

**SPECIAL PROVISIONS TO THE
AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU
AND PB AMERICAS INC.**

GENERAL ENGINEERINGCONSULTANT CONTRACT II

HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT

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These Special Provisions to the Agreement for Professional Services (“Special Provisions”) shall be incorporated into and be a part of that certain Agreement for Professional Services, by and between the CITY AND COUNTY OF HONOLULU (the “CITY”) and PB AMERICAS, INC. (the “CONSULTANT”), dated _____ (the “Agreement”). These Special Provisions and the General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu dated 8/2000 (“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 PROJECT is to provide general engineering, planning, construction management and other consultant services for the Honolulu High-Capacity Transit Corridor Project (“HHCTCP”).

II. SERVICES

The basic services that the CONSULTANT shall provide under the Agreement are set forth in the Scope of Work, attached hereto and incorporated herein as Exhibit 1.

III. TIME

- A. The term of this Agreement is for three (3) years (“Initial Term”) commencing with Notice to Proceed #1. The CITY may extend the period of performance of this Agreement for up to an additional five (5) years if compensation to CONSULTANT is provided. The Agreement may be extended pursuant to Section 5 of the General Terms and Conditions at any time prior to the end of the Initial Term by an amendment to the contract.
- B. This is a multi-term Agreement subject to the availability of funds in accordance with HAR § 3-122-149. Funds are available for only the initial year of the Agreement. The contractual obligation of both parties in each fiscal period succeeding the first will be subject to the appropriation and availability of funds. The CITY shall notify the CONSULTANT, on a timely basis, whether or not funds are available for the continuation of the Agreement for each succeeding fiscal period.

The Agreement will be terminated if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the initial year of the Agreement; however, this does not affect either the CITY’s rights or the CONSULTANT’s rights under any termination clause of the Agreement. If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the Agreement shall be terminated and the CONSULTANT shall be reimbursed for the unamortized, reasonably incurred, nonrecurring costs.

IV. LIQUIDATED DAMAGES

Liquidated damages are not applicable to this Agreement.

V. INSURANCE REQUIREMENTS

See Paragraph 4.3., Insurance, of the General Terms and Conditions.

VI. COMPENSATION AND PAYMENT SCHEDULE

- A. This is a cost plus fixed fee contract subject to the General Terms and Conditions. The compensation of the CONSULTANT shall be allowable Costs and a Fixed Fee up to the amount stated in the Agreement and shall be made in accordance with the Contract Cost Estimate and invoicing/payment Schedule in Exhibit 2A and accompanying Schedule A (Labor, Overhead and Fixed Fee Costs), Schedule B (Subconsultant Costs), and Schedule C (Other Direct Costs).
- B. The CITY reserves the right to direct removal from the PROJECT of any CONSULTANT or SUBCONSULTANT employee for any reason and at any time.
- C. Reimbursement of CONSULTANT labor-related Work should be invoiced to the CITY on a monthly basis and shall be accompanied by schedule with the details identified in Exhibit 2B, paragraph 2.a. The CONSULTANT shall certify that the schedule includes only employees authorized by the CITY to charge the PROJECT and that the information ties to the CONSULTANT's general ledger. The invoice shall also be accompanied by a report of the work accomplished during the previous month and a list of major Work in progress.
- D. Reimbursement to the CONSULTANT for Subconsultant and Other Direct Costs (ODC) shall be made upon submission of Subconsultant and Expense Reimbursement Invoices, which shall include copies of pertinent vendor bills or invoices.
- E. 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 (8/2000)

The General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu, dated 8/2000, (the "General Terms and Conditions") shall apply to, and are incorporated by reference into this Agreement, except as modified herein.

A. DEFINITIONS

The following definitions are added to the General Terms and Conditions:

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

"BASELINE 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.

"DIRECTOR" means the CITY's Director of the Department of Transportation Services or the Director's duly authorized representative or assignee.

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

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

"FTA" means the Federal Transit Administration, United States Department of Transportation. The Federal Transit Administration is the current designation for the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration or its acronym UMTA is deemed a reference to the Federal Transit Administration.

"MILESTONE" means a defined step towards the completion of Work in the Schedule of Milestones. The Schedule of Milestones, once achieved, shall serve as the basis of payments.

"PMOC" means the FTA's Project Management Oversight Contractor.

"PMSC" means "InfraConsult LLT, the CITY's Project Management Services Consultant or any successor entity.

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

"STANDARD OR REQUIREMENT" means any provision of any Federal, State or local (including CITY) law, ordinance, code, rule, regulation, guideline, directive, order, circular, agreement, practice, policy, notice, plan, statement, or other standard or requirement, and any amendment or revision thereto made in the future, including any mandatory provision, term, condition, clause, representation, certification, assurance or other statement required thereunder.

“U.S.C.” means the United States Code.

“U.S. DOT” means the United States Department of Transportation, including its operating administrations.

“WORK” means the furnishing of all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary to the successful completion of the Agreement.

“WORK BREAKDOWN STRUCTURE” (“WBS”) means a hierarchal breakdown of the scope of Work into components.

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

“CONSULTANT” OR “CONTRACTOR” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity engaged by the CITY to perform the Work under this Agreement.

B. DESIGNATION OF PROJECT MANAGERS

The Officer-in-Charge shall designate, in writing, a representative to coordinate the Work under this Agreement, to coordinate work under other CITY contracts with the Work under this Agreement, and to act as the liaison between the CITY and the CONSULTANT in order to assist in expediting the resolution of questions or controversies, the making of CITY decisions, and the review and approval by the CITY of documents, progress reports, requests, and other matters as required.

The CONSULTANT shall, with approval from the CITY, designate a representative, who shall maintain close and frequent communications with the CITY's representative and be authorized to act on behalf of the CONSULTANT. Any change in the CONSULTANT's representative will be made by request, in writing, to be approved by the CITY. The CONSULTANT's representative shall be experienced and qualified in the type of work involved and shall be directly responsible for the prosecution of the Work under this Agreement.

The Parties to this Agreement will make all reasonable efforts to retain the same representatives in order to maintain continuity of effort and control.

C. NO THIRD PARTY BENEFICIARY

The CITY and the CONSULTANT are entering into this Agreement for the sole benefit of the Parties in exclusion of any third party, and no third party beneficiary is intended or created by execution of this Agreement.

D. CHANGE ORDERS

General Terms and Conditions, Section 5.1.1(c). Delete this section in its entirety and substitute in lieu thereof 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 contractor shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.”

E. DELAY

General Terms and Conditions, Section 6.2. Delete this section in its entirety and substitute in lieu thereof the following:

“**6.2 DELAY.** If any excusable delay occurs, it shall be dealt with in accordance with subsection 9.2.3, Excuse for nonperformance or delayed performance. No extension of time however, shall be granted unless the written application therefor stating in detail the cause or causes of delay is filed by the contractor with the officer-in-charge *within thirty (30) days* after the commencement of the delay. No such extension shall be deemed a waiver of the right of the officer-in-charge to require the completion of services under the contract within the time required herein as so extended by the specific terms of such extension or extensions, nor a waiver of right to terminate the contract for any other or additional delay not covered by the specific terms of such extension or extensions. The number of days of each extension of time shall be determined by the Director of Budget and Fiscal Services upon the recommendation of the officer-in-charge.”

G. AUTHORITY OF THE OFFICER-IN-CHARGE AND DIRECTOR OF BUDGET AND FISCAL SERVICES

General Terms and Conditions, Section 6.5. Delete this section in its entirety and substitute in lieu thereof the following:

“**6.5 AUTHORITY OF THE OFFICER-IN-CHARGE AND DIRECTOR OF BUDGET AND FISCAL SERVICES.** The decisions of the officer-in-charge shall be final unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence, provided that decisions on questions or disputes relating to the acceptance of the services performed under the contract, suspension or termination of the contract, extension of time, reduction or increase in the compensation of the contractor and payment shall become final only upon approval of the Director of Budget and Fiscal Services, and provided further that nothing herein shall be construed as making final and binding any decision of the officer-in-charge and/or Director of Budget and Fiscal Services on a question of law. Pending final decision of any dispute or question, the contractor shall proceed diligently with the

performance of services under the contract in accordance with the decision of the officer-in-charge and/or Director of Budget and Fiscal Services.”

H. RETAINAGE

Retainage is not applicable to this Agreement.

K. NON-DISCLOSURE OF DESIGNATED TRADE SECRETS OR PROPRIETARY INFORMATION: ELECTRIC UTILITY INFRASTRUCTURE INFORMATION

Electric Utility Infrastructure Information (“EUII”), defined as all information, including drawings, schematics, models, plans, specifications, standards, diagrams, field notes, reports, correspondence, and other information in paper, photographic, or digital format, provided by Hawaiian Electric Company, Inc. (“HECO”), concerning the location, configuration, and nature of the above-ground and subsurface utility facilities and equipment within the limits of the HHCTCP site, as denoted in HHCTCP plans, models, and schematics, and within one hundred (100) feet of either side of the HHCTCP site, shall be considered confidential information, which shall not be disclosed by the CITY absent court order, and the CITY shall notify the CONSULTANT as soon as practicable upon receipt of any such order. The CITY shall not compel disclosure of the EUII by the CONSULTANT or handle any EUII it may obtain from the CONSULTANT in such a manner as to subject otherwise confidential information to public disclosure under applicable public records laws. The CITY agrees to follow such procedures as may be required under public records laws to establish and maintain the confidential status of the EUII, or otherwise lawfully protect it from public disclosure during the term of this Agreement. It is specifically agreed that the utility composite drawings prepared by the CONSULTANT shall not be considered confidential information.

L. PROSECUTION OF THE WORK: UTILITY COMPOSITE DRAWINGS

Notwithstanding any provision of this Agreement to the contrary, including but not limited to Section 6.4 of the General Terms and Conditions, the CONSULTANT shall not be responsible for inaccuracies in the utility composite-drawings to be produced in the PE/EIS phase of the HHCTCP, or delays in their preparation or delivery to the CITY, that result from or are attributable solely to inaccuracies, errors, or omissions in the EUII, as that term is defined in subparagraph K above, provided to the CONSULTANT by HECO. In the event that any of the CONSULTANT’s work must be performed again in whole or in part, or deliverables are revised in whole or in part and are resubmitted, due to such inaccuracies, errors or omissions, the CONSULTANT shall be compensated for the same at the rates established herein for the original work.

M. PROMPT PAYMENT 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 TO SUBCONTRACTORS

(a) Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes.

(b) Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor’s performance under the subcontract. *See HAR § 3-125-33.*

(c) A payment request made by a contractor to the officer-in-charge that includes a request for sums that were withheld or retained from a subcontractor and are due to the subcontractor may not be approved, unless the payment request includes:

1. Substantiation of the amounts requested; and
2. Certification by the contractor, to the best of the contractor’s knowledge and belief; that:
 - i) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Agreement;
 - ii) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the Agreement and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
 - iii) The payment request does not include any amounts that the contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

(d) Prompt Payment of Retainage to Subcontractors upon Satisfactory Completion of Subcontractor Work. Upon satisfactory completion of accepted work by a subcontractor, the contractor shall request sums that were withheld or retained from a subcontractor and are due to the subcontractor pursuant to subsection (c). The contractor shall pay all retainage owed to the subcontractor within ten (10) days after payment to the contractor.”

VIII. FEDERAL REQUIREMENTS: 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, dated November 1, 2008 (including any changes), 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 CITY requests which would cause the CITY to be in violation of FTA terms and conditions. This Agreement will be subject to any financial assistance agreement between the 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 the CITY and FTA, as they may be amended or promulgated from time to time during the term of the Agreement (collectively, "Federal Standard Requirements"). These Federal Standard Requirements may change and the changed Federal Standard Requirements will apply to this Agreement as required unless the Federal Government determines otherwise. The CONSULTANT's failure to comply with the Federal Standard Requirements shall constitute a material breach of the Agreement.

The Federal Standard Requirements are contained in Exhibit 8, attached hereto and incorporated by reference. This list may not be complete.

IX. COMPLIANCE WITH OMB CIRCULAR A-87 - Office of Management and Budget

The CONSULTANT 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.

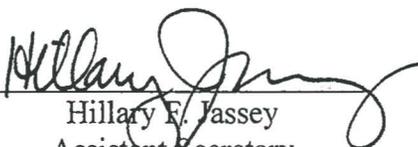
PB AMERICAS, INC.

ASSISTANT SECRETARY'S CERTIFICATE

I, Hillary F. Jassey, Assistant Secretary of PB Americas, Inc. (the "Company"), do hereby certify on behalf of the Company and not in my individual capacity that on March 30, 2011 the Board of Directors of the Company adopted the following resolution:

"Resolved, that James R. Van Epps is hereby elected a Senior Vice President of PB Americas, Inc., to hold office, subject to the by-laws, until his respective successor is duly elected and qualified."

I further certify that the resolution has not been revoked, that as a Senior Vice President of the Company, James R. Van Epps is authorized to sign the Agreement for Professional Services for the Honolulu High-Capacity Transit Corridor Project – General Engineering Consultant II, between the City and County of Honolulu, a municipal corporation of the State of Hawaii, and the Company.


Hillary F. Jassey
Assistant Secretary

6/27/11
Date