the applicable rate(s) contained in Exhibit 2B which are attached hereto and incorporated herein by this reference.
- e. The CONTRACTOR will invoice on a periodic basis, but no more often than monthly, for work completed on authorized task orders. The invoice will be submitted in a form satisfactory to HART. Timesheets, appraisal reports and vendor invoices in sufficient detail to satisfy HART shall accompany the invoice for which payment is requested. The CONTRACTOR shall certify in each invoice that the invoice is for work authorized by HART and for which the CONTRACTOR has not been previously paid. Approved invoices will be paid within thirty (30) days of approval. At no time shall the cumulative amount paid for all Task Orders exceed the Total Aggregate Amount.
- f. The CONTRACTOR shall submit a progress report along with the invoice. The progress report will identify the status of the Work activities for which compensation is being requested.
- g. Payment does not imply acceptance of the Work. The granting of any payment by HART, or the receipt thereof by the CONTRACTOR, shall in no way imply acceptance of the Work. Such Work, components or workmanship that does not conform to the requirements of this Agreement may be rejected by HART and in such case must be replaced by the CONTRACTOR without delay.
- h. HART's obligation to make timely payments and the statutory interest that accrues to any late unpaid balance shall be in accordance with HRS §103-10.
- i. Acceptance and Final Payment. In accordance with HRS Sections 103-53 and 103D, as amended, relating to prerequisite for final settlement of contracts of \$25,000 or more, final payment will be withheld until the Contractor secures and HART receives a tax clearance certificate from the Director of Taxation of the State of Hawaii and the Internal Revenue Service as specified herein. The tax clearance certificates shall be on an original certificate, with an original green certified copy stamp, not more than two months old. Contractor shall also submit the completed Final Report of DBE Participation, included herein as Attachment

1.6b) to Exhibit 4, Federal Standard Requirements. Additionally, an original "Certification of Compliance for Final Payment (SPO Form-22) attached herein, is required for final payment. Acceptance by the CONTRACTOR of the final payment shall constitute payment in full for all services performed under the contract."

J. DELAY

Section 29.d of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

"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 this contract in accordance with its terms. The CONTRACTOR shall notify the Officer-in-Charge, in writing, of the causes of the delay or failure arising out of causes including but not limited to the following: acts of God; acts of the public Enemy; acts of the State of Hawai'i and 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. 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 CONTRACTOR with the Officer-in-Charge *within fifteen (15) 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 upon the recommendation of the officer in charge.

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 set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the contract requirements."

K. RETAINAGE

Retainage is not applicable to this Agreement.

VI. AUTHORITY OF THE OFFICER-IN-CHARGE AND/OR DIRECTOR

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 Director, and provided further that nothing herein shall be construed as making final and binding any decision of the Officer-in-Charge and/or the Director 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.

VII. 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 CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any HART or CITY 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 CONTRACTOR 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 the FTA, as they may be amended or promulgated from time to time during the term of the Agreement (collectively, "Federal Standard Requirements"). These Federal Standard Requirements may change and the changed Federal Standard Requirements will apply to this Agreement as required unless the Federal Government determines otherwise. The CONTRACTOR's failure to comply with the Federal Standard Requirements shall constitute a material breach of the Agreement.

The Federal Standard Requirements are contained in Exhibit 4, attached hereto and incorporated by this reference.

VIII. KEY PERSONNEL

Any change to the CONTRACTOR's key personnel is subject to express and written approval of HART. The CONTRACTOR shall not substitute, transfer or engage the service of any person or persons for designated key personnel positions in the performance of Work under this Agreement other than those individuals specifically identified in Exhibit 14 as submitted in CONTRACTOR's proposal and incorporated herein, without written approval by HART. When any proposed change to key personnel is requested, the CONTRACTOR shall submit an updated Exhibit 14, signed by its authorized representative for review and approval by HART. Submittal of resume(s), statements of qualifications and references should be included as attachments.

EXHIBIT 1
SCOPE OF SERVICES
SPECIAL PROVISIONS

HONOLULU RAIL TRANSIT PROJECT

Honolulu Rail Transit Project

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Honolulu Rail Transit Project

EXHIBIT 1 SCOPE OF SERVICES

1.0 GENERAL APPROACH

The CONTRACTOR shall provide real estate professional services for the Honolulu Rail Transit Project ("H RTP"), including but not limited to, acquisition and negotiation services (including title and closing services, appraisal services, and appraisal review), relocation assistance services, property management services, project administration services, and services related to impacts to the public, contractors, the Honolulu Authority for Rapid Transportation ("HART") and other stakeholders (the "Work").

The CONTRACTOR will notify HART of its place of business, which is to be located on the Island of Oahu, State of Hawaii. The CONTRACTOR's staff providing services under active task orders, are expected to be available during normal HART business hours to participate in meetings and respond to questions if needed. The CONTRACTOR's Project Manager will serve as the primary liaison with HART. A staff member of CONTRACTOR should be a currently commissioned notary public.

1.1 DEFINITIONS

"The Uniform Act" or "URA" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 U.S.C. 4601 *et seq.*). This Act is also referred to with the abbreviation URA per the regulations codified at 49 CFR part 24. All real estate acquisition and relocation assistance undertaken with Federal Transit Administration ("FTA") Federal assistance must be compliant with this Act and its implementing regulations at 49 CFR part 24.

"Real Estate Acquisition Management Plan" or "RAMP" means HART's written document detailing goals of the program, functional and administrative methodology, inclusive of statutory and policy issues for the acquisition of right-of-ways.

All work and services to be performed by the CONTRACTOR, will be in compliance with the URA, applicable regulations under 49 CFR part 24, and FTA Circular 5010 1D, as codified at 49 U.S.C. Chapter 53 and all applicable federal, state, City or local, laws, statutes, regulations, guidelines, and HART's RAMP, policies and procedures.

Some of the Work will be continuous and some parts may be on an **as-needed basis**. The Work required will be released by issuance of task orders. Each task order will be issued in writing by HART and will specify the Work, labor required, rates, schedule for completion and a contract deliverable where applicable.

This Scope of Services describes work that may be required under this contract. HART does not represent expressly, or by implication, that the work described herein will be equal to the actual Work required under the contract. HART reserves the right to direct the increase or decrease of any or all Work and to omit in its entirety any work or services described herein.

Honolulu Rail Transit Project

2.0 ACQUISITION AND NEGOTIATION SERVICES

2.1 TITLE AND CLOSING SERVICES (COMBINED)

- A. For each acquisition the CONTRACTOR will obtain a Certificate of Title with 10-year sales data from a Title Company.
- B. HART may request the CONTRACTOR to obtain title insurance for a parcel being acquired, if it is deemed to be in the best interest of HART and if required by specific task order.
- C. The CONTRACTOR shall provide closing services in conjunction with an approved Title Company and will be required to attend each closing. Additional tasks may include the following:
1. Prepare a request for funding in accordance with HART's RAMP for the Honolulu Rail Transit Project and other policies and procedures as directed;
 2. Obtain and prepare all required real estate closing documents;
 3. Deliver documents of conveyance to the property owner, lessee, licensee, occupant, or other holder of any compensable interest, as applicable, and obtain their execution of the same. Obtain notarized signatures on documents to be recorded, in accordance with Hawai'i law;
 4. For whole and partial acquisitions, closing(s) will be completed by the CONTRACTOR free and clear of all liens and encumbrances.
 5. Provide written notification to HART, if liens and/or encumbrances cannot be cleared.
 6. Provide written notification to HART at least five (5) days in advance of scheduled closing appointments, with updates as necessary;
 7. Track and ensure recordation of all original instruments immediately after closing at the State Bureau of Conveyance, except for donations which must be forwarded to HART;
 8. Deliver the original recorded conveyance document(s) to HART and provide electronic copies for input into the Real Estate Administration Database ("READ").

Deliverables:

- Request for funding;
- Real estate closing documents, and
- Copies of liens or encumbrances, if applicable
- Others as indicated herein, or as determined by HART

2.2 APPRAISAL SERVICES

The CONTRACTOR will provide appraisals for parcels and easements to be acquired under issued task orders for the H RTP. Appraisals are to be completed in accordance

Honolulu Rail Transit Project

with HART's RAMP and in compliance with Appendix C of FTA Circular 5010.1D, 49 C.F.R. Part 24-103, applicable state and City laws, and with guidelines set by the Appraisal Foundations Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA) to the extent appropriate. HART, in consultation with the CONTRACTOR/appraiser, will develop the agreed scope of services for each appraisal required.

The CONTRACTOR/appraiser will perform the following:

- A. Obtain permission from the property owner to enter the property. If the CONTRACTOR, after diligent effort(s) are made, is unable to obtain permission to enter the property from the property owner, the appraisal will be conducted using the best available valuation information.
- B. Invite the owner and/or the owner's representative to attend the appraisal site visit. The CONTRACTOR will document the owner's acceptance or refusal to attend the appraisal site visit.
- C. Identify and resolve personalty/realty issues for businesses prior to, or at the time of, the property appraisal.
- D. The Appraisal Summary Report shall include all pertinent special analyses, studies, or reports, including but not limited to, a detailed description of property, real and personal property report(s), analysis and valuation, certification and other addenda as applicable.
 - 1) The Summary Appraisal Report is to be completed within six (6) weeks from issuance of a task order by HART.
 - 2) If applicable, the Summary Appraisal Report should include any environmental concerns or impact information based on information provided by HART.
- E. If requested by HART, the appraiser will participate in pre-trial meetings and in court proceedings.

Deliverables:

- Summary Appraisal Reports
- Others as indicated herein, or as determined by HART

2.3 APPRAISAL REVIEW SERVICES

The CONTRACTOR shall select a different appraiser, who must be approved by HART and who is currently licensed by the State of Hawai'i, to conduct Appraisal Reviews.

The review appraiser will review Summary Appraisal Reports for compliance with USPAP and UASFLA, to the extent appropriate, and applicable Federal, state and City laws.

- A. Review Appraisal Reports will include written certification from the review appraiser.

Honolulu Rail Transit Project

- B. Review Appraisal Reports should be completed within fifteen (15) calendar days of HART's acceptance of the Summary Appraisal Report.
- C. When requested by HART, the review appraiser will prepare and give testimony as an Expert Witness in eminent domain proceedings. As part of the preparation, the review appraiser will be available for pre-trial meetings as directed by HART.
Deliverables:
 - Review Appraisal Reports
 - Review Appraiser's Certification
 - Others as indicated herein, or otherwise determined by HART

2.4 NEGOTIATION SERVICES

The CONTRACTOR will employ acquisition agents or negotiators, who are appropriately licensed in the State of Hawai'i, are qualified and experienced in federally-funded projects and have been pre-approved in writing by HART to perform negotiation services.

Task orders may be issued for the following:

- A. To prepare documentation and conduct personal pre-appraisal contact with interested property owner(s) for each parcel.
- B. To provide property owners, or their designated representative, the opportunity to accompany the appraiser during the appraiser's inspection of their property. A record of the contact will be maintained in READ.
- C. To review title reports to determine potential title problems and report to HART any title deficiencies.
- D. To analyze Summary Appraisal Reports and Review Appraisal Reports.
- E. To enter a record of each meeting or conversation with any person (or their designated representatives) who has a compensable interest in the agent's log in READ. This must be done within two (2) days of such meeting or conversation.
- F. To prepare an offer letter and any other related documentation required or as otherwise directed by HART. The CONTRACTOR will obtain explicit approval from HART prior to preparation and transmittal of any offer letter.
- G. To contact property owner(s) or owner(s)' designated representative, within five (5) working days of HART's approval of an acquisition file and offer letter, or owner's designated representative, presentation of the written offer in-person and delivery of required documents and brochures.
- H. Follow-up with owner(s), after acceptance of an offer, to process and transmit the necessary instruments for closing. If circumstances do not allow the CONTRACTOR to contact each property owner or owner's designated representative in person, the CONTRACTOR shall transmit the documents to the owner(s) via certified mail.
- I. To respond to inquiries regarding acquisitions received from property owners within two (2) business days. Such responses may be verbal and/or in writing.

Honolulu Rail Transit Project

- J. To prepare and deliver offer letters and deliver documents of conveyance when requested by HART.
- K. To appear and provide testimony if requested by HART.
- L. To secure a Right of Entry or Possession and Use Agreement as part of general negotiation services when requested by HART.
- M. To identify lessees, licensees, occupants, or other parties with potential compensable interests and, if appropriate, after consultation with HART, negotiate with such parties for the acquisition of their compensable interests. The CONTRACTOR shall respond to verbal and written inquiries from any property owner, lessee, licensee, occupant or other holder of a compensable interest, as applicable, not more than ten (10) working days after the inquiry.
- N. To conduct negotiations with the landowners for acquisition of property.
- O. The CONTRACTOR is expected to negotiate in good faith with all property owners. If there is a demand to increase the amount of compensation or change the terms of the contract, the CONTRACTOR must provide its recommendation and confer with HART. Should HART agree with the suggestion of the CONTRACTOR, the CONTRACTOR must prepare all necessary documents.

Deliverables

- Documentation of contacts with property owners and parties with interests
- Offer Letters with Relevant Data
- Administrative Settlement Recommendations
- Others as indicated herein, or otherwise determined by HART

3.0 RELOCATION ASSISTANCE SERVICES

The CONTRACTOR shall provide relocation planning, advisory services, and coordination as outlined in URA 24.205 for residential, business, farms, and nonprofit organizations when requested by HART.

Task orders and may include, the following:

- A. Notify all property owners and potential displacees that may be eligible for relocation assistance and provide them with a Relocation Assistance Brochure at time of initial contact. Advise displacees of preliminary relocation benefits.
- B. Contact and provide relocation assistance to property owners and tenants affected by acquisition of right of way.
- C. Conduct a personal interview to determine the needs and preferences of the displaced person as required under URA 24.205(c)(2).
- D. Prepare and deliver all appropriate notices required by the URA which include, but are not limited to:

Honolulu Rail Transit Project

- General Information Notice
 - Notice to Relocate
 - 90-day Notice
 - Notice of Relocation Eligibility or ineligibility
 - Notice of Comparable Replacement Dwelling
 - 30-day Notice
 - Payment determinations
 - Rights of and procedures for appeal of payments and advisory services
 - Other notices as determined by HART
- E. Maintain relocation contact logs and update READ.
- Prepare a written summary of every meeting and conversation with displacee(s) or other parties relevant to a pending relocation action within two (2) days of a meeting.
- F. Maintain relocation contact logs and update READ.
- G. Locate, evaluate and maintain files on comparable available housing and commercial sites.
- H. Calculate replacement housing supplemental benefits.
- I. Compute and submit the request for relocation housing/rental supplement to HART with photographs and other documentation attached.
- J. Administer, coordinate and monitor moves with displaced homeowners, business owners, and tenants and with moving companies:
- Request moving estimates from moving companies as needed.
 - Determine/negotiate and document for all self-moves.
 - Prepare moving plan with appropriate photos and sketches along with inventory of personal property to be moved for non-residential moves. Notify HART if a cost of moving is estimated to exceed \$25,000.
 - For fixed payment for non-residential moves, obtain applicable signed tax returns and a moving plan including inventory, type of move planned and move date from displacees.
- K. Attend closings on replacement properties if requested by any party involved, and assure supplemental payments are properly distributed.
- L. Process and compute increased housing expenses, including interest payments as required.
- M. Prepare all relocations payment claim submissions for all displacees on a parcel.
- N. As required, coordinate with appropriate state and local agencies to successfully relocate displacees.

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- O. Issue a Relocation Survey to displacees.
- P. Provide a Certification of Eligibility for all displacees.
- Q. Notify in writing and forward any relocation appeals to HART for adjudication in accordance with the RAMP. Relocation agent(s) may be required to attend appeals and/or hearings.

Deliverables:

- Relocation Plan for Airport and City Center Sections
- Notices required by URA
- Inventory of comparable available housing
- Requests for relocation housing/rental supplementals
- Replacement housing inspection reports
- Moving Plans
- Relocation payment claims submissions
- Relocation Surveys
- Certificates of Eligibility
- Others as indicated herein, or otherwise determined by HART

4.0 PROPERTY MANAGEMENT SERVICES

The CONTRACTOR shall provide property management services when requested by issuance of task order. The tasks for each property identified by HART may include:

- A. Provide written notification to the tenants with ownership change and introduction of new property management and contact information;
- B. Upon approval by HART, provide new lease/rental agreements;
- C. Manage and provide all services according to the new lease/rental agreements, including common area maintenance (CAM);
- D. Provide accounting services, invoice and collect lease/rental agreement payments, receive and process payments of all bills related to the property maintenance;
- E. Keep accounting ledger for all tenants and reconcile end of the year financials, including adjustments to CAM according to the lease/rental contracts; and
- F. Provide monthly accounting reports.

Deliverables:

- Change of ownership reports
- New lease/rental agreements
- Accounting ledger
- Monthly accounting reports
- Others as indicated herein, or otherwise determined by HART

5.0 PROJECT ADMINISTRATION SERVICES

Honolulu Rail Transit Project

5.1 COMMUNICATIONS

- A. The CONTRACTOR will maintain and update property, parcel, and project file with most current information using the CITY's Real Estate Administration Database (READ). READ is used to record data related to all stages of acquisition, relocation and property management.
- B. The CONTRACTOR shall provide a weekly status report of activities indicating issues that might delay completion of the CONTRACTOR'S work or that might require assistance from HART.
- C. The CONTRACTOR shall participate in project review meetings at dates and times determined by HART.
- D. The CONTRACTOR shall participate in ad hoc meetings when requested by HART.
- E. In correspondence with HART relating to all services, include the following information (at a minimum) in the heading:
 - Tax Map Key (TMK) Number; and
 - Name(s) of record owner(s).

Deliverables:

- Schedule and Activity Reports
- Weekly Status Report
- Records of Correspondence
- Others as indicated herein, or otherwise determined by HART

5.2 RECORDS MANAGEMENT

- F. The CONTRACTOR shall enter and maintain a complete parcel file for each ownership in the City's READ database.
- G. The CONTRACTOR shall enter all correspondence and contacts with property owners in READ within two (2) working days of receipt or contact.
- H. The CONTRACTOR shall enter and update, if appropriate all payments in READ.
- I. Prepare a hard copy parcel file for each owner. The file is to contain colored dividers using legal size paper and marked with the title and date. The CONTRACTOR shall provide HART a copy of the file within thirty (30) days after completion.
- J. The CONTRACTOR shall provide HART with a hard copy and an electronic copy (Adobe Acrobat searchable PDF) of all correspondence originated and received by the CONTRACTOR within three (3) working days.
- K. When HART is required to institute eminent domain proceedings, the CONTRACTOR will assemble a packet comprised of materials, to include but is not limited to the items identified below:

Honolulu Rail Transit Project

- Parcel map delineating and metes and bounds description(s) of the property or properties;
- Updated title report;
- Names of all the parties with interest and their contact information;
- Appraisal report and review;
- Copy of the offer letter;
- Copies of negotiation contact log; and
- Further information on property ownership and other documents pertinent to the acquisition requested by HART and by COR.

Deliverables:

- Parcel file consisting of hard copy and electronic copy
- Eminent domain proceedings packet
- Others as indicated herein, or otherwise determined by HART

6.0 IMPACTS TO PUBLIC, CONTRACTORS, HART, CITY AND OTHER STAKEHOLDERS

- A. The CONTRACTOR shall within two (2) days notify HART in writing, of events which have a material impact upon the progress of the work, including problems, delays, adverse conditions which will materially affect the ability to attain contract objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods; this notification is to include actions taken, or contemplated, and identify any HART assistance needed.
- B. The CONTRACTOR shall within two (2) days notify HART in writing, of any adverse or potentially adverse event, activity or issue arising in the course of dealings with property owners, displacees, tenants or other holders of compensable interests. The CONTRACTOR shall coordinate with HART and its representatives in all responses to public concerns, community outreach, contractors and affected parties.
- C. CONTRACTOR shall take all reasonable actions to preserve and build a positive image for HART and the Project and to place a high priority on being responsive to concerns of the affected parties, neighborhoods and business owners in its pursuit of the Project Work.

Deliverables

- Notification, if required, pursuant to Section 6.0 A) and B), above
- Others as indicated herein, or otherwise determined by HART

7.0 OTHER

The CONTRACTOR shall take reasonable and necessary action to ensure the safe conduct of work, including but not limited to, compliance with applicable Federal, state and City laws with regard to occupational, safety and health issues, and in accordance with HART's RAMP and other safety policies and procedures.

**EXHIBIT 2A
CONTRACT COST ESTIMATE**

SPECIAL PROVISIONS

**TO THE AGREEMENT BETWEEN
THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION
AND PARAGON PARTNERS, LTD.**

REAL ESTATE PROFESSIONAL SERVICES CONTRACT

HONOLULU RAIL TRANSIT PROJECT

EXHIBIT 2A

CONTRACT COST ESTIMATE

Labor and Appraisal Fees	\$ 2,800,000.00
Allowance for Other Direct Costs	<u>\$ 200,000.00</u>
Total Contract Amount	<u>\$ 3,000,000.00</u>

**EXHIBIT 2B
RATE SCHEDULE**

**SPECIAL PROVISIONS
REAL ESTATE PROFESSIONAL SERVICES CONTRACT**

HONOLULU RAIL TRANSIT PROJECT

**EXHIBIT 2B RATE SCHEDULE
FULLY BURDENED HOURLY LABOR RATES AND FEE APPRAISAL RATES**

	POSITION DESCRIPTION	FULLY BURDENED HOURLY LABOR RATES				
		Base Year (First 12 months) Year 1	(Second 12 months) Year 2	(Third 12 months) Year 3	(Fourth 12 months) Year 4	(Fifth 12 months) Year 5
1	Project Manager					
2	Real Property Appraiser					
3	Appraisal Reviewer					
4	Furniture & Fixtures Appr					
5	Acquisition Agents- Level 1					
6	Title & Escrow Coordinator					
8	Relocation Agent - Level 1					
9	Relocation Agent - Level 2					
10	Property Manager					
12	QA/QC & Compliance					
14	Data Entry/Clerical					

REDACTED PURSUANT TO HRS CHAPTER 92F

	Rates (\$USD)/unit
FEE APPRAISAL RATES:	
Self-Contained Appraisal Report - Commercial or Mixed Use (Standard to Complex)	\$1,500.00 to \$25,000.00
Summary Appraisal Report - Commercial or Mixed Use (Standard to Complex)	\$1,500.00 to \$25,000.00

**EXHIBIT 2C
TASK ORDER PROCEDURES**

**SPECIAL PROVISIONS
REAL ESTATE PROFESSIONAL SERVICES CONTRACT**

HONOLULU RAIL TRANSIT PROJECT

EXHIBIT 2D
TASK ORDER FORM (SAMPLE)

Date Issued _____
 Contract No. _____
 Task Order No. _____

Issued To: (Contractor)

Issued By: (HART)

Description of Task Order Services/Deliverables: (Reference Scope of Services section and attach a work scope to this form.)

Location of Services:

Period of Performance: _____

In accordance with the Special Provisions of Contract No. _____, this Task Order is issued and hereby authorizes Contractor to perform the following services under the terms and conditions set forth herein.

Labor Category	Fully-Burdened Rate	Hours	Total
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
Total Labor		-	\$ -
Appraisals	# Appraisals	Cost	
Total Appraisals			\$ -
Other Direct Costs (ODCs)			
			\$ -
			\$ -
			\$ -
Total Other Direct Costs			\$ -
TOTAL Labor + Appraisals + ODCs			\$ -

Upon execution of this Task Order, HART and Contractor agree to be bound by and to comply with all of the terms and conditions contained in the above referenced Professional Services Agreement, as well as the specific terms and conditions contained herein.

Authorized By:

**Honolulu Authority for
Rapid Transportation (HART)**

Name: _____

Signature: _____

Title: _____

Date: _____

Accepted By:

[Name of Contractor]

Name: _____

Signature: _____

Title: _____

Date: _____

EXHIBIT 4
FEDERAL STANDARD REQUIREMENTS

SPECIAL PROVISIONS
REAL ESTATE PROFESSIONAL SERVICES CONTRACT

HONOLULU RAIL TRANSIT PROJECT

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FEDERAL STANDARD REQUIREMENTS

1.0 GENERAL

The Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

(b) The Contractor 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 Contractor 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 Contractor 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 FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Contractor 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 Contractor to the extent the Federal Government deems appropriate.

(b) The Contractor 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 a 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 Contractor, to the extent the Federal Government deems appropriate.

(c) The Contractor 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 Contractor 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 Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor 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 Contractor'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 Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) The Contractor 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 Contractor 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 Contractor 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 Contractor's failure to so comply shall constitute a material breach of this Agreement.

1.5 Civil Rights Requirements

The Contractor 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 Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor shall refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor 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 Contractor 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 Contractor shall comply with any implementing requirements FTA may issue.

(4) Access for Individuals with Disabilities. The Contractor 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 Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor 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 Contractor 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 Contractor signs with a subcontractor.

(b) Prompt Payment. The Contractor 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 Contractor to all subcontractors shall include retainage, if applicable.

(c) DBE Goal. The City and County of Honolulu, has established a race neutral overall DBE goal of 3.83% through Federal Fiscal Year 2013. The Contractor will be notified in writing of any adjustments to the DBE Goal. DBE firms and small businesses shall have an equal opportunity to participate in the Agreement. The Contractor 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 Contractor shall report its DBE participation obtained through race-neutral means throughout the period of performance. The Contractor shall submit the "DBE PARTICIPATION REPORT" reflecting payments made by the Contractor to DBE subcontractors. Payments to the Contractor 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 Contractor 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 Contractor shall promptly notify HART, whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work. The Contractor 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 Contractor is required to verify that none of the Contractor, 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 Contractor 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 Contractor 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 Contractor 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 Contractor agrees to comply with the requirements of 2 C.F.R. 180, Subpart C, as supplemented by 2 C.F.R. Subpart C, throughout the Agreement period. The Contractor 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," is included as Exhibit 8 of Contractor's Proposal, dated June 27, 2011, and incorporated herein by reference. The Contractor 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 Contractor 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 Contractor 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 Contractor shall include the above clause in each subcontract exceeding \$100,000.

1.10 Clean Water Requirements

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

1.11 Fly America Requirements

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

1.12 Energy Conservation Requirements

(a) The Contractor 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 Contractor 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 Contractor 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 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 Contractor 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 Contractor agrees to comply with all applicable implementing Federal regulations and directives and any subsequent amendments thereto.

1.15 [RESERVED]

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 DOT Order 3902.10, "Text Messaging While Driving", December 30, 2009, the Contractor 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 Contractor'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 Contractor, 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 DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information", 49 C.F.R. Part 1520.

1.18 Incorporation of FTA Terms

(a) The Special Provisions 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 Contractor 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 Contractor 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			
Project Name:		Contractor Name:	
Contract No:	ID No.:	Contract Amount (including amendments): \$	
(OWP WE #, FTA Grant #, FHWA Project #)			
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	Total Amount to Date
Prime Contractor		\$	\$
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)		\$	%

ATTACHMENT 1.6 b) - FINAL REPORT OF DBE PARTICIPATION

This report must be submitted by the Contractor 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

**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
Contractor 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