

SPECIAL PROVISIONS

HONOLULU RAIL TRANSIT PROJECT

**FARRINGTON HIGHWAY STATION GROUP
DESIGN SUPPORT CONSULTANT**

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These Special Provisions and the General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu dated 08/2000 (“General Terms and Conditions”) shall apply to, and are incorporated by reference into the Agreement, except as modified by reference herein. All defined terms in the Agreement shall have the same meaning in these Special Provisions.

I. PROJECT

The Honolulu Rail Transit Project (“HRTP”) is described in the Final Environmental Impact Statement as a twenty (20) mile grade separated fixed guideway transit system between East Kapolei and Ala Moana. The CONSULTANT will provide architectural and engineering services for the design and design support of three (3) transit stations of the HRTP comprising the Farrington Highway Station Group: West Loch Station, Waipahu Transit Center Station, and Leeward Community College Station, herein referred to as the “PROJECT”.

II. SERVICES

The CONSULTANT’s responsibilities under this Agreement include providing services set forth in the Scope of Work attached hereto and incorporated herein as Exhibit 1.

III. TIME

Work under this Agreement shall be completed under multiple and overlapping Notices to Proceed (“NTPs”). Deadlines for Work under NTP #1, NTP #2 and NTP #3 shall be determined at the discretion of HART.

IV. LIQUIDATED DAMAGES

Liquidated damages shall not apply to this Agreement. Section 6.6 of the General Terms and Conditions, entitled "LIQUIDATED DAMAGES", is hereby deleted in its entirety.

V. INSURANCE REQUIREMENTS

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

VI. COMPENSATION AND INVOICING

A. Compensation to the CONSULTANT under this Agreement shall not exceed the amount stated in the Agreement. Payment shall be made in accordance with Exhibits 2 A - D, 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 (08/2000)

The General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu (08/2000) 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:

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

“BASELINE DESIGN SCHEDULE” means the time-scaled and cost-loaded critical path network, updated monthly in accordance with the Agreement and depicting the Price Items and subordinate activities and their respective prices (distributed over time), durations, sequences, and interrelationships that represent the CONSULTANT’s Work plans, work breakdown structure (“WBS”) for designing and completing the PROJECT and the cost of all Work to be performed under the Agreement, distributed over the duration of the Agreement.

“C.F.R.” means the Code of Federal Regulations.

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

“CONFORMANCE CHECKLIST” is the formal checklist used by the Project team to verify design criteria and construction specification conformance for each certifiable element in accordance with the H RTP Safety and Security Management Plan dated June 1, 2011.

“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.

“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.

“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 indicates otherwise.

“MILESTONE” means a defined step toward the completion of Work in the Schedule of Milestones. The Schedule of Milestones, once achieved, shall serve as the basis for payment.

“PAY ITEM” means a component of the Schedule of Milestones for which the CONSULTANT provides a Pay Item Value for all Work included in a schedule milestone. A Pay Item may be activities, deliverables or a series of interrelated items as identified in the Schedule of Milestones and corresponding with activities from the CONSULTANT’s Baseline Design Schedule.

“PAY ITEM VALUE” means that value allocated by the CONSULTANT to a Pay Item that represents the dollar value to be achieved or achieved upon the completion of a schedule milestone as indicated in the Schedule of Milestones and the CONSULTANT’s Baseline Design Schedule.

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

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

“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.

“SCHEDULE OF MILESTONES” means a table of scheduled milestones, organized by NTP, which specifies Pay Items, Pay Item descriptions, Pay Item Values, planned or actual achievement dates and serves as a basis for payment.

“SCHEDULE OF MILESTONES PAY ITEM” means a series of activities contained in a Pay Item that depicts the associated Work leading to the payment milestone and shall contain unique coding to facilitate progress reporting of the Schedule of Milestones.

“STANDARD” or “REQUIREMENT” means any provision of any Federal, State, or City law, 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.

“SUBCONSULTANT” means any subcontractor or subconsultant who enters into an agreement with the CONSULTANT or Consultant’s subcontractors at any tier to perform a portion of the Work for the CONSULTANT.

“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 design, engineering, administration, testing, inspection and other duties and services; the furnishing of

all labor, deliverables, materials, supplies, and equipment, as required by the Agreement, including all efforts and design services required during the construction phase of the PROJECT stations to successfully complete the scope of work covered under this Agreement. In certain cases, the term is also used to mean the products of the Work.

“WORK BREAKDOWN STRUCTURE” (“WBS”) means a hierarchal breakdown of the Scope of Work into components. HART will provide the WBS that reflects its breakdown of the scope and associated code structure in NTP #1a.

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

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

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

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

B. DESIGNATION OF PROJECT MANAGERS

The Officer-in-Charge will designate 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 communication 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, and 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 representatives in order to maintain continuity of effort and control.

C. INDEPENDENT CONTRACTOR

Section 4.1 of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following:

“4.1.1 The CONSULTANT shall perform the work as an independent contractor and shall indemnify and hold harmless HART and all of its officers and employees from death, injuries, losses and damages to persons or property, including reasonable attorneys’ fees and cost of defense, caused by the negligent act, error or omission in the performance of the contract by the CONSULTANT or the CONSULTANT’s subconsultants, agents and employees and this requirement shall survive the termination of the contract.

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

D. INSURANCE

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

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

1. Workers Compensation and Employers Liability Insurance.

The CONSULTANT shall maintain workers compensation and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability coverage shall provide limits of not less than \$100,000 each accident for bodily injury by accident or \$100,000 each employee, \$100,000 aggregate, for bodily injury by disease.

2. Commercial General and Umbrella Liability Insurance.

The CONSULTANT shall maintain commercial general liability (CGL) and if necessary commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence, and general aggregate. CGL insurance shall be written on ISO occurrence form, CG 00 01 (or a substitute form providing equivalent coverage), and shall cover liability arising from premises,

operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). HART and the CITY shall be included as additional insureds under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent); such additional insured provisions shall also apply under the commercial umbrella, if any. The policy(ies) shall contain a waiver of subrogation in favor of HART and the CITY.

3. Business Automobile and Umbrella Liability Insurance. The CONSULTANT shall maintain business auto liability (including no-fault coverage) and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used by the CONSULTANT in the performance of this 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, with HART and the City included as additional insureds using ISO endorsement CA 20 48. If necessary, the policy shall be endorsed to provide contractual liability coverage, subject to policy terms and conditions.

4. Professional Liability Insurance. The CONSULTANT shall maintain professional liability insurance with limits of not less than \$1,000,000 per claim/annual aggregate, covering the CONSULTANT and the CONSULTANT's employees or agents for liability arising out negligent acts, errors or omissions in the performance of professional services under the contract. Such insurance shall remain in full force and effect continuously for the period of design and construction of the Work, and for a period of three years following substantial completion of construction, provided that such coverage is reasonably available at commercially affordable premiums, as mutually determined and agreed. Notwithstanding the foregoing, however, it is understood and agreed that the coverage afforded under this article 4.3.1.4 shall cover only the vicarious liability of the CONSULTANT for the negligent acts or omissions of its agents.

4.3.2 The insurance specified above shall:

1. Provide that insurance specified in 4.3.1.2 and 4.3.1.3 above is primary for claims arising from the CONSULTANT's performance of services or operation of automobiles under this Agreement and that insurance (or self-insurance) carried by HART and/or the CITY shall be excess and non-contributing to CONSULTANT's insurance;

2. Contain a standard Cross Liability coverage providing that the insurance applies separately to each insured, applicable to policies specified in 4.3.1.2 and 4.3.1.3 above;

3. Not be canceled or non-renewed or reduced in limits by endorsement without THIRTY (30) DAYS prior written notice to HART, except for non payment of premium in which case, TEN (10) DAYS notice of cancellation shall be given;

4. Except for Professional Liability insurance required in 4.3.1.4 above, be written on an "Occurrence" form of policy, unless otherwise specifically approved by HART;

5. Be provided by insurers authorized to provide insurance in the State of Hawai'i and with a current Best's rating of not less than A-7 or otherwise approved by HART.

4.3.3 Certificate of Insurance:

1. The CONSULTANT will provide and thereafter maintain current and renewal certificates of insurance, prepared by a duly authorized agent, evidencing the insurance in effect at all times during the term of this contract as required herein to HART. In the event of a claim, the CITY or HART may request, and CONSULTANT shall then provide, a copy of the insurance policies.

2. Certificates shall clearly identify the project by name and/or contract number.

3. Certificates shall show the Certificate Holder as the Honolulu Authority for Rapid Transportation, and be delivered to the Executive Director and CEO, 1099 Alakea Street, Suite 1700, Honolulu, Hawai'i 96813. Certificates shall name the Honolulu Authority for Rapid Transportation and the City and County of Honolulu as additional insured as to General Liability and Automobile Liability insurances."

E. MODIFICATIONS

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."

Section 5.2 of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following:

“5.2 PRICE ADJUSTMENT.

- (a) Any adjustment in contract price pursuant to a clause in the contract shall be made in one or more of the following ways:
 - 1. By agreement on a fixed price adjustment before commencement of the pertinent performance;
 - 2. By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
 - 3. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
 - 4. In any other manner as the parties may mutually agree before commencement of the pertinent performance; or
 - 5. In the absence of agreement between the parties, the provisions of section 103D-501(b)(5), HRS, shall apply.
- (b) Submission of cost or pricing data. The CONSULTANT shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 103D-312, HRS. The submission of any cost or pricing data shall be made subject to the provisions of subchapter 15, chapter 3-122, Hawai‘i Administrative Rules. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraph (a)(1) through (a)(4) above shall be issued within ten days after agreement on the method of adjustment.”

F. SAFETY AND SECURITY CERTIFICATION

A new Section 6.8 of the General Terms and Conditions, entitled "SAFETY AND SECURITY CERTIFICATION ", is hereby inserted.

“6.8 SAFETY AND SECURITY CERTIFICATION.

- (a) The purpose of the safety and security certification is to ensure that:

1. The design, construction, fabrication, installation, testing, and commissioning of all safety- and security-certifiable elements (civil, structural, and systems) have been evaluated for conformance with the safety and security design criteria and specifications requirements and to verify their readiness for operational use; and
 2. The rail system is operationally safe and secure for customers, employees, emergency responders, and the general public.
- (b) The objective is to achieve an acceptable level of risk through a systematic approach to safety hazard and security vulnerability management, design criteria adherence, specification and construction compliance, and testing and commissioning verification.
- (c) The CONSULTANT shall implement and successfully complete safety and security certification for all certifiable elements contained in the Agreement. Safety and security certification shall be conducted in accordance with the latest version of the Federal Transit Administration (FTA) Handbook for Transit Safety and Security Certification as tailored to the CONSULTANT's scope of work. HART has developed a Project Safety and Security Certification Plan (SSCP) based on FTA guidelines to describe how these activities will be implemented for the H RTP. The CONSULTANT's activities include, but are not limited to, the following:
1. Participate in safety and security committees and working groups established by HART to perform safety and security certification activities as requested.
 2. Demonstrate within its schedule the integration and completion of safety and security certification activities, including the development and completion of Conformance Checklists.
 3. Develop and support the development of safety and security analyses for safety and security certifiable elements as needed.
 4. Support the resolution of identified safety hazards and security vulnerabilities identified through safety and security analyses.
 5. Submit completed and signed Conformance

Checklists to HART for review and acceptance.

6. Submit supporting verification documentation to demonstrate that the design has incorporated and complies with safety and security design criteria and requirements provided in the contract documents.
 7. Submit required documents using HART's document management system for safety and security certification.
 8. Identify on its organization chart the representative assigned to manage and facilitate the CONSULTANT's implementation of the safety and security certification process.
- (d) The safety and security certification process for each certifiable element is not complete until Conformance Checklists that are completed, signed, and submitted by the CONSULTANT have been reviewed and accepted by HART. Additional requirements for safety and security certification are detailed in the Project SSCP. The CONSULTANT shall refer to Engineering Data for a copy of the Project SSCP.
- (e) Notwithstanding the foregoing provisions of this Article 6.8, however, it is understood and agreed that the CONSULTANT is responsible only for construction safety in relation to construction actually undertaken at the CONSULTANT's direction and within the Scope of Work for the PROJECT as set out in Exhibit 1 herein."

G. FIELD SAFETY AND SECURITY

A new Section 6.9 of the General Terms and Conditions, entitled "FIELD SAFETY AND SECURITY", is hereby inserted.

"6.9 FIELD SAFETY AND SECURITY

- (a) The CONSULTANT is responsible for initiating and maintaining a safety and health program that complies with applicable local, state and federal occupational safety and health regulations, including but not limited to the Hawai'i Administrative Rules, Title 12, Department of Labor and Industrial Relations Subtitle 8, Division of Occupational Safety and Health Part 3, Construction Standards.
- (b) The CONSULTANT shall be familiar with the Honolulu Rail Transit Project Construction Safety and Security Plan (CSSP) current revision and comply with applicable sections, such as, but not limited to, visitor control, public access, first aid/emergency

response, safe work practices, personal protective equipment and safety and security reporting requirements. All personnel who have who will be accessing field locations must attend the HART Safety and Environmental Orientation.

- (c) The CONSULTANT shall designate at least one person as the Safety and Security Representative (this may be a collateral duty position and/or prime sub-consultant designee) to be on-site any time field activities are taking place and is responsible to ensure the proper implementation of the Site-Specific Safety and Security Plan (SSSP). The Safety and Security Representative shall have completed the OSHA 10 Hour Construction Safety Outreach Program or equivalent and be a competent person for applicable subject matter including, but not limited to, fall protection, excavation and trenching, the control of hazardous energy (Lock Out Tag Out (LOTO) Procedure), scaffolding and confined spaces.
- (d) The CONSULTANT shall ensure employees, subconsultants and/or subcontractors comply with applicable regulations and the SSSP submitted by CONSULTANT for this project.
- (e) The CONSULTANT shall submit an SSSP, which shall address field work-related hazards and mitigation measures. This plan shall take into account all work, including any activities subcontracted. This plan must interface with the CONSULTANT's overall safety and health program and be submitted to the HART Safety and Security Manager for review and acceptance 30 days prior to field work taking place. The plan shall include, but not be limited to, the following elements:
 - 1. Title, signature and phone number of the Plan Preparer (this person must be a qualified person), Company Officer and Safety and Security Representative (SSR).
 - 2. Background information: Provide CONSULTANT name, Contract name and number, description of work to be performed (with attention to field related work).
 - 3. Responsibilities and Lines of Authority. Include a statement of the CONSULTANT's ultimate responsibility for the implementation of the SSSP. Identification and accountability of subconsultants, subcontractors and personnel responsible for safety at all levels is required. Provide to HART the SSR's qualifications and letter of designation assigning the authority to carry out safety and security responsibilities. HART will review the qualifications for acceptance.
 - 4. Safety Policy Statement detailing the CONSULTANT'S commitment to providing a safe and healthy workplace for

all employees.

5. Training. Provide a statement requiring completion of the HART Safety and Environmental Orientation for all personnel prior to accessing field work locations. List end user, competent or qualified person training requirements, as applicable.
6. List procedures for field site inspections and documentation. Include the assignment of this responsibility, frequency and documentation method.
7. List procedures for complying with applicable portions of the CSSP.
8. Emergency Planning. Describe emergency plan and means to ensure employees are not permitted to work alone and to ensure an effective means of emergency communication is provided, readily available and in working condition.
9. Describe method of providing drinking water, toilet and washing facilities.
10. First Aid and CPR training. Describe and provide copies of methods to ensure at least two employees are on site at all times who are qualified/certified to administer first aid and CPR and describe the first aid kit (type/size) to be provided.
11. Personal Protective Equipment. At minimum, all personnel, including visitors, on work site locations associated with the PROJECT shall wear the following PPE:
 - i) Head protection complying with ANSI Z89.1-2009 and ANSI Z89.2-2009 shall be worn at all times when on the work site.
 - ii) High visibility, retro-reflective clothing (class 2 or 3) complying with ANSI/ISEA 107, 23 CFR Part 634, MUTCD 6E-3, and 29 CFR 1926.201(a) shall be worn at all times within the traffic work zone.
 - iii) Eye protection complying with ANSI Z87.1-2003 shall be worn at all times when on the work site.
 - iv) Foot protection complying with ASTM F2413-05 or ANZI Z41-1999 shall be worn at all times when on the work site. Work boots are the preferred type of protective footwear. No tennis-type shoes are

permitted.

- v) Hearing protection with a Noise Reduction Rating (NRR) appropriate for the exposure shall be worn by personnel exposed to noise levels in excess of the 29 CFR 1926.101 Table D-2 Permissible Exposure Limit (PEL). When in the field, personnel must have hearing protection readily available for use.
12. Hazardous substances. Describe when any hazardous substances are to be procured, used, stored or disposed. Provide a hazard communication program and describe how Material Safety Data Sheets (MSDSs) will be made readily available for review. Employees shall have received training in hazardous substances being used and emergency equipment (such as eye wash) shall be readily available at the work area.
 13. Describe how traffic control will be accomplished in accordance with the Department of Transportation Manual for Uniform Traffic Control Devices (current edition).
 14. Control of Hazardous Energy (Lockout/Tagout). Describe procedures to ensure adequate control of energy before an employee performs any inspection, servicing or maintenance on any equipment where the unexpected energizing or startup of the equipment could occur.
- (f) Notwithstanding the foregoing provisions of this Article 6.9, however, it is understood and agreed that the CONSULTANT is responsible only for construction safety in relation to construction actually undertaken at the CONSULTANT's direction and within the Scope of Work for the PROJECT as set out in Exhibit 1 herein. CONSULTANT shall, however, be responsible for the safety of its employees at all times. ”

H. 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

- (a) Payments to the CONSULTANT for Work satisfactorily performed will be made according to the mutually-agreed Schedule of Milestones:
 1. Scope of Payment. The CONSULTANT shall receive and accept the compensation provided for in the Agreement as

full payment for performing all Work under the Agreement in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof.

2. Payment Concept. Payment will be calculated using the Schedule of Milestones (“SM”) Pay Item table.
3. Payment does not imply acceptance of the Work. The granting of any payment by HART, or the receipt thereof by the CONSULTANT, shall in no way imply acceptance of the Work. Such Work, equipment, components or workmanship that do not conform to the requirements of this Agreement may be rejected by HART and in such case must be reformed or replaced by the CONSULTANT without delay.

(b) Payment will be based on the SM.

The SM is intended to provide linkage between the Baseline Design Schedule and the PROJECT Work Breakdown Structure (“WBS”) provided by HART. The SM is to be organized by NTP and itemized by Pay Items. The CONSULTANT is to be paid upon satisfactory completion of SM Pay Item(s).

1. Pay Item measurement and payment for NTP#1 shall be based on lump sum values assigned to all SM Pay Items, with Completion of Milestones as the basis for payment.
2. Pay Item measurement and payment for NTP #2 and #3 shall be based on time and materials in accordance with the Schedule of Milestone’s SM Values, based on the Agreed Upon Rates of Pay in Exhibit 2D.
3. Request for Monthly Payment. The CONSULTANT shall submit monthly pay requests using Contract Management System procedures for HART to review. The request shall consist of the SM Pay Items for the current month and cumulative to date. An updated SM, Baseline Design Schedule, and a progress narrative addressing, at a minimum, areas of concern shall be included with each pay request. For time and materials work, CONSULTANT shall also include a schedule with the details identified in Exhibit 2D. The CONSULTANT shall certify that the schedule includes only employees authorized by the HART to charge the PROJECT and that the information ties to the CONSULTANT’s general ledger.

(c) HART’s obligation to make timely payment and the statutory interest that accrues to any late unpaid balance shall be according

to HRS § 103-10.”

I. RETAINAGE

Retainage shall not apply to this Agreement. Section 8.5 of the General Terms and Conditions, entitled "RETAINAGE", is hereby deleted in its entirety.

J. PROMPT PAYMENT BY CONTACTORS 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 BY CONTRACTORS TO SUBCONTRACTORS

- (a) Generally. Any money paid to a contractor shall be disbursed 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 on which the procurement agency has withheld payment.
- (b) Final Payment. 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. The final payment request shall be properly documented as required under HAR § 3-125-23 (4).
- (c) Penalties. The contractor may be subject to a penalty of one and one-half (1 ½) percent per month on the outstanding amounts due that were not timely paid to the subcontractor under the following conditions. Where a subcontractor has provided evidence to the contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in paragraph (d), and:
 - (1) Has provided to the contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the state.
 - (2) The following has occurred:
 - (a) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or

supplied has elapsed without written notice of a claim given to contractor and the surety, and

(b) The subcontractor has provided to the contractor, an acceptable release of retainage bond, executed by a surety company authorized to do business in the state, in an amount of not more than two times the amount being retained or withheld by the contractor; any other bond acceptable to the contractor; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the contractor and subsequently, upon receipt from the procurement officer, by the contractor to the subcontractor within the applicable time periods specified in paragraph (b). The penalty may be withheld from future payment due to the contractor, if the contractor was the responsible party. If a contractor has violated paragraph (b) three or more times within two years of the first violation, the contractor shall be referred by the procurement officer to the contractors license board for action.

(d) A properly documented final payment request from a subcontractor, as required by paragraph (c), shall include:

(1) Substantiation of the amounts requested;

(2) A certification by the subcontractor to the best of the subcontractor's knowledge and belief, that:

(a) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

(b) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract 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

(c) The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

(3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the contractor within seven (7) days after receipt, with a statement identifying the defect.

(e) In case of a construction contract, a payment request made by a contractor to the procurement officer that includes a request for sums that were withheld or retained from a subcontractor and are due to a subcontractor may not be approved under paragraph (c) unless the payment request includes:

(1) Substantiation of the amounts requested; and

(2) A certification by the contractor, to the best of the contractor's knowledge and belief, that:

(a) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(b) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract 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

(c) 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.

The procurement officer shall return any final payment request that is defective to the contractor within seven (7) days after receipt, with a statement identifying the defect.

(f) This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under paragraph (c); provide that any such payments withheld shall be withheld by the procurement officer.”

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, 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/City and the FTA and all laws, regulations, guidelines, and provisions of the financial assistance agreement will apply to the Agreement and will be incorporated by reference as if fully set forth therein.

The CONSULTANT shall at all times comply with all applicable Federal Government laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between HART/City and FTA relating to H RTP, 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 by reference.

IX. ASSIGNMENT

The CONSULTANT agrees that the CONSULTANT shall not transfer or assign this Agreement in whole or in part, except by an instrument, in writing, approved by HART.

X. HEADINGS; GENDER; NUMBER

The titles of headings of Sections, Subsection 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.

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

The CONTRACTOR 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.