



IN REPLY REFER TO:
CMS-AP00-00810

HONOLULU AUTHORITY for RAPID TRANSPORTATION

Daniel A. Grabauskas
EXECUTIVE DIRECTOR AND CEO

October 21, 2014

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Dear President Lassner:

Subject: Commitment to Reimburse University

This letter confirms the binding commitment of the Honolulu Authority for Rapid Transportation ("HART"), a public transit authority under the City and County of Honolulu, a Hawai'i municipal corporation ("CITY"), to reimburse the University of Hawai'i, the state university and body corporate of the State of Hawai'i ("UNIVERSITY") for certain costs incurred by the UNIVERSITY as described below. The provisions of this letter, including the General Terms attached hereto, are herein called the "Commitment".

Background:

HART is planning and constructing a mass transit system known as the Honolulu Rail Transit Project ("HART Project"), the Minimum Operable Segment ("MOS") of which is to begin in East Kapolei and end at Ala Moana Center. HART is responsible for all associated costs and expenses of planning, designing, and constructing the HART Project and seeks to construct portions of the HART Project upon portions of UNIVERSITY-owned property at the following campuses (collectively the "University Properties"): University of Hawai'i - West O'ahu ("UHWO"), Leeward Community College ("LCC"), University of Hawai'i at Mānoa at its Urban Gardens project in Pearl City ("UHM"), and Honolulu Community College ("HCC").

Since 2012, HART and the UNIVERSITY have been in discussions concerning the possibility of reaching a number of mutually acceptable agreements concerning HART's due diligence investigations, and work on and use of the University Properties ("HART Transaction Documents"). In dealing with HART's plans and proposals, the UNIVERSITY has incurred and will continue to incur substantial out-of-pocket costs.

Reimbursement Commitment:

In order to induce the UNIVERSITY to engage in communications with HART regarding the HART Project, HART previously orally committed to, and hereby confirms in writing, HART's commitment to reimburse the UNIVERSITY for the UNIVERSITY's actual and reasonable out-of-pocket costs

associated with the UNIVERSITY's efforts to review, evaluate, investigate, respond to, and otherwise determine how to deal with HART's plans and proposals to enter upon and use University Properties for the HART Project, and to obtain assistance in structuring, negotiating, drafting and reviewing HART Transaction Documents (herein called the "Reimbursable Costs"), from and after March 1, 2013 (the "Effective Date"), through the use of attorneys, consultants, architects, engineers, and other professionals.

- a. Reimbursable Costs include but are not limited to costs reasonably incurred by the UNIVERSITY for the matters set forth above and the following:
 - i. Communicating, coordinating and negotiating with HART, contractors, consultants and third parties;
 - ii. Assessing, understanding and identifying issues, mitigation measures and contractual provisions to address HART Project work, risks, uses and impacts, on the UNIVERSITY, its staff, students, and faculty, and the University Properties, including the condition, value, use and operation thereof;
 - iii. Reviewing and responding to HART's proposed plans for work and uses on University Properties;
 - iv. Planning, architectural, landscaping, environmental, engineering, other design professional, financial, operations, academic, and real estate advice and services, including but not limited to reviewing and commenting on HART's proposed plans;
 - v. Legal advice and services;
 - vi. Investigating, assessing, addressing and dealing with impacts arising from the HART Project, including but not limited to traffic, access, roads, parking, landscaping, improvements, land use, utility, drainage and other infrastructure issues, the need for interim facility solutions, renovations, rescheduling and replanning of projects, improvements, programs and events, relocation of programs and equipment, replacement of parking, buildings and other facilities displaced or rendered unfeasible because of the HART Project;
 - vii. Dealing with third parties, including but not limited to easement holders, holders of rights under covenants and other legal rights affecting the University Properties, neighbors and others in the vicinity of the University Properties, licensees, various CITY, State of Hawaii and other government agencies.

The UNIVERSITY's retention of professionals whose fees and costs will be Reimbursable Costs under this Commitment shall be subject to the written approval of HART, which shall not be

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unreasonably delayed, conditioned, or withheld. Effective retroactive to the Effective Date, HART approves of the University's retention of the law firm of Schlack Ito LLC and the planning and consulting firm of PBR Hawaii. The UNIVERSITY may notify HART of its intention to retain additional professionals at any time and shall provide such information as HART may reasonably request concerning their intended scope of work and the estimated costs thereof. HART acknowledges that scope and nature of work may change from time to time as the HART Project moves forward and shall not withhold payment for Reimbursable Costs of approved professionals solely on the basis that such costs are outside such professionals' original scope of work, provided such costs are otherwise reasonable and in accordance with this Commitment.

- b. Reimbursable Costs do not include costs related to betterments to the University Properties beyond the scope of work necessary to accommodate the HART Project. "Betterments" include but are not limited to any incremental costs attributable to improvements to UNIVERSITY facilities which increase the capacity, capability, durability, appearance, access or function of the facility. The cost of any such betterments shall be borne by the UNIVERSITY. It is understood and agreed that in general, costs in the nature of those reimbursable under this Commitment will not constitute "betterments".
- c. Stipulated Limit. HART's obligation to reimburse the UNIVERSITY for Reimbursable Costs under this Commitment is limited to the "Stipulated Limit". As used herein, the term "Stipulated Limit" shall mean the sum of \$400,000.00; provided, that the Stipulated Limit shall increase to \$600,000.00 upon the UNIVERSITY's demonstrating to HART's reasonable satisfaction that the initial Stipulated Limit is insufficient to cover Reimbursable Costs reasonably incurred by the UNIVERSITY. Any costs incurred by the UNIVERSITY in excess of the Stipulated Limit shall not be reimbursable under this Commitment unless otherwise approved in writing by HART. HART acknowledges that the actual total of Reimbursable Costs may change over time and exceed the amounts set forth in this paragraph. Neither party shall have any obligation to agree to increase the Stipulated Limit under this Commitment. However, HART recognizes that the UNIVERSITY reserves the right to consider lack of mutual agreement on increasing the Stipulated Limit a material factor in determining whether to continue working with HART with regard to the HART Project and HART Transaction Documents.
- d. Payment Due Dates. From time to time, the UNIVERSITY will issue to HART invoices for Reimbursable Costs. HART shall pay the UNIVERSITY the full amount shown on such invoices within thirty (30) days of HART's receipt of each invoice, subject to the Stipulated Limit. The invoices shall be prepared in the form and manner as reasonably requested by HART. As part of the invoices, the UNIVERSITY shall provide the documentation reasonably satisfactory to HART that amounts invoiced constitute Reimbursable Costs. HART shall not require that the UNIVERSITY's invoices provide any information that would constitute the sharing of confidential or privileged information, including but not limited to information that would potentially (a) frustrate the UNIVERSITY's ability to obtain protective or other favorable

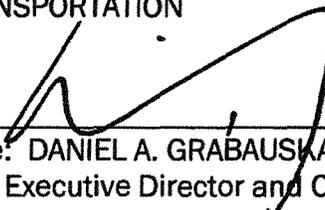
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provisions in the HART Transaction Documents, (b) disclose confidential information, strategy or communications, (c) increase the UNIVERSITY's risk of legal liability to anyone, or (d) otherwise risk the loss of the attorney-client privilege and work product protections under existing law.

e. General Terms. The General Terms attached hereto are made a part of this Commitment.

Sincerely,

HONOLULU AUTHORITY FOR RAPID
TRANSPORTATION

By: 
Name: DANIEL A. GRABAUSKAS
Title: Executive Director and CEO

APPROVED AS TO FORM
AND LEGALITY:

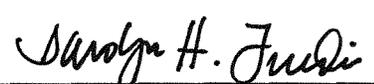
DEPARTMENT OF THE CORPORATION
COUNSEL

By: 
Name: GARY Y. TAKEUCHI
Deputy Corporation Counsel

RECEIPT OF HART'S COMMITMENT IS HEREBY ACKNOWLEDGED:

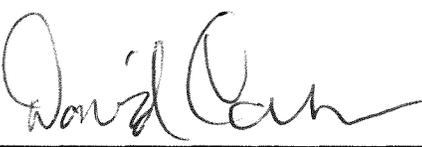
APPROVED AS TO FORM:

Office of the University General
Counsel


Name: Darolyn Lendio
Title: Vice President for Legal Affairs
and University General Counsel

UNIVERSITY:

UNIVERSITY OF HAWAII:

By: 
Name: David Lassner
Title: President

Name: David Lassner
Title: President

By: 
Name: Howard Todo
Title: Vice President for Budget and Finance
and Chief Financial Officer

Name: Howard Todo
Title: Vice President for Budget and Finance
and Chief Financial Officer

GENERAL TERMS

1. Interest on Late Payments. Amounts not paid by HART when due shall accrue interest on a daily basis at the rate of 10% per annum. In addition, if HART fails to make timely payments on the UNIVERSITY's invoices, the UNIVERSITY shall be entitled to terminate its commitments to HART relating in any manner to the HART Project, and terminate HART's rights under other agreements and contracts with the UNIVERSITY. The UNIVERSITY shall also be entitled to recover from HART its reasonable expenses incurred to enforce HART's obligations under this Commitment, including attorneys' fees and costs.

2. Retention of Consultants. The UNIVERSITY's investigation, assessment and evaluation of HART Project impacts and HART plans and proposals, and retention of professional consultants to assist the UNIVERSITY shall not in any way relieve HART or anyone else under other commitments to indemnify and otherwise protect the UNIVERSITY from adverse impacts arising from or relating to the HART Project.

3. Acknowledgment. HART acknowledges that the payment of Reimbursable Costs does not: (a) guarantee that the UNIVERSITY will approve HART's plans for the HART Project and related work and uses on the University Properties, (b) obligate the UNIVERSITY to allow HART to use the University Properties, and (c) constitute stipulated rent or other compensation for the short or long term use of any University Properties. HART acknowledges that the purpose of this Commitment to pay the Reimbursable Costs is simply to make it less costly for the UNIVERSITY to continue its efforts to engage in communications and other activities to deal with HART's plans and proposals for the HART Project and related work and uses on the University Properties. HART acknowledges that the overall business deal and terms and conditions for HART's use of the University Properties, including but not limited to benefits to be provided by HART to the UNIVERSITY have not yet been determined.

4. Term. HART's obligations under this Commitment shall continue until HART has paid the full amount of the Reimbursable Costs to the UNIVERSITY, subject to the Stipulated Limit.

5. Cross-Default. HART's failure to comply with this Commitment shall constitute a breach by HART under its other agreements with the UNIVERSITY. Without limiting the UNIVERSITY's remedies under any agreements with HART, the UNIVERSITY shall have the right to terminate any or all of its obligations to HART and HART's rights under any agreements with the UNIVERSITY (including any right of entry, use and occupancy agreement) if HART shall breach any HART obligation and/or commitment made by HART to the UNIVERSITY.

6. Further Acknowledgments.

a. Not obligated to make University Properties available. Except for the limited purpose described in any lease, license, construction right of entry or use and occupancy agreements ("Site Agreements"), if any, nothing in this Commitment or any Site Agreement (if any) shall constitute evidence or support of a commitment on the part of the UNIVERSITY to make the University Properties available to anyone for any use, including but not limited to, uses related to the HART Project.

b. UNIVERSITY not obligated to enter into further agreements. HART acknowledges and agrees that the UNIVERSITY reserves the right to not enter into any further agreement or agreements (including Site Agreements) with HART or any other person or entity regarding the HART Project.

c. Stipulated Limit not Applicable to HART Responsibility under other Agreements. The Stipulated Limit does not constitute a limit on HART's responsibility under other existing or future commitments to the UNIVERSITY. HART's commitment to pay the Reimbursable Costs up to the Stipulated Limit under this Commitment is in addition to any other obligations other than for costs incurred for the services identified in this Commitment under existing or future other commitments to the UNIVERSITY. For example and not by way of limitation, Site Agreements will likely require HART to reimburse the UNIVERSITY and broadly indemnify the UNIVERSITY from claims, liability and costs arising out of the HART Project, and the Stipulated Limit shall not in any way limit HART's responsibility under such reimbursement and indemnity obligations.

7. No Partnership. It is not intended by this Commitment to, and nothing contained in this Commitment shall, create any partnership, joint venture, or other similar relationship between the UNIVERSITY and HART.

8. Notice. All notices, requests, demands, and other communications directed to HART or the UNIVERSITY under this Commitment shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, sent by overnight carrier, or sent by email or facsimile transmission to the following numbers or addresses, as appropriate:

To HART:

Daniel A. Grabauskas
Alii Place Suite 1700
1099 Alakea Street
Honolulu, Hawaii 96813

Phone No.: (808) 768-6146
Fax No.: (808) 768-1205
Email: dgrabauskas@honolulu.gov

To the UNIVERSITY:

University of Hawai'i
2444 Dole Street
Bachman Hall, Room 202
Honolulu, Hawai'i 96822
Attention: David Lonborg
Phone: (808) 956-8436
Email: dlonborg@hawaii.edu

Office of Capital Improvements
University of Hawai'i
Biomedical Services Building, Room B-102
1960 East West Road
Honolulu, Hawai'i 96822
Attention: Associate Vice President for Capital Improvements
Phone: (808) 956-7935
Fax: (808) 956-3175
Email: bminai@hawaii.edu

With copy to:

Office of Procurement and Real Property Management
University of Hawai'i
1400 Lower Campus Road, Room 15
Honolulu, Hawai'i 96822
Attention: Director
Phone: (808) 956-8687
Fax: (808) 956-2093
Email: duff@hawaii.edu

Notices, demands, and requests shall be deemed served or given for all purposes hereunder at the time such notice, demand, or request is personally delivered or delivered by email or internationally recognized courier service, the sender of the Fax transmission has received confirmation of its transmission from the sender's fax machine, or three days following such mailing thereof, as the case may be. The foregoing shall not preclude any other effective means of providing written notice to the applicable party.

9. Dispute resolution. In the event a dispute arises between the parties concerning any aspect of this Commitment, the parties agree to negotiate face-to-face within twenty (20) days of receipt of a letter describing the nature of the dispute and referencing this paragraph of the Commitment. The meeting will be held at the place of business of the party receiving the letter unless the parties mutually agree to meet at another place. In the event the matter is not resolved by negotiation within thirty (30) days of this initial negotiation meeting, the parties shall engage a mediator and attempt to mediate the dispute. The parties agree to try in good faith to settle the dispute by mediation under the applicable mediation rules of a mutually acceptable alternative dispute resolution firm, before resorting to litigation. If the dispute is not resolved by mediation within sixty (60) days of the initial mediation meeting or such further time as the parties may agree to or that the mediator deems is needed, any party may commence a legal action in the First Circuit Court of the State of Hawaii.

10. Amendment. This Commitment shall not be amended except in writing signed by HART and consented to in writing signed by the UNIVERSITY, which consent may be withheld in the UNIVERSITY's sole discretion.

11. Counterparts; facsimile signatures. This Commitment may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing, and delivery of this Commitment, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document. The submission of a signature page transmitted by facsimile (or similar electronic transmission facility) shall be considered as an "original" signature page for purposes of this Commitment.

12. Interpretation of Commitment.

a. Headings. The headings and captions used herein are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which they may pertain.

b. Not against drafter. This Commitment has been negotiated at arm's length and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Commitment.

The language hereof, and in all parts of this Commitment shall, in all cases, be construed simply according to its fair meaning, and not strictly for or against any party hereto.

c. Fair Meaning. Provisions in this Commitment relating to number of days shall be calendar days. Use of the word "including" shall mean "including, but not limited to." References to statutes, sections, ordinances, or regulations are to be construed as including all statutory, ordinance, or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section, ordinance or regulation.

d. Gender and number. Whenever the singular number is used in this Commitment and when required by the context, the same includes the plural, the plural includes the singular, and the masculine gender includes the feminine and neuter genders, and the word "person" shall include corporation, partnership, firm, limited liability company, trust, and association. The use of any pronoun herein shall include any and all pronouns.

13. Binding effect. The term "UNIVERSITY" wherever used herein shall include the UNIVERSITY OF HAWAI'I and its successors and assigns, the term "CITY" wherever used herein shall include the CITY AND COUNTY OF HONOLULU, a Hawai'i municipal corporation, and its successors and permitted assigns, the term "HART" wherever used herein shall include the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a governmental body under the CITY, and its successors and permitted assigns. This Commitment shall be binding upon HART and shall inure to the benefit of the UNIVERSITY.

14. Severability. If any provision of this Commitment or the application thereof to any person, entity, or circumstance shall, to any extent, be deemed invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Commitment, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid, void, or unenforceable, shall not be affected thereby, and each other provision of this Commitment shall be valid and be enforceable to the full extent permitted by law.

15. Waiver. Any waiver of the terms, conditions, or provisions of this Commitment or a party's rights or remedies under this Commitment must be in writing to be effective. Failure, neglect, or delay by a party to enforce the terms, conditions, or provisions of this Commitment or such party's rights or remedies at any time, will not be construed as a waiver of such party's rights under this Commitment and will not in any way affect the validity of the whole or any part of this Commitment or prejudice such party's right to take any subsequent action. No exercise or enforcement by any party of that party's rights or remedies under this Commitment will preclude the enforcement by such party of any of its other rights or remedies that are available under this Commitment or by law.

16. Integration. This Commitment shall be the final expression of HART's understanding with respect to the subject matter hereof (unless amended in accordance with the provision of this Commitment concerning amendment) and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings.