

**AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT FOR PROFESSIONAL SERVICES dated June 30, 2011 (this "Agreement"), is entered into by and between 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", and PB AMERICAS, INC., a New York Corporation, whose principal place of business and mailing address is 1001 Bishop Street, American Savings Bank Tower, Suite 2400, Honolulu, Hawaii 96813, hereinafter referred to as the "CONSULTANT". The CITY and the CONSULTANT are hereinafter collectively referred to as the "Parties".

WITNESSETH THAT:

WHEREAS, the CITY desires to engage the CONSULTANT to provide general engineering, planning, construction management and other consultant services for the Honolulu High-Capacity Transit Corridor Project, hereinafter referred to as the "PROJECT";

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

WHEREAS, the CONSULTANT was selected pursuant to Section 103D-304 of the Hawaii Revised Statutes ("HRS"), as amended, and related Hawaii Administrative Rules ("HAR"), relating to the procurement of professional services; and

WHEREAS, the CONSULTANT is willing and able to provide the technical and professional services required if compensation is provided for;

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

1. The CONSULTANT shall perform and complete in a professional manner all of the services required for the PROJECT in accordance with and as set forth in the Contract Documents as hereinafter described, shall furnish all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of the PROJECT and work contemplated under the Contract Documents (the "Work"), and the CONSULTANT shall receive and accept as full compensation for all of the Work the price for the various items of the Work as hereinafter set forth.

2. The CONSULTANT shall complete the technical and professional services and perform the Work in accordance with:

- a. Part 1 - This Agreement;
- b. Part 2 - The Special Provisions and any exhibits and attachments thereto; and

- c. Part 3 - The General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu, dated 8/00 (“General Terms and Conditions”);

all of which are collectively referred to as the “Contract Documents”, are attached hereto and incorporated herein, and are listed in order of controlling preference should there be any conflict in the terms of the Contract Documents, and any modifications, changes or amendments in connection therewith being specifically referred to and incorporated herein by reference and made a part hereof as though fully set forth herein.

3. The CONSULTANT shall complete the Work required under the Contract Documents as provided for in the Special Provisions attached hereto.

4. This is a multi-term agreement subject to the availability of funds in accordance with HAR § 3-122-149 as further described in the Special Provisions. There will be several separate and distinct written Notices to Proceed (“NTPs”) issued under the Agreement. Work shall not begin until the CITY has issued the respective NTP. Any Work undertaken by the CONSULTANT prior to issuance of a required written NTP will be the sole responsibility of and will be undertaken at the sole risk of the CONSULTANT, without any obligation on the part of the CITY or the Federal Government.

5. This is a cost plus fixed fee contract, and subject to the provisions of this paragraph and in accordance with Paragraph VI to the Special Provisions and Section 8 of the General Terms and Conditions, the CITY agrees to pay the CONSULTANT, for the satisfactory performance and completion of the Work, the payments in accordance with invoices received, and further as set forth in the Special Provisions attached hereto. The aggregate amount of such payments for the Work shall not exceed ONE HUNDRED FIFTY MILLION AND 00/100 DOLLARS (\$150,000,000). The payments for services and the Work performed under this Agreement are all inclusive of direct labor, overhead, general and administrative expenses, other direct costs, subcontractor costs, fixed fees, and all applicable taxes, including State General Excise and Use Tax (“GET”) and county one-half percent (0.5%) GET Surcharge.

Request for payment shall be invoiced to the CITY in accordance with guidelines as set forth in the Special Provisions. Such payments shall be provided from the following funds:

City Funds	\$150,000,000
Federal Funds	-0-
Total	\$150,000,000

Also included with the Aggregate Amount is an Allowance for other Direct Costs of SIX MILLION AND 00/100 DOLLARS (\$6,000,000). The reimbursable allowance of SIX MILLION (\$6,000,000) is not to be exceeded without a contract amendment and any funds remaining at the end of this Agreement shall revert back to the CITY. The reimbursable allowance is provided for expenses identified in Exhibit 2A, Schedule C to the Special Provisions, and such other expenses as are specifically approved by the CITY (“Other Direct Costs”). Payment for Other Direct Costs is subject to the terms contained in the Special Provisions. Reimbursement shall be made for actual

costs incurred without markup upon submission of CONSULTANT invoice that includes a copy of the vendor invoice for which reimbursement is being requested.

The CITY agrees to establish an Allowance for Extra Work of ONE HUNDRED FIFTY MILLION AND 00/100 DOLLARS (\$150,000,000) which is not to be exceeded without a contract amendment. Payment for Extra Work will be negotiated and a contract amendment will be processed to reflect the change. Extra Work requested by the CITY shall be authorized as set forth in Section 5 of the General Conditions. Any funds remaining at the end of the Agreement shall revert back to the CITY.

In accordance with the paragraphs above, the total aggregate amount of THREE HUNDRED AND NO/100 (\$300,000,000) (the Total Aggregate Amount”) is established as the maximum payable under this Agreement and is subject to the Special Provisions and the General Terms and Conditions, including the provisions thereof related to reducing or increasing the compensation of the CONSULTANT.

6. By signing below, the CONSULTANT hereby represents 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, either actually or by specific identification in writing to the Officer-in-Charge in support of this Agreement, is accurate, complete, and current as of the date of this Agreement. This certification includes the cost or pricing data supporting any advance agreement(s) between the CONSULTANT and the CITY which are a part of the CONSULTANT’s cost proposal.

7. The Parties acknowledge that this Agreement will be assigned from the CITY to the Honolulu Authority for Rapid Transportation (“HART”) as of July 1, 2011, when HART comes into existence. The CONSULTANT hereby consents to the assignment by the CITY to HART of all of the right, title, and interest of the CITY in and under the Agreement, effective as of July 1, 2011. Except as provided in this section, assignment of the Agreement shall be in accordance with Section 5.3 of the General Terms and Conditions.

8. Unless notified otherwise by the Officer-in-Charge in writing, when notice is to be given to the CITY, it shall be mailed or delivered to:

City and County of Honolulu  
Department of Transportation Services  
650 South King Street, 3<sup>rd</sup> Floor  
Honolulu, Hawaii 96813

Attention: Director

9. Unless mutually agreed to otherwise in writing, when notice is to be given to the CONSULTANT, it shall be mailed or delivered to:

Mr. Jim Van Epps  
Project Manager  
PB Americas, Inc.  
1099 Alakea St., Suite 1700

# Certificate

The attached contract for consultant services to provide general engineering, planning, construction management and other consultant services for the Hounolulu High-Capacity Transit Corridor Project

(\$300,000,000.00)

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 are 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 - DTS- 1100131

HONOLULU, HAWAII

FUND Transit Fund (690)

DATE: JUL 26 2011

Transit Improvement Bond Fund (695)

ACCOUNT NO. \_\_\_\_\_

690/7801-10-P	(4064)	\$ 3,750,000.00
690/7801-11-P	(4064)	1,000,000.00
695/7801-11-P	(4064)	45,350,000.00
690/7801-11-D	(4064)	16,960,000.00
695/7801-11-D	(4064)	109,640,000.00
695/7801-10-I	(4064)	87,129,114.00
690/7801-11-I	(4064)	16,517,886.00
695/7801-11-I	(4064)	19,653,000.00
		<u>\$ 300,000,000.00</u>



Director of Budget & Fiscal Services *ll*

10. This Agreement, its integrated attachments, and the Contract Documents constitute the entire agreement of the Parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed to be consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement or the Contract Documents, no modification or amendment to this Agreement or the Contract Documents shall be binding upon the Parties unless the same is in writing and signed by the respective Parties hereto.

IN WITNESS WHEREOF, the CITY and the CONSULTANT have executed this Agreement by their duly authorized officers or agents on the day and year first above written.

CITY AND COUNTY OF HONOLULU

*Michael Hansen*

By: Michael R. Hansen, Director  
Department of Budget and Fiscal Services

*vs  
C/hi*

PB AMERICAS, INC.

*James R. Van Epps*

By: JAMES R. VAN EPPS  
As: SENIOR VICE PRESIDENT / PROJECT MANAGER

Address:

1001 BISHOP STREET, ASB #2400  
HONOLULU, HI 96813

APPROVED AS TO CONTENT

*Wayne Y. Yoshioka*

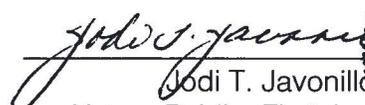
By: Wayne Y. Yoshioka, Director  
Department of Transportation Services

APPROVED AS TO FORM AND  
LEGALITY

*Deirdre M. Spina*  
Deputy Corporation Counsel

STATE OF HAWAII )  
 ) SS.  
City and County of Honolulu )

On this 30<sup>th</sup> day of June, 2011, before me personally appeared James R. Van Epps, to me personally known, who, being by me duly sworn or affirmed, did say that he is a Senior Vice President of PB Americas, Inc., a New York corporation; that the seal affixed to the foregoing instrument is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and said officer severally acknowledged said instrument to be the free act and deed of said corporation.

  
Jodi T. Javonillo  
Notary Public, First Judicial Court  
State of Hawaii  
My Commission expires June 1, 2012.



NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: Honolulu High-Capacity Transit Corridor Project, General Engineering Consultant II Contract No. SC-DTS-1100131

Doc. Date: (undated at time of notarization) No. of Pages: 197  
Jurisdiction: First Judicial Court

  
Jodi T. Javonillo  
30-JUN-11  
Date of Certificate

