

**Honolulu Authority for Rapid Transportation**

**CONTRACT FOR  
COMPLEX REAL PROPERTY NEGOTIATIONS AND LITIGATION SUPPORT  
PROFESSIONAL SERVICES CONTRACT  
CONTRACT No. SC-HRT-1700085**

This Agreement for Professional Services ("Agreement") is entered into and effective SEP 09 2016 ("Effective Date") by and between the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION ("HART"), a semi-autonomous agency of the City and County of Honolulu, whose principal place of business and mailing address is Ali'i Place, 17<sup>th</sup> Floor, 1099 Alakea Street, Honolulu, Hawaii 96813, and STARN O'TOOLE MARCUS & FISHER, A LAW CORPORATION (the "CONTRACTOR"), whose principal place of business and mailing address is 733 Bishop Street, Suite 1900, Honolulu, Hawaii 96813 collectively referred to herein as the "Parties," and individually as a "Party."

**WITNESSETH:**

WHEREAS, HART desires to engage the CONTRACTOR to provide legal services in support of HART's real property acquisition, whether by negotiation or eminent domain, and any claims or litigation arising out or related to real property acquisition as they related to the Honolulu Rail Transit Project.

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

WHEREAS, the CONTRACTOR was selected pursuant to Hawaii Revised Statutes ("HRS") Section 103D-303, as amended, and related Hawaii Administrative Rules ("HAR"), relating to competitive sealed proposals under RFP-HRT-956114 dated February 23, 2016;

WHEREAS, federal funding is involved in this project and, as such, the CONTRACTOR is required to comply with all applicable federal laws, rules and regulations, including but not limited to those of the United States Department of Transportation, Federal Administration; and

WHEREAS, the CONTRACTOR is qualified, able, and willing to render the required services on the terms, conditions, and compensation hereinafter fully set forth;

NOW, THEREFORE, HART and the CONTRACTOR, in consideration of the foregoing and of the mutual promises hereinafter set forth, and intending to be legally bound, hereby mutually agree as follows:

1. Work. The CONTRACTOR shall, in a professional, proper and satisfactory manner as determined by HART, furnish all services, labor, materials, and equipment reasonably necessary for the successful performance and completion of the scope of work ("Work") as set forth in the Contract Documents.

2. Notice to Proceed. The CONTRACTOR shall not commence the Work on any Task Order until HART issues a written Notice to Proceed (“NTP”). Any Work undertaken by the CONTRACTOR prior to issuance of the NTP shall be the sole responsibility of and undertaken at the sole risk of the CONTRACTOR, without any obligation on HART’s behalf.

3. Contract Documents. This Contract, along with the documents listed below and incorporated by reference herein, comprise the “Contract Documents,” “Contract” or “Agreement.” The Contract Documents are listed in descending order of precedence, with the latest version taking precedence over older versions:

- This Contract Form and any amendments thereto;
- Task Orders;
- Special Provisions and any exhibits, attachments, appendices or required submittals thereto;
- HART’s General Terms and Conditions for Professional Services, (v. 08/2015) (“GC” or “General Conditions”);
- The Request for Proposals and any addenda thereto; and
- The Contractor’s proposal and required submissions.

To the extent that the Contractor’s Proposal contains provisions that exceed the requirements set forth in other Contract Documents, then those provisions shall be construed as the new minimum requirements. Any modifications, changes or amendments to the Contract Documents shall be incorporated and made part of this Contract.

4. Term. The term of this Contract shall be two (2) years from issuance of the written NTP.

5. Contract Type and Contract Cost. This is a Task Order, time and materials contract, unless designated otherwise (e.g., fixed price) in a Task Order. This Contract with an allowance for reimbursable expenses, shall not exceed SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00). The Contractor shall be compensated for its satisfactory performance and completion of the Work as specified in each Task Order utilizing the rates provided in Appendix B-1a to the Special Provisions. All compensation paid to the Contractor under this Contract is inclusive of, but not limited to, labor, overhead, general and administrative expenses, other direct costs, subcontractor costs, fixed fees, and all applicable taxes, including but not limited to the State general excise and use tax (“GET”) and the City and County of Honolulu’s one-half percent (0.5%) GET surcharge.

6. Cost and Pricing Data. The CONTRACTOR hereby certifies that, to the best of its knowledge and belief, cost or pricing data, as defined in HAR § 3-122-122 and submitted pursuant to HAR § 3-122-125, is accurate, complete, and current as of the Effective Date. This certification includes any cost or pricing data which is part of the proposal.

7. Notices. Any notice required or permitted hereunder to be given shall be written and shall either be delivered personally or mailed by certified mail to the address and person

**CERTIFICATE OF THE SECRETARY OF  
STARN O'TOOLE MARCUS & FISHER, A LAW CORPORATION  
(the "Company")**

The undersigned, hereby certifies as follows:

1. I am the duly authorized and appointed Secretary of the Company, and have the authority to make this certification;
2. The Company has duly adopted the following Resolution of the Board of Directors of the Company:

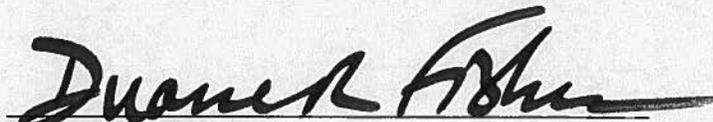
RESOLVED, that the Company has determined it to be in the best interests of the Company to accept the award of the Honolulu Authority for Rapid Transportation Contract For Complex Real Property Negotiations and Litigation Support Contract, Contract No. SC-HRT-1700085 ("**Contract**") in connection with the Honolulu Rail Transit Project;

FURTHER RESOLVED, that Terence J. O'Toole and Duane R. Fisher, Vice Presidents of the Company, are each individually authorized to be the Principal Participant and/or the designated point of contact of the Company in connection with the Contract, as they may determine; and

FURTHER RESOLVED, that the following officers of the Company are each individually authorized to execute and deliver any and all documents, letters or other instruments that any such officer determines is necessary, convenient or advisable, in connection with the Contract. Joint or dual signatures are not required:

Terence J. O'Toole, Vice President  
Kenneth B. Marcus, Vice President and Treasurer  
Duane R. Fisher, Vice President and Secretary

Made this 18<sup>th</sup> day of August, 2016

  
DUANE R. FISHER  
Corporate Secretary

designated by each Party below. Any change of address of either of the Parties shall be effective upon receipt of written notice of such change by the other Party.

Notices to HART shall be sent to HART's Acting Executive Director and CEO as follows:

Michael D. Formby  
Acting Executive Director and CEO  
Honolulu Authority for Rapid Transportation  
1099 Alakea Street Suite 1700  
Honolulu, Hawaii 96813

Notices to the CONTRACTOR shall be sent to:

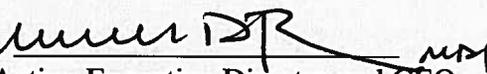
Terence J. O'Toole, Esq.  
Vice-President  
Starn O'Toole Marcus & Fisher, A Law Corporation  
733 Bishop Street, Suite 1900  
Honolulu, Hawaii 96813

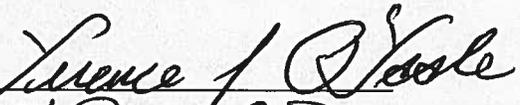
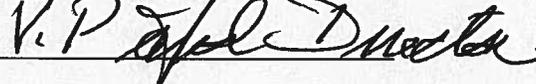
8. This Contract cannot be modified except by a written instrument signed by both parties.

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

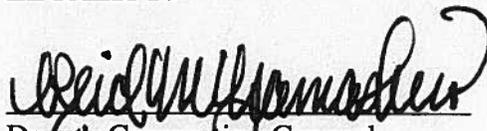
HONOLULU AUTHORITY FOR  
RAPID TRANSPORTATION

STARN O'TOOLE MARCUS &  
FISHER, A LAW  
CORPORATION

By:   
Its Acting Executive Director ~~and CEO~~

By:   
Its 

APPROVED AS TO FORM AND  
LEGALITY:

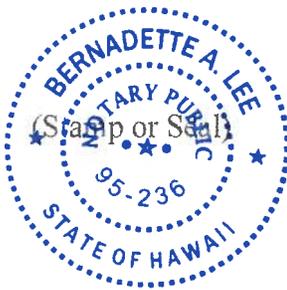
  
Deputy Corporation Counsel  
REID M. YAMASHIRO



STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU )

On this 22nd day of August, 2016, before me appeared Terence J. O'Toole, to me personally known, who being by me duly sworn or affirmed, did say that he is the Vice President and Director of Starn O'Toole Marcus & Fisher, A Law Corporation, and that the instrument was signed and sealed in behalf of the corporation by authority of its Board of Directors, and Terence J. O'Toole acknowledged the instrument to be the free act and deed of the corporation.

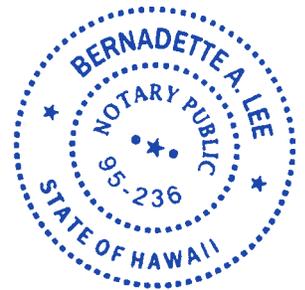
Subscribed and sworn to before me  
this 22nd day of August, 2016



Bernadette A. Lee  
Print Name: BERNADETTE A. LEE  
Notary Public, State of Hawaii  
My Commission Expires: 6/29/2019

**NOTARY CERTIFICATION**

Doc. Date: undated at time of # Pages: 3  
notarization  
Name: BERNADETTE A. LEE First Circuit  
Doc. Description: Contract for Complex Real Property  
Negotiations and Litigation Support Professional Services  
Contract No. SC-487-1700085  
Bernadette A. Lee 8/22/2016  
Notary Signature Date



HART-12 (11/11)

## Certificate

The attached contract for Complex Real Property Negotiations and Litigation Support Professional Services Contract

(\$600,000.00)

is hereby approved as to availability and designation of funds, and certification is hereby made that there is a valid appropriation from which expenditures to be made under said contract may be made and that sufficient unencumbered funds will be available in the Treasury of the City and County of Honolulu to the credit of such appropriation to pay the amounts of such expenditures when the same become due and payable.

CONTRACT NO. SC - HRT- 1700085  
FUND Transit Fund (690)

HONOLULU, HAWAII

Date: 9/9/16

ACCOUNT NO.  
690/7790 - 16 = \$ 600,000.00 (4063)

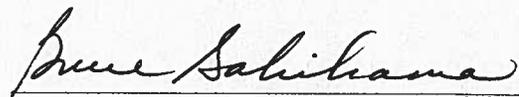
TOTAL = \$ 600,000.00



Acting Executive Director

Honolulu Authority for Rapid Transportation

Date:



Fiscal Officer

9/9/16

Honolulu Authority for Rapid Transportation