

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES dated JAN 12 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 HDR ENGINEERING, INC., a Nebraska corporation, whose principal place of business and mailing address is 1132 Bishop Street, Suite 1003, 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 for architectural and engineering services for the design of three (3) transit stations of the Honolulu High-Capacity Transit Corridor Project ("HHCTCP") comprising the Farrington Highway Station Group: West Loch Station, Waipahu Transit Center Station, and Leeward Community College Station, 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; and

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

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 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.

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 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.

The first NTP will be NTP #1a. The CONSULTANT shall submit a proposed Schedule of Milestones within ten (10) working days after receipt of NTP #1a. The Schedule of Milestones shall be completed as described in the Contract Documents. The CITY's approved Schedule of Milestones shall be added to the Agreement by contract amendment and become part of the Agreement by amending Exhibit 2B-1 to the Special Provisions. NTP #1b will be limited to Work activities related to the revision of preliminary engineering drawings and preliminary design drawings, as defined by the CITY, to incorporate approved value engineering recommendations and other CITY preferences, and to bring schematic designs in compliance with all applicable codes, regulations and design standards. Until the Federal Transit Administration ("FTA") issues a Record of Decision ("ROD") for the HHCTCP, no action by the CONSULTANT shall be taken which would have an adverse environmental impact or limit the choice of reasonable alternatives. Any such action would be considered grounds for possible termination of the Agreement for cause.

NTP #2 will be to commence interim design drawings, detailed working drawings and other preliminary engineering phase activities, as defined by the CITY. Until the FTA issues a ROD for the HHCTCP, no action by the CONSULTANT shall be taken which would have an adverse environmental impact or limit the choice of reasonable alternatives. Any such action would be considered grounds for possible termination of the Agreement for cause.

NTP #3 will be to commence Final Design and preparation of construction contract documents, cost estimating and other services in support of construction activities. NTP #3 will be issued after the FTA issues a ROD for the HHCTCP and/or a "Letter of No Prejudice".

NTP #4 will be for design support during the Bidding Phase, as defined and directed by the CITY.

NTP #5 will be for design support during the Construction Phase of the stations, as defined and directed by the CITY.

4. This is a firm-fixed price contract and subject to the provisions of this paragraph and in accordance with Section VI, Compensation and Invoicing, of 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 the Approved Schedule of Milestones, Exhibit 2B-1, all as set forth in the Special Provisions. The aggregate amount of these lump sum payments shall not exceed FOUR MILLION EIGHT HUNDRED TWENTY-EIGHT THOUSAND FOUR AND 00/100 DOLLARS (\$4,828,004.00) (the "Total Contract Amount"). The lump sum 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.

The allowance for extra work of SIX HUNDRED SEVENTY-TWO THOUSAND SIX HUNDRED NINETY-TWO AND 00/100 DOLLARS (\$672,692.00) is not to be exceeded without a contract amendment. Payment for extra work will be negotiated on a fixed-price basis 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 Terms and Conditions. Any funds remaining at the end of the Agreement will revert back to the CITY.

In accordance with the paragraphs above, the total aggregate amount of FIVE MILLION FIVE HUNDRED THOUSAND SIX HUNDRED NINETY-SIX AND 00/100 DOLLARS (\$5,500,696.00) (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.

5. 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.

6. 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, 3rd Floor
Honolulu, Hawaii 96813

Attention: Director

7. When notice is to be given to the CONSULTANT, it shall be mailed or delivered to:

Mr. Lester Fukuda
Vice President
HDR Engineering, Inc.
1132 Bishop Street, Suite 1003
Honolulu, HI 96813-2830

8. 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.

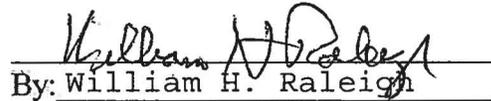
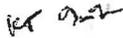
CITY AND COUNTY OF HONOLULU

HDR ENGINEERING, INC.



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

JAN 12 2011



By: William H. Raleigh
Its: Executive Vice-President

Address: 1132 Bishop Street, Ste. 1003
Honolulu, Hawaii 96813

REDACTED PURSUANT TO HRS CHAPTER 92F

APPROVED AS TO CONTENT


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

APPROVED AS TO FORM AND
LEGALITY


Deputy Corporation Counsel

Certificate

The attached contract for consultant services for architectural and engineering services for the design of three (3) transit stations of the Honolulu High-Capacity Transit Corridor Project ("HHCTCP") comprising the Farrington Highway Station Group: West Loch Station, Waipahu Transit Center Station, and Leeward Community College Station

(\$5,500,696.00)

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- 1100013
FUND Transit Fund (690)
ACCOUNT NO. 690/7801-10-D (4064)

HONOLULU, HAWAII

JAN 12 2011



ACTING Director of Budget & Fiscal Services *dch*

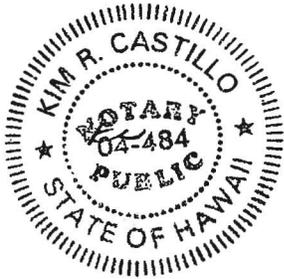
STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 20th day of December, 2010, personally before me appeared William H. Raleigh, to me personally known, who, being by me duly sworn or affirmed, did say that he/she is the Executive Vice President of HDR Engineering, Inc., and known to me to be the person who executed the within instrument on behalf of the corporation therein named and acknowledged to me that the corporation executed it.

Kim R. Castillo

Kim R. Castillo
Notary Public, First Judicial Circuit
State of Hawaii

My Commission Expires: 9/5/2012



NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)	
Document Identification or Description: <u>Honolulu High-Capacity Transit Corridor Project, Farrington Highway Station Group, Station Design Consultant, Contract No. SC-DTS-1100013</u>	
<u>Agreement for Professional Services Contract</u>	
Doc. Date: <u>Undated at time of notarization</u>	No. of Pages: <u>4</u>
Jurisdiction: <u>First Circuit</u>	
<u><i>Kim R. Castillo</i></u>	<u>12/20/10</u>
Signature of Notary	Date of Certificate
<u>Kim R. Castillo</u>	(Official Stamp or Seal)
Printed Name of Notary	



CERTIFICATE

The undersigned hereby certifies that he is the Secretary of HDR Engineering, Inc., a Nebraska corporation, and that, as such, has custody of the minute books of the Corporation, and that, by Consent and Agreement of the Board of Directors dated May 19, 2010, the following resolution was unanimously adopted:

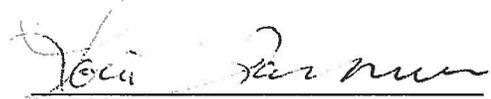
"RESOLVED, that effective immediately and until June 20, 2011, or until termination of said individual from the Corporation, or until rescision by the Corporation's Board of Directors, whichever occurs first, the following individuals are hereby granted the nondelegable authority to execute or approve on behalf of the Corporation, contracts for engineering services and architectural services incidental to engineering services to be rendered by the Corporation, . . . , or releases of claim or lien in connection with such services, such contracts or releases so executed or approved shall be binding upon the Corporation:

. . . William H. Raleigh – Executive Vice President . . ."

The undersigned further certifies that the foregoing resolution has been spread in full upon the minute books of the Corporation and is in full force and effect.

DATED Dec 15, 2010.

(CORPORATE SEAL)



Louis J. Pachman, Secretary

**SPECIAL PROVISIONS TO THE
AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU
AND HDR ENGINEERING, INC.**

STATION DESIGN CONSULTANT

**FARRINGTON HIGHWAY STATION GROUP
HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT**

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 - EXHIBIT 3 - CERTIFICATION REGARDING CONFLICT OF INTEREST
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-
- 1. Attachment 1.6a) - DBE Participation Report
 - 2. Attachment 1.6b) - Final Report of DBE Participation and Instructions for
completion of the Final Report of DBE Participation

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 HDR ENGINEERING, INC. (the "CONSULTANT"), dated JAN 12 2011 (the "Agreement"). The CITY and the CONSULTANT are hereinafter collectively referred to as the "parties" and either may be referred to individually as a "party", all as governed by the context in which such words are used. 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 as in these Special Provisions.

The titles of headings of Sections, Subsections and Paragraphs are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

All words used in the singular shall extend to and include the plural. All words used in the plural shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

I. PROJECT

The CONSULTANT will provide architectural and engineering services for the design of three (3) transit stations of the Honolulu High-Capacity Transit Corridor Project ("HHCTCP") comprising the Farrington Highway Station Group: West Loch Station, Waipahu Transit Center Station, and Leeward Community College Station.

II. SERVICES

The 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

Work under this Agreement shall be completed under multiple and overlapping Notices to Proceed ("NTP"). Work under NTP #1a, NTP #1b, NTP #2 and NTP #3 shall be completed within three hundred sixty (360) calendar days, exclusive of CITY review time, from issuance of NTP #1a. The duration for performance of Work under issuance of NTP #4 and NTP #5 shall be determined at the discretion of the CITY.

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.

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VI. COMPENSATION AND INVOICING

A. Subject to the General Terms and Conditions, the compensation of the CONSULTANT shall be the amount stated in the Agreement and upon completion and acceptance of each stage, payment shall be made in accordance with Exhibits 2B and 2B-1, attached hereto and incorporated herein, inclusive of all taxes. Upon completion of any portion of each stage, a proportionate share of the fee may be paid when requested by the CONSULTANT and as determined by the Officer-in-Charge.

B. 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 (8/2000) 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:

"BASELINE DESIGN 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.

"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.

"PROJECT" means Work performed as set forth in the Agreement, including furnishing all services, labor, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of the Work contemplated under the Agreement.

"PAY ITEM" means a component of the Schedule of Milestones for which the CONSULTANT provides a Pay Item Value for all Work included in a schedule milestone. A Pay Item may be activities, deliverables or a series of interrelated items as identified in the Schedule of Milestones and corresponding with activities from the CONSULTANT's Baseline Design Schedule.

"PAY ITEM VALUE" means that value allocated by the CONSULTANT to a Pay Item that represents the dollar value to be achieved or achieved upon the completion of a schedule milestone as indicated in the Schedule of Milestones and the CONSULTANT's Baseline Design Schedule.

"SCHEDULE OF MILESTONES" means a table of schedule milestones, organized by NTP, that specifies Pay Items, Pay Item descriptions, Pay Item Values, planned or actual achievement dates and serves as a basis for monthly payment.

"SCHEDULE OF MILESTONES PAY ITEM" means a series of activities contained in a Pay Item that depicts the associated Work leading to the payment milestone and shall contain unique coding to facilitate progress reporting of the Schedule of Milestones.

"STANDARD OR REQUIREMENT" means any provision of any Federal, State or local law, 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" in addition to the definition described in the Agreement for Professional Services, paragraph 1, means all of the design, engineering, administration, testing, inspection and other duties and services; the furnishing of all labor, deliverables, materials, supplies, and equipment, as required by the Agreement, including all efforts and design services required during the construction phase of the Project stations to successfully complete the scope of work covered under this Agreement. In certain cases, the term is also used to mean the products of the Work.

"WORK BREAKDOWN STRUCTURE" ("WBS") means a hierarchal breakdown of the scope of Work into components. The CITY shall provide the WBS that reflects

its breakdown of the scope and associated code structure at NTP #1a.

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

“CONTRACT” shall be replaced with the term “Agreement”.

“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. For the purposes of this Agreement, “Contractor” shall mean “CONSULTANT”.

B. DESIGNATION OF PROJECT MANAGERS

The Officer-in-Charge shall designate, in writing, a key 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, subject to written approval from the CITY, designate a key representative, who shall maintain close and frequent communications with the CITY's key representative and be authorized to act on behalf of the CONSULTANT. Any change in the CONSULTANT's key representative will be made by request, in writing, to be approved by the CITY. The CONSULTANT's key 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 key representative in order to maintain continuity of effort and control.

C. NO THIRD PARTY BENEFICIARY

The parties 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. INSURANCE

Section 4.3.2, paragraph 5 of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following:

“5. Be provided by insurers authorized to provide insurance in the State of Hawaii, and with a current Best's rating of not less than A-, or otherwise as approved by the City;”

E. CHANGE ORDERS

Section 5.1.1 (c) of the General Terms and Conditions is hereby deleted in its entirety and replaced with 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 Consultant 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.”

F. DELAY

Section 6.2 of the General Terms and Conditions is hereby deleted in its entirety and replaced with 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 therefore stating in detail the cause or causes of delay is filed by the Consultant 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 Chief Procurement Officer upon the recommendation of the Officer-in-Charge.”

G. LIQUIDATED DAMAGES

Section 6.6 of the General Terms and Conditions, entitled "LIQUIDATED DAMAGES", is hereby deleted in its entirety.

H. PAYMENT

Section 8.2 of the General Terms and Conditions, entitled "PROGRESS PAYMENT", is hereby deleted in its entirety and replaced with the following:

“8.2 PAYMENT

(a) Payments to the CONSULTANT for Work satisfactorily performed will be made monthly:

1. **Scope of Payment.** The CONSULTANT shall receive and accept compensation provided for in the Agreement as full payment for performing all Work under the Agreement in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the

nature of the Work or the prosecution thereof.

2. Payment Concept. Payment will be calculated using the Schedule of Milestones (SM) Pay Item table.
3. Payment does not imply acceptance of the Work. The granting of any payment by the CITY, or the receipt thereof by CONSULTANT, shall in no way imply acceptance of the Work. Such Work, Equipment, components or workmanship that do not conform to the requirements of this Agreement may be rejected by the CITY and in such case must be replaced by CONSULTANT without delay.

(b) Payment will be based on the SM.

Within ten (10) days upon receipt of NTP #1a, the CONSULTANT is required to breakdown the Work into milestones and submit the SM for approval and acceptance by the CITY. The SM is intended to provide linkage between the Baseline Design Schedule and the Project Work Breakdown Structure (WBS) provided by the CITY. The SM is to be organized by NTP and itemized by Pay Items. The CONSULTANT is to be paid upon satisfactory completion of SM Pay Item(s).

1. Pay Item measurement and payment shall be based on lump sum values assigned to all SM Pay Items. Completion of Milestones is the basis for payment.
2. Request for Monthly Payment. The CONSULTANT shall submit monthly pay requests using CM System procedures for the CITY to review. The request shall consist of the SM Pay Items for the current month and cumulative to date. An updated SM, Baseline Design Schedule, and a progress narrative addressing, at a minimum, areas of concern shall be included with each pay request.

(c) The CITY's obligation to make timely payment and the statutory interest that accrues to any late unpaid balance shall be according to HRS § 103-10."

I. RETAINAGE

Section 8.5 of the General Terms and Conditions, entitled "RETAINAGE", is hereby deleted in its entirety.

J. 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 CLAUSES

1.1 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,

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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.

IX. ASSIGNMENT

This Agreement is binding upon the parties and any agency of government that may assume the rights and obligations of a party with respect to the Agreement; otherwise the Agreement is non-transferable and non-assignable in whole or in part, except by an instrument, in writing, signed by each of the parties.

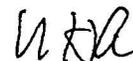


EXHIBIT 1 – SCOPE OF WORK

**SPECIAL PROVISIONS TO THE
AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU
AND HDR ENGINEERING, INC.**

STATION DESIGN CONSULTANT

**FARRINGTON HIGHWAY STATION GROUP
HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT**

This Exhibit 1 to the Special Provisions to the Agreement for Professional Services (“Exhibit 1”) 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 HDR ENGINEERING, INC. (the “CONSULTANT”), dated JAN 12 2011 (the “Agreement”). All defined terms in the Agreement and the Special Provisions shall have the same meaning in this Exhibit 1.

PROJECT PURPOSE AND DESCRIPTION:

The CONSULTANT will provide architectural and engineering services for the design of three (3) transit stations of the Honolulu High-Capacity Transit Corridor Project (“HHCTCP”) comprising the Farrington Highway Station Group: West Loch Station, Waipahu Transit Center Station, and Leeward Community College Station (the “PROJECT”). The design of these stations shall meet the functional, budgetary, environmental, cultural/historic, and operational requirements of the HHCTCP, the CITY and all Federal, State and local agencies.

A description of the Scope of Work to be performed under this Agreement and deliverables is set forth in this Exhibit 1.

This Scope of Work and accompanying budget/fee estimate assumes that the Design Schedule and durations of the NTP phases will not require revision due to the schedules of interfacing contracts such as the West Oahu Farrington Highway (“WOFH”) Guideway Design-Build Contract, the Maintenance and Storage Facility Design-Build Contract and the Core Systems Design-Build-Operate-Maintain (“DBOM”) Contract. If changes to the durations or sequencing of the design work due to interfaces with other contracts are required, the CITY will consider adjustment to the NTP phases and durations stated herein.

NTP #1a [EXPECTED DURATION TEN (10) WORKING DAYS] PREPARE SCHEDULE OF MILESTONES

- Provide the CITY within ten (10) days of receipt of NTP #1a with a Schedule of Milestones (“SM”) that includes all Work for which the CONSULTANT expects to be compensated (*see* “Schedule of Milestones” in Special Provisions Section VII A. Definitions). The SM is to be organized by NTP and will serve as the basis for payment. The CONSULTANT’s Baseline Design Schedule must be conformed to the SM. The CITY and the CONSULTANT shall reach agreement on the proposed SM at which time the CITY will approve the SM. The CITY’s approved SM shall be added to the Agreement by contract amendment and become part of the Agreement by amending Exhibit 2B-1 to these Special Provisions.

NTP #1b [EXPECTED DURATION NINETY (90) DAYS] REVISION TO PRELIMINARY ENGINEERING (“PE”)

- Commencing with NTP #1b, revise current PE design and drawings to incorporate the approved station Value Engineering (“VE”) recommendations and other CITY preferences.
- Prepare and convene community presentation(s) featuring the graphic layout of the stations (a maximum of two (2) presentations).

- Ensure compliance of PE design with applicable codes, regulations and design standards.

NTP #2 [EXPECTED DURATION ONE HUNDRED EIGHTY (180) DAYS] INTERIM DESIGN (“ID”)

- Commence ID drawings and detailed working drawings and specifications.
- Incorporate PROJECT standard details provided by the CITY and develop Project-specific details as required; provide consistent material selection that considers pedestrian safety, durability, maintenance, sustainability and aesthetics relating to the transit environment.

NTP #3 [EXPECTED DURATION ONE HUNDRED TWENTY (120) DAYS] FINAL DESIGN (“FD”)

- Commence FD and preparation of construction contract documents.
- Provide detailed construction contract documents to permit accurate cost estimating and expedite construction activities.
- The NTP #3 duration assumes the following: sixty (60) days from NTP #3 for submittal of camera-ready final documents to the CITY; thirty (30) days for CITY review; and thirty (30) days for the CONSULTANT to incorporate review comments and prepare final advertisement-ready (“ad-ready”) construction documents.

NTP #4 [EXPECTED DURATION TBD DAYS] DESIGN SUPPORT DURING BIDDING

- As requested, assist the CITY in construction solicitation process.

NTP #5 [EXPECTED DURATION TBD] DESIGN SUPPORT DURING CONSTRUCTION

- As requested, assist the CITY in resolving design issues during construction.

SCOPE OF WORK – DETAILED DESCRIPTION BY TASK

TASK 1 – CONTRACT MANAGEMENT

1.1 PROJECT MANAGEMENT PLAN

Critical to the CONSULTANT’s management approach for this PROJECT will be the development by the CONSULTANT of a written Project Management Plan (“PMP”) and a Project Work Plan (“PWP”). The PMP will define the processes, protocols, progress reporting methods and areas of PROJECT responsibilities to facilitate coordination and communication between the design disciplines and the CITY. The PMP will include an updated organization chart, a PROJECT directory identifying team members within each firm, their contact information, and staffing assignments, which will be distributed to all CONSULTANT team members and the CITY and shall require updating as necessary to reflect changes.

1.2 PROJECT WORK PLAN

The PWP will provide details for execution of the PROJECT, including the plan to maintain control of such items as scope, cost, schedule, and quality. PWP will include cost tracking and controls, progress reporting methodology and quality assurance/quality control. The PWP will also define the resources required to fulfill the requirements of each phase of the work and the development of each deliverable, and will include the interaction of other activities such as presentations, reviews, approvals and permitting.

1.3 DESIGN WORKSHOP & COORDINATION MEETINGS

A Design Workshop will officially commence the CONSULTANT's design effort using original station design concepts developed by the CITY in prepared drawings dated September 18, 2009. It is understood that those drawings will require revisions based on VE recommendations that were accepted by the CITY. Design Workshop participants will include PROJECT designers, the WOFH Guideway Design-Build Contractor ("GDBC") and design staff, the CITY architectural and engineering staff and others. This exchange is expected to explain design philosophies, site limitations, community input and other considerations that have resulted in the current schematic design.

Progress/Coordination meetings will be held with the CITY on a bi-weekly schedule. The agenda for these meetings will include a review of work performed during the previous period, work planned in the current period, identified or anticipated issues and, as applicable, resolutions proposed. Each meeting will include a written agenda, a specific purpose statement identifying elements on the schedule to be resolved, and the key individuals from both the CONSULTANT and the CITY, in order to address key issues requiring timely resolution. The CONSULTANT will provide copies (electronic) of all drawings, reports, renderings or displays that are required for review at least two (2) working days in advance of the meeting. Meeting minutes will be distributed within five (5) days of the meeting and will include the party responsible for the performance of key activities or resolution of outstanding concerns, and a date required for such response. Minutes will be prepared by the CONSULTANT representing a continuous record of the ID and an on-going confirmation of the design schedule.

The CONSULTANT will hold supplementary meetings with appropriate team members. These meetings will act as work sessions to focus on specific areas of the Project that require attention or design issues that require resolution. These meetings are intended to start general discussion on matters reviewed with the CITY and will designate work assignments and focus on specific issues.

Appropriate meetings, including design review meetings per the HHCTCP Quality Plan, will be held with the various approving CITY, State and Federal agencies and utility companies to assist in the review process. It is critical that the review process include a one-time review by all agencies and utilities and an expedited review period.

1.4 DESIGN COST MONITORING AND CONTROL

The CONSULTANT will monitor the design budget weekly using Primavera's Contract Management ("CM") and P6 Version 7 programs for design costs, preparation of earned value reports and staff/expense forecasting where required. The CITY will provide the CONSULTANT with all program control requirements, detailed schedules from interfacing contracts, rail budget proposal list and cost data, baseline schedule format, invoicing procedures,

and a sample format for the SM. The CONSULTANT will maintain one licensed copy of CM (refer to item 1.6 below) and provide input for the CITY once the relevant data is provided. Scheduling hours have been limited based on the above assumptions.

Cost monitoring output, mainly earned value, will follow the CITY Work Breakdown Structure (“WBS”) for compliance with the CITY’s reporting requirements.

Estimates of design efforts are based upon useable Preliminary Design drawings represented in the PE Drawings dated September 18, 2009.

All documentation, reporting, auditing, etc. pursuant to Federal Transit Administration (“FTA”) requirements will be performed by the CITY with input from the CONSULTANT.

1.5 DESIGN SCHEDULE MONITORING AND PROJECT CONTROLS

The CONSULTANT will prepare a Baseline Design Schedule using Oracle Primavera’s P6 for each design discipline, milestone submissions, meetings, presentations and review durations for each design phase. The CONSULTANT will incorporate the CITY’s WBS and the CITY dictated coding schemes and the SM in the CONSULTANT’s Baseline Design Schedule. The CITY will provide the CONSULTANT with the base formats and all applicable HHCTCP data as needed for coordination.

The Baseline Design Schedule commences with NTP #1a and will identify the critical path network, identify early start and early finish dates for the Work inclusive of the deliverables identified in this Scope of Work (*see* “Baseline Design Schedule” defined in Special Provisions Section VII. Definitions). The CONSULTANT will provide the CITY with the SM within ten (10) days of receipt of NTP #1a which depicts milestones for the Work, specific deliverables, reviews and necessary approvals from agencies and departments having jurisdiction over the Work including permitting and payment milestones. The SM is intended to provide linkage between the Baseline Design Schedule, PROJECT WBS and the pricing that is itemized by Pay Items. The SM will be added to the Agreement by contract amendment, and will serve as the basis for payments.

The initial Baseline Design Schedule and SM will be reviewed by the CITY for acceptability of the schedules submitted. The CONSULTANT shall have an additional ten (10) days after receipt of comments from the CITY to make corrections and adjustments and shall complete and resubmit the schedules. No progress payment shall be made to the CONSULTANT until schedules are submitted to and accepted by the CITY.

The CONSULTANT shall update the Baseline Design Schedule and the SM and other PROJECT controls systems to effectively manage and control performance of the Work. An updated Baseline Design Schedule (“Progress Payment Schedule”) shall be submitted monthly, based on the last Friday of the month, and presented with each request for payment upon completion of milestones. Whenever the Baseline Design Schedule changes materially from the accepted version, the CONSULTANT shall submit a revised Baseline Design Schedule with narrative describing the cause and actions planned to remediate such that the contract completion milestone(s) are not impacted. Written Notice by the CONSULTANT is required if at any time the progress of the Baseline Design Schedule is impacting the contract completion milestones.

In order to accomplish the Work within the stated NTP Phase and total durations, the design work for subsequent NTP Phases must overlap the CITY’s thirty (30) day review of the prior submittal. Therefore, the authorization to proceed for NTP #2 will be concurrent with the NTP

#1b submission and the authorization to proceed for NTP #3 will be concurrent with the NTP #2 submission. Should there be any delay in these notices to proceed, through no fault of the CONSULTANT and for which the CONSULTANT seeks additional compensation, the CONSULTANT shall provide written notification to the CITY in a timely manner of any change pursuant to Section 5, "Modifications" of the General Terms and Conditions.

The CONSULTANT will proceed at its own risk in the event that comments received during the review period require the revision of Work completed by the CONSULTANT during the thirty (30) day submittal review period or in the event that the PROJECT is suspended.

The specifics of the component activities, in particular the PE effort, will depend on the results and availability of the VE Report and the determination by the CITY of the incorporation of VE recommendations. Accordingly, the design durations of the phased design may require adjustment within the overall duration of the Agreement. A major concern for the overall schedule will be the timely review of construction documents by affected State and CITY agencies, utility companies and affected individuals. This will be required in order to obtain approvals for final documents. The Scope of Work assumes a maximum of thirty (30) days for outside agency reviews and that the reviews would be concurrent with design work for the next phase, as applicable.

All documentation, reporting, auditing, etc. pursuant to FTA requirements, will be performed by the CITY with input from the CONSULTANT.

1.6 PRIMAVERA LICENSING & TRAINING

Per the CITY's "Farrington Highway Station Group Design Consultant, Proposed Design Consultant Responsibilities for City Hosted System" document received with the May 5, 2010 letter (RT5/10-364977), the CONSULTANT will purchase one program license agreement for Oracle's Primavera P6 and Contract Management.

1.7 SUB-CONSULTANT MANAGEMENT & COORDINATION

The CONSULTANT will hold coordination meetings or conference calls (weekly during NTP #1b and bi-weekly thereafter or as needed) to review the responses to inquiries or comments from the CITY, disseminate information from the CITY and to discuss work effort and schedules. Specific design issues will be identified in the agenda so that appropriate team members can be prepared to discuss and coordinate work, resolve outstanding problems and anticipate problematic design issues. The CONSULTANT's Project Manager will periodically visit the offices of team members to monitor the dedicated participation of appropriate staff and to verify that Quality Control protocols are being followed.

1.8 DOCUMENT CONTROLS

Non-CADD PROJECT correspondence and other documentation will be controlled using CM in accordance with the CITY's "Farrington Highway Station Group Design; Proposed Design Responsibilities for City Hosted System" document received with the May 5, 2010 letter (RT5/10-364977).

The CONSULTANT will utilize the CADD production guidelines established by the CITY to standardize the development and production of design drawings, aid in the use, retrieval, exchange and modification of design drawings, and communicate information to the CITY and other stakeholders. Standards include sheet organization, and conventions for line weight, layer

and level naming, symbols, and filing. The CONSULTANT will use the CITY's web-based collaboration site Projectsolve² for CADD drawing sharing. AutoCAD (Version 2009) has been established as the PROJECT CADD platform.

The CONSULTANT will utilize a PROJECT CADD Coordinator to review protocols and resolve problems as they may occur, and to enforce a uniform application of these guidelines.

1.9 MONTHLY PROGRESS REPORTING

1.9.1 Monthly Progress Reports

Progress reports will be submitted monthly to update and inform the CITY on all PROJECT matters, including but not limited to updates on design progress, schedule, meetings attended, site visits, presentations, design issues that have arisen or are anticipated and their proposed resolution. In addition, the reports will document any design issues and include updates on Environmental Compliance Plan ("ECP") compliance issues (*see* Task 13) that may impact the design schedule or the construction budget, and specifically suggest methods of proactive resolution of such issues.

All documentation, reporting, auditing, etc. pursuant to FTA requirements will be performed by the CITY with input from the CONSULTANT.

1.10 TRAINING

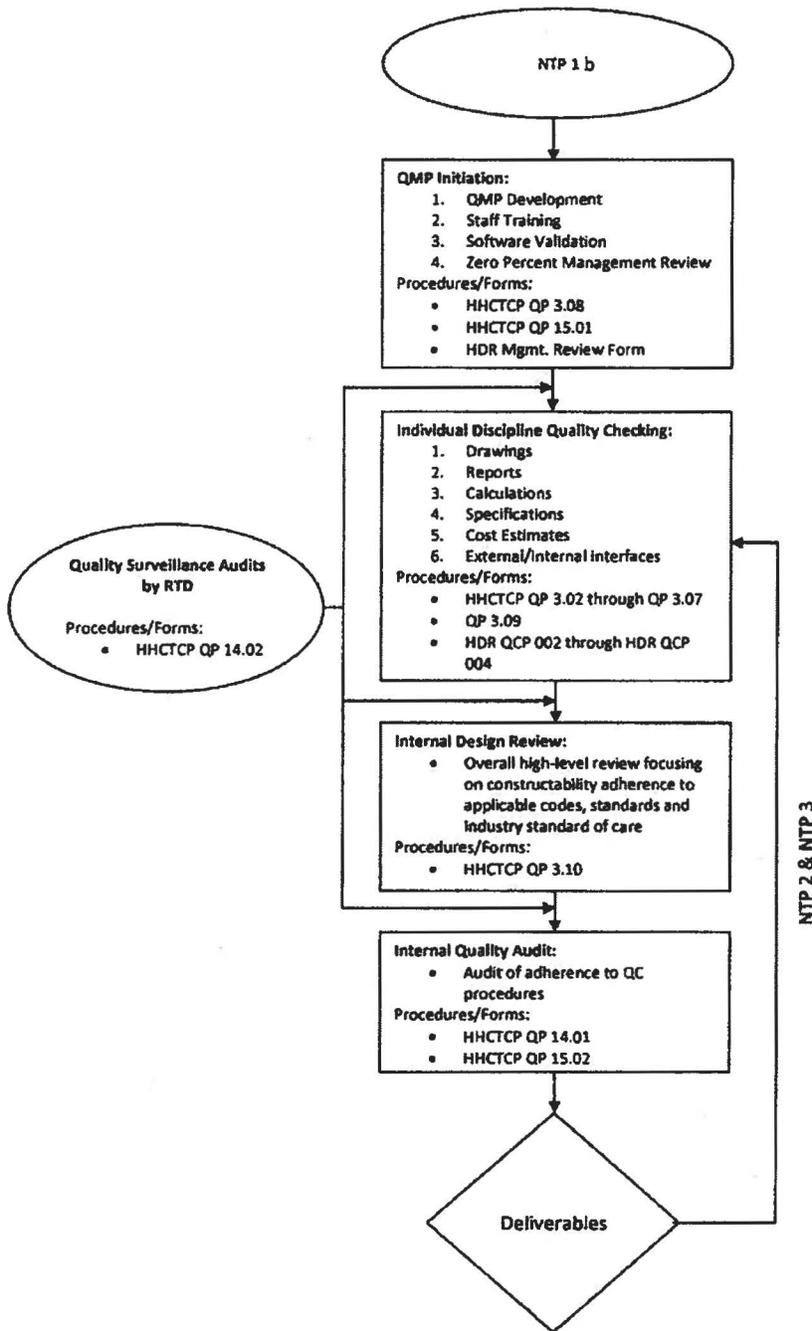
The CONSULTANT's Project Scheduler will attend all necessary training required at the outset of the PROJECT as required by the CITY, in Primavera CM and other HHCTCP-wide software.

1.11 QUALITY CONTROL AND QUALITY ASSURANCE

The CONSULTANT will develop and implement a Quality Management Plan ("QMP") to manage the Quality Control/Quality Assurance ("QC/QA") activities on the Project. The QMP will comply with the HHCTCP Quality Plan and with the CONSULTANT's corporate requirements. The CONSULTANT will use the forms and procedures contained in the HHCTCP Quality Plan and the CONSULTANT's quality control procedures to document QC/QA actions, reviews and documentation. The CONSULTANT will conduct independent checks by QC/QA auditors not involved in the discipline or design being reviewed and that possess the qualifications and expertise to perform said checks.

It is assumed that three (3) submittals will go through the QC/QA process: NTP #1b, NTP #2, and NTP #3 camera-ready final documents. The NTP #3 ad-ready submittal will receive a check to verify that final CITY comments have been incorporated.

The QC/QA work flow activities are illustrated on the following diagram:



CONSULTANT QC/QA Work Flow

1.12 MISCELLANEOUS ADMINISTRATIVE ASSISTANCE

This activity is limited to administrative assistance for meetings, coordinating schedules, work processing, data entry, filing and other clerical activities such as note taking, photocopying, mailing preparation, etc.

TASK 1 DELIVERABLES:

- Project Management Plan
- Project Work Plan
- Meeting Agendas & Minutes
- Design Schedule (Primavera P6)
- Monthly Progress Reports
- Monthly Invoices
- Quality Management Plan
- Quality Audit Reports

TASK 2 - ARCHITECTURAL DESIGN

2.1 NTP #1b – PRELIMINARY ENGINEERING

The PE drawings developed by the CITY, including the West Loch Bus Transit Center and parking lot, will be modified as required to reflect the Scope of Work, programmatic and functional requirements, provide a basis for cost estimating purposes, and allow an understanding of the PROJECT for approval of the CITY and for presentations to the public. This development of the updated PE drawings will incorporate the CITY accepted recommendations of the VE Report, design improvements proposed by the CONSULTANT in the analysis of the PROJECT requirements, and proposed typical details adopted for the cost effective construction of the three PROJECT stations. Illustrative materials will be prepared including rendered plans, sections and elevation drawings, three-dimensional renderings and representations of the stations and other graphic materials that will convey an understanding and appreciation by all recipients of this presentation.

2.2 NTP #2 – INTERIM DESIGN

Interim Design will be developed to provide further definition and to develop cost estimates to provide a greater degree of assurance that the PROJECT is within the stated budget. Standard specifications provided by the CITY will be reviewed and edited for Project specific requirements. The CONSULTANT will create new specifications sections where required.

2.2.1 Design Details Preparation

Develop PROJECT specific design details to be consistent with the goals of the Design Language Pattern Book established by the CITY to formulate a standard design vocabulary that is recognizable and respectful of the cultural influences on the transit design. The drawings, details and criteria that form the basis of the CITY Standard and Directive Drawings, Compendium of Design Criteria and Signage and Wayfinding Manuals are evidence of similar efforts by the CITY to develop system-wide design details.

The CITY Standard and Directive Drawings will be modified as necessary and stamped and signed by the CONSULTANT for inclusion in the construction documents. The CITY Standard Drawings that are not modified by the CONSULTANT will be incorporated by reference.

Design details will address considerations for public safety, material durability, maintainability, accessibility and aesthetics that have been investigated in the course of the PROJECT ID.

2.2.2 Design Visualizations

Renderings, a 3-D flyover, and supporting visual documentation, including landscaping and plaza design, will be prepared for each station in support of the public outreach process and ID related presentations.

2.2.4 Constructability Review

The CONSULTANT will perform a high-level constructability review of the ID to identify design elements that may need to be modified to improve constructability. Construction means, methods and construction job site safety will remain the responsibility of the construction contractor.

2.3 NTP #3 - FINAL DESIGN

Final Design documents will be developed to establish a detailed construction cost estimate of the Project and to provide a basis for prospective bidders of the finished construction. The CONSULTANT will provide quantity updates. The CITY will provide bid item unit costs. Since the CONSULTANT has no control over the ultimate cost of labor, materials, equipment or services furnished by others, or over contractor methods of determining prices, or over competitive bidding or market conditions, the CONSULTANT does not guarantee that proposals, bids or actual PROJECT or construction cost will not vary from opinions of probable cost in the construction cost estimate that the CONSULTANT prepares.

The FD documents, consisting of final working drawings, final specifications, construction schedule and other contract documents will become part of the construction bid documents. Proposed elements of the PROJECT will be identified and specified including the materials, equipment, systems of all design disciplines. The West Loch Bus Transit Center and parking lot are included in this Scope of Work.

2.3.1 Design Visualizations

Renderings, a 3-D flyover, and supporting visual documentation, including landscaping and plaza design, will be prepared for each station in the PROJECT.

Physical Station Model

Upon completion of the FD, the CONSULTANT will create a 1/8"=1'-0" physical scale model of one (1) PROJECT station selected by the CITY. Three to four weeks lead time is needed for production of the model. A durable wood base with Plexiglas cover, custom, protective shipping case with casters will also be provided to allow for the CITY to transport the model.

2.4 NTP #4 – DESIGN SUPPORT DURING BIDDING

Architectural Design services during bidding will be performed on a negotiated firm-fixed price basis.

2.5 NTP #5 – DESIGN SUPPORT DURING CONSTRUCTION

Architectural Design services during construction will be performed on a negotiated firm-fixed price basis.

2.6 RIGHT-OF-WAY (“ROW”)/PRIVATE PROPERTY

Station boundaries shall be confined to the parcels and limits identified in the PE drawings. If additional ROWs are deemed appropriate by the CITY, the CONSULTANT shall provide potential changes to the station ROW acquisition plans. Proper ROW boundaries will be established or revised as necessary based on appropriate code requirements. It is understood that the revision of the ROW acquisition maps and legal descriptions will be performed by the CITY and any such changes will be communicated through the CONSULTANT’s Interface Manager. The CONSULTANT will provide plan drawings identifying the limits of the proposed station work and impacts to private property.

2.7 DECONSTRUCTION/DEMOLITION

The CONSULTANT shall prepare deconstruction/demolition drawings and specifications for the properties impacted by station related work. Hazardous material abatement work related to this is currently not applicable. Standard specifications provided by the CITY will be reviewed and edited for PROJECT specific requirements. The CONSULTANT will create new specifications sections where required.

2.8 TRANSIT ARTS PROGRAM

The CITY’s Transit Arts Program is intended to integrate art into transit station designs during the design process rather than add artwork after the process is complete. The CONSULTANT will work with the CITY selected artist(s) to integrate artwork into the design of the stations and station site. The CONSULTANT will work with the Transit Arts Administrator and the CITY Chief Architect during the design process to identify art opportunities and to incorporate the artwork into the design construction documents.

2.9 STATION PROGRAM SPACE INVENTORY

The program spaces included in the PE drawings dated September 18, 2009 prepared by the CITY have been used as a guideline in the preparation of this Scope of Work and the negotiated cost proposal. The number and size of spaces may be modified to agree with the HHCTCP Compendium of Design Criteria (“CDC”) and by the recommendations of the VE Report, community and/or stakeholder input, and responses to inquiries.

TASK 2 DELIVERABLES:

NTP #1b:

- Updated Preliminary Engineering Drawings
- Preliminary Code Compliance Checklist
- Responses to comments

NTP #2:

- Interim Architectural Design Drawings
- Interim Design Code Compliance Checklist
- Interim Design Station Visualizations
- Interim Design Constructability Review
- Responses to comments

NTP #3:

- Final Architectural Design Drawings
- Final Architectural Design Specifications
- Final Design Architectural Quantity Estimates
- Final Code Compliance Checklist
- Updated station visualizations
- Physical model of one (1) station
- Responses to comments

TASK 3 - CIVIL DESIGN

3.1 TOPOGRAPHIC SURVEY

3.1.1 NTP #1b - PRELIMINARY ENGINEERING

The CONSULTANT will provide additional topographic surveys at the three (3) PROJECT sites as required to supplement the CITY provided topographic surveys and controls. New topographic surveys will follow Hawaii State Plane coordinate grid system, North American Datum 83 HARN (PAC00), Zone 3 with a horizontal accuracy of second order class II (1:20,000); and vertical datum will be referenced to the National Geodetic Vertical Datum of 1929.

The CITY will provide the final topographic survey for the guideway (CADD files of previous photogrammetric survey), boundary surveys, ALTA maps, ROW mapping and overall PROJECT controls for the main segment design for use by the CONSULTANT. The CONSULTANT will prepare site controls and property ROW plans to meet the limits as identified by the CITY.

3.1.2 NTP #2 – INTERIM DESIGN

Full survey completion is desired during NTP #1, but this work will likely continue into and be completed during the NTP #2 period.

3.1.3 NTP #3 – FINAL DESIGN

It is assumed that topographic survey services will not be required during NTP #3.

3.1.4 NTP #4 – DESIGN SUPPORT DURING BIDDING

Topographic survey services during bidding will be performed on a negotiated firm-fixed price basis.

3.1.5 NTP #5 – DESIGN SUPPORT DURING CONSTRUCTION

Topographic survey services during construction will be performed on a negotiated firm-fixed price basis.

3.2 OFF-SITE ROADWAYS

Prepare construction documents for off-site street modifications and restoration as required for construction operations of the rail stations. Close coordination will be required with the WOFH GDBC to address impacts of the primary segment design modifications to Farrington Highway and at the Leeward Community College Station.

The limit of work at the Farrington Highway Guideway Stations is the ROW boundary at Farrington Highway. The CONSULTANT will prepare geometric design controls for proposed on-site layout and off-site County roadway modifications. A Geometric Design Report for roadway layout for work on Farrington Highway is not required.

3.2.1 NTP #1b – PRELIMINARY ENGINEERING

Review VE recommendations, community input, coordinate with the WOFH GDBC and coordinate with the CITY to develop revised PE plans. Participate in the Design Workshop to review the current PROJECT status, schedule, station designs, and deliverables.

3.2.2 NTP #2 – INTERIM DESIGN

Interim design of off-site roadways, civil engineering, traffic control, drainage and utility infrastructure documents based on detailed topographic survey and preliminary geotechnical information. At each phase of the design process, quantity take-offs will be prepared to allow cost estimate comparison with the construction budget and where necessary, recommendations will be offered to revise the program, function, systems or design details to comply with the Agreement.

3.2.3 NTP #3 – FINAL DESIGN

Prepare final construction documents for off-site roadways, civil engineering, traffic control, drainage and utility infrastructure documents. Coordination with the CITY, the Department of Planning and Permitting (“DPP”), the Department of Transportation, State of Hawaii (“HDOT”), and utility agencies for the review and approval of construction documents. Prepare quantity take-offs to allow for cost estimate comparisons with the construction budget and elsewhere as necessary. Recommendations to revise the program, function, systems or design details to comply with the stated budget may be submitted. Attend meetings and public outreach events as required.

3.2.4 NTP #4 – DESIGN SUPPORT DURING BIDDING

Civil consultation services during bidding will be performed on a negotiated firm-fixed price basis.

3.2.5 NTP #5 – DESIGN SUPPORT DURING CONSTRUCTION

Civil consultation services during construction will be performed on a negotiated firm-fixed price basis.

3.3 AMERICANS WITH DISABILITIES ACT (“ADA”) ACCESSIBILITY

Prepare an ADA Accessibility Report indicating the accessible routes and features of each station, including the West Loch Bus Transit Center and parking lot, indicating how ADA accessibility guidelines were utilized. Follow ADA Accessibility Guidelines for Buildings and

Facilities (“ADAAG”). Provide curb ramps at intersections that meet the applicable CITY standards for curb ramps. Coordinate with the CITY the requirements of State Department of Health, Disability and Access Board.

3.4 CIVIL DESIGN

PROJECT civil design will follow the design standards, standard specifications and standard details of the Department of Design and Construction (“DDC”) and DPP, for work within the CITY ROW. HDOT’s Design Manual and Standard Details for work within the State’s ROW or State Highway areas are not required. Standard specifications provided by the CITY will be reviewed and edited for PROJECT specific requirements. The CONSULTANT will create new specifications sections where required. The CITY Standard and Directive Drawings will be modified as necessary and stamped and signed by the CONSULTANT for inclusion in the construction documents. The CITY Standard Drawings that are not modified by the CONSULTANT will be incorporated by reference.

Pavement design within the station areas will follow the Standard Details and Standard Specifications and as modified by geotechnical data. Consider the basic site elements for access for pedestrians, bicycles, vehicles, buses, handi-vans, taxis, private shuttles and private tour buses in the design of the station areas including the West Loch Bus Transit Center and parking lot.

Prepare drainage and erosion control studies for the three (3) on-site station areas that comply with the CITY Storm Drainage Standards and conform to the master drainage study with interface with the WOFH GDBC design team and the CITY.

3.5 TRAFFIC CONTROL MEASURES

Prepare Preliminary Maintenance of Traffic (“PMOT”) report and plans in accordance with HDOT’s Transportation Management Guidelines and Work Zone Safety and Mobility Process, dated October 3, 2007 for the West Loch and Waipahu Transit Center Stations. The PMOT will include viable strategies for temporary traffic control and detour plans as required by the HDOT or CITY Traffic Review Branch approval process. PMOT plan preparation is predicated on the assumption that the Station Construction Contractor will ultimately be responsible for its own detailed traffic control plans commensurate with their proposed means and methods of construction, and operations.

Provide coordination with the WOFH GDBC and HDOT, CITY Traffic Review Branch and Department of Transportation Services (“DTS”) for any disruptions to roadways, emergency, local, pedestrian, safe routes to schools, bus routes, traffic signal systems, CITY’s CCTV systems and Intelligent Transportation Systems (“ITS”).

3.6 GEOTECHNICAL EXPLORATION AND DESIGN

A geotechnical exploration will be conducted for the three (3) PROJECT stations in areas outside of the WOFH Guideway ROW. Geotechnical investigations for guideway foundations and site improvements that are required within the WOFH Guideway ROW are not included and will be conducted by the WOFH GDBC. The requirements of HHCTCP Compendium of Design Criteria, Sections 9.6.2 and 9.6.3 apply.

Geotechnical investigation needs will be coordinated with WOFH GDBC to the extent practicable.

The station layouts from the PE design, geotechnical data from existing investigations and reports for the HHCTCP and from other readily available soils reports for other projects in the vicinity of each station, will be used to plan the geotechnical exploration program.

All station locations are assumed not to require survey and study of archaeological sites, historic artifacts, or protected flora and fauna by the CONSULTANT. The CONSULTANT will be responsible for any damage to any unmarked archaeological sites, historic artifacts, or unidentified protected flora and fauna during any field work by the CONSULTANT and must comply with the Section 106 Programmatic Agreement.

Geotechnical engineering services for preliminary design, ID, FD, bidding phase, and construction phase will consist of the following:

3.6.1 NTP #1b - PRELIMINARY ENGINEERING

A. Research and Review Available Geotechnical Data

Readily available information on subsurface and geologic conditions near each PROJECT site will be researched and reviewed. The sources of this review may include the CITY's Geotechnical Data Report ("GDR") and addenda for the WOFH GDBC, readily available information from previous applicable projects, existing reports on file in the CITY's Municipal Library, and other available information in the vicinity of the PROJECT stations.

B. Preliminary Geotechnical Engineering Analysis

Based on the results of the research and review of available geotechnical information, preliminary geotechnical analyses will be performed, and initial feedback and preliminary recommendations will be developed regarding main potential geotechnical concerns and considerations, anticipated subsurface conditions, general site preparation and preliminary foundation subgrade treatment and support.

A Health and Safety Plan ("HSP") will be prepared for the geotechnical field exploration work. HSP assumes that the subsurface materials and ground water at the PROJECT sites are non-hazardous, non-toxic, and free of asbestos, PCBs, and hydrocarbon contamination. It also assumes personal protective equipment ("PPE") Level D.

If potentially hazardous and/or toxic materials, asbestos, PCBs, or hydrocarbon contamination are encountered during the field exploration, drilling work will be stopped in the affected area to allow the CITY to assess the potential contamination. Any special measures required by the CITY due to site contamination, such as providing Hazardous Waste Operations and Emergency Response trained field engineers and drillers, modifying the HSP for hazardous waste conditions, providing more stringent PPE, decontaminating the drilling and sampling equipment, disposal, or other directives will be considered a change to this Agreement and subject to the provisions in Section 5 of the CITY's General Terms and Conditions, "Modifications".

C. Preliminary Foundation Support Recommendations

A technical memorandum will be prepared to summarize the results of the review of available information, and preliminary geotechnical analysis based on available geotechnical information.

3.6.2 NTP #2 – INTERIM DESIGN

A. The CITY will obtain right-of-entry and necessary approvals from private property owners and the Leeward Community College for the geotechnical field exploration work.

B. HDOT and CITY Permits

It is anticipated that the test borings for the PROJECT facilities will be sited in private property outside of the Farrington Highway ROW. Applying for and obtaining an HDOT Permit to work within State Highways is not included. If test borings are needed within the HDOT or CITY ROW, there will be additional charges to obtain the required permit, boring and bond fee, and to prepare a Best Management Practices (“BMP”) plan that is required for a HDOT permit. Changes to the requirements will be processed pursuant to Section 5 of the General Terms and Conditions for Professional Services.

C. Locating Existing Utilities Near Borings

The CONSULTANT will review available utility plans and the Hawaii One Call Center (“HOCC”) will be consulted regarding existing underground utilities and to schedule field marking of utility lines in the vicinity of the borings. Separate requests will be made for each station. Boring locations will be checked for potential conflicts using metal detector and Ground Penetration Radar (“GPR”) testing methods.

HHCTCP “Standard Specification Division 02, Section 02 32 00, Part 3.05 B. Existing Utilities” requires that excavations or testing at locations within three (3) feet of an (active or inactive) underground utility line need to be cleared to a depth of six (6) feet below existing grades by hand excavation method before beginning mechanized geotechnical investigation and testing activities. A subcontractor will be retained to assist with pot-holing and/or hand excavations that may be needed to check for potential underground utilities in the vicinity of the borings. Pot-holing at other locations for utility relocations and new utilities is not included.

D. Subsurface Exploration and Testing

Subsurface conditions for the PROJECT stations will be explored by performing the following test borings at:

West Loch Station

- Mauka Entrance Building: Two (2) test borings, each to a depth of about 75 to 125 feet below existing grades.
- Mauka Entrance Plaza: Two (2) test borings, each to a depth of about fifteen (15) feet.
- Makai Entrance Building: Two (2) test borings, each to a depth of about 75 to 125 feet.
- Makai Entrance Plaza: One test boring to a depth of about fifteen (15) feet.
- Bus Transit Center: Five (5) test borings, each to a depth of about 15 to 40 feet.

Waipahu Transit Center Station

- Mauka Entrance Building: Two (2) test borings, each to a depth of about 125 to 150 feet below existing grades.
- Mauka Entrance Plaza: Two (2) test borings, each to a depth of about fifteen (15) feet.

- Makai Entrance Building: Two (2) test borings, each to a depth of about 125 to 150 feet.
- Makai Entrance Plaza: Two (2) test borings, each to a depth of about fifteen (15) feet.

Leeward Community College Station

- Station Entrance Building: One (1) test boring to a depth of about one hundred (100) feet below existing grades.
- Retaining Walls: Two (2) test borings, each to a depth of about 40 to 60 feet.
- Parking Lot Pavements: Three (3) borings, each about fifteen (15) feet in depth.
- Landscape Areas (west): Two (2) borings, each about fifteen (15) feet in depth.

Standpipe PVC or vibrating wire piezometers will be installed to select depths to check on water levels. Two (2) wells per station will be installed at the West Loch and Waipahu Transit Center Stations, and one at the Leeward Community College Station. The piezometers will be monitored for a period of about two (2) months and will generally be measured about once a week.

The borings will be drilled using truck-mounted drill rigs. Subcontractor(s) will be retained to perform the borings. The total drilling footage is estimated to be about 1,500 feet.

Prior to the start of the field exploration, a pre-field investigation meeting will be held with subcontractors and the CITY as specified to discuss the planned work schedule and operations, and equipment and methods to be used during the field work.

Surveying of the borings is not included in the Scope of Work, however survey coordinates obtained through hand-held global positioning device will be provided.

It is assumed that the field work can be scheduled during regular 8-hour work days, Monday through Friday. Overtime, night, holiday, and weekend work are not included.

The field work will be performed under the technical observation of engineering personnel, who will obtain soil samples and/or rock cores and maintain logs of the subsurface materials that are encountered.

Traffic control equipment consisting of signs, cones, and if needed, directional arrow boards and traffic duty police will be provided where borings are located along existing streets or within traffic lanes.

Temporary fire hydrant water meter hook-up will be obtained to provide sources of water for the drilling process. Water truck and/or water tanks will be provided to transport water to the drilling sites.

This Scope of Work assumes that the on-site materials are considered to be non-hazardous, non-toxic, and free of asbestos, PCBs, and hydrocarbon contamination. Containerizing, sampling, storing, handling, testing, transporting, and disposing of any hazardous and/or toxic materials, including asbestos, PCBs, and hydrocarbon containing materials and fluids are not included. If the CITY directs additional field work for the contaminated site and handling of contaminated materials, a change order will be required for such work.

The soil cuttings and drilling fluids from the borings will be temporarily placed in HDOT approved 55-gallon drums. An environmental testing laboratory will be required to sample

the drum contents to check if the material is considered to be regulated or non-regulated per State Department of Health requirements. If the material is considered regulated material, there will be additional charges for disposal of the soil cuttings and fluids. Changes to the requirements will be processed pursuant to Section 5 of the General Terms and Conditions for Professional Services. This Scope of Work assumes that the CONSULTANT is allowed to temporarily store the drums at the station sites until the testing of the drum contents has been completed, non-regulated drums will be hauled off-site for disposal.

If the testing indicates that the soil cuttings and fluids are considered to be non-regulated material, the assumption is that this material may be placed back into the boreholes.

The submerged portion of the borings will be backfilled with a cement, bentonite, and water mixture or bentonite pellets. The portion of the hole above the water table will be backfilled with soil cuttings and soil materials. The top of the hole located in paved areas will need to be capped with concrete or cold-mix AC depending on existing surface conditions.

Assessment of the environmental aspects of the PROJECT sites is not included. This Scope of Work assumes that if an environmental assessment is needed, it will be performed by the CITY.

Soil samples and rock cores from the test borings will be stored for a period of two (2) months after the CONSULTANT's FD documents are accepted by the CITY. Any additional storage time will be subject to a change order.

F. Laboratory Testing

After the completion of the field work, the soil samples and rock cores from the borings will be transported to a geotechnical laboratory for further examination and testing. The testing will be performed by the CONSULTANT's geotechnical subconsultant and/or its qualified subcontract testing laboratory.

The laboratory testing may include index and classification tests, strength tests, swell or Expansion Index tests, consolidation tests, moisture-density relations test, and single point California Bearing Ratio ("CBR") tests, unconfined compressive strength ("UCS") on soil and intact rock cores, and R-value tests, as appropriate. Laboratory soil corrosion testing (pH, sulfate, resistivity, chlorides) will also be performed on select soil samples. Field soil resistivity testing is not included.

G. Geotechnical Recommendations

Based on the results of the review of available information, field exploration, and laboratory testing, engineering analyses will be performed and comments and recommendations for the subject stations will be developed regarding:

1. Site preparation
2. Anticipated excavation conditions
3. Permanent cut and fill slopes, as appropriate
4. Fill materials, placement, and compaction
5. Foundation subgrade treatment and support
6. Estimates of settlement
7. Lateral resistance
8. Site Class

9. Foundation installation and testing
10. On-grade floors
11. Wall foundation support
12. Lateral earth pressures
13. Wall backfill materials, placement, and compaction
14. Geotechnical parameters and recommendations for flexible and rigid pavements
15. Pipeline bedding and sub bedding, as appropriate
16. Trench excavation and backfilling

Assessing the feasibility of trenchless installation methods for underground utilities is not included.

H. Geotechnical Data Report (“GDR”)

Based on the results of the field exploration and laboratory testing, a GDR will be prepared for all three stations. Preparation of separate reports for each station is not included. The GDR report will generally include the following:

- Introduction
- Project Considerations
- Scope of Services
- Brief description of field exploration and laboratory testing
- Geologic setting
- Discussion of findings, such as subsurface and groundwater conditions encountered, and laboratory test results
- Limitations
- References
- Appendix A – Field Exploration
 - Description of Field Exploration
 - Boring Logs
 - Classification Charts
 - Summary tables
 - Core Photos
- Appendix B – Groundwater Monitoring Results
 - Monitoring procedures and instrumentation
 - Monitoring results
- Appendix C – Laboratory Testing
 - Laboratory tests performed
 - Laboratory test results
 - Summary tables
- Figures
 - Map of Area
 - Plot Plans
 - Generalized Subsurface Cross Sections

A draft and final of the GDR will be submitted. One hard copy will be submitted to the CITY along with an electronic file in pdf format.

I. Geotechnical Recommendations Report (“GRR”)

A GRR will be prepared that will include interpretations of the field and laboratory test data, comments, and recommendations for site preparation, foundation support, and pavements. Main items to be covered in the report are outlined in item G above.

A draft and final of the GRR will be submitted. Two hard copies will be submitted to the CITY along with an electronic file in pdf format.

- J. Providing consultation regarding geotechnical related design issues.
- K. Attending design coordination, design review and design interface meetings and participating in conference calls as needed.
- L. Interim Design Drawing Geotechnical Review

During the ID phase, the geotechnical related sections of the ID plans and specifications for the PROJECT stations will be reviewed to check that the intent of geotechnical recommendations have been properly reflected in the contract documents. Feedback will be provided in the form of marked-up plans and specifications, as appropriate.

3.6.3 NTP #3 – FINAL DESIGN

The geotechnical Scope of Work for the FD phase includes ongoing consultation relating to geotechnical design issues on an as needed basis.

3.6.4 NTP #4 - DESIGN SUPPORT DURING BIDDING

Geotechnical consultation services during bidding will be performed on a negotiated firm-fixed price basis.

3.6.5 NTP #5 – DESIGN SUPPORT DURING BIDDING CONSTRUCTION

Geotechnical consultation services relating to geotechnical design issues will be performed on a negotiated firm-fixed price basis.

TASK 3 DELIVERABLES:

NTP #1b:

- Updated Preliminary Engineering Drawings
- Geotechnical Planning Report (Draft & Final)
- Preliminary Foundation Support Recommendations Technical Memorandum
- Responses to comments

NTP #2:

- Interim Civil Design Drawings
- Interim Civil Design Technical Specifications
- Interim ADA Accessibility Report
- Interim Drainage Design Report
- Interim Maintenance of Traffic Report
- Geotechnical Data Report (Draft & Final)
- Geotechnical Recommendations Report (Draft & Final)
- Responses to comments

NTP #3:

- Final Civil Design Drawings
- Final Civil Design Specifications

- Final ADA Accessibility Report
- Final Drainage Design Report
- Responses to comments

TASK 4 - UTILITIES DESIGN

Prepare composite utility location, relocation and service plans, profiles and details by performing additional pothole verification as needed for on-site work related to the station areas only. Prepare utility service requests. Follow HHCTCP CDC design requirements for water systems, sewer systems and drainage systems within the station areas. Off-site utilities should follow HDOT or CITY design standards as applicable. Provide coordination with private utility companies that have been identified by the CITY on the PE drawings and that are affected by utility relocations or required services.

The CONSULTANT will prepare street lighting plans for the proposed station areas that are not part of the WOFH GDBC.

TASK 4 DELIVERABLES:

NTP #1b:

- Updated Preliminary Engineering Drawings (if required based on VE Report)
- Responses to comments

NTP #2:

- Interim Design Drawings (Relocations, New Services and Street lighting)
- Draft utility service requests
- Responses to comments

NTP #3:

- Final Design Drawings (Relocations, New Services and Street lighting)
- Final utility service requests
- Responses to comments

TASK 5 - STRUCTURAL DESIGN

The structural design will be in accordance with the CDC and 2006 International Building Code. Coordination with the Architectural Design (Task 2) will be provided throughout the design process along with coordination with the WOFH GDBC. The PE drawings developed by the CITY will be the basis for the interim and FD documents.

5.1 NORTH (MAUKA) ENTRANCE BUILDING/SOUTH (MAKAI) ENTRANCE BUILDING

Foundation design including the design of assumed pile foundations, concourse level framing, platform level framing, roof framing, walls, vertical transportation pits and enclosures, and escalator support framing, stair foundations and framing, related canopies. Floor/Decking design and details are to be coordinated with the CITY.

5.2 NORTH AND SOUTH PEDESTRIAN BRIDGES

Mezzanine level bridge framing, mezzanine level passages, stairs to platforms, north and south abutments and foundations, and coordination of center supports designed by the WOFH GDBC. Connection requirements for station supported facilities are to be coordinated with the WOFH GDBC.

5.3 PLATFORMS

Provide double precast box platform structure, platform deck, railings and attachments. Provide loading information from the station design to the WOFH GDBC to confirm the design of the guideway and piers.

5.4 TENSILE STRUCTURE CANOPY

The CONSULTANT's structural designers will provide a canopy design based on Standard and Directive Drawings provided by the CITY. The design will identify the type of tensile structure, the tensile system, and provide load calculations from fabric attachment points to the superstructure. The configuration of the canopy will conform to the Standard/ Directive Drawings. Design of the Tensile Membrane Structure Canopy will be based upon preliminary sizes, loads, modules, and attachment points derived from the HHCTCP's Standard and Directive Drawings.

5.5 PHASE SPECIFIC WORK

5.5.1 NTP #1b - PRELIMINARY ENGINEERING

- A. Review the documents provided by the CITY
- B. Establish applicable codes and standards
- C. Identify critical design criteria
- D. Define the seismic zone (site-specific geotechnical data) and relevant seismic load cases
- E. Develop system for canopy design coordination with the CITY
- F. Support and attend 3-day design workshop
- G. Provide revised plans for stations incorporating accepted revisions and VE recommendations

5.5.2 NTP #2 – INTERIM DESIGN

- A. Prepare IDs of structural system for elements identified above
- B. Prepare interim drawings for structural work for the elements identified above
- C. Provide preliminary loads to the WOFH GDBC
- D. Begin preparation of record structural calculations
- E. Prepare outline specifications for structural portion of PROJECT specifications
- F. Attend team and coordination meetings as necessary
- G. Provide input into staging and Maintenance of Traffic plans
- H. Participate in constructability review, at the CITY's request

5.5.3 NTP #3 - FINAL DESIGN

- A. Prepare FD of structural system for elements identified above
- B. Prepare final drawings for structural work for the elements identified above
- C. Provide FD loads to WOFH GDBC
- D. Prepare final specifications for structural portion of PROJECT specifications, including testing and inspection requirements, and contractor deliverables
- E. Submit checked final structural calculations to the CITY

F. Attend team and coordination meetings as necessary

5.5.4 NTP #4 – DESIGN SUPPORT DURING BIDDING

Structural consultation services during bidding will be performed on a negotiated firm-fixed price basis.

5.5.5 NTP #5 – DESIGN SUPPORT DURING CONSTRUCTION

Structural consultation services during construction will be performed on a negotiated firm-fixed price basis.

TASK 5 DELIVERABLES:

NTP #1b:

- Updated Preliminary Engineering Drawings
- Responses to comments

NTP #2:

- Interim Design Structural Drawings
- Interim Structural Basis of Design
- Responses to comments

NTP #3:

- Final Design Structural Drawings
- Final Structural Calculations
- Responses to comments

TASK 6 - LANDSCAPE ARCHITECTURE

The landscape architectural work includes ID and final landscape construction plans, specifications and details for the three (3) rail stations and adjoining areas identified within the PROJECT area, including the West Loch Bus Transit Center and parking lot.

Landscape architectural designer participation at the Project kickoff meeting and public outreach meetings will be provided. Unforeseen conditions will be considered extra work.

The landscape architectural Scope of Work is described below.

6.1 NTP #1b – PRELIMINARY ENGINEERING

Upon the issuance of NTP#1b, the PE Landscape Design drawings developed by the CITY will be evaluated and updated to reflect the VE recommendations provided by the CITY. This phase of work is intended to provide a reasonable basis for early cost projecting purposes, and will create an understanding of the PROJECT's landscape design for review by the City and for presentations to the public.

Landscape architectural services performed for NTP #1b will consist of the following:

- A. Consult with the CITY and other City agencies to determine the exact review and approval procedures for the landscape plans. Consult with the CITY and other City agencies to determine the duration of the formal maintenance period by the Station Construction Contractor prior to dedication and relinquishing landscape maintenance responsibilities to the CITY.

- B. Review and assess the schematic AutoCAD landscape plans for the three PROJECT stations and the VE recommendations provided by the CITY. Determine the extent to which VE recommendations are readily achievable, where modification or adjustments are suggested and where the CONSULTANT team coordination may be necessary.
- C. For each station, determine where any additional roadway crossings, additional irrigation points of connection and electrical power will be needed for the irrigation system. Assess adequacy of available water pressure. Layout the irrigation backbone design to include main line location and size, location of irrigation backflow devices and isolation valves, electrical connection to controllers, sleeving under plaza pavement areas and controller locations. The irrigation Plans shall include a connection to a water source, and a narrative describing the method of irrigation for each planting area. A proposed legend of the equipment to be incorporated into the PROJECT shall be provided for discussion or approval.
- D. For each station, update the landscape site and planting plan according to VE recommendations. The landscape site plan will include plaza paving layout, planting areas and location of proposed plaza furnishings. The landscape planting plans will layout plant massings, tree grate locations, hedging and groundcover location in accordance with the concept outlined in Chapter 11, Compendium of Design. The revised landscape plans for each PROJECT station plaza will include adjoining areas associated with each station.
- E. Prepare quantity take-offs for all landscape elements to include planting and imported soil quantities and irrigation based on square footage. Quantity take-offs to be prepared per station in accordance with a cost projection form provided by the CITY.

6.2 NTP #2 – INTERIM DESIGN

Interim design will commence following NTP #2 and will further define the landscape design and its technical/coordination requirements. The revised landscape plans for each PROJECT station plaza will include the adjoining areas associated with the station and will take into account all proposed site modifications.

Landscape architectural services performed for NTP #2 will consist of the following:

- A. Review and assess the CITY and public review comments and recommendations pertaining to landscape plans prepared in NTP #1b. Determine the extent to which comments and recommendations are readily achievable where modification or adjustments are suggested and where special inter-team coordination may be necessary.
- B. For each PROJECT station, prepare a detailed irrigation plan to include placement of all sprinkler heads, valves and piping layout, pipe and valve sizing, irrigation calculations, and details as necessary. A pre-final irrigation legend of the equipment to be specified in the PROJECT shall be provided for approval.
- C. For each PROJECT station, prepare an updated landscape site plan to include a refined plaza paving layout, planting areas and location of proposed plaza furnishings. Plaza furnishing may include but not limited to tree grates, bicycle racks, pedestrian benches, trash receptacles, etc. The plaza paving design and finishes will be coordinated with interfacing design elements.

- D. For each PROJECT station, prepare a detailed landscape planting plan with a specific layout for all plant material, tree grates, hedging and groundcover.
- E. Prepare a draft landscape planting and irrigation specifications applicable to all PROJECT stations and areas.
- F. Prepare updated quantity take-offs for all landscape elements to include planting and imported soil quantities, irrigation and decorative paving square footages. Quantity take-offs shall be prepared per PROJECT station in accordance with a cost estimating form provided by the CITY.

Planting materials will be selected that are readily available locally, easily maintainable and sustainable, aesthetically pleasing and consistent with the suggestions found in the Design Language Pattern Book and Chapter 11 of the CDC. All landscape planting materials will be selected on the basis of local experience of the designers and its suitability to the environmental conditions of the PROJECT stations locations.

Detailed irrigation system will be laid out for each station and ancillary facilities. Irrigation calculations, pipe sizing, points of connection, electrical power sources will be developed and coordinated during this phase of work. Irrigation controls shall be specified for easy conversion to a centrally controlled system in the future. Non-potable irrigation equipment shall be used if directed.

6.3 NTP #3 - FINAL DESIGN

Based on the CITY's review comments and internal coordination with other team members, final landscape design and plans will be developed during NTP #3 to establish detailed landscape construction cost projections and to properly communicate to prospective bidders what is required of the finished construction. The CITY will provide the schedule of costs to the CONSULTANT. The final Landscape Design Documents will consist of final working drawings and final specifications. Construction means, methods and construction job site safety will remain the responsibility of the construction contractor.

Landscape architectural services performed for NTP #3 will consist of the following:

- A. Review and assess final the CITY review comments.
- B. Incorporate final review comments and any architectural and engineering FD site modifications into landscape plans for each station plaza and PROJECT areas.
- C. Confirm design coordination requirements for irrigation points of connection, water meter requirements, electrical meter requirements, location and quantity of site furnishings, finish grade elevations to accommodate placement of imported soil, etc.
- D. Prepare final landscape site, planting and irrigation plans, details and specifications.
- E. Prepare final quantity take-offs for planting and imported soil quantities, paving, irrigation and decorative paving square footages. Quantity take-offs shall be prepared per station in accordance with PROJECT proposal items provided by the CITY.

6.4 NTP #4 - DESIGN SUPPORT DURING BIDDING

Landscape Architecture services during bidding will be performed on a negotiated firm-fixed price basis.

6.5 NTP #5 - DESIGN SUPPORT DURING CONSTRUCTION

Landscape Architecture services during construction will be performed on a negotiated firm-fixed price basis.

TASK 6 DELIVERABLES:

NTP #1b:

- Updated Preliminary Engineering Landscape and Irrigation Drawings (if required based on VE Report)
- Responses to comments

NTP #2:

- Interim Design Landscape and Irrigation Drawings
- Responses to comments

NTP #3:

- Final Design Landscape and Irrigation Drawings
- Responses to comments

TASK 7 - MECHANICAL DESIGN

Prepare mechanical design for air conditioning, ventilating, drainage and plumbing systems for the stations in accordance with requirements of the Compendium of Design Criteria and Standard and Directive Drawings and Standard Specifications.

7.1 AIR CONDITIONING AND VENTILATING SYSTEMS

7.1.1 Train Control and Communications Rooms (“TCCR”)

Air conditioning and ventilation system design for the TCCR and Uninterrupted Power Supply (“UPS”) rooms will be based on the preliminary heat load information contained in the Station Heating Ventilation Air Conditioning (“HVAC”) Report prepared by the CITY.

7.1.2 Elevator Machine Rooms

Air conditioning and ventilation system design for the elevator machine rooms will be based on the preliminary heat load information contained in the Station HVAC Report prepared by the CITY. If the provided information is insufficient or requires updating, the CITY will provide revised information for the elevator equipment.

7.2 PLUMBING SYSTEMS

Design of plumbing systems, including design for piping, fixtures, floor drains, hose bibs, etc. is included in CONSULTANT’s Scope of Work.

The CONSULTANT will prepare the “Form 1” for the CITY to submit to the State Department of Health as part of the building permit process. Assist with the preparation of the building permit application as necessary and respond to applicable review comments.

7.3 ELEVATOR/ESCALATOR DESIGN

Elevator and escalator equipment will be provided by the CITY. The CONSULTANT will provide elevator shaft design and architectural and structural features for escalator installation,

inclusive of exterior cladding. Coordination with the CITY, equipment suppliers, and others will be required.

7.4 FIRE PROTECTION SYSTEM

The CONSULTANT will provide fire protection and life safety design in accordance with the CDC. This includes preparation of egress calculations, means of egress diagrams, and construction documents for standpipe fire protection systems.

TASK 7 DELIVERABLES:

NTP #1b:

- Updated Preliminary Engineering Mechanical Drawings (if required based on VE Report)
- Responses to comments

NTP #2:

- Interim Design Mechanical Drawings
- Responses to comments

NTP #3:

- Final Design Mechanical Drawings
- State of Hawaii Department of Health, Air Conditioning/Ventilation Form 1 permit application
- Responses to comments

TASK 8 - ELECTRICAL DESIGN

8.1 LIGHTING AND POWER SYSTEMS

Provide electrical design for lighting and power systems for the passenger stations including the West Loch Bus Transit Center and parking lot. Provide calculations for lighting and power per Chapter 20 Facilities Electrical Design Criteria paragraphs 20.20.1 and 20.11.16.

8.2 ELECTRICAL AND TELEPHONE SERVICE

Provide electrical design for electrical and telephone service to the stations from the Hawaiian Electric Company and Hawaiian Telecom service points. Coordinate service requirements from the utility companies.

8.3 EMERGENCY POWER SYSTEM

Provide electrical design for emergency power system using two separate UPS systems, one for the essential train control and communication ("TCC") system, and the other for emergency egress lighting.

8.3.1 Generator Receptacle

The emergency system shall consist of a generator receptacle with a manual transfer switch to supply power to only the TCC UPS, TCC HVAC, and lighting loads to keep the TCC operational. Emergency power system shall supply emergency egress lighting for the station, exit signs, emergency stair lighting, blue light stations, CCTV cameras, fire alarm control and management panels, intrusion alarm control panels, public address system, communication,

computers and bus-operation equipment in the train control center, elevator cab lights, station manager booth and guideway safety walk lighting for passenger evacuation.

8.4 CORE SYSTEMS CONTRACTOR (“CSC”)

Coordinate communication and special systems services with the CSC. Provide electrical design for embedded conduit and rough-in raceways with pull lines, empty device boxes for the following systems:

- A. Public Address
- B. Fare Vending
- C. Intrusion Detection
- D. Access Control
- E. Surveillance Cameras
- F. Variable Message Signage
- G. Encroachment Detection
- H. Train Emergency Phones
- I. Passenger Assistance Kiosks
- J. Defibrillator Cabinets
- K. Computer Data Systems
- L. Telephone Systems
- M. Fire Control Panels & Fire Alarms
- N. Additional City and Utilities’ fiber optic cables

8.5 EVALUATION OF PHOTOVOLTAIC TECHNOLOGIES

Assist with the evaluation and design (as directed by the CITY) of photovoltaic technologies for use at the stations.

8.6 ANALYSIS OF LIGHTNING PROTECTION

Perform an analysis and recommendation for the inclusion of lightning protection and submit a Lightning Protection Report to the CITY for review and direction. The Lightning Protection Report will consist of one typical report for all stations. Design of the lightning protection system is not included.

8.7 DESIGN OF CANOPIES

Coordinate the design of the canopies to provide necessary equipment, fixtures, or other features requiring power and communications.

TASK 8 DELIVERABLES:

NTP #1b:

- Updated Preliminary Engineering Drawings
- Responses to comments

NTP #2:

- Interim Design Electrical Drawings (Lighting, Power, UPS and interfacing Systems raceways)
- Lightning Protection Report
- Photovoltaic Technology Evaluation Technical Memorandum
- Responses to comments

NTP #3:

- Final Design Drawings (Lighting, Power, UPS and interfacing Systems raceways)
- Responses to comments

TASK 9 - CONSTRUCTION STAGING PLANS

The CONSULTANT will produce construction staging plans for the stations that depict a logical and coordinated sequence of the construction work. These plans will be used to develop a sequence of work that is well coordinated and integrated with the work of other contracts such as the WOFH GDBC and the CSC. This will assist in the development of the required construction milestones and hand-off dates, reducing the CITY's construction delay risk by eliminating or minimizing the construction time overlap between interfacing construction contracts.

Development of the Construction Staging Plans will begin during NTP #2 with integration of the CSC's detailed design and schedule. The effort required to develop construction phasing drawings is assumed to be one site plan per station.

The Construction Staging Plans will not show the Farrington Highway Station Group ("FSG") construction contractor's laydown yard site(s) as it is assumed that the FSG construction contractor will be responsible for selecting a laydown yard site(s) that best suits their construction means and methods. The FSG construction contractor will be responsible for all real property transactions (purchase, lease, rent or barter) of all laydown sites as well as permitting and all required approvals of such sites.

TASK 9 DELIVERABLES:

NTP #1b:

- None

NTP #2:

- Interim Design Construction Staging Plans
- Responses to comments

NTP #3:

- Final Design Construction Staging Plans
- Responses to comments

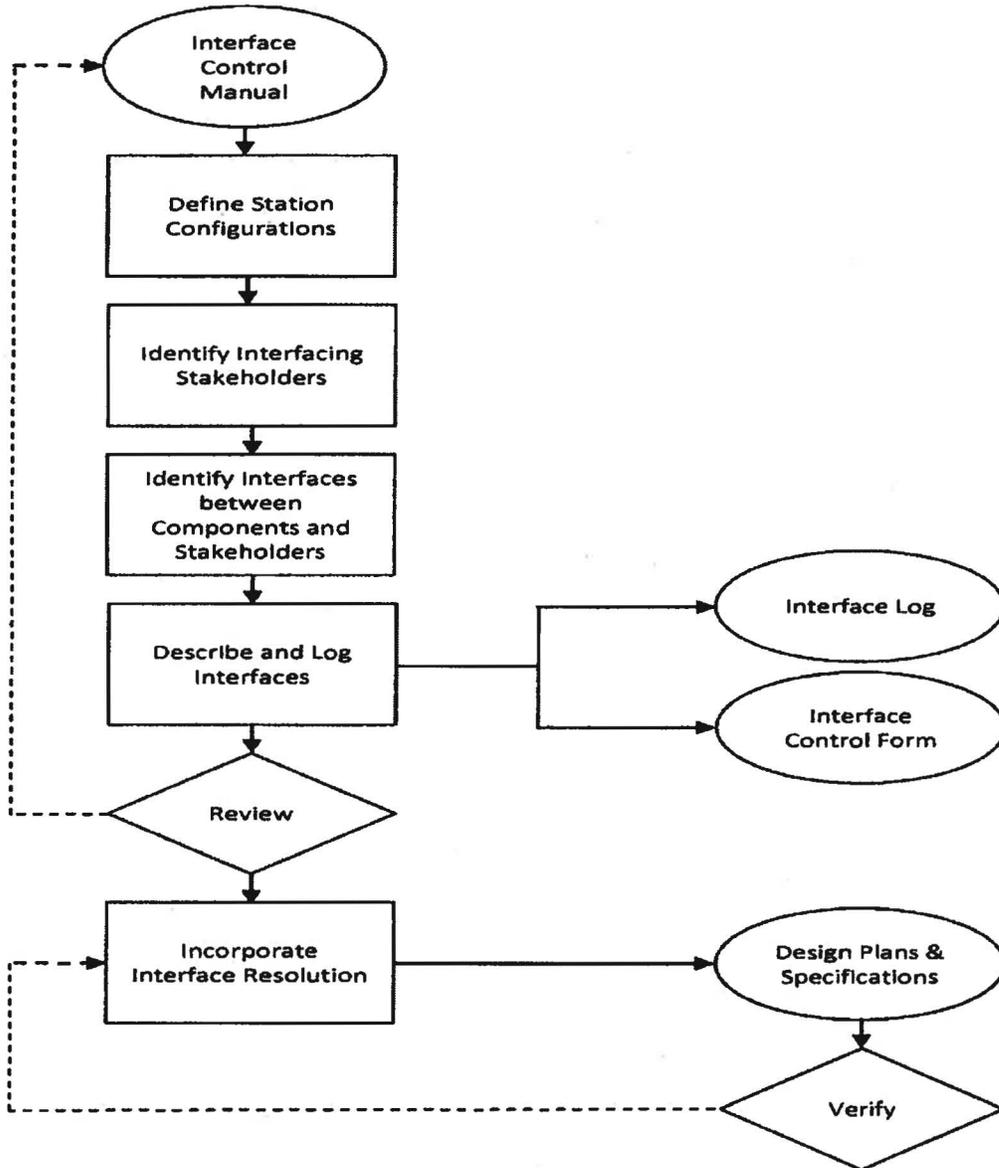
TASK 10 - INTERFACE WITH OTHERS

Knowledge and management of the many PROJECT design interfaces is essential so that:

- All necessary PROJECT components are incorporated in the appropriate contract design documents.
- The possibility of design duplication in multiple contracts is prevented through proactive identification and responsibility assignment.
- Component design is coordinated at the design interface effecting the form, fit and function of the system.
- The Scope of Work for each construction contract is clear.

- A documented process of interface management is maintained facilitating accountability.

The CONSULTANT will implement an Interface Management Process to achieve these goals. The Interface Management Process will be as follows:



10.1 INTERFACING STAKEHOLDERS

The following list describes the interfacing stakeholders “Stakeholders” included in this Scope of Work and level of interface management anticipated for each.

10.1.1 Core Systems Contractor

- A. Vehicle Static and Dynamic dimensions (including floor height)
- B. Communications and Control
- C. Traction Electrification
- D. Train Control and Signaling
- E. Fare Vending Systems

10.1.2 West O’ahu/Farrington Highway Guideway Design-Build Contractor

- A. Top of rail/top of platform elevations
- B. Station loads on the guideway substructure
- C. Station platform support structure
- D. Station concourse support structure
- E. Construction joint/handshake points
- F. Platform dimensions including beginning and ending station and offset from centerline
- G. Emergency walkway coordination
- H. Guideway noise wall termination
- I. Temporary/Permanent Landscaping and Irrigation
- J. Utility Relocation
- K. Others as identified during the Interface Management Process

10.1.3 Elevators and Escalators Contract

- A. Elevator/Escalator location and ease of access within the station
- B. Elevator pits
- C. Escalator/Elevator bearing points
- D. Equipment/Control rooms
- E. Others as identified during the Interface Management Process

10.1.4 Transit Arts Program

- A. Identify opportunities for incorporation of art into the station design
- B. Artwork loads and attachment points
- C. Others as identified during the Interface Management Process

10.1.5 Public and Private Property Owners

- A. ROW requirements
- B. Traffic control during construction
- C. Any material change in the station configuration from PE resulting from interface with Public and Private Property Owners will be considered extra work

10.1.6 Public and Private Utilities

- A. Points of Service
- B. Handshake points
- C. Station power requirements
- D. Transformer and switch locations
- E. Water service location, sizing and connection points
- F. Sanitary sewer location and connection points
- G. Drainage connection points, storm water run-off treatment
- H. Others as identified during the Interface Management Process

10.1.7 Stakeholders Identified in the Section 106 Programmatic Agreement (“PA”)

- A. Various stipulations have been agreed to between the CITY and consulting parties identified in the PA related to impacts from the PROJECT on cultural, historic, and archaeological resources. The CONSULTANT's Work is required to be consistent with these stipulations. The CONSULTANT shall coordinate with consulting parties identified in the PA on applicable stipulations, including the following:
- o Locations for interpretive signage within PROJECT areas
 - o Lava rock curbstones disturbed by station construction

10.1.8 Stakeholders Identified in the Record of Decision ("ROD") and Final Environmental Impact Statement/ Section 4(f) Evaluation ("FEIS")

Various mitigation measures have been imposed by FTA on the CITY in the ROD and as further described in the FEIS. The CONSULTANT's Work is required to be consistent with these mitigation measures. The CONSULTANT shall coordinate with the required stakeholders identified in these documents to achieve consistency.

10.2 DEVELOP PASSENGER STATION INTERFACE CONTROL MANUAL

Immediately following the NTP #1b, the CONSULTANT will develop a Passenger Station Interface Control Manual ("PSICM"). The PSICM will serve as a roadmap for successful interface management ensuring that the passenger stations are fully integrated with all core systems, guideway and other fixed facility components/requirements such as right of way, utility providers, Elevator & Escalator Contract and the Transit Arts Program. The CONSULTANT will also use the PSICM to manage conformance with the requirements of the PA and the ROD (as applicable to the CONSULTANT's Scope of Work) so compliance is easily tracked and documented.

The PSICM will be structured and formatted to integrate seamlessly with the HHCTCP Interface Control Manual and the Interface Control Manuals for the other interfacing contracts. The key sections of the plan will be the Interface Control Process, Interface Control Log and Interface Control Form as described below.

10.3 INTERFACE CONTROL PROCESS

This section of the PSICM will define the process by which interfaces between the various PROJECT elements are identified, assigned, coordinated, incorporated and verified. It will set the interface meeting schedules, and identify and provide contact information for the representative(s) or Interface Manager of each Stakeholder.

10.4 INTERFACE CONTROL LOG ("ICL")

The ICL will be a living document that tracks the various interface elements as they arise. It is intended to be a summary document allowing rapid review of each interface during the Interface Management Meetings. The information shown on the ICL will include:

- A. Document Control Number
- B. Interface Tracking Number
- C. Date of Interface Identification
- D. Interface Lead
- E. Interface Partner
- F. Internal or External Interface

- G. Interface Short Title
- H. Interface Short Description
- I. Interface Status (Identified, Deferred, Resolved)
- J. Comments
- K. Resolution Sign Off by the Interface Manager

10.5 INTERFACE CONTROL FORM (“ICF”)

An ICF will be developed for each identified interface. The ICF will provide more detail for each interface including a more detailed definition of the interface, resolution actions required including target dates for completion of each resolution action and the party responsible for each resolution action. Each interface will be assigned a resolution target date that is coordinated with the interface stakeholders and in line with each contract schedule. This will ensure that interfaces are assigned the appropriate priority and addressed based on their potential to impact the PROJECT schedule.

The ICF will also include a verification section where the actions required to verify the interface resolution has been translated into the design plans, calculations, specifications or other contract documents will be listed. Each verification action will be assigned and scheduled.

The final component of the ICF is a sign off by each interface Stakeholder, the Interface Manager and the CONSULTANT Project Manager that the interface is sufficiently resolved to the agreement of all stakeholders involved in that interface.

For interfaces related to compliance with the PA or ROD, the Interface Manager, the CONSULTANT Project Manager and the CITY Project Manager will be the sole verifying signatures.

The ICL and ICFs will be incorporated into the Quality Management Plan documents and be subject to Internal Quality Audit and External Quality Surveillance Audits.

The PSICM will comply with and incorporate the appropriate components of the Configuration Management Plan.

Updates to the PSICM will be published and distributed as needed in the CM System.

10.6 INTERFACE MANAGEMENT MEETINGS

The CONSULTANT will convene (or attend) regularly scheduled Interface Meetings. For the CONSULTANT, it is assumed that the Interface Manager, Chief Architect and Design Manager will attend the Interface Meetings on a regular basis either in-person or by conference call. The CONSULTANT’s Project Manager will attend as required. Specific Discipline Leads and the CONSULTANT’s Public Involvement Liaison will attend on an as needed basis depending on the identified interface. The CITY Project Manager or designee is encouraged to attend and representatives of other Stakeholders will be invited as applicable. At these meetings the Stakeholders will identify and discuss PROJECT interfaces and generally work through the ICL and ICFs tracking interface status. It is assumed that the frequency of the Interface Meetings will be bi-weekly for the duration of the Agreement and that each meeting will be approximately three (3) hours in duration.

This activity also includes effort related to informal interface coordination via telephone and/o e-mail as needed.

TASK 10 DELIVERABLES:

NTP #1b:

- Passenger Station Interface Control Manual (includes ICL and ICFs)
- Responses to comments

NTP #2:

- Updated PSICM (submitted with Quality Audit Report)
- Responses to comments

NTP #3:

- Updated PSICM (submitted with Quality Audit Report)
- Responses to comments

TASK 11 - PUBLIC INVOLVEMENT

The CONSULTANT will provide the CITY with monthly public involvement reports for the three (3) PROJECT stations for inclusion into the overall public outreach program. The public involvement effort includes monthly meetings with the WOFH GDBC, the CITY, and other community events or Neighborhood Board meetings (limited to one meeting per month) to ensure that public information is shared amongst all of the concurrent contracts and communication is facilitated.

The CONSULTANT will provide a meeting venue for the three (3) day design workshop/kick-off meeting once the requirements are established by the CITY.

Per the CITY May 5, 2010 letter (RT5/10-364977), the CONSULTANT will participate with the CITY in two (2) public meetings/workshops and will prepare supporting graphic information as necessary.

11.1 CULTURAL AND HISTORIC RESEARCH

Cultural and Historic Research and investigation required by the Section 106 PA are not included in this Scope of Work. The final report and findings will be provided to the CONSULTANT by the CITY. The CONSULTANT will be responsible for any damage to any unmarked archaeological sites, historic artifacts, or unidentified protected flora and fauna during any field work by the CONSULTANT and must comply with the Section 106 PA. The CONSULTANT will incorporate any given reports and findings in the ECP described below in Task 13.1.

TASK 11 DELIVERABLES:

NTP #1b:

- Monthly public involvement reports

NTP #2:

- Monthly public involvement reports

NTP #3:

- Monthly public involvement reports

TASK 12 - SUSTAINABILITY

Utilize the HHCTCP System-wide Sustainability Report (the “Sustainability Report”) and follow general principals of the United States Green Building Council’s (“USGBC”) LEED Green Building Rating System guidelines with the station design and specifications. LEED Certification is not required for the stations, in accordance with the Sustainability Report. However, sustainable/green design initiatives will be introduced by the CONSULTANT, with cost and return on investment information to enable the CITY to review for possible inclusion in the FD. All design work will be considered with sustainability in mind, in accordance with the Sustainability Report. Strategies that will be considered and evaluated for their feasibility include but are not limited to:

- A. Storm Water Management
- B. Green Roofs
- C. Storm Water Harvesting and Reuse for Site Irrigation
- D. Photovoltaics
- E. Recycled and Recyclable Materials
- F. Specifying Locally Produced Products/ Materials
- G. Construction Waste Management
- H. Day-lighting
- I. Wind Turbines

TASK 12 DELIVERABLES:

NTP #1b:

- No specific deliverables. Provide input to the design teams on an on-going basis.

NTP #2:

- No specific deliverables. Provide input to the design teams on an on-going basis.

NTP #3:

- No specific deliverables. Provide input to the design teams on an on-going basis.

TASK 13 – ENVIRONMENTAL AND HAZARDOUS WASTE

13.1 ENVIRONMENTAL COMPLIANCE

The CONSULTANT will prepare an ECP that addresses how the CONSULTANT will include in the design, pertinent environmental mitigation commitments specified in the FEIS, and forthcoming ROD (which includes the PA). The ECP shall be updated when new or modified mitigation or environmental compliance conditions arise during the performance of the Work. The ECP shall include, at a minimum, the following elements:

- A. Identify key personnel and organizations related to environmental compliance;
- B. Define responsibilities and actions required to maintain compliance with environmental mitigation commitments as they pertain to design and construction documents;
- C. Describe procedures for documenting and incorporating comments from design reviews (*see below*);

- D. Include environmental constraint maps, in electronic format to be determined by the CITY, identifying the location and environmental constraints identified in the FEIS and ROD within the station footprint;
- E. Describe how constraint maps will be incorporated into the design plans and used by designers and construction contractors;
- F. Describe documentation procedures for recording design compliance, using CM. Documentation may include, but not be limited to site photos and constraint maps identifying environmentally sensitive resources, meeting notes, and design concepts;
- G. Identify pertinent permits/variances pertinent to station designs; and
- H. Include ECP compliance updates as part of the Monthly Progress Reports (*see* Task 1.9.1).

The CITY will provide the CONSULTANT with the comments from the Section 106 PA consulting parties, public meetings and other Stakeholders and will direct the CONSULTANT to incorporate these comments into the design. The CONSULTANT will report to the CITY the process used to monitor and track environmental compliance issues. The CONSULTANT will document and report to the CITY using CM, any changed conditions that may affect environmental commitments or permit conditions that may require new permits or permit modifications. The CONSULTANT will provide the required documentation for the CITY to obtain or modify environmental clearances and/or CITY-prepared permits.

The CONSULTANT will prepare supporting documents/applications for environmental permits required for construction of the PROJECT stations including, but not limited to: site-specific Best Management Practices (“BMPs”) and Municipal Separate Storm Sewer System (“MS4”) approvals in compliance with the conditions of the National Pollutant Discharge Elimination System (“NPDES”) Notice of General Permit Coverage and any new NPDES permit applications related to the FD (de-watering and/or hydrotesting).

13.2 HAZARDOUS MATERIAL SURVEYS

The findings of completed Phase I Environmental Site Assessments (“ESAs”) will be used in station design; however, detailed design or changes in station footprint may require additional Phase I and/or Phase II ESAs. Supplemental sampling and testing for asbestos, lead-based paint, and/or other potentially hazardous materials is excluded.

TASK 13 DELIVERABLES:

NTP #1b:

- Draft Environmental Compliance Plan

NTP #2:

- Environmental Compliance Plan and EC activities

NTP #3:

- Updated Environmental Compliance Plan

TASK 14 – CONSTRUCTION QUANTITY ESTIMATES

The CONSULTANT will prepare Construction Quantity Estimates for the FSG construction contract package and will work with the CITY to develop a standardized construction schedule of values/bid item list. The bid items will be coordinated with the Measurement and Payment articles contained in the PROJECT specifications. The CITY will prepare the cost estimates based on the quantities provided by the CONSULTANT.

It is understood that the FSG construction contract package will be procured as a single construction contract; however it is assumed that the CITY will desire cost items broken down by station where applicable. Bid item quantities will be calculated per station through direct take-off from the plans and specifications. Unit pricing will be provided by the CITY. Allocated cost contingencies developed by the CITY in conjunction with the CONSULTANT will be applied to the bid line items as appropriate to the forecasted price volatility. The CONSULTANT will work with the CITY to review the allocated contingencies and to determine the appropriate unallocated cost contingency to be carried in the cost estimate consistent with FTA requirements and the CITY's risk position.

The CONSULTANT will provide quantity take-offs at the completion of NTP #1b, NTP #2 and NTP #3.

It is assumed that cost risk assessment will be the CITY's responsibility and is not included in this Scope of Work; however, the CONSULTANT agrees that design and cost estimating resources will be required to participate in CITY-facilitated risk analysis meetings and will assist in updating the CITY's risk register on a monthly basis. It is assumed that two (2) risk analysis meetings will be held.

TASK 14 DELIVERABLES:

NTP #1b:

- Updated Preliminary Engineering Construction Quantity Estimates
- Responses to review comments

NTP #2:

- Interim Design Construction Quantity Estimates
- Responses to review comments

NTP #3:

- Final Construction Quantity Estimates
- Responses to review comments

TASK 15 - SPECIFICATIONS

The CITY Standard Specifications provided to the CONSULTANT will be reviewed and edited for Project-specific requirements. The CONSULTANT will prepare new specification sections where required following the master specification format.

15.1 NTP #1b - PRELIMINARY ENGINEERING

- A. Identify list of general conditions to be included in specifications
- B. Develop list of technical specifications sections applicable to the PROJECT
- C. Identify new sections that may require preparation in subsequent submissions
- D. Identify anticipated long-lead items that may impact the construction schedule

15.2 NTP #2 – INTERIM DESIGN

- A. Update Standard Specification sections as required
- B. Develop new specification sections for Project-specific application to each station as necessary
- C. Identify specific systems and equipment for each design discipline

15.3 NTP #3 - FINAL DESIGN

- A. Prepare final specifications incorporating revisions resulting from design review comments and FD details for final CITY review

TASK 15 DELIVERABLES:

NTP #1b:

- List of applicable CITY Standard Specifications and new specifications sections required (Table of Contents)
- Responses to comments

NTP #2:

- Interim Design Technical Specifications
- Responses to comments

NTP #3:

- Final Design Specifications
- Responses to comments

TASK 16 - DESIGN SUPPORT DURING BIDDING PHASE

Provide engineering support during bidding to include response to questions, preparation of addenda and support the CITY in the evaluation of the general format of the bids. An amount for this task is included in this Agreement (*See* NTP #4 description in this Scope of Work). Work will be done on a negotiated firm-fixed price basis.

TASK 17 - DESIGN SUPPORT DURING CONSTRUCTION PHASE

Design services during construction will be done on a negotiated firm-fixed price basis. An amount for this task is included in this Agreement (*See* NTP #5 description in this Scope of Work).

*****END OF SCOPE OF WORK*****

EXHIBIT 2A – CONTRACT COST ESTIMATE

**SPECIAL PROVISIONS TO THE
AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU
AND HDR ENGINEERING, INC.**

STATION DESIGN CONSULTANT

**FARRINGTON HIGHWAY STATION GROUP
HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT**

**EXHIBIT 2A
CONTRACT COST ESTIMATE**

<u>Notice to Proceed</u>	<u>Estimated Cost</u>
1a: PREPARE SCHEDULE OF MILESTONES	\$52,356
1b: REVISION TO PRELIMINARY ENGINEERING (PE)	To be determined (TBD)
2: INTERIM DESIGN (ID)	\$3,672,296
3: FINAL DESIGN (FD)	\$1,103,352
4: DESIGN SUPPORT DURING BIDDING	TBD
5: DESIGN SUPPORT DURING CONSTRUCTION	<u>TBD</u>
Total Contract Amount	\$4,828,004
Allowance for Extra Work	<u>\$672,692</u>
Total Aggregate Amount	<u>\$5,500,696</u>

EXHIBIT 2B – COMPENSATION AND INVOICING

**SPECIAL PROVISIONS TO THE
AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU
AND HDR ENGINEERING, INC.**

STATION DESIGN CONSULTANT

**FARRINGTON HIGHWAY STATION GROUP
HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT**

EXHIBIT 2B COMPENSATION AND INVOICING

1. Subject to the provisions set forth in this Agreement, the CONSULTANT will be paid periodically by the CITY for authorized and satisfactorily completed Work under this Agreement based on an approved Schedule of Milestones. Such payment shall be full compensation for Work performed, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals. The amount to be paid to the CONSULTANT shall be computed as hereinafter set forth; provided that such payment shall not exceed the amount of FOUR MILLION EIGHT HUNDRED TWENTY-EIGHT THOUSAND FOUR AND 00/100 DOLLARS (\$4,828,004.00), which includes all costs and fees associated with this Agreement, subject only to authorized adjustments as specifically provided for in this Agreement. In the event the CONSULTANT incurs costs or fees in excess of the Total Contract Amount, adjusted as provided herein, the CONSULTANT shall pay such excess from its own funds and shall have no claim against CITY for payment of such excess.

2. The CONSULTANT shall submit a proposed Schedule of Milestones within ten (10) working days after receipt of NTP #1a. The Schedule of Milestones is to be organized by NTP and will identify the Scope of Work (SOW) activity code, describe the activity, specify the associated fixed-price amount and specify the estimated completion date. The CONSULTANT's Baseline Design Schedule must be conformed to the Schedule of Milestones. The CITY and the CONSULTANT shall reach agreement on the proposed Schedule of Milestones at which time the CITY will approve the Schedule of Milestones. The CITY's approved Schedule of Milestones shall be added to the Agreement by contract amendment and become part of the Agreement by amending Exhibit 2B-1 to these Special Provisions. In no event shall compensation exceed the amounts listed in the Schedule of Milestones or the Total Contract Amount.

3. **Payment Schedule.** Upon completion of Milestones for which NTP has been issued, the CONSULTANT shall submit to the CITY invoices for payment for Project Work completed on a schedule to be determined by the CITY and CONSULTANT in a form and in reasonable detail as determined by the CITY. Within thirty (30) days of receipt of invoice, and upon approval of the work satisfactorily completed and amount billed, the CITY will pay the invoice as approved. At no time shall the total cumulative amount paid for the Project Work exceed the Total Contract Amount. **The CONSULTANT shall notify the CITY in writing no later than ten (10) days after expending seventy five percent (75%) of the Total Contract Amount or whenever the CONSULTANT believes the Project Work cannot be completed for the Total Contract Amount.**

**EXHIBIT 2B-1
PROJECT PAYMENT SCHEDULE**

APPROVED SCHEDULE OF MILESTONES*

<u>Milestone</u>	<u>Amount</u>
NTP #1a Schedule of Milestones	\$52,356
NTP #2 Interim Design (ID)	\$3,672,296
NTP #3 Final Design (FD)	<u>\$1,103,352</u>
Total Contract Amount	\$4,828,004
Allowance for Extra Work	<u>\$672,692</u>
Total Aggregate Amount	<u>\$5,500,696</u>

*Upon issuance of NTP #1a, the CONSULTANT is to provide a Schedule of Milestones to the CITY within ten (10) days. The CITY's approved Schedule of Milestones shall be added to the Agreement by contract amendment and become part of the Agreement by amending this Exhibit 2B-1.

EXHIBIT 3
CERTIFICATION REGARDING CONFLICT OF INTEREST

“Organizational conflict of interest” means that, because of other activities or relationships with other persons or firms, a Consultant (including its principal participants, directors, proposed consultants or subcontractors) would be unable or potentially unable to render impartial, technically sound assistance or advice to the City and County of Honolulu; or the Consultant’s objectivity in performing the Work would or might be otherwise impaired.

On behalf of HDR Engineering, Inc., I certify that:
(Named Consultant)

(Check one)

The Consultant does not have any relationships with any firms or individuals that are or appear to be an organizational conflict of interest.

The Consultant has had the following relationships with the specific firm(s)/individual(s), identified on the attached sheet, which may be determined to be an organizational conflict of interest. I understand that based on the information I have provided, the City may exclude the Offeror from further consideration and may withdraw its selection if the real or apparent organizational conflict of interest cannot be avoided or mitigated. I further certify that the degree and extent of the relationship of the Consultant with these named firm(s)/individual(s) have been fully disclosed on the attached sheet.

William H. Raleigh
(Signature of Authorized Official)

William H. Raleigh
(Print Name)

December 20, 2016
(Date)

Honolulu High-Capacity Transit Corridor Project

EXHIBIT 4
LETTER OF SUBCONTRACT INTENT

HDR Engineering Inc. _____ intends to subcontract Work for the
Farrington Highway Station Group Project to Austin Tsutsumi & Associates, Inc.
(Name of Subcontractor/Consultant)

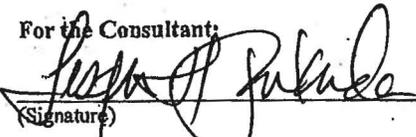
to perform the following type of work:
Traffic control design for Farrington Station Group.

The minimum value of the Subcontract is \$122,962.

The Subcontractor/Consultant _____ is is not a certified DBE firm.

If certified, indicate certifying entity: _____ . Include a name and telephone
number for certifying entity _____.

For the Consultant:


(Signature)

Lester H. Fukuda, P.E.
(Printed Name)

Vice President
(Title)

December 22, 2010
(Date)

For the Subcontractor/Sub Consultant:


Confirmed by: (Signature)

Terrance S. Arashiro
(Printed Name)

Senior Vice President
(Title)

12-22-10
(Date)

Exhibit 4 - Letter of Subcontract Intent

SPECIAL PROVISIONS
Farrington Highway Station Group

Honolulu High-Capacity Transit Corridor Project

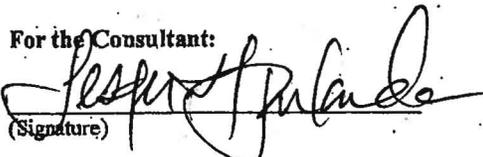
EXHIBIT 4
LETTER OF SUBCONTRACT INTENT

HDR Engineering Inc. intends to subcontract Work for the
Farrington Highway Station Group Project to Nagamine Okawa Engineers, Inc.
(Name of Subcontractor/Consultant)
to perform the following type of work:
Structural engineering services for Leeward Community College Station and West Loch Station.

The minimum value of the Subcontract is \$516,078.

The Subcontractor/Consultant _____ is is not a certified DBE firm.

If certified, indicate certifying entity: _____ Include a name and telephone
number for certifying entity _____.

For the Consultant:

(Signature)
Lester H. Fukuda, P.E.
(Printed Name)
Vice President
(Title)
December 22, 2010
(Date)

For the Subcontractor/Sub Consultant:
Norman Nagamine
Confirmed by: (Signature)
Norman Nagamine
(Printed Name)
President
(Title)
Dec. 22, 2010
(Date)

Honolulu High-Capacity Transit Corridor Project

EXHIBIT 4
LETTER OF SUBCONTRACT INTENT

HDR/~~Hawaii Pacific~~ Engineers, Inc. intends to subcontract Work for the
Farrington Highway Station Group Project to Pacific Geotechnical Engineers, Inc.
(Name of Subcontractor/Consultant)

to perform the following type of work:

Geotechnical engineering services including consultation during
design, subsurface exploration, laboratory testing, and
report preparation.

The minimum value of the Subcontract is \$533,095.00.

The Subcontractor/Consultant _____ is X is not a certified DBE firm.

If certified, indicate certifying entity: _____ Include a name and telephone
number for certifying entity _____.

For the Consultant:


(Signature)

LESTER H. FUKUDA
(Printed Name)

VICE PRESIDENT
(Title)

DEC 22, 2010
(Date)

For the Subcontractor/Sub Consultant:


Confirmed by: (Signature)

Glen Y.F. Lau
(Printed Name)

President
(Title)

December 22, 2010
(Date)

Exhibit 4 - Letter of Subcontract Intent

SPECIAL PROVISIONS
Farrington Highway Station Group

Honolulu High-Capacity Transit Corridor Project

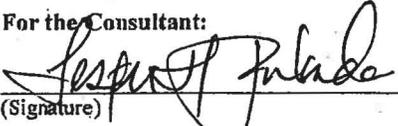
EXHIBIT 4
LETTER OF SUBCONTRACT INTENT

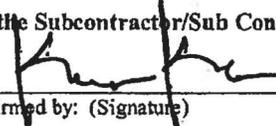
HDR Engineering, Inc. intends to subcontract Work for the
Farrington Highway Station Group Project to Ace Land Surveying LLC
(Name of Subcontractor/Consultant)
to perform the following type of work:
Land Surveying Services - Topographic

The minimum value of the Subcontract is \$ 59,644.

The Subcontractor/Consultant is is not a certified DBE firm.

If certified, indicate certifying entity: HDOT Civil Rights Include a name and telephone
number for certifying entity Terry Kim Ph: 587-2024.

For the Consultant:

(Signature)
LESTER H FUKUDA
(Printed Name)
VICE PRESIDENT
(Title)
DEC 22, 2010
(Date)

For the Subcontractor/Sub Consultant:

Confirmed by: (Signature)
Kevin Kea
(Printed Name)
President
(Title)
12/22/10
(Date)

Honolulu High-Capacity Transit Corridor Project

EXHIBIT 5
CERTIFICATE REGARDING INELIGIBLE CONTRACTORS

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
INELIGIBILITY AND VOLUNTARY EXCLUSION FROM TRANSACTIONS
FINANCED IN PART BY THE U.S. GOVERNMENT**

I, William H. Raleigh, Executive Vice President, hereby
(Name of Certifying Officer) (Title of Certifying Officer)

certify that HDR Engineering, Inc.:
(Name of Contractor/Consultant)

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency or from participation in City and County of Honolulu Project No. SC-DTS-1100013
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
4. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

If any Principal Participant is unable to certify to any of the statements in this certification, such prospective Principal Participant shall attach an explanation to this certification.

I hereby certify and affirm the truthfulness and accuracy of the above statement, and I understand that the provisions of 31 United States Code (U.S.C.) §3801 et seq., (Administrative Remedies for False Claims and Statements) are applicable hereto.

HDR Engineering, Inc.
Name of Consultant

1132 Bishop St.
Street Address

Honolulu HI 96813
City, State, Zip

William H. Raleigh
Signature of Certifying Officer

808 697 6200
Telephone Number

(Note: The above certification merely certifies that the Consultant and its subcontractors are not declared by the Federal Government or have not voluntarily declared themselves debarred, suspended, or declared ineligible from doing transactions with the Federal Government or any of its agencies.)

Honolulu High-Capacity Transit Corridor Project

EXHIBIT 6
CERTIFICATE REGARDING INELIGIBLE SUBCONTRACTORS

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions**

- 1) The prospective lower tier participant (Subcontractor/Subconsultant) certifies, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in Contract No. SC-DTS-1100013 by any federal department or agency.
- 2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation.

(60 FR 33042, 33064, June 26, 1995)



Signed

Terrance S. Arashiro

Typed or Printed Name

Austin, Tsutsumi & Associates, Inc.

Company Name

12-22-10

Date

Exhibit 6- Certification Regarding Ineligible Subcontractors

SPECIAL PROVISIONS
Farrington Highway Station Group

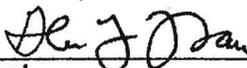
Honolulu High-Capacity Transit Corridor Project

EXHIBIT 6
CERTIFICATE REGARDING INELIGIBLE SUBCONTRACTORS

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions**

- 1) The prospective lower tier participant (Subcontractor/Subconsultant) certifies, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in Contract No. SC-DTS-1100013 by any federal department or agency.
- 2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation.

(60 FR 33042, 33064, June 26, 1995)



Signed

Glen Y.F. Lau

Typed or Printed Name

Pacific Geotechnical Engineers, Inc.

Company Name

December 22, 2010

Date

Honolulu High-Capacity Transit Corridor Project

EXHIBIT 6
CERTIFICATE REGARDING INELIGIBLE SUBCONTRACTORS

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions**

- 1) The prospective lower tier participant (Subcontractor/Subconsultant) certifies, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in Contract No. SC-DTS-1100013 by any federal department or agency.
- 2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation.

(60 FR 33042, 33064, June 26, 1995)

Norman Nagamine
Signed

Norman Nagamine
Typed or Printed Name

Nagamine Okawa Engineers Inc.
Company Name

Dec. 22, 2010
Date

Exhibit 6- Certification Regarding Ineligible Subcontractors

SPECIAL PROVISIONS
Farrington Highway Station Group

Honolulu High-Capacity Transit Corridor Project

EXHIBIT 7

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) **No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned,** to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) **If any funds other than Federal appropriated funds have been paid or will be paid** to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The CONSULTANT, HDR Engineering, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONSULTANT understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Company Name: HDR Engineering, Inc.
Signature: William H. Raleigh
Print Name: William H. Raleigh
Title: Executive Vice President
Date: December 20, 2010

NOTE: THE CONSULTANT IS REQUIRED PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000 AND TO OBTAIN THIS LOBBYING CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.

EXHIBIT 8 – FEDERAL STANDARD REQUIREMENTS

**SPECIAL PROVISIONS TO THE
AGREEMENT BETWEEN THE CITY AND COUNTY OF HONOLULU
AND HDR ENGINEERING, INC.**

STATION DESIGN CONSULTANT

**FARRINGTON HIGHWAY STATION GROUP
HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT**

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FEDERAL STANDARD REQUIREMENTS

1.0 GENERAL

The Consultant understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date signed may be modified from time to time. The Consultant agrees that the most recent of such Federal requirements will govern the administration of the Agreement at any particular point in time, except if the City issues a written determination otherwise. To achieve compliance with changing Federal requirements, the Consultant agrees to include notice in each subcontract that Federal requirements may change and that the changed requirements will apply to the subcontract as required.

1.1 No Government Obligation to Third Parties

(a) The City and the Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the City, the Consultant, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

(b) The Consultant agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

1.2 Program Fraud and False or Fraudulent Statements and Related Acts

(a) The Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.

(b) The Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Consultant, to the extent the Federal Government deems appropriate.

(c) The Consultant shall include the above two clauses in each subcontract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

1.3 Access to Records and Reports

(a) The Consultant shall provide the City, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The Consultant shall, pursuant to 49 C.F.R. § 633.17, provide the FTA

Administrator or his authorized representatives, including any Project Management Oversight Contractor, access to the Consultant's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

(b) The Consultant shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) The Consultant shall maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the Consultant shall maintain the same until the City, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

1.4 Federal Changes

The Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and the FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The Consultant's failure to so comply shall constitute a material breach of this Agreement.

1.5 Civil Rights Requirements

The Consultant shall comply with the following requirements and include the following requirements in each subcontract, modified only if necessary to identify the affected parties:

(a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Consultant shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying Agreement:

(1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of

compensation; and selection for training, including apprenticeship. In addition, the Consultant shall comply with any implementing requirements FTA may issue.

(2) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Consultant shall refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant shall comply with any implementing requirements FTA may issue.

(3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant shall comply with the requirements of the U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant shall comply with any implementing requirements FTA may issue.

(4) Access for Individuals with Disabilities. The Consultant shall comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities.

1.6 Disadvantaged Business Enterprises (DBE)

(a) DBE Assurances. The Consultant and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted Agreements. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in termination of this Agreement or such other remedy, as the City deems appropriate.

The above paragraph shall be included in each subcontract the Consultant signs with a subcontractor.

(b) Prompt Payment. The Consultant shall pay all subcontractors (DBEs and non-DBEs) for satisfactory performance of their subcontracts no later than ten (10) days from receipt of payment by the City. Full and prompt payment by the Consultant to all subcontractors shall include retainage, if applicable.

(c) DBE Goal. The City has established a race neutral overall DBE goal of 3.83% for fiscal year 2010. Although the City has not established a DBE Agreement goal for this Project, DBE firms and small businesses shall have an equal opportunity to participate in the Agreement. The Consultant shall adhere to the following requirements:

(1) Take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 C.F.R. 26.51(b) as practicable to afford opportunities to DBEs to participate in the Agreement. A race-neutral measure is one that is, or can be, used to assist all small businesses.

(2) A DBE firm must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work; and

(3) A DBE firm must be certified by the Hawai'i State Department of Transportation before its participation is reportable under paragraph (d) below;

(d) Reports to the City. The Consultant shall report its DBE participation obtained through race-neutral means throughout the period of performance. The Consultant shall submit the "DBE PARTICIPATION REPORT" reflecting payments made by the Consultant to DBE subcontractors. Payments to the Consultant will not be processed if the DBE PARTICIPATION REPORT is not properly completed and attached. The DBE PARTICIPATION REPORT shall be prepared in the format set forth in ATTACHMENT 1.6 a) to this Exhibit.

(e) Records. On request, the Consultant shall make available for inspection, and assure that its subcontractors make available for inspection:

- (1) Records of prompt payments made in accordance with Section 1.6(b), above;
- (2) The names and addresses of DBE subcontractors, vendors, and suppliers under this Agreement;
- (3) The dollar amount and nature of work of each DBE subcontractor;
- (4) The social/economic disadvantaged category of the DBE firms, i.e. Black American, Hispanic American, Native American, Subcontinent Asian American, Asian Pacific American, Non-Minority Women, or Other; and
- (5) Other related materials and information.

(f) The Consultant shall promptly notify the City, whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work. The Consultant shall also promptly notify the City of a DBE subcontractor's inability or unwillingness to perform and provide reasonable documentation.

1.7 Government-Wide Debarment and Suspension (Non-procurement)

(a) This Agreement is a covered transaction for purposes of 2 C.F.R. 180.220(b) and 2 C.F.R. 1200.220. As such, the Consultant is required to verify that none of the Consultant, its principals, as defined at 2 C.F.R. 180.995, or affiliates, as defined at 2 C.F.R. 180.905, are excluded or disqualified as defined at 2 C.F.R. 180.940 and 2 C.F.R. 180.935.

(b) The Consultant is required to comply with 2 C.F.R. 180 Subpart C, as supplemented by 2 C.F.R. 1200 Subpart C, and must include the requirement to comply with 2 C.F.R. 180, Subpart C, as supplemented by 2 C.F.R. 1200 Subpart C, in any lower tier covered transaction equal to or exceeding \$25,000 it enters into. By signing the Agreement, the Consultant certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City and County of Honolulu (the City). If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Consultant agrees to comply with the requirements of 2 C.F.R. 180, Subpart C, as supplemented by 2 C.F.R. Subpart C, throughout the Agreement period. The Consultant further agrees to include a provision requiring such compliance in its lower tier covered transactions equal to or exceeding \$25,000.

1.8 Lobbying

The "CERTIFICATION REGARDING LOBBYING," as executed by the Consultant in Exhibit 7 of the Special Provisions is incorporated herein by reference. The Consultant and its subcontractors at every tier shall comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, which requires that no Federal appropriated funds shall be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Agreement, grant, or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to the City.

1.9 Clean Air Requirements

(a) The Consultant shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant shall report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The Consultant shall include the above clause in each subcontract exceeding \$100,000.

1.10 Clean Water Requirements

(a) The Consultant shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The Consultant shall report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The Consultant shall include the above clause in each subcontract exceeding \$100,000.

1.11 Fly America Requirements

(a) The Consultant shall comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. Parts 301-10, which provide that the City and sub-recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

(b) The Consultant shall include the requirements of this section in all subcontracts that may involve international air transportation.

1.12 Energy Conservation Requirements

(a) The Consultant shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

(b) The Consultant shall include the above clause in each subcontract at every tier. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

1.13 Recycled Products

The Consultant agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

1.14 ADA Access

The Consultant shall comply with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the Consultant agrees to comply with all applicable implementing Federal regulations and directives and any subsequent amendments thereto.

1.15 Seismic Safety

The Consultant shall ensure that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in the U.S. Department of Transportation's Seismic Safety Regulations (49 C.F.R. Part 41) and shall certify to compliance to the extent required by the regulation. The Consultant also agrees to ensure that all work performed under this Agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

1.16 Text Messaging While Driving

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While December 30, 2009, the Consultant is encouraged to comply with the terms of the following:

a. Definitions.

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

b. Safety. The Grantee is encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving:

(a) Grantee-owned or Grantee-rented vehicles or Government-owned, leased or rented vehicles;

(b) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or

(c) Any vehicle, on or off duty, and using an employer supplied electronic device.

(2) Conduct workplace safety initiatives in a manner commensurate with the Consultant's size, such as:

(a) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(b) Education, awareness, and other outreach to employees about the safety risks associated with text messaging while driving.

(3) Include this Special Provision in its subagreements with its subrecipients and third party contracts and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision and include this clause in each subagreement, lease, and subcontract at each tier financed with Federal assistance provided by the Federal Government.

1.17 Incorporation of FTA Terms

(a) The Special Provisions include, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this 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 the FTA terms and conditions.

(b) The Consultant shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

ATTACHMENT 1.6 a) - DBE PARTICIPATION REPORT

DBE PARTICIPATION REPORT				
Project Name:				
Contract No:		Contractor Name:		
Federal ID No.: (OWP WE #, FTA Grant #, FHWA Project #)		Contract Amount (including amendments):		\$
Period Covered By This Report:	Current (Invoice #)		Total to Date	
Total Invoice Amount	(A) \$		(B) \$	
Payment Requested:	DBE? (Yes/No) DBE Code (if "Yes")	Prior Amount	Current Amount	Total Amount to Date
Prime Contractor		\$	\$	\$
Subcontractors (attach additional sheets as needed):				
Name:				
Type of Work:		\$	\$	\$
Name:				
Type of Work:		\$	\$	\$
Name:				
Type of Work:		\$	\$	\$
Name:				
Type of Work:		\$	\$	\$
TOTALS		\$	\$	(C) \$
DBE Participation to Date (C/B)		%		

ATTACHMENT 1.6 b) - FINAL REPORT OF DBE PARTICIPATION

This report must be submitted by the Contractor with the final invoice or request for payment under this contract.

Project Title: _____

Contractor Name: _____

Project No.: _____ Contract No.: _____

Period Covered by this Report: _____

Contract Amount (including amendments): \$ _____

Final Payment Amount: \$ _____ Invoice No.: _____

Total Payment to DBE: \$ _____

All Subcontractors (DBE and non-DBE) & DBE Suppliers or Manufacturers	Type of Service or Materials Provided	Subcontract Amount
Name Address Telephone No.		

Add additional sheets as necessary.

Signature

Print Name & Title

**INSTRUCTIONS FOR COMPLETING THE
FINAL REPORT OF DBE PARTICIPATION**

All subcontractors, suppliers and manufacturers should be listed on the FINAL REPORT OF DBE PARTICIPATION in the same order as listed in the proposal.

Project Title:	Self Explanatory
Project No.:	Self Explanatory
Period Covered by this Report:	Same period as invoice period
Contractor Name:	Self-Explanatory
Contractor No:	Self-Explanatory
Contract Amount (including amendments):	Less Mobilization, Force Account Items and Allowance Items Amendments should be listed separately with an explanation of how it was allocated to DBEs and non-DBEs
Invoice No.:	Self-Explanatory
Final Payment Amount:	Self-Explanatory
Total Payment to DBE	Total \$ amount paid to DBE

**GENERAL TERMS AND CONDITIONS
FOR PROFESSIONAL SERVICES
CITY AND COUNTY OF HONOLULU**

STATION DESIGN CONSULTANT

**FARRINGTON HIGHWAY STATION GROUP
HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT**

(8/00)

**GENERAL TERMS AND CONDITIONS
FOR CONTRACTS FOR PROFESSIONAL SERVICES
FOR THE
CITY AND COUNTY OF HONOLULU**

SECTION 1 - DEFINITIONS; GENERAL PROVISIONS

1.1 DEFINITIONS. Terms as used in these General Terms and Conditions and the contract, unless the context requires otherwise, shall have the following meaning:

"Amendment" means modification.

"Change order" means a written order signed by the officer-in-charge and approved by the Director of Budget and Fiscal Services, directing the contractor to make changes which the changes clause of the contract authorizes the officer-in-charge to order without the consent of the contractor.

"City" means the City and County of Honolulu, State of Hawaii.

"Contract" means the written agreement between the City and the successful contractor.

"Contractor" or "consultant" means the person having a contract with the City.

"Day" means calendar day unless otherwise specified.

"Design and plans" means any and all designs, plans, construction drawings, specifications, cost estimates, work schedules, proposals, studies, reports and other items.

"Designee" means a person appointed by the Director of Budget and Fiscal Services or the officer-in-charge to act on his/her behalf with delegated authority.

"Director of Budget and Fiscal Services" means the chief procurement officer of the executive branch of the City and County of Honolulu, or the director's designee.

"General terms and conditions" means these General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu.

"HRS" means the Hawaii Revised Statutes of the State of Hawaii.

"Modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of the contract accomplished by mutual action of the parties to the contract.

"Notice to proceed" means the written document indicating the official commencement date of services.

"Officer-in-charge" means the head of the department or a designee of the officer-in-charge for which services are being rendered.

"Professional services" means those services within the scope of the practice of architecture, landscape architecture, professional engineering, land surveying, real property appraisal, law, medicine, accounting, dentistry, or any other practice defined as professional pursuant to section 415A-2, HRS, or the professional and scientific occupation series contained in the United States Office of Personnel Management's Qualifications Standards Handbook.

"Qualified list method" means the method of source selection for professional services under HRS 103D-304.

1.2 GENERAL PROVISIONS

1.2.1 Nondisclosure of designated trade secrets or proprietary information. A person shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. *Such data shall accompany the proposal, be clearly labeled as confidential, and shall be readily separable from other data in order to facilitate eventual public inspection of the nonconfidential portion of the data.* [3-122-46, HAR]

1.2.2 Independent price determination. By submitting an offer or price, the person certifies that the price submitted for the contract was independently arrived at without collusion. [3-122-192, HAR]

1.2.3 No reimbursement. The City shall not provide any reimbursement for the cost of developing or presenting proposals in response to the request for proposal. Failure to include the requested information may have a negative impact on the evaluation of the offeror's proposal.

1.2.4 Cancellation of solicitation. Solicitations may be canceled in whole or in part when in the best interest of the agency. [3-122-95, HAR]

1.2.5 Determination of contractual terms and conditions. The Director of Budget and Fiscal Services is authorized to determine the contractual provisions, terms, and conditions of solicitations and contracts, provided such provisions, terms, and conditions are not contrary to statutory or Chapter 91, HRS, administrative rule requirements governing the procurement. [3-122-7, HAR]

1.2.6 Any notice required or permitted by the provisions hereunder or under the contract to be given by a party to any other party, shall be written and either shall be delivered personally or mailed postage prepaid by certified mail, return receipt requested, to each other party at the address and to the person designated by each party in the contract. No other method of notice shall be effective. If notice is given by mail, it shall be effective one business day following the date it is mailed. If notice is hand delivered, it shall be effective upon receipt. Any change of address of either of the parties shall be effective upon receipt of written notice of such change by the other party.

1.2.7 If any term, condition, provision, covenant or agreement of the terms hereunder or under the contract or the application thereof to any person or circumstance is rendered or held invalid, illegal or unenforceable under the laws of the State of Hawaii or the United States of America, such part of the terms hereunder or under the contract as shall have been rendered or held to be invalid, illegal or unenforceable shall not affect the validity of the terms hereunder or under the contract as a whole or the remainder of the terms hereunder or under the contract and the application of such part to other persons and circumstances, but shall be given effect and enforced without such part to the greatest extent permitted by applicable law.

1.2.8 The provisions of this document and the contract shall be interpreted in accordance with the laws of the State of Hawaii as those laws are construed and amended from time to time.

1.2.9 The titles of headings of sections, subsections and paragraphs are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

1.2.10 All words used in the singular shall extend to and include the plural. All words used in the plural shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

1.2.11 Managed Competition Review. All contracts executed on or after July 20, 1998 which will extend beyond June 30, 2001 (including contracts which have initial terms ending before June 30, 2001, with options to extend beyond June 30, 2001) will be subject to the Managed Competition Review, as defined below.

During its term, the contract shall be subject to a single review by the City pursuant to the managed process for public-private competition to be developed under Part III, Section 6 of Act 230, Session Laws of Hawaii 1998. It is the understanding of the parties that, as a result of the managed process review, the Agreement may be terminated by the City, renegotiated by mutual agreement of the parties, or continued in its current form. Any termination pursuant to this Section shall be deemed a termination for convenience.

1.2.12 Cooperation. The contractor shall cooperate and coordinate with other contractors who may be employed by the City on the same or related projects of the City, and to the extent possible, shall avoid interference therewith, and shall cooperate with the other contractors so as to avoid unnecessary delay or hindrance in the performance of their respective contracts. Any difference or conflict which may arise between the contractor and the other contractors of the City shall be resolved by the officer-in-charge, whose decision shall be final and binding.

1.2.13 Confidentiality. When dealing with the news media, the contractor is expected to be circumspect and to treat all matters falling within the scope of the contract with the utmost confidentiality. The contractor shall consult with and/or obtain the consent of the officer-in-charge prior to having conversations with or giving public interviews to the news media or any other members of the public.

SECTION 2 - HAWAII ADMINISTRATIVE RULES (HAR)

The Public Procurement Code (HRS Chapter 103D) and the Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, State of Hawaii (HAR), govern the procurement of goods and services and are by reference incorporated herein and made a part of the request for proposals and contract documents.

Wherever "chief procurement officer" appears in the HAR, for the Board of Water Supply (BWS), it shall mean the Manager and Chief Engineer of the BWS, for all others it shall mean the Director of Budget and Fiscal Services.

Wherever "head of the purchasing agency" and "procurement officer" appear in the HAR, both shall mean the officer-in-charge, or their authorized designees. For all agencies except the Board of Water Supply, the officer-in-charge shall have authority to act as specified herein.

Sections of the HAR are provided in whole or in part in these general terms and conditions for convenience only and the applicable section numbers are indicated in brackets. These provisions are not intended to relieve the contractor from the responsibility of familiarizing themselves with the HAR relating to this contract. Should any provision of these general terms and conditions be found to be inconsistent with the HAR, the provision in the HAR shall take precedent.

SECTION 3 - AWARD AND EXECUTION OF CONTRACT

3.1 AWARD OF CONTRACT. The contractor, upon being selected to render the services for the project, will be notified of its commission by the officer-in-charge. Said notice shall not be construed to be authorization to proceed with the performance of services under the contract.

3.2 EXECUTION OF CONTRACT

3.2.1 If the contractor is an individual, or partnership, the contractor shall cause the contract to be signed before a notary public duly acknowledged. If the contractor is a corporation, or if the joint venture is made up of two or more corporations, the contractor shall cause the contract to be signed and sealed before a notary public who shall acknowledge the person(s) signing, their titles, and shall affix thereto their corporate resolution, or other instrument vesting such officer with authority to sign the contract on their behalf.

3.2.2 If performance and payment bonds are required in the solicitation or contract, such documents shall be executed in the same manner above.

3.2.3 The signed contract, bonds, if any bonds are required, shall be returned together with evidence of insurance coverages as may be required, to the officer-in-charge for further processing, within ten days after notification of award.

3.3 CONTRACT NOT BINDING UNLESS PROPERLY EXECUTED AND APPROPRIATION AVAILABLE. The contract shall not be binding or of any force and effect without an endorsement by the Director of Budget and Fiscal Services that there is an appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract.

3.3.1 Exceptions to the certification of funds required above are:

- (1) If a contract is a multi-term contract pursuant to section 3-122-149, HAR, the Director of Budget and Fiscal Services shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts that is sufficient to cover the amount required to be paid under the contract during the current fiscal year or remaining portion of the current fiscal year of the first term of the multi-term contract. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore from sources which are identified in writing;
- (2) If the contract is one under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded; and

- (3) If there is no direct expenditure of public funds from the City to the contractor.
- (4) Certification of a portion of the total funds required for a contract may be permitted when an immediate solicitation will result in significantly more favorable contract terms and conditions to the City than a solicitation made at a later date; provided that certification for partial funding shall be permitted only if the Director of Budget and Fiscal Services states in the certificate that the availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special fund revenues. All contracts partially funded shall be enforceable only to the extent to which funds have been certified as available.

3.3.2 Contracts involving federal funds. Unless otherwise specified in the solicitation, for any contract supplemented by federal funds or receiving one hundred per cent federal funds, payment shall be made upon receipt of federal funds. The obligation of the City shall extend only to that portion of funds certified to and payable out of City funds. [3-122-102; 3-122-103, HAR]

3.4 COMMENCEMENT OF WORK. Work shall not commence until a contract has been executed and availability of funds certified by the Director of Budget and Fiscal Services, and the officer-in-charge has issued a written notice to proceed or the executed contract specifies the official commencement for services to begin.

SECTION 4 - LEGAL RELATIONS AND RESPONSIBILITY

4.1 INDEPENDENT CONTRACTOR

4.1.1 The contractor shall perform the work as an independent contractor and shall indemnify and hold harmless the City, its departments, and all of their officers, employees or agents, from any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, suits, action and liability therefor including reasonable attorney fees and cost of defense, caused by error, omissions or negligence in the performance of the contract by the contractor or the contractor's subcontractors, agents and employees and this requirement shall survive the termination of contract..

The contractor is an independent contractor and shall not be deemed to be an agent, servant, representative or employee of the City. The contract shall not be construed to create a partnership or joint venture between the City and the contractor.

4.1.2 Laws, regulations. The contractor shall keep itself fully informed of all laws, ordinances, codes, rules and regulations, governmental general and development plans, setback limitations, rights-of-way, and all changes thereto, which in any manner affect the contract and the performance thereof. The contractor shall comply with all such laws, ordinances, codes, rules and regulations, governmental general and development plans, setback limitations, rights-of-way, including the giving of all notices necessary and incident to the proper and lawful prosecution of the work, and all changes thereto. If any discrepancy or inconsistency is discovered between the contract and any such law, ordinance, code, rule, regulation, design standard, design criterion, governmental general and development plans, setback limitation, rights-of-way, the contractor shall forthwith report the same in writing to the officer-in-charge.

4.2 COPYRIGHT OR PATENT

4.2.1 If the contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the right for such use shall be procured by the contractor from the patentee or owner. The contractor shall indemnify and hold harmless the City and its departments, from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright in connection with the work to be performed under the contract, and shall indemnify the City and its departments, and all of their officers, employees or agents, for any costs, expenses and damages which it may be obliged to pay by reason of any such infringement at any time during the prosecution or after the completion of the work.

4.2.2 The City shall have an unrestricted, royalty-free, nonexclusive and irrevocable license to reproduce, publish, translate or otherwise use and to authorize others to publish and use all materials obtained or produced in connection with the work hereunder which may be copyrighted by the contractor prior to the completion of the contract.

4.3 INSURANCE

4.3.1 Unless otherwise specified in contract documents, the contractor shall procure or cause to be procured and maintain (as provided herein), at no cost to the City, during the life of this contract and any extensions thereof, all insurance to cover the operations under this contract, that may be required under the laws, ordinances or regulations of any governmental authority, including but not limited to the coverages below. The contractor shall either include all tiers of subcontractors, if any, under the policies required under paragraphs 2 through 4, to the extent permitted by law, or shall require all subcontractors to maintain coverages described in paragraphs 1 through 4.

1. Workers Compensation and Employers Liability Insurance. Contractor shall maintain workers compensation and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability coverage shall provide limits of not less than \$100,000 each accident for bodily injury by accident or \$100,000 each employee, \$100,000 aggregate, for bodily injury by disease.
2. Commercial General and Umbrella Liability Insurance . Contractor shall maintain commercial general liability (CGL) and if necessary commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence, and general aggregate. CGL insurance shall be written on ISO occurrence form, CG 00 01 (or a substitute form providing equivalent coverage), and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The City shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent), and under the commercial umbrella, if any. The policy(ies) shall contain a waiver of subrogation in favor of the City.
3. Business Automobile and Umbrella Liability Insurance . Contractor shall maintain business auto liability (including no-fault coverage) and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used by contractor in the performance of this contract. Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

4. **Professional Liability Insurance** . The contractor shall maintain professional liability insurance with limits of not less than \$1,000,000 per claim/annual aggregate, covering the contractor, the contractor's employees or agents for liability arising out of errors, omissions, or negligence in the performance of professional services under the contract. Such insurance shall remain in full force and effect continuously for the period of design and construction of the work, and for a period of 1 year following substantial completion of construction, provided that such coverage is reasonably available at commercially affordable premiums, as mutually determined and agreed.

4.3.2 The insurance specified above shall:

1. Provide that such insurance is primary coverage with respect to all insureds for claims arising from contractor's negligent acts and/or omissions or misconduct; and that any insurance (or self-insurance) carried by the City shall be excess and non-contributing;
2. Contain a standard Cross Liability endorsement providing that the insurance applies separately to each insured, applicable to policies specified in 4.3.1.2 and 4.3.1.3 above;
3. Not be terminated, canceled, not renewed or substantially changed without THIRTY (30) DAYS prior written notice to the City, except for non-payment of premium;
4. Except for Professional Liability insurance required in 4.3.1.4 above, be written on an "Occurrence" form of policy, unless otherwise specifically approved by the City.
5. Be provided by insurers authorized to do business in the State of Hawaii, and with a current Best's rating of not less than A-, or otherwise as approved by the City;

4.3.3 Certificate of insurance:

1. The contractor will provide and thereafter maintain current and renewal certificates of insurance, prepared by a duly authorized agent, or if requested, copies of the policies, evidencing the insurance in effect at all times during the term of this contract as required herein to the City.
2. Certificates shall clearly identify the project by name and/or contract number.
3. Certificates shall show the Certificate Holder as the City and County of Honolulu, and be delivered to the Director of Budget and Fiscal Services, 530 South King Street, Honolulu, Hawaii 96813.

SECTION 5 - MODIFICATIONS

5.1 MODIFICATIONS OF CONTRACTS. The City may at any time make such modifications in the contract, and the services, designs and plans, or studies prepared by the contractor as the officer-in-charge deems necessary and advisable. Such modifications shall be made by a supplemental agreement in writing or by a written order of the Director of Budget and Fiscal Services; provided that modifications by such a written order shall be limited to modifications in the scope of

services and in the designs, plans and studies; and provided further that modifications involving no reduction or increase in compensation of the contractor may be made by written order of the officer-in-charge.

5.1.1 Change order. (a) The officer-in-charge, with the approval of the Director of Budget and Fiscal Services, may at any time, and without notice to any surety, unilaterally, order of the contractor:

- (1) Changes in the work within the scope of the contract; and
- (2) Changes in the time of performance of the contract that do not alter the scope of the contract work.

(b) If any change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under the contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with subsection 5.2, Price adjustment, or as negotiated. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the officer-in-charge promptly and duly makes the provisional adjustments in payment or time for the direct costs of the work as the City deems reasonable. The right of the contractor to dispute the contract price or time or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the contract or these provisions.

(c) *Within ten 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.

(d) Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if written response is not given prior to final payment under the contract.

(e) Claims not barred. In the absence of a change order, nothing in this subsection shall be deemed to restrict the contractor's right to pursue a claim under the contract or for breach of contract. [3-125-2, HAR]

5.1.2 Modifications. (a) By written order, the officer-in-charge, with the approval of the Director of Budget and Fiscal Services, may at any time, and without notice to any surety, subject to mutual agreement of the parties to the contract and all appropriate adjustments, make modifications within the general scope of the contract to include any one or more of the following:

- (1) Drawings, designs, or specifications, for the goods to be furnished;
- (2) Method of shipment or packing;
- (3) Place of delivery;
- (4) Description of services to be performed;
- (5) Time of performance (i.e., hours of the day, days of the week, etc.);

- (6) Place of performance of the services; or
- (7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

(b) If any modification increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under the contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with subsection 5.2, Price adjustment or as negotiated.

(c) Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if written agreement of modification is not made prior to final payment under the contract.

(d) Claims not barred. In the absence of a contract modification, nothing in this subsection shall restrict the contractor's right to pursue a claim arising under the contract or for breach of contract. [3-125-3, HAR]

5.1.3 Variations in definite quantities. Upon the agreement of the parties, the quantity of goods or services or both specified in the contract may be increased by a maximum of ten percent provided the unit prices will remain the same except for any price adjustments otherwise applicable and the officer-in-charge makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract. [3-125-8, HAR]

5.1.4 Order to stop work. (a) The officer-in-charge may, with the approval of the Director of Budget and Fiscal Services, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by the contract. ***This order shall be for a specified period not exceeding sixty days*** after the order is delivered to the contractor, unless the parties agree to any further period. Any order shall be identified specifically as a stop work order issued pursuant to this subsection. Upon receipt of an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the officer-in-charge, with the approval of the Director of Budget and Fiscal Services, shall either:

- (1) Cancel the stop work order, or
- (2) Terminate the work covered by the order as provided in subsection 9.2, Termination for default, or subsection 9.3, Termination for convenience.

(b) Cancellation or expiration of the order. If a stop work order issued under this subsection is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

- (1) The stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of the contract; and

- (2) The contractor asserts a claim for such an adjustment *within thirty days* after the end of the period of work stoppage; provided that, if the officer-in-charge decides that the facts justify such action, any claim asserted may be received and acted upon at any time prior to final payment under the contract.

(c) Termination of stopped work. If a stop work order is not canceled and the work covered by the order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowable by adjustment or otherwise.

(d) Adjustment of price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with subsection 5.2, Price adjustment. [3-125-6, HAR]

5.2 PRICE ADJUSTMENT. Any adjustment in contract price pursuant to a clause in the contract shall be made in one or more of the following ways:

- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (2) By unit prices specified in the contract or subsequently agreed upon;
- (3) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- (4) In such other manner as the parties may mutually agree; or
- (5) In the absence of agreement between the parties, by a unilateral determination by the Director of Budget and Fiscal Services upon the recommendation of the officer-in-charge of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the officer-in-charge in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- (6) The contractor shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, subchapter 15, HAR. [3-125-12, HAR]

5.3 NOVATION OR CHANGE OF NAME

5.3.1 No assignment. No contract is transferable, or otherwise assignable, without the written consent of the Director of Budget and Fiscal Services.

5.3.2 Recognition of a successor in interest; assignment. When in the best interest of the City, a successor in interest may be recognized in an assignment agreement in which the transferor, the transferee and the City shall agree that:

- (1) The transferee assumes all of the transferor's obligations;
- (2) The transferor remains liable for all obligations under the contract but waives all rights under the contract as against the City; and

- (3) The transferor shall continue to furnish, and the transferee shall also furnish, all required bonds.

5.3.3 Change of name. When a contractor requests to change the name in which it holds a contract with the City, the Director of Budget and Fiscal Services shall, upon receipt of a document indicating such change of name (for example an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed. [3-125-14, HAR]

5.4 CLAIMS BASED ON THE OFFICER-IN-CHARGE'S ACTIONS OR OMISSIONS.

(a) If any action or omission on the part of an officer-in-charge or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) The contractor shall have given written notice to the officer-in-charge;
 - (A) *Prior to the commencement* of the work involved, if at that time the contractor knows of the occurrence of the action or omission;
 - (B) *Within thirty days after* the contractor knows of the occurrence of the action or omission, if the contractor did not have knowledge prior to the commencement of the work; or
 - (C) Within further time as may be allowed by the officer-in-charge in writing.

(2) This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The officer-in-charge or designee of such officer, upon receipt of the notice may rescind the action, remedy the omission, or take other steps as may be deemed advisable in the discretion of the officer-in-charge or designee of such officer;

(3) The notice required by paragraph (1) describes as clearly as practicable, at the time, the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and

(4) The contractor maintains and, upon request, makes available to the officer-in-charge within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with the changes.

(b) Nothing herein contained, however, shall excuse the contractor from compliance with any rules of law precluding any City officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(c) Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with subsection 5.2, Price adjustment. [3-125-15, HAR]

SECTION 6 - PERFORMANCE OF CONTRACT

6.1 TIME. Time is of the essence of the contract. Performance of the services under the contract shall be commenced on the date designated in the notice to proceed or in the contract and the services as required in the contract shall be completed within the number of days or on the date specified.

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 fifteen 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.

6.3 EXTENSION OF TIME ON CONTRACTS. If a contract has exhausted its provision for extension(s) of time of performance, or if the contract does not include a provision for extension(s) of time of performance, the contract may be extended upon approval of the Director of Budget and Fiscal Services, provided:

- (1) The period of each extension is for one hundred eighty calendar days or less;
- (2) The officer-in-charge makes a written determination that it is not practical to award another contract at the time of the expiration of the contract for reasons to include but be limited to the following:
 - (A) A new contract cannot be executed by the time the contract expires; or
 - (B) The need for the good or service is short term;
- (3) All parties agree to the extension of time of performance; and
- (4) The price or conditions of the contract remain the same as the original contract, or as amended per the contract; or if not the same or as amended, they are fair and reasonable.
[3-122-3, HAR]

6.4 PROSECUTION OF THE WORK. The contractor shall be available upon reasonable demand to discuss the progress of the services being performed under the contract. The contractor shall also remain available through any applicable alternative means of contact, such as pager or cellular phone, in the event of an emergency or other event that necessitates immediate communication with the contractor. All questions arising during the performance of the contract which must be resolved by the officer-in-charge shall be brought to the officer-in-charge's immediate attention.

The contractor shall direct its work to relate appropriately to, and in accordance with, established principles, practices and standards for such work. The contractor shall direct its work to relate appropriately to, and in accordance with, established engineering, planning and/or architectural design principles and practices for good exterior appearance, and the natural and man-made environment.

The contractor shall furnish sufficient technical supervision and administrative personnel to insure the proper performance of the services under the contract.

The contractor shall be responsible for the accuracy of all computations and completeness of all studies, designs and plans.

All notes, deliverables, plans, specifications, calculations, field notes, and other data produced in the performance of the contract shall be the property of the City.

The officer-in-charge shall have access, at all reasonable times, to all notes, designs, drawings, tracings or other technical data pertaining to the services being performed under the contract for the purpose of inspection and making copies of them. Upon completion of the services under the contract, any or all of such notes, studies, designs, drawings, tracings or other technical data shall be delivered and surrendered to the officer-in-charge on demand, provided that copies of notes, studies and other technical data may be delivered and surrendered instead of the originals.

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 and binding upon parties 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 and binding upon all parties 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.

6.6 LIQUIDATED DAMAGES. The amount of damage to the City as a result of failure to complete performance of specified services under the contract within the time fixed or any extension thereof, exclusive of overhead expenses, being certain but difficult, if not impossible to ascertain, the contractor agrees to pay the sum stated in the contract as liquidated damages, and not by way of penalty, for every calendar day of delay until the services are completed and accepted, or a reasonable time has expired for completion and acceptance of the services remaining to be performed.

When the contractor is given notice of delay or nonperformance as specified in subsection 9.2, Termination for default, and fails to cure in the time it is agreed specified, the contractor shall pay to the City the amount specified in the contract per calendar day from the date set for cure until either the officer-in-charge reasonably obtains similar goods or services if the contractor is terminated for default, or until the contractor provides the goods or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under 9.2.3, Excuse for nonperformance or delayed performance of the termination for default clause, liquidated damages shall not be due the City. The contractor remains liable for damages caused other than by delay. [3-125-19, HAR]

6.7 SUBCONTRACTING. The contractor shall not subcontract all or any part of the services under the contract without the prior written consent of the officer-in-charge. Any consent by the officer-in-charge to subcontract or otherwise dispose of any portion of the contract shall not be construed to relieve the contractor of any responsibility for the performance of the contract.

SECTION 7 - SERVICES TO BE PERFORMED BY THE CITY

7.1 COOPERATION BY THE CITY. The City shall, without cost to the contractor, through the officer-in-charge, cooperate fully with the contractor and will promptly place at the disposal of the contractor all available pertinent information which the City may have in its possession. The officer-in-charge will certify to the accuracy of certain information in writing whenever it is possible to do so. The officer-in-charge does not represent that other information not certified as accurate is so and takes no responsibility therefor, and the contractor shall rely on such information at the contractor's own risk.

7.2 REVIEW BY THE OFFICER-IN-CHARGE. The officer-in-charge shall review all submittals and other work and data required to be made by the contractor and reject or approve such submittals in their entirety or approve the same subject to such deletions, additions and revisions as the officer-in-charge may deem necessary and proper. In submittals specified in the special provisions, all items not required by the contractor to be deleted, added, or revised after review by the contractor and not defective by reason or error, omissions or negligence on the part of the contractor, his subcontractor, agents or employees shall be deemed to have been approved.

SECTION 8 - COMPENSATION

8.1 COMPENSATION. The contractor shall be paid the amount stated in the contract or the amount determined in accordance with the special provisions, whichever is lower, as full compensation for the performance of the services under the contract.

8.2 PROGRESS PAYMENT. The contractor's compensation shall be paid as set forth in the contract.

8.3 ACCEPTANCE AND FINAL PAYMENT. The officer-in-charge shall approve and accept completion of the contract upon the satisfactory fulfillment of the terms of the contract and receipt of a certificate from the State Director of Taxation and the Internal Revenue Service, as provided in section 103-53, HRS, relating to prerequisite for final settlement of contracts, provided that final payment will be made upon approval of the Director of Budget and Fiscal Services. The tax clearances required at final settlement of a contract shall be on an original certificate or certified copy and valid for a period of 6 months from the later date stamped on the form, provided that the contractor does not delay in obtaining clearance from both agencies.

8.3.1 In the event equipment is provided under the contract, which received prior approval from the Director of Budget and Fiscal Services, the contractor shall also provide a written list of equipment installed or provided, listing the description, make, model, serial number, cost, and location of the equipment or room number in which the equipment is located.

For purposes of this subsection, "equipment" means any item such as a water heater that can be removed with a hand tool, or like an air conditioner, is capable of being moved or transferred to another location and is accessible to tagging with an identification number.

8.3.2 Acceptance by the contractor of the final payment shall constitute payment in full for all services performed under the contract.

8.4 AUTHORITY TO WITHHOLD MONEY DUE OR PAYABLE. The officer-in-charge may withhold such amounts from the money due or to become payable under the contract to the contractor, or any assignee under subsection 5.3, Novation or change of name, as may be necessary to protect the City against liability or to satisfy the obligations of the contractor to the City, State Department of Taxation, Internal Revenue Service, and to employees, subcontractors and material suppliers who have performed labor or furnished material and equipment under the contract and may make such payments from such amounts as may be necessary to discharge such obligations and protect the City.

8.5 RETAINAGE. In accordance with HRS 103-32.1, the officer-in-charge may determine the need for retainage of a portion of the monthly payments to the contractor or payments made upon completion of phases of the contract to insure the proper performance of the contract; provided that the sum withheld shall not exceed five per cent of the amount due the contractor and that after fifty per cent of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the officer-in-charge may continue to withhold as retainage, sums not exceeding five per cent of the amount due the contractor.

For federally funded contracts, the amount of retainage shall be the amount allowed by federal regulations.

8.6 PROMPT PAYMENT TO SUBCONTRACTORS.

- (1) Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten 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; and
- (2) Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract. [3-125-23, HAR]

8.7 PAYMENT FOR REIMBURSABLE EXPENSES.

Payment requests for all reimbursable expenses shall be accompanied and supported by receipted invoices for all charges. The City must approve of all reimbursable expenses in writing. Payment for reimbursable items shall be made for allowable costs in accordance with the Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Chapter 3-122, Subchapter 15, cost or pricing data, and Chapter 3-123, cost principles.

Reimbursable amounts stated in the contract shall not be exceeded without a contract amendment. Any balance remaining from the reimbursable expense funds at the completion of the Agreement shall revert to the City.

SECTION 9 - TERMINATION OF CONTRACTS

9.1 RIGHT OF THE CITY TO TERMINATE. The City shall have the right to suspend performance of the services under the contract or terminate the contract in whole or in part at any time by written notice to the contractor. If the termination is for reasons other than default of the contractor as provided in subsection 9.2, the contractor shall be compensated in accordance with subsection 9.3, Termination for convenience.

9.2 TERMINATION FOR DEFAULT. If the contractor refuses or fails to perform any of the provisions of the contract with such diligence as will ensure its completion within the time specified in the contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of the contract, the officer-in-charge may notify the contractor in writing of the delay or nonperformance, and *if not cured in ten days* or any longer time specified in writing by the officer-in-charge, the officer-in-charge may, with the approval of the Director of Budget and Fiscal Services, terminate the contractor's right to proceed with the contract or a part of the contract as to which there has been delay or other breach of contract. In the event of termination in whole or in part, the Director of Budget and Fiscal Services may procure similar goods or services in a manner and upon terms deemed appropriate by the Director of Budget and Fiscal Services. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

Notwithstanding the above, in the event the contract is terminated, in whole or in part, by the City as the result of a default by the contractor, the City may secure, on any terms and in any manner that the City deems appropriate, supplies, materials, equipment and/or services similar to those required under the work terminated. The contractor shall be liable to the City for any excess costs for such similar supplies, materials, equipment and/or services, and the City may withhold and apply any monies due or to become due to the contractor under the contract for the completion of the work and/or for the payment of an additional contractor or contractors. This provision shall survive the termination of the contract. In case an additional contract or contracts let after such termination for default are let in an amount or amounts in excess of the amount remaining available for the contract in the hands of the City, free from all claims by laborers or material providers for work performed or materials furnished for the contract prior to the termination for default or any deductions authorized by the terms hereunder or the contract in favor of the City, then the contractor shall deposit, within ten (10) days from the receipt of each notice of any such reletting, to the credit of the City, solely for the prosecution and completion of the work, a sum of money equal to such excess; and in case the City desires to complete the work in any other manner than by contract, then the contractor shall deposit within ten (10) days from the receipt of each notice of the final completion of the work, to the credit of the City, the amount of any excess cost occasioned by such completion over the amount available under the contract in the hands of the City, free from all claims or deductions as aforesaid, all without prejudice to any other or additional rights or remedies the City may have against the contractor under the terms hereunder or the contract or under any applicable law, statute, ordinance, rule, regulation or other standard or requirement.

9.2.1 Contractor's duties. Notwithstanding termination of the contract and subject to any directions from the Director of Budget and Fiscal Services or the officer-in-charge, the contractor shall take timely and necessary action to protect and preserve property in the possession of the contractor in which the City has an interest.

9.2.2 Compensation. Payment for completed goods delivered and accepted by the City shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the contractor and the officer-in-charge; if the parties fail to agree, the Director of Budget and Fiscal Services, upon recommendation of the officer-in-charge, shall set an amount subject

to the contractor's rights under chapter 3-126, HAR. The City may withhold from amounts due the contractor as the Director of Budget and Fiscal Services deems to be necessary to protect the City against loss because of outstanding liens or claims of former lien holders and to reimburse the City for the excess costs incurred in procuring similar goods and services.

9.2.3 Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of the contract in accordance with its terms, if the contractor has notified the officer-in-charge *within fifteen days* after the cause of the delay and the failure arises out of causes including but not limited to: acts of God; acts of the public enemy; acts of the City and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if the failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements.

Upon request of the contractor, the officer-in-charge shall ascertain the facts and extent of the failure, and, if the officer-in-charge determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the completion date or delivery schedule shall be revised accordingly, subject to the rights of the City under subsection 9.3, Termination for convenience. As used in this paragraph, the term "subcontractor" means subcontractor or subconsultant at any tier.

9.2.4 Additional rights and remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law. [3-125-17, HAR]

9.3 **TERMINATION FOR CONVENIENCE.** The Director of Budget and Fiscal Services may, upon recommendation of the officer-in-charge, when the interests of the City so require, terminate the contract in whole or in part, for the convenience of the City. The Director of Budget and Fiscal Services shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

9.3.1 Contractor's obligations. The contractor shall incur no further obligations in connection with the terminated work and on the dates set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the City's approval. The contractor may be directed to assign the contractor's right, title, and interest under terminated orders or subcontracts to the City. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

9.3.2 Right to goods.

- (1) The contractor may be required to transfer title and deliver to the City in the manner and to the extent directed by the officer-in-charge or the Director of Budget and Fiscal Services: any completed goods; and the partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights, hereinafter

called "manufacturing material," as the contractor has specifically produced or specially acquired for the performance of the terminated part of the contract.

- (2) The contractor shall, upon direction of the officer-in-charge, protect and preserve property in the possession of the contractor in which the City has an interest. If the officer-in-charge does not exercise this right, the contractor shall use the contractor's best efforts to sell such goods and manufacturing materials. Use of this section in no way implies that the City has breached the contract by exercise of the termination for convenience clause.

9.3.3 Compensation

- (1) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, bearing on such claim. If the contractor fails to file a termination claim *within one year* from the effective date of termination, payment may be made to the contractor, if at all, in accordance with paragraph (3) below.
- (2) A settlement may be agreed to by both parties provided the contractor has filed a termination claim supported by cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the City, the proceeds of any sales of goods and manufacturing materials under paragraph 9.3.2, Right to goods, and the contract price of the work not terminated.
- (3) Absent complete agreement under paragraph (2), the contractor shall be paid the following amounts, provided payments agreed to under paragraph (2) shall not duplicate payments under this paragraph for the following:
 - (A) Contract prices for goods or services accepted under the contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the work plus a five percent markup on actual direct costs on such portion of the work, the markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Subject to the prior approval of the Director of Budget and Fiscal Services the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph 9.3.1, contractor's obligations. Subcontractors shall be entitled to a markup of no more than ten percent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with subparagraph (3)(B).
 - (D) The total sum to be paid the contractor under this paragraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subsection 9.3.2, Right to goods, and the contract price of work not terminated.

- (4) Cost claimed, agreed to, or established under paragraphs (2) and (3) shall be in accordance with Chapter 3-123, HAR. [3-125-21, HAR]

**SECTION 10 - DISPUTES ON CONTRACT
AND BREACH OF CONTRACT CONTROVERSIES.**

10.1 FINAL DECISION. (a) When a controversy cannot be resolved by mutual agreement between the officer-in-charge and the contractor, the Director of Budget and Fiscal Services shall, upon recommendation by the officer-in-charge, after written request by the contractor for a final decision, promptly issue a written decision.

(b) Any such decision shall be final and conclusive, unless fraudulent, or unless the contractor brings an action seeking judicial review of the decision in a circuit court of this State *within the six months* from the date of receipt of the decision.

10.1.1 The Director of Budget and Fiscal Services shall issue a written decision within the following time limitations:

- (1) For claims not exceeding fifty thousand dollars: *ninety calendar days* after receipt of the claim.
- (2) For claims exceeding fifty thousand dollars: *ninety calendar days* after receipt of the claim; provided that if a decision is not issued within ninety calendar days, the Director of Budget and Fiscal Services shall notify the contractor of the time within which a decision will be made.

If the Director of Budget and Fiscal Services fails to issue a decision on a claim not exceeding fifty thousand dollars within ninety calendar days after receipt, or does not issue a decision within the time promised for a claim in excess of fifty thousand dollars, the contractor may proceed as if an adverse decision had been received.

10.2 PAYMENT. The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting contractor action concerning appeal. Such payments shall be without prejudice to the rights of either party and where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment.

10.3 CLAIMS AGAINST THE CONTRACTOR. All controversies involving claims asserted by the City against a contractor which cannot be resolved by mutual agreement shall be the subject of a decision by the Director of Budget and Fiscal Services, upon recommendation by the officer-in-charge. [3-126-29, HAR]

10.4 CONTINUED PERFORMANCE OF THE CONTRACT. The contractor shall comply with any decision of the Director of Budget and Fiscal Services and proceed diligently with performance of the contract pending final resolution by a circuit court of this State of any controversy arising under, or by virtue of, the contract, except where there has been a material breach of contract by the City; provided that in any event the contractor shall proceed diligently with the performance of the contract where the Director of Budget and Fiscal Services has made a written determination that

continuation of work under the contract is essential to the public health and safety. [3-126-28, 3-126-29, 3-126-31, HAR]

10.5 REMEDIES. Any dispute arising under or out of the contract is subject to chapter 3-126, HAR. The procedures and remedies provided for shall be the exclusive means available for persons aggrieved in connection with the solicitation or award of a contract, a suspension or debarment proceeding, or in connection with a contract controversy, to resolve their claims or differences. The contested case proceedings set out in chapter 91, HRS, shall not apply to protested solicitations and awards, debarments or suspensions, or the resolution of contract controversies. [HRS 103D-704]

SECTION 11 - COST OR PRICING DATA

11.1 COST OR PRICING DATA. Pursuant to chapter 3-122, subchapter 15, HAR, cost or pricing data may be required as determined by the officer-in-charge or by chapter 3-122, subchapter 15, HAR, along with the certification of current cost or pricing data, substantially in the form attached hereto as Exhibit "A".

11.1.1 Cost and pricing data means all facts as of the date of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of a prospective contractor's judgment about future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all facts that can reasonably be expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as:

- (1) Vendor quotations;
- (2) Nonrecurring costs;
- (3) Information on changes in production methods and in production or purchasing volume;
- (4) Data supporting projections of business prospects and objectives and related operations costs;
- (5) Unit cost trends such as those associated with labor efficiency;
- (6) Make or buy decisions;
- (7) Labor union contract negotiations; and
- (8) Information on management decisions that could have a significant bearing on costs.

11.1.2 When cost or pricing data are required, they shall be submitted to the officer-in-charge prior to beginning price negotiations at any reasonable time and in any reasonable manner prescribed by the officer-in-charge. Such data shall either be actually submitted or specifically identified in writing. The contractor is required to keep such submission current until the negotiations are concluded.

The contractor shall provide written certification as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of the date of reaching agreement on price.

11.1.3 If a prospective contractor refuses to supply the required data, the Director of Budget and Fiscal Services, upon recommendation of the officer-in-charge, shall determine in writing whether to disqualify the noncomplying contractor, to defer award pending further investigation, or to enter into the contract. If, after award, a contractor refuses to supply the required data, the officer-in-charge shall determine in writing whether to further investigate the price adjustment, not to allow any price adjustment, or to set the amount of the price adjustment, subject to the contractor's rights under chapter 3-126, HAR.

The certificate of cost or pricing data is not to be construed as a representation as to the accuracy of the contractor's judgment on the estimated portion of future costs or projections. It does, however, constitute a representation as to the accuracy of the data upon which the contractor's judgment is based.

The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used does not require recertification or further submission of data.

11.1.4 If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or not current as of the date stated in the certificate, the City is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced in such amount.

In determining the amount of a downward adjustment, the contractor shall be entitled to an offsetting adjustment of any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the City's claims for overstated cost or pricing data arising out of the same pricing action.

11.1.5 If the contractor and the officer-in-charge cannot agree as to the existence of defective cost or pricing data or amount of adjustment due to defective cost or pricing data, the officer-in-charge shall set an amount in accordance with provisions of this section and the contractor may appeal this decision as a contract controversy under chapter 3-126, HAR.

SECTION 12 - SEXUAL HARASSMENT POLICY

12.1 GENERAL. The contractor must comply with Revised Ordinances of Honolulu (ROH) section 1-18, on sexual harassment. The contractor shall have and enforce a policy prohibiting sexual harassment. The contractor's sexual harassment policy must set forth the same or greater protection than those contained or required by the ordinance. Section 1-18, ROH is on file and available for viewing in the Purchasing Division. Contractors needing a copy must pick up the copy from the Office of the City Clerk, Room 203, City Hall, 530 South King Street, Honolulu, Hawaii.

12.1.1 The ordinance is applicable to the employer's business and includes:

- (1) Prohibitions against an officer's or employee's sexual harassment of the following:
 - (a) Another officer or employee of the employer;
 - (b) An individual under consideration for employment with the employer; or
 - (c) An individual doing business with the employer;
- (2) A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under paragraph (1) above;
- (3) A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;
- (4) A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;
- (5) Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;
- (6) Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;
- (7) A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard;"
- (8) Disciplinary actions which may be imposed on an officer or employee who committed a prohibited act; and
- (9) For an employer with at least five employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

12.2 POLICY TERM. The policy required under this section shall be in effect for at least the duration of the contractor's contract with the City.

12.3 PLEDGE AND ACCEPTANCE. The action of the contractor signing the contract shall constitute the contractor's pledge and acceptance of the provisions for the sexual harassment policy as required by section 1-18, HRS.