

Master Agreement
Between
The City and County of Honolulu and the State of Hawaii
For
The Honolulu Rail Transit Project
(Sections to and from: Kamehameha Highway Guideway,
Airport Guideway and City Center Guideway)

THIS AGREEMENT is effective this 11th day of October, 2013 (the "Master Agreement"), by and between the STATE OF HAWAII, by its Director of Transportation, whose principal place of business and mailing address is 869 Punchbowl Street, Honolulu, Hawaii, 96813, hereinafter referred to as the "STATE," and the CITY AND COUNTY OF HONOLULU a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813, hereinafter referred to as the "CITY." The STATE and the CITY collectively, are the "Parties," and individually a "Party," all as governed by the context in which such words are used.

WITNESSETH THAT:

WHEREAS, Ordinance No. 07-001 authorized the implementation of the Locally Preferred Alternative (the "LPA"), which is a fixed guideway system between Kapolei and the University of Hawaii ("UH") at Manoa, provided that a Minimum Operable Segment (the "MOS") of the LPA is constructed within financial constraints;

WHEREAS, Resolution No. 08-261 approved the MOS beginning at UH-West Oahu (near the Kroc Center), via Farrington Highway and Kamehameha Highway (adjacent to Pearl Harbor), to Aolele Street serving the Honolulu International Airport (hereinafter the "Airport"), to Dillingham Boulevard, to Nimitz Highway, to Halekauwila Street, and ending at Ala Moana Center;

WHEREAS, the CITY, by the Honolulu Authority for Rapid Transportation ("HART"), a semi-autonomous agency of the CITY, is authorized to develop, operate, maintain, and expand a mass transit system known as the Honolulu Rail Transit Project ("HRTTP") within the MOS which includes the limits of the Kamehameha Highway Guideway Section, the Airport Guideway Section, and the City Center Guideway Section, as described in Article I and Exhibit "A" hereinafter referred to as the "PROJECT";

WHEREAS, the STATE has jurisdiction over all roads, alleys, streets, ways, lanes, bikeways, bridges, and airports in the STATE, opened, laid out, or built by the government and under the jurisdiction of the Department of Transportation ("DOT");

WHEREAS, the mission of the STATE is to provide a safe, efficient and accessible highway and airport system through the utilization of available resources in the maintenance, enhancement and support of land and air transportation facilities;

WHEREAS, AIRPORT LANDS are those lands and facilities owned by the STATE Department of Transportation, Airports Division, as depicted in the most current Airport Layout Plan, Exhibit B, Property Map (hereinafter "AIRPORT LANDS");

WHEREAS, the PROJECT is proposed to be situated within STATE Highway rights-of-way and AIRPORT LANDS which are under the jurisdiction, authority, and control of the STATE;

WHEREAS, it is in the public interest for the STATE to permit the construction, operation and maintenance of the PROJECT and all transit facilities (hereinafter the "GUIDEWAY FACILITY") within the STATE Highway rights-of-way and upon AIRPORT LANDS, subject to the conditions herein;

WHEREAS, the STATE requires that the GUIDEWAY FACILITY not adversely affect its highway and Airport safety, construction, maintenance, and operations; does not interfere with, or minimizes to the extent possible, as agreed to by the STATE, the free and safe flow of vehicular, bicycle and pedestrian traffic, aircraft movements, and Airport traffic; does not interfere with the STATE's existing, planned, or contemplated future use of the STATE Highway rights-of-way for land transportation purposes and AIRPORT LANDS for air transportation purposes; and the construction, operation, and maintenance of the GUIDEWAY FACILITY within the STATE Highway rights-of-way and AIRPORT LANDS are in accordance with all applicable federal, State, CITY and any other applicable laws, ordinances, and regulations;

WHEREAS, guidelines outlining safe and rational practices for accommodating the GUIDEWAY FACILITY within STATE Highway rights-of-way and AIRPORT LANDS are of valuable assistance to transportation agencies;

WHEREAS, the STATE and the CITY mutually recognize the need for entering into a Master Agreement designating and setting forth the responsibilities of each Party;

WHEREAS, the STATE and the CITY, by mutual agreement, have identified each of the Parties' responsibilities within the STATE Highway and AIRPORT LANDS for the PROJECT, and further, such responsibilities shall be contained in a Joint Use and Occupancy Agreement and Airport Special Provisions (hereinafter "ASP") as appropriate, as set forth in Exhibit "C" and Exhibit "D" respectively, attached hereto;

WHEREAS, the CITY has the authority pursuant to its Charter and ordinances to enter into this Master Agreement and the STATE has been granted the authority to function adequately in all areas of appropriate jurisdiction including the implementation of an integrated and balanced transportation system and is authorized under the HRS to enter into this Master Agreement; and

WHEREAS, the Director of Transportation has the authority to enter into this Master Agreement for the STATE under HRS Section 26-19;

NOW, THEREFORE, the STATE and the CITY, in and for the consideration of the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound thereby, mutually agree as follows:

ARTICLE I – PROJECT DESCRIPTION

The PROJECT includes, but is not limited to, the design, construction, and maintenance of the Kamehameha Highway Guideway Section, the Airport Guideway Section, and the City Center Guideway Section of the H RTP from approximately four hundred (400) feet east of the Pearl Highlands Station near Kuala Street along Kamehameha Highway (adjacent to Pearl Harbor), onto Nimitz Highway, to Aolele Street and Ualena Street serving the Honolulu International Airport, to Dillingham Boulevard, to Nimitz Hwy, to Halekauwila Street, and ending at Ala Moana Center.

The PROJECT involves the design and construction of approximately 13 miles of elevated guideway, including the associated roadway modifications and other infrastructure. The GUIDEWAY FACILITY consists of a two track elevated structure primarily within the existing STATE Highway alignment and AIRPORT LANDS, and requires utility relocations, reconfiguration and reconstruction of the medians, left turn pockets, traffic signal relocations, signs, pavement markers/markings, roadway widening, pedestrian and bicycle facilities, removal/relocation of existing landscaping and installation of temporary landscaping, landscaping irrigation, drainage facilities, stations, traction power substations, gap breaker stations, and associated grading.

There are fourteen (14) stations along the PROJECT's alignment: the Pearlridge Station, Aloha Stadium Station, Pearl Harbor Station, Airport Station, Lagoon Drive Station, Middle Street Transit Center Station, Kalihi Station, Kapalama Station, Iwilei Station, Chinatown Station, Downtown Station, Civic Center Station, Kakaako Station, and Ala Moana Station. The PROJECT includes the Aloha Stadium third track, site improvements for traction power substations, guideway lighting, miscellaneous electrical/mechanical wayside equipment, switch machines, sound barrier walls, running rails and insulated third rail (contact rail), and installing duct banks and system elements/cable trays.

The Kamehameha Highway Section of the GUIDEWAY FACILITY primarily runs in the median of Kamehameha Highway and will start at a point approximately 460 feet west of where the southern Kamehameha Highway right-of-way line meets the northern Farrington Highway right-of-way line. From here it runs eastward on the south side of Kamehameha Highway for approximately 1,000 feet and then crosses into the median of Kamehameha Highway. It continues running in the median of Kamehameha Highway crossing over H-1 Freeway, Moanalua Freeway, and the Aiea Access ramp. After crossing the Aiea Access ramp it will run on the east side of Kamehameha Highway, crossing over Salt Lake Blvd. and ending approximately 300 feet south of Kohomua Street.

The Airport Guideway Section of the GUIDEWAY FACILITY continues along the south side of Kamehameha Highway, continues to Nimitz Highway and turns south along Aolele Street towards the Airport. It then follows Aolele Street eastbound, crosses through AIRPORT LANDS (i.e. Airport roadways, automobile parking facilities, landscaped areas, etc.) to the Airport Station. From there, it continues eastbound on Aolele Street, bisecting AIRPORT LANDS to Ualena Street and Waiwai Loop east to reconnect to Nimitz Highway near Moanalua Stream, and continues on to terminate past the Middle Street Transit Center Station.

The City Center Guideway Section of the GUIDEWAY FACILITY starts just past the Middle Street Transit Center Station, follows Dillingham Boulevard to the vicinity of Kaaahi Street and then turns east to connect with Nimitz Highway near Iwilei Road. The guideway will follow Nimitz Highway's eastbound direction to Halekauwila Street, then proceeds along Halekauwila Street past Ward Avenue, where it will transition to Queen Street. The guideway will cross from Waimanu Street to Kona Street in the vicinity of Pensacola Street and continue above Kona Street to the Ala Moana Shopping Center.

The CITY's Contractors shall be required to coordinate the safe, efficient, effective, and continued movement of all modes of traffic through the construction zone(s). Preliminary level Maintenance-of-Traffic ("MOT") plans that are based on assumed column locations were coordinated with the STATE. The MOT plans will be refined and finalized during detailed design work by the CITY's Contractors.

The existing landscaping is present along most of the PROJECT. With the reconfiguration and installation of the GUIDEWAY FACILITY columns within the median shoulder, and within AIRPORT LANDS, it will be necessary to remove certain existing landscaping and install temporary landscaping until such time as final landscaping plans are developed.

Utilities relocation will involve both public and private utilities. There will be water, storm water, sanitary sewer, natural gas, fuel, electrical (both underground and overhead), communication (both underground and overhead), traffic signals and conduits, some abandoned fuel lines that are identified as needing to be relocated and removed or capped, and Army Signal Corps lines running through AIRPORT LANDS.

See Exhibit "A" hereto for the PROJECT Map. Should the description of the PROJECT change, the STATE and the CITY agree to amend this Article I and Exhibit "A" in an instrument in writing with a revised description.

ARTICLE II – PURPOSE OF THE MASTER AGREEMENT

The purpose of this Master Agreement is:

1. To coordinate and minimize the impact of the GUIDEWAY FACILITY on the STATE Highways and AIRPORT LANDS;

2. To prescribe the respective responsibilities of the STATE and the CITY and establish cooperative procedures towards achieving the objectives identified herein;

3. To establish the terms and conditions under which the STATE will convey to the CITY and its Contractors rights to use certain STATE Highway rights-of-way and AIRPORT LANDS for the construction, operation, and maintenance of the GUIDEWAY FACILITY as provided herein; and

4. To establish procedures to resolve any disputes between the STATE and the CITY arising in connection with the PROJECT and the GUIDEWAY FACILITY as provided herein.

ARTICLE III – OPERATION AND MANAGEMENT RESPONSIBILITIES

1. For the safe, effective and efficient operations of the STATE Highways system for the public and for the expeditious, effective and efficient design, construction, and operations of the PROJECT, the CITY will assume authority, control, operation, and maintenance responsibilities of the STATE Highways where the PROJECT is within the STATE Highway rights-of-way during construction of the GUIDEWAY FACILITY;.

2. For the safe, effective and efficient operations of the Airports system the STATE Airports Division will remain as the authority and assume control, operation, and maintenance responsibilities of the AIRPORT LANDS, as specifically delineated in Exhibit “E”, Page 3, where the Project impacts the AIRPORT LANDS;

3. The STATE Highways over which the CITY will assume authority, control, operation, and maintenance responsibilities are portions of Kamehameha Highway and Nimitz Highway/Ala Moana Boulevard (“CITY MAINTAINED STATE HIGHWAYS”), which are more specifically delineated in Exhibit “F”, attached hereto and incorporated herein by reference. The limits of the STATE Highway rights-of-way over which the CITY will assume authority, control, operation, and maintenance responsibilities pursuant to this Master Agreement specifically EXCLUDE the right-of-way limits of the H-1 Freeway, the Moanalua Freeway, the Aiea Access ramp, and the H-1 Viaduct;

4. If the location where the PROJECT is located within the STATE Highway rights-of-way and AIRPORT LANDS during construction of the GUIDEWAY FACILITY should change, the Parties agree to amend Exhibit “E” and Exhibit “F” hereto in an instrument in writing with a revised description;

5. The CITY’s operational and maintenance duties under this Article for the CITY MAINTAINED STATE HIGHWAYS and GUIDEWAY FACILITY within a Section, except for the AIRPORT LANDS within the Airport Section which shall be governed by the attached ASP, shall commence upon the effective date of the Joint Use and Occupancy Agreement of that particular Section.

6. The CITY agrees to reimburse the STATE for the street cleaning, inspection of drains and culverts, and cleaning of other areas as necessary and as mutually agreed, subject to the following:

- a. If the work is performed by contractor(s), the STATE shall submit to the CITY invoices for the work performed; or
- b. If the work is a direct labor cost incurred by the STATE, the CITY agrees to reimburse the STATE for direct labor costs, employee fringe benefits, and indirect costs related to the direct labor costs incurred by the STATE subject to the following:
 - 1. The STATE shall prepare and submit a staffing plan for approval by the CITY.
 - 2. Eligible reimbursable direct labor costs shall be supported by periodic certifications or personnel activity reports or equivalent documentation pursuant to 2 C.F.R. Part 225, Appendix B, Section 8.h, including, but not limited to, timesheets signed by the employee and approved by a supervisor or other responsible official(s) of the STATE.
 - 3. The employee fringe benefit rate and indirect cost rate to be applied to direct labor costs shall be the prevailing employee fringe benefit rate and indirect cost rate at the time the direct labor costs are incurred.
 - a. The STATE shall submit to the CITY a copy of the employee fringe benefit rate officially established for each fiscal year within fifteen (15) calendar days of the establishment of the employee fringe benefit rate.
 - b. The STATE shall submit to the CITY a copy of the indirect cost rate approved by the STATE's Federal cognizant agency for each fiscal year within fifteen (15) calendar days of the Federal cognizant agency's approval of the indirect cost rate.
 - 4. The same labor costs that are treated as indirect costs shall not be claimed as direct labor costs.

An authorized STATE representative shall verify that work by the STATE for the street cleaning, inspection of drains and culverts, and cleaning as necessary for areas by mutual agreement was performed satisfactorily by signing a "Verified and Recommend Approval" signature block on the employees' invoices.

7. Once the CITY has assumed the operational and maintenance duties of this Article over the CITY MAINTAINED STATE HIGHWAYS for a particular Section, the CITY

shall perform the operational and maintenance duties of this Article for that Section until the STATE assumes the operational and maintenance duties for that Section as described in paragraph 13 of this Article;

8. For each Section, the CITY agrees to assume sole authority and control to operate and maintain the CITY MAINTAINED STATE HIGHWAYS during construction of the GUIDEWAY FACILITY in accordance with STATE requirements, including, but not limited to, construction, operations, maintenance and environmental work and reporting as required by law, rule, or regulation;

9. For each Section, the CITY shall assume the total operational and maintenance duties for the CITY MAINTAINED STATE HIGHWAYS during the construction of the GUIDEWAY FACILITY. The CITY MAINTAINED STATE HIGHWAYS shall be operated and maintained in accordance with current STATE policies, standards and guidelines. Such duties include, but are not limited to, the entire median, from curb face to curb face, for watering, weeding, fertilizing, mowing, reseeding, cultivating, spraying, mulching, trimming and care of shrubs and trees, edging, invasive plant removal and other services necessary for care and median plantings; curb repairs; sidewalk repairs; paving repairs; replacement of dead or damaged plants; street cleaning; cleaning and clearing of sidewalks, gutters, swales, and ditches; highway lighting repairs and replacement; removal and disposal of trash and debris at no cost to the STATE, and further take reasonable measures to mitigate, at the CITY's own costs and expenses, any and all vehicular and pedestrian traffic safety and congestion impacts on the CITY MAINTAINED STATE HIGHWAYS during the construction of the GUIDEWAY FACILITY;

10. The CITY shall comply with the Consent Decree dated September 29, 2005, in the case of United States of America, Department of Health, State of Hawaii v. Department of Transportation, State of Hawaii, Civil No. 05-00636 HG, attached hereto as Exhibit "G" and incorporated by reference ("Consent Decree"), and the latest National Pollutant Discharge Elimination System Permit issued by the Department of Health, attached hereto as Exhibit "H" and incorporated by reference ("NPDES Permit") within the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS;

11. Prior to the effective date of any Joint Use and Occupancy Agreements and the ASP, the CITY shall at its own expense conduct a site inventory of the site covered by the said Joint Use and Occupancy Agreement and ASP to identify any existing environmental violations. The CITY shall notify the STATE of the results of such site inventory and shall provide the STATE with all testing results and reports from the site inventory. If the CITY contends that the site inventory has identified environmental violations, the CITY and STATE shall attempt to negotiate a mutually acceptable resolution. At and as of the time the CITY assumes the operational and maintenance duties of this Article for a Section until the STATE assumes the operational and maintenance duties as described in this Article, the CITY shall be responsible for any environmental violations that arise out of, are connected with, or are otherwise related to the CITY's activities under this Master Agreement and shall be responsible for fines, mitigation requirements or other enforcement arising from said environmental violations regardless of when the enforcement action is taken or imposed;

12. For each Section, the CITY shall return the CITY MAINTAINED STATE HIGHWAYS for that Section to the STATE in accordance with federal and STATE standards, and shall provide a warranty for any work performed by the CITY or the CITY's Contractors on the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS in the applicable Section for twenty-four (24) months after STATE acceptance of PROJECT work and maintenance work to the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS. Such warranty shall be identical to the warranty required by the CITY of the CITY's Contractors for the PROJECT work, a copy of which is attached hereto as Exhibit "I" and incorporated by reference;

13. For each Section, the STATE shall assume the total operational and maintenance duties for the CITY MAINTAINED STATE HIGHWAYS for that Section after the PROJECT is completed and accepted by the CITY in that Section, and the PROJECT work and maintenance work to the CITY MAINTAINED STATE HIGHWAYS in that Section is accepted by the STATE, which acceptance shall not be unreasonably withheld. Prior to the STATE assuming and accepting the operational and maintenance duties for the CITY MAINTAINED STATE HIGHWAYS from the CITY for a Section, the CITY shall notify the STATE in writing of the proposed return of the operational and maintenance duties to the STATE for that Section and the CITY shall conduct a site inspection with the STATE on the acceptance of the CITY MAINTAINED STATE HIGHWAYS. Should the STATE have any objections to the PROJECT work and maintenance work to the CITY MAINTAINED STATE HIGHWAYS for a Section, the STATE shall have thirty (30) calendar days after the site inspection to submit a statement of written objections to the CITY, otherwise the STATE shall be deemed to have accepted such work and shall assume operational and maintenance duties over the CITY MAINTAINED STATE HIGHWAYS for that particular Section. Any written objections by the STATE shall be appropriately addressed by the CITY for acceptance by the STATE, which acceptance shall not be unreasonably withheld;

14. After construction of the GUIDEWAY FACILITY is completed and the STATE has accepted the PROJECT work and maintenance work for a Section, the STATE will resume sole authority and control to operate and maintain the CITY MAINTAINED STATE HIGHWAYS within that Section in accordance with STATE requirements, including, but not limited to, operations, maintenance and environmental work and reporting as required by law, rule, or regulation.

ARTICLE IV – DESIGN AND CONSTRUCTION MANAGEMENT CONSULTANT

1. To carry out the terms of this Master Agreement in an expeditious, effective, and efficient manner, the CITY shall procure a Design and Construction Management Consultant for the Kamehameha Guideway, the Airport Guideway, and the City Center Guideway Sections to work under the direction and on behalf of the STATE to review, coordinate, and respond to the PROJECT design submittals; to coordinate the STATE's projects and permits for the PROJECT; to perform required design reviews and construction inspections for the PROJECT; and to monitor compliance with the Consent Decree and the NPDES Permit;

The CITY agrees that its consultants will work together with the STATE's Design and Construction Management Consultants, and allow the Design and Construction Management Consultants to review all documents necessary for the Design and Construction Management Consultants to effectively review, coordinate and respond on the STATE's behalf.

2. The CITY agrees the Design and Construction Management Consultants shall coordinate the PROJECT with other STATE's projects and permits on the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS;

3. The CITY agrees the Design and Construction Management Consultants will have adequate staff to carry out the functions identified in ARTICLE IV, Items 1 and 2;

4. Office space may be available at CITY offices for the Design and Construction Management Consultants to conduct activities which are required to be provided at the CITY office site, including, but not limited to, work space, office furniture and equipment;

5. The CITY agrees to fully fund the contracts for the Design and Construction Management Consultants;

The CITY acknowledges that the Airport Guideway portion of the PROJECT is substantially different than work on CITY MAINTAINED STATE HIGHWAYS, and agrees to approve and fully fund subconsultants, as needed by the Design and Construction Management Consultant, to perform additional work associated with the Airport Guideway PROJECT. The STATE shall not be held to the CITY's deadlines in the event of CITY delays in approving such subconsultants.

6. The CITY agrees to reimburse the STATE Highways and Airports for direct labor costs, employee fringe benefits and indirect costs related to the direct labor costs incurred by the STATE's staff for the review and coordination of the PROJECT, subject to the following:

a. The STATE shall prepare and submit a staffing plan for approval by the CITY;

b. Eligible reimbursable direct labor costs shall be supported by periodic certifications or personnel activity reports or equivalent documentation pursuant to 2 C.F.R. Part 225, Appendix B, Section 8.h, including, but not limited to, timesheets signed by the employee and approved by a supervisor or other responsible official(s) of STATE;

c. The employee fringe benefit rate and indirect cost rate to be applied to direct labor costs shall be the prevailing employee fringe benefit rate and indirect cost rate at the time the direct labor costs are incurred;

1. The STATE shall submit to the CITY a copy of the employee fringe benefit rate officially established for each fiscal year within fifteen (15) calendar days of the establishment of the employee fringe benefit rate; and

2. The STATE shall submit to the CITY a copy of the indirect cost rate approved by STATE's Federal cognizant agency for each fiscal year within fifteen (15) calendar days of the Federal cognizant agency's approval of the indirect cost rate; and
- d. The same labor costs that are treated as indirect costs shall not be claimed as direct labor costs.

An authorized STATE representative shall verify that work by the STATE to review and coordinate the Project was performed satisfactorily by signing a "Verified and Recommend Approval" signature block on the employees' invoices.

7. Should the PROJECT be cancelled for any reason, the CITY shall terminate the contracts for the Design and Construction Management Consultants for convenience.

ARTICLE V – DESIGN

1. The CITY agrees that the STATE will review the PROJECT designs and provide comments to the CITY;

2. The CITY shall submit to the STATE, PROJECT-related design submittals that affect STATE Highway rights-of-way on the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS. The STATE will receive intermediate and semi-final design submittals for review. The STATE shall review and accept any design submittals of any facilities that affect the safety and/or operations of the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS;

3. The Parties agree that the final design drawings approved by the STATE shall constitute the final work scope for PROJECT construction insofar as the design affects the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS;

4. The CITY has identified in Exhibit "E" the properties within the STATE Highway rights-of-way and AIRPORT LANDS necessary for the CITY and its Contractors to complete the PROJECT as described in ARTICLE I and Exhibit "A";

5. The CITY shall provide to the STATE its Contractors' and Design Consultants' submittal schedules for review and the CITY agrees to address the STATE's design review process when reviewing the CITY's Contractors and Design Consultants' schedules;

6. Relocation, modification and/or reconstruction of the STATE's facilities shall be in accordance with the latest and most current STATE and Federal policies, criteria, guidelines and manuals unless otherwise agreed to between the Parties;

7. The Parties acknowledge that timely STATE review of PROJECT-related design submittals is critical and therefore time is of the essence to maintaining the PROJECT schedule. The STATE shall have twenty-one (21) calendar days or a mutually agreed upon time frame for the STATE's review and approval;

The CITY agrees that having the Design and Construction Management Consultants conduct periodic reviews of its design progress in advance of the formal design submittals will assist in the STATE meeting the time frame for the STATE's review. The CITY agrees that lack of periodic reviews could affect the STATE in meeting the time frame for STATE's reviews.

8. The STATE's review of PROJECT-related design submittals which affect STATE highway facilities and the State Highway System, and AIRPORT LANDS will be limited to review for conformance to STATE and Federal design standards and requirements, including those of the Federal Highway Administration ("FHWA") and Federal Aviation Administration ("FAA"), and the CITY will be responsible for all other aspects of design;

9. The Parties agree that an up-to-date and appropriately maintained website for the communication and collaboration between the Parties on submittals for review will be implemented. The website will be developed, implemented and updated by the CITY as required;

10. The CITY shall submit to the STATE for review and approval any and all GUIDEWAY FACILITY design plans and specifications for future significant additions, changes, and alterations to, and modification and replacement of, any facilities within STATE Highway rights-of-way and AIRPORT LANDS insofar as such matters affect the safety and/or operations of the STATE Highway and Airport system within the limits of the PROJECT, and such approval shall not be unreasonably withheld;

11. After the acceptance of the design plans and specifications by the Parties, no significant or material changes that affect or impact the safety and/or operations of the State Highway, the Airport, the Joint Use and Occupancy Agreement, the ASP, or the Construction Permit may be made to the design plans and specifications unless agreed in writing by both Parties. The CITY shall timely notify the STATE in writing of all minor, non-significant changes or modifications;

12. The CITY shall timely provide to the STATE for submittal to the FHWA and FAA such drawings, data, reports, records, contracts, or other documents relating to the PROJECT as are necessary for the STATE FHWA, and FAA to process an application to utilize land existing within the publicly acquired right-of-way of any Federal-Aid Highway or AIRPORT LANDS for the PROJECT. All communication with FHWA and FAA will be through the STATE;

13. Within six (6) months after completion of each section of the GUIDEWAY FACILITY, the CITY will furnish the STATE with "as-built" drawings. The "as-built" drawings shall conform to the STATE CADD software and Airport Drafting Guidelines;

14. Within six (6) months after completion of each section of the GUIDEWAY FACILITY, the CITY will furnish the STATE with one (1) hardcopy and one (1) '.pdf' electronic file of all design related reports.

ARTICLE VI – CONSTRUCTION

1. Construction work related to the GUIDEWAY FACILITY shall be performed by the CITY and its Contractors and the GUIDEWAY FACILITY shall be constructed in accordance with current STATE and federal policies, standards and guidelines. The STATE grants to the CITY and its Contractors the right to construct the PROJECT on, within, under, over, and across the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS. The CITY's construction duties under this Article for the CITY MAINTAINED STATE HIGHWAYS and GUIDEWAY FACILITY within a Section, except for the AIRPORT LANDS within the Airport Section which shall be governed by the ASP, shall commence upon the effective date of the Joint Use and Occupancy Agreement of that particular Section.

2. For each Section, the CITY shall notify the STATE in writing prior to the initial entry by the CITY or its Contractors onto the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS after execution of this Master Agreement and after the execution of the applicable Joint Use and Occupancy Agreement and ASP.

3. The CITY shall cause to be performed and the STATE agrees to the relocation, modification, or reconstruction of STATE facilities on CITY MAINTAINED STATE HIGHWAYS and all facilities located on AIRPORT LANDS as necessitated for the GUIDEWAY FACILITY, including, but not limited to, streets, utilities, traffic signals, traffic signing, street lighting, signing, landscaping, street furniture and sidewalks, which shall be in accordance with the STATE and Federal design standards and requirements.

4. The replacement of or modifications to the STATE facilities as necessitated for the GUIDEWAY FACILITY and STATE and Federal design standards and requirements shall be at the CITY's expense.

5. The CITY shall be responsible for any permits required for the GUIDEWAY FACILITY, including, but not limited to, construction and environmental permits.

6. All GUIDEWAY FACILITY schedules for construction work that relate to the safety and/or operation of the CITY MAINTAINED STATE HIGHWAYS and all facilities located on AIRPORT LANDS shall be approved by the STATE.

7. All GUIDEWAY FACILITY work performed by the CITY's Contractors related to the safety and/or operation of the CITY MAINTAINED STATE HIGHWAYS and all facilities located on AIRPORT LANDS may be inspected by the STATE or its representatives.

8. The CITY shall coordinate with the STATE to keep the STATE informed of the GUIDEWAY FACILITY construction activities and complaints.

9. During construction, the Parties shall agree to schedule joint meetings between STATE staff and the CITY staff to review progress of construction and future actions.

10. The CITY shall be responsible for coordinating the necessary modification and/or relocation of all existing utilities, including obtaining additional rights-of-way. Any and all work found to be unacceptable by the STATE shall be appropriately addressed by the CITY for acceptance by the STATE.

11. Within the CITY MAINTAINED STATE HIGHWAYS and AIRPORT LANDS, the CITY shall comply with the Consent Decree and the NPDES Permit. The CITY shall be responsible for environmental violations as set forth in Paragraph 11 of Article III of this Master Agreement, except any environmental violations arising out of or related to the STATE's work.

12. The CITY shall not allow additional runoff into the STATE drainage facilities unless the CITY demonstrates that retaining the additional runoff on-site is not practical and the additional runoff will have no negative impacts to the existing facility. The STATE will have the right to review and accept or deny such design.

ARTICLE VII – BETTERMENTS

1. The STATE in collaboration with the CITY may add betterments to the PROJECT scope of work when in the best interest of the public and feasible.

2. The STATE shall be solely responsible for all costs due to the betterments, including design and increased construction management expenses associated with the betterments, and all construction costs, unless otherwise agreed to by the CITY.

3. It is agreed that the betterment work and costs on the State Highways must be accepted by both the CITY and the STATE.

4. Prior to the construction of any betterments, the CITY and the STATE shall enter into a separate written agreement regarding betterments that will specify, among other things, the funding and payment mechanisms for any betterments as provided in ARTICLE VII, Paragraph 2.

ARTICLE VIII – TRAFFIC MANAGEMENT

1. The construction of the GUIDEWAY FACILITY will cause increased traffic congestion for vehicular, bicycle, and pedestrian modes of travel, and the CITY shall develop and maintain traffic plans, such as maintenance of traffic plans and traffic control plans, to minimize traffic congestion to allow free and safe flow of vehicular, bicycle and pedestrian traffic, aircraft, and emergency response efforts on this corridor during construction.

2. To further manage the traffic affected by the construction of the GUIDEWAY FACILITY during the construction of the PROJECT, the CITY agrees to procure a Transportation Management Consultant who shall be assigned and dedicated solely to manage the GUIDEWAY FACILITY's traffic plans in coordination with both the STATE, including the Airport and the CITY traffic operations offices until the PROJECT is fully operational.

3. The Transportation Management Consultant shall manage the PROJECT's traffic plans affected by the GUIDEWAY FACILITY.

4. The Transportation Management Consultant shall utilize existing Intelligent Transportation Systems (ITS) and the transportation management center capabilities to manage traffic on this corridor, implement new ITS strategies to complement existing ITS for the purpose of managing traffic effectively and efficiently on this corridor, and the CITY shall be responsible for all costs to implement new ITS strategies due to traffic impacts caused by the GUIDEWAY FACILITY.

5. The CITY's public involvement team will coordinate with the Transportation Management Consultant for the purpose of providing current information to the public and media;

6. The CITY agrees to solely fund the contract for the Transportation Management Consultant.

7. Should the PROJECT be cancelled for any reason, the CITY shall terminate the contract for the Transportation Management Consultant for convenience.

ARTICLE IX – PUBLIC OUTREACH

1. It is agreed for the proper management of all surface modes of transportation on this corridor, public awareness and coordination is needed. The information needed for public awareness should include, but not be limited to, information on construction phasing and scheduling, traffic congestion levels, lane closures and detours; operations and management; aesthetic mitigation resulting from public concerns for the life of the PROJECT, as defined in this Master Agreement; and the public coordination required for public awareness, public outreach strategies and response capabilities.

2. The CITY shall be responsible for the public outreach and awareness related to the PROJECT, and to respond to public inquiries and complaints.

3. The CITY shall establish a 24-hour hotline telephone number.

ARTICLE X – JOINT USE AND OCCUPANCY AGREEMENT

1. Upon issuance of a Construction Notice to Proceed for each Section (except the AIRPORT LANDS which is governed by the terms of the ASP), the Parties shall enter into a Joint Use and Occupancy Agreement, for properties located in each Section identified for the GUIDEWAY FACILITY, in a form similar in all material respects to the document attached as Exhibit “C” hereto, which is hereby incorporated into this Master Agreement by reference for all purposes. The CITY shall give the STATE sixty (60) days notice or notice as otherwise agreed to by the Parties prior to issuing the Construction Notice to Proceed for each Section of the GUIDEWAY FACILITY.

ARTICLE XI – AIRPORT SPECIAL PROVISIONS

Upon issuance of a Construction Notice to Proceed for the Section on AIRPORT LANDS, the Parties shall enter into the Airport Special Provisions, in a form similar in all material respects to the document attached as Exhibit “D” hereto, which is hereby incorporated into the Master Agreement by reference for all purposes. The CITY shall give the STATE sixty (60) days notice or notice as otherwise agreed to by the Parties prior to issuing the Construction Notice to Proceed.

ARTICLE – XII MISCELLANEOUS

1. Time is of the Essence. The Parties acknowledge and agree that time is of the essence as to each and every obligation under this Master Agreement.
2. Compliance with Laws. The CITY shall complete the PROJECT in accordance with all applicable Federal, STATE, and CITY laws.
3. Funding. The CITY shall provide all the necessary funds for completion of the GUIDEWAY FACILITY, including all costs for any future mitigations as specified in the Joint Use and Occupancy Agreement and Airport Special Provisions through any of its available means. The STATE is under no obligation for funding for the GUIDEWAY FACILITY as a result of this Master Agreement. This paragraph does not apply to betterments.
4. No Third-Party Agreements. Except as otherwise authorized in writing by the STATE, the CITY shall not execute any contract or obligate itself in any manner requiring action/approval from the STATE. The CITY will be responsible for payment to third-party contractors retained by the CITY for the PROJECT.
5. Dispute Resolution. The Parties shall resolve all disputes regarding all items in this Master Agreement at the lowest staff level possible. Disputes subject to this provision include, but are not limited to, the following: physical impacts, safety and operational impacts, long-term PROJECT impacts, regulatory impacts, design review and approval, personnel, additional rights-of-way, credits for funds expended, and preparation of additional

intergovernmental agreements necessary to implement this Master Agreement. In the event the Parties are unable to resolve disputes at the staff level, the matter shall be referred to the City and County of Honolulu, Director of the Department of Transportation Services and the State of Hawaii, Director of the Department of Transportation for resolution.

6. Except as stated in this Master Agreement, the STATE shall not incur any responsibility nor any liability under contract, tort or otherwise for any of its review and/or approvals for the GUIDEWAY FACILITY provided herein.

7. Indemnity. Notwithstanding any agreements to the contrary between the Parties, the CITY shall hold harmless, defend, and indemnify the STATE from and against all claims, demands, liabilities, suits, actions, judgments, costs, and expenses for loss, injury, death, or damage under tort, contract or otherwise, including, but not limited to, claims of property damage, personal injury, or death of persons, and economic loss, whenever such loss, injury, death, or damage arises out of, is connected with, or related to the CITY's acts, omissions, rights and responsibilities under this Master Agreement, provided, however, that the CITY shall not be responsible for indemnifying the STATE from and against any claims or damages arising out of the negligence or intentional misconduct of the STATE.

8. Insurance. The CITY shall procure or cause to be procured and maintained during the term of this Master Agreement, comprehensive general liability insurance, and if necessary, excess liability insurance, with combined single limits of not less than \$5,000,000 for bodily injury and property damage per occurrence, which shall cover all the claims arising out of, connected with, or related to rights and responsibilities under this Master Agreement. Such policy(ies) shall name the STATE as an additional insured. The policies of insurance for the CITY's Contractors working on the PROJECT, GUIDEWAY FACILITY and CITY MAINTAINED STATE HIGHWAYS and the AIRPORT LANDS shall name the STATE as an additional insured.

The CITY shall furnish the STATE with evidence that such policy or policies have been issued and are in force, and without notice or demand, furnish like certificate(s) upon each renewal thereof. The CITY shall provide the STATE with thirty (30) days prior written notice of any termination or cancellation of the coverage provided by said policy or policies. The minimum limits of insurance recited herein may be increased by the STATE as the STATE deems necessary in the exercise of sound business judgment. All insurance required herein shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the STATE. This paragraph shall not relieve or release the CITY from its responsibilities under this Master Agreement or limit the amount or degree of the CITY's liability, and shall not be construed to transfer any liability from the STATE to the CITY.

The CITY may, at its sole discretion, elect to self-insure any and all insurance it is required to provide hereinabove.

9. No Obligation to Third Parties. There are no intended third party beneficiaries to this Master Agreement. It is expressly understood that the enforcement of the terms and conditions of this Master Agreement, and all rights of action relating to such enforcement, shall

be strictly reserved to the CITY and the STATE, and nothing contained in this Master Agreement shall give or allow any legal or equitable remedy, claim, or right of action by any third person under this Master Agreement. It is the express intention of the Parties that any third person who receives benefits under this Master Agreement shall be deemed an incidental beneficiary only.

10. Binding Effect. All provisions contained in this Master Agreement shall be binding upon and inure to the benefit of the respective Parties, their successors and permitted assigns, and officers, agents, and employees or any person acting for and on their behalf.

11. Singular, Plural, Gender. All words used herein in the singular number shall extend to and include the plural. All words used in the gender shall extend to and include all genders.

12. Severability. The portions of this Master Agreement shall be severable, and any invalidity, unenforceability, or illegality of any provision or provisions of this Master Agreement shall not affect any other provision or provisions of this Master Agreement, and each term or provision of this Master Agreement shall be construed to be valid and enforceable to the full extent permitted by law.

13. Assignment. This Master Agreement is binding upon the Parties and any agency of government may assume the rights and obligations of a Party provided that the Party making such assignment shall continue to be obligated under the terms of the Master Agreement; otherwise the Master Agreement is non-transferable and non-assignable in whole or in part, except by an instrument, in writing, signed by the Parties.

14. Headings. The headings and captions herein are for convenience or reference only and are not intended to fully describe, define, or limit the provisions of this Master Agreement to which they may pertain.

15. Entire Agreement; Amendment. This writing embodies the whole agreement and understanding of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Master Agreement shall supersede all previous communications, representations, or agreements either verbal or written, between the Parties hereto. This Master Agreement cannot be modified except by an instrument, in writing, signed by each of the Parties.

IN WITNESS WHEREOF, the Parties have caused these presents to be executed the day and year first above written.

CITY AND COUNTY OF
HONOLULU

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

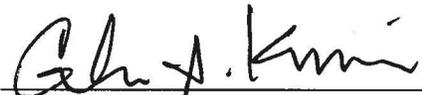

By: Michael D. Formby, Director
Department of Transportation Services
City & County of Honolulu


By: Glenn M. Okimoto, Ph.D.
Director, Department of Transportation
State of Hawaii

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:


By: Nelson H. Koyanagi, Jr., Director
Department of Budget & Fiscal Services


Deputy Attorney General

APPROVED AS TO FORM
AND LEGALITY:


Deputy Corporation Counsel (For HART)
GARY Y. TAKEUCHI

APPROVED AS TO FORM
AND LEGALITY:


Deputy Corporation Counsel (For City)
KRISHNA F. JAYARAM