

HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT  
CONTRACT NO. SC-DTS-0700001  
AMENDMENT NO. 3

THIS AMENDMENT NO. 3 dated JAN 22 2010 (this "Amendment No. 3"), is made and 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 called the "CITY", and PB AMERICAS, INC., a New York Corporation, whose office and mailing address is 1001 Bishop Street, American Savings Bank Tower, Suite 2400, Honolulu, Hawaii 96813, hereinafter referred to as the "CONSULTANT", collectively referred to as the "parties."

WITNESSETH THAT:

WHEREAS, the parties entered into Agreement No. SC-DTS-0700001 for Professional Services (CONSULTANT Agreement No. 16471A), dated August 24, 2007, as amended by Amendment No. 1 dated June 23, 2008 and Amendment No. 2 dated May 21, 2009 (collectively, the "Agreement"), to provide general engineering consultant services for the Preliminary Engineering/Environmental Impact Statement (PE/EIS) for the Honolulu High-Capacity Transit Corridor Project (the "Project");

WHEREAS, the CITY now desires to further amend the Agreement as specified under the General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu (8/2000), Subsection 5.1 MODIFICATIONS OF CONTRACTS, incorporated by reference into the Agreement, to increase the amount in paragraph 5 of the Agreement by TWELVE MILLION NINE HUNDRED THOUSAND DOLLARS (\$12,900,000) to provide for additional services to assist the CITY with increased Project alignment and Project Contract delivery activities; and

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

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the CITY and the CONSULTANT hereby mutually agree to amend the Agreement as follows:

1. Paragraph 5, AGREEMENT FOR PROFESSIONAL SERVICES. Delete the paragraph in its entirety and substitute in lieu thereof the following:

"5. This is a cost plus fixed fee contract, and is subject to the provisions of this paragraph. In accordance with Paragraph VI 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, in accordance with invoices received, and further as set forth in the Special Provisions attached hereto. The aggregate amount of such payments for the Work (the "Aggregate Amount") shall not exceed ONE HUNDRED THREE MILLION NINE HUNDRED THOUSAND DOLLARS (\$103,900,000) for direct labor, overhead, subconsultants, and a fixed fee, inclusive of State General Excise and Use Tax. Payment shall be invoiced to the CITY in accordance with guidelines as set forth in the Special Provisions. Such payment shall be provided from the following funds:

City Funds.....	\$ 99,900,000
Federal Funds.....	\$ 4,000,000
Total .....	\$103,900,000

Also included with the Aggregate Amount is an Allowance for Other Direct Costs of FOUR MILLION ONE HUNDRED SEVENTY-EIGHT THOUSAND EIGHT HUNDRED FIFTY-THREE DOLLARS (\$4,178,853). This Allowance for Other Direct Costs is not to be exceeded without a contract amendment and any funds remaining at the end of the Agreement shall revert back to the CITY. The Allowance for Other Direct Costs is provided for expenses identified in Schedule B-2, Exhibit 2A-2 to the Special Provisions and such other expenses as are specifically approved by the CITY. Payment for Other Direct Costs is subject to the terms contained in the Special Provisions. Reimbursement shall be made for actual costs incurred without markup upon submission of a copy of the vendor invoice or other documentation satisfactory to the CITY.

In accordance with the paragraphs above, the total aggregate amount of ONE HUNDRED THREE MILLION NINE HUNDRED THOUSAND DOLLARS (\$103,900,000) (the "Total Aggregate Amount") is established as the maximum payable under this Agreement and is subject to the Special Provisions and the General Terms and Conditions, including the provisions thereof related to reducing or increasing the compensation of the CONSULTANT."

2. Paragraph 6, AGREEMENT FOR PROFESSIONAL SERVICES. Delete the paragraph in its entirety and substitute in lieu thereof the following:

"6. Notwithstanding any other provisions of this Agreement, including the provisions of Section 3.3 of the General Terms and Conditions, it is covenanted and agreed by and between the parties hereto that a sum of FOUR MILLION DOLLARS (\$4,000,000) shall be paid only out of the applicable Federal funds, and that this Agreement shall be construed to be an agreement by the CITY to pay such compensation to the CONSULTANT only out of the aforesaid Federal funds if and when such Federal funds shall be received from the Federal Government, and that this Agreement shall not be construed to be a general agreement to pay said compensation at all events out of any funds other than those which may be so received from the Federal Government; provided that, in the event the CITY determines that the anticipated Federal funds to fund this Agreement will not be available in whole or in part and the CITY does not otherwise agree to pay the CONSULTANT for services in excess of the amount of the Federal funds available, then the CONSULTANT shall not be obligated to perform any services required under this Agreement the value of which exceeds the amount of the Federal funds available; and provided further that, if, for any reason, the anticipated Federal funds to fund this Agreement will not be available in whole or in part, the CITY shall promptly advise the CONSULTANT so that the CONSULTANT may avoid, to the extent possible, work for which compensation, as provided for in this Agreement, will not be forthcoming."

3. SPECIAL PROVISIONS, Article III. TIME. Delete the paragraph in its entirety and substitute in lieu thereof the following:

"The CONSULTANT shall complete the Work required under this Agreement within 918 calendar days from the Notice to Proceed #1 (NTP #1), exclusive of the time that the CITY and other public agencies require to review the Work."

4. SPECIAL PROVISIONS, Section VIII.C, ACCESS TO RECORDS AND REPORTS. Delete this section in its entirety and substitute in lieu thereof the following:

"C. ACCESS TO RECORDS AND REPORTS

1. The CONSULTANT shall provide the CITY, the FTA Administrator, the Comptroller General of the United States, the Inspector General of the United States, or any of their authorized representatives access to any books, documents, papers and records of the CONSULTANT and its sub-consultants at every tier, which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The CONSULTANT and sub-consultants at every tier shall, pursuant to 49 C.F.R. § 633.17, provide the FTA Administrator or his authorized representatives, including any PMOC, access to 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.
2. When the CITY, in accordance with 49 U.S.C. § 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. § 5302(a)(1)) through other than competitive bidding, the CONSULTANT and its sub-consultants at every tier shall make available records related to the Agreement to the CITY, the Secretary of Transportation, the Comptroller General of the United States, the Inspector General of the United States, or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
3. The CONSULTANT and its sub-consultants at every tier shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. 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, the Inspector General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.”
5. **SPECIAL PROVISIONS, Article IX. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (“ARRA”). A new Article IX is added to include the following:**

**“IX. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (“ARRA”)”**

The CONSULTANT understands that certain Services under this Agreement will be funded with ARRA funds and to the extent ARRA funds are utilized, the CONSULTANT must comply with requirements of ARRA.

The CONSULTANT acknowledges and agrees to the following notices and requirements:

**A. General Requirements.**

Funding for certain Services under this Agreement has been provided through the American Recovery and Reinvestment Act of 2009 ("ARRA"), and is subject to the reporting and operational requirements of ARRA. Whereas each contract funded by ARRA, including contracts with sub-consultants, is subject to audit by appropriate federal, state or CITY entities; the CONSULTANT and/or SUB-CONSULTANT shall be responsible for record keeping and reporting requirements under ARRA for those Services subject to ARRA funding.

#### B. Reporting Requirements

The CONSULTANT shall submit the periodic and quarterly information required by Sections 1201(c) and 1512 of the ARRA to the CITY five (5) calendar days prior to the CITY's reporting due dates to the federal government. The cost for complying with these reporting requirements shall be borne by the CONSULTANT as part of their overhead cost and is deemed to be included in the payments made under this Agreement.

If necessary to conform to guidance provided by FTA concerning the ARRA reporting requirements, the CONSULTANT, and all-tier SUB-CONSULTANTS will revise their reporting as directed by the CITY.

Failure to comply with the reporting requirements under ARRA would jeopardize the CITY's continued receipt of ARRA funding. Accordingly, if the CONSULTANT or any SUB-CONSULTANT fails to comply with these requirements, the CITY may withhold payments until compliance is achieved."

#### 6. SPECIAL PROVISIONS, Exhibit 2A-1 – Cost Estimate:

- (1) Exhibit 2A-1 – Cost Estimate, is deleted in its entirety and is replaced with Exhibit 2A-2 – Cost Estimate, attached hereto.
- (2) Schedule A – Direct Labor Details, Exhibit 2A – Cost Details, is deleted in its entirety and is replaced with Schedule A-1 – Direct Labor Details, Exhibit 2A-2 – Cost Estimate, attached hereto.
- (3) Schedule B-1 – Other Direct Cost Details, Exhibit 2A-1 – Cost Details, is deleted in its entirety and is replaced with Schedule B-2 – Other Direct Cost Details, Exhibit 2A-2 – Cost Estimate, attached hereto.
- (4) Schedule C-1 – Subconsultant Cost, Exhibit 2A-1 – Cost Estimate, is deleted in its entirety and is replaced with Schedule C-2 – Subconsultant Cost, Exhibit 2A-2 – Cost Estimate, attached hereto.

#### 7. SPECIAL PROVISIONS, Exhibit 2B-1 COMPENSATION AND INVOICING. Delete the Exhibit in its entirety and substitute in lieu thereof the following:

##### **"Exhibit 2B-2**

#### **COMPENSATION AND INVOICING**

1. Subject to the provisions set forth in this Agreement, the CONSULTANT will be paid on a monthly basis by the CITY for authorized and satisfactorily completed work and

services rendered under this Agreement. Such payment shall be full compensation for work performed and services rendered, 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 \$103,900,000, (hereinafter called the "Total Price"), which includes all costs and fees associated with this Agreement, subject only to authorized adjustments as specifically provided in this Agreement. In the event the CONSULTANT incurs costs, fees or other compensation in excess of the Total Price, adjusted as provided herein, the CONSULTANT shall pay such excess from its own funds and the CITY shall not be required to pay any part of such excess and the CONSULTANT shall have no claim against CITY on account thereof.

2. Compensation for work and services shall be on a cost plus fixed fee basis but not to exceed the Total Price. Compensation shall be the sum of direct labor costs, indirect costs, subconsultant costs, other direct costs, fixed fee and General Excise and Use Tax as described below. Costs to be paid are identified in the "Cost Estimate" schedule, which is attached hereto as Exhibit 2A-2 and incorporated herein by this reference, and comprise the following:
  - a. Direct Labor Costs. Direct labor costs shall be the total number of hours worked on the Project by each authorized employee multiplied by the employee's regular hourly rate. The CONSULTANT shall develop procedures to be approved by the CITY that limit charges by non project office employees to those in the CONSULTANT's cost estimate contained in Schedule A-1, Exhibit 2A-2. Advance CITY approval is required for all employee Project charges with a regular hourly rate of \$70 per hour or higher except for employees assigned to the Project Office. CITY approval is required for employee overtime labor charges. In no event shall the premium portion of overtime be classified or billed as direct labor.
  - b. Indirect Costs. Indirect costs shall be the product of all direct labor costs multiplied by an overhead rate. The parties agree that the Overhead Rates shown in Exhibits 2 C.1, 2 C.2 and 2 C.3 shall be used on a provisional basis for the purpose of invoicing until the audited rate that is based on a "Report of Independent Auditors" for the period is agreed upon by the CITY at which time payment for services using the provisional rate will be adjusted to the audited rate accepted by the CITY. The CONSULTANT's overhead rates are to be calculated on an annual basis and are to be prepared on the basis of accounting practices prescribed by Part 31, Subparts 31.1 and 31.2 of the Federal Acquisition Regulations.

Facilities, services and equipment for Project Office CONSULTANT staff will be provided by the CITY. It is agreed that project services by the CONSULTANT and employees assigned to the Project Office will be invoiced to the CITY at the provisionally approved Project Office overhead rate; Project services by employees that are not assigned, but are expected to work in the Project Office for twenty nine (29) or more continuous days shall be invoiced to the CITY at the CONSULTANT's provisionally approved Field Overhead Rate; and Project services by CONSULTANT employees not assigned to the Project Office and who are not expected to be working in the Project Office for twenty nine (29) or more continuous days shall be invoiced to the CITY at the CONSULTANT's provisionally approved General Service Office rate. The CONSULTANT's provisional overhead rates will be reviewed annually by the CITY and adjusted if deemed acceptable to the CITY.

The initial Provisional Overhead Rate schedules are contained in attached Exhibits 2 C.1, 2 C.2 and 2 C.3 and are incorporated by this reference.

- c. Other Direct Costs. Other direct costs shall be billed at cost without markup by the CONSULTANT and shall include actual authorized expenses incurred by the CONSULTANT for Project work that is identified in the CONSULTANT's Cost Estimate which is attached hereto as Schedule B-2, Exhibit 2A-2 and incorporated herein by this reference.
  - d. Fixed Fee. The CITY shall pay the CONSULTANT a fixed fee of \$4,731,984. Such fixed fee is included in the Total Price set forth above. It is understood and agreed that the fixed fee is only due and payable for the Project work for which the CITY has given notice to proceed and for which the CONSULTANT has satisfactorily completed. The fixed fee will be prorated and paid monthly in proportion to CONSULTANT's direct labor and overhead for work satisfactorily completed. The proportion of work completed shall be documented by invoices. A payment for an individual month shall include that approved portion of the fixed fee allocable to the Project work satisfactorily completed during said month and not previously paid. Any portion of the fixed fee not previously paid in the monthly payments shall be included in the final payment. The CITY may permit an increase in fixed fee only due to "Additional Work" beyond that work covered by the scope of services that is contained in Exhibit 1 and is incorporated by this reference. In the event the CITY deletes work from the Scope of Services in Exhibit 1, a proportional decrease in the fixed fee may be required. The fixed fee shall not be increased or decreased for additional or lower level of effort for the work described in Exhibit 1.
  - e. Subconsultant Costs. It is agreed that the CITY has the right to approve any CONSULTANT subcontract agreement related to the Project. The provisions contained in Exhibit 2B-2 shall apply to Subconsultant costs. Subconsultant costs shall be billed to the CITY at cost without markup by the CONSULTANT and shall include actual authorized expenses incurred by the CONSULTANT for Project work that is identified in the CONSULTANT's Cost Estimate which is attached hereto as Exhibit 2A-2 and incorporated herein by this reference.
  - f. The CONSULTANT's Cost Estimate contained in Exhibit 2A-2 shall designate by employee the expected overhead rate schedule to be used for billing and any changes will require advance CITY approval.
3. Payment Schedule. Each month the CONSULTANT shall submit to the CITY an invoice for payment for Project work completed to the end of the previous month in a form and in reasonable detail as determined by the CITY. Such invoices shall be for work performed subsequent to that work covered by all previously submitted invoices and shall be completed pursuant to the rates and limitations set forth herein above. Invoices shall be supported by adequate documentation as determined by the CITY and shall detail the work, hours, and employee name for which payment is being requested, including subconsultant employees, and shall itemize, with receipts and invoices attached, the Other Direct Costs for which reimbursement is being requested. Within thirty (30) days of receipt of an 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 Price. Copies of all invoices submitted by the authorized subconsultants identified in Schedule

CERTIFICATION AS TO AVAILABILITY OF FUNDS

Contract for: providing general engineering consultant services for the Preliminary Engineering/  
Environmental Impact Statement for the Honolulu High Capacity Transit Corridor Project.

Original + Amd 1 & 2	91,000,000.00
This Amendment 3	12,900,000.00
New Contract	103,900,000.00

Certification is hereby made that sufficient funds are or will be available to pay the above described contract when due and payable; availability of funds are assured by the Federal government, Federal Transit Administration Grant no. HI-96-0001 (ARRA).

Funds provided in Account No.(s) 630/5195-10-D (4064) \$ 4,000,000.00

Certified by: *A. Doherty* 1/18/10  
Fiscal Officer *Wh*

*Wayne J. Yoshida*  
Department Head

Payments to the contractor will be made as cash is received and deposited into the City Treasury.

FUND Federal Grants  
Capital Projects Fund (630)  
Transit Fund (690)

HONOLULU, HAWAII

ACCOUNT NO. 630/5195-10-D (4064) \$ 4,000,000  
690/7801-10-D (4064) 8,900,000  
\$12,900,000

BFS CONTRACT NO. SC-DTS-0700001 - 4

*[Signature]*  
Director of Budget & Fiscal Services *deh*  
JAN 22 2010

B-2, Exhibit 2A-2 for which payment is requested shall be submitted to the CITY. The CONSULTANT shall notify the CITY Project Manager in writing no later than ten (10) days whenever the CONSULTANT believes the Project Work cannot be completed for the Total Price."

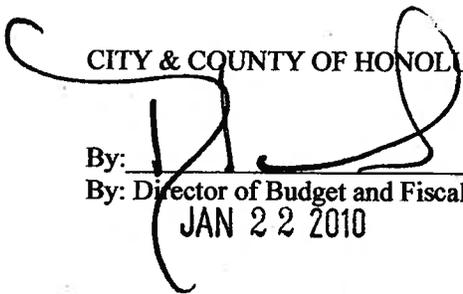
8. By signing below, the CONSULTANT hereby certifies that, to the best of its knowledge and belief, cost or pricing data, as defined in Section 3-122-122, Hawaii Administrative Rules, and submitted pursuant to Section 3-122-125, HAR, either actually or by specific identification in writing to the Officer-in-Charge in support of this Amendment No. 3, is accurate, complete and current as of the date of this Amendment No. 3. This certification includes the cost or pricing data supporting any advance agreement(s) between the CONSULTANT and the CITY which are part of the proposal.
9. In the event of any conflict or inconsistency between the provisions of this Amendment No. 3 and any provisions of the Agreement, the provisions of this Amendment No. 3 shall govern in all aspects.
10. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the CITY and the CONSULTANT have executed this Amendment No. 3 to the Agreement, effective as of the date first written above.

APPROVED AS TO CONTENT:  
Department of Transportation Services

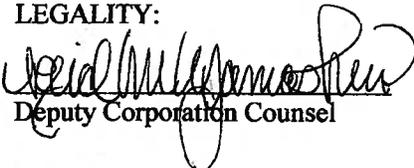
  
By: Its Director  
Department of Transportation Services

CITY & COUNTY OF HONOLULU

By:   
By: Director of Budget and Fiscal Services

JAN 22 2010

APPROVED AS TO FORM AND  
LEGALITY:

  
Deputy Corporation Counsel

PB AMERICAS, INC.

By:   
Its: PRESIDENT, TRANSPORTATION DIV.

Federal ID No.

  
THERESA F. CONWAY  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires September 3, 2008

STATE OF NEW JERSEY            )  
  ) SS:  
COUNTY OF MONMOUTH         )

On this 6<sup>th</sup> day of January, 2010, before me personally appeared Gregory A. Kelly, individually and as Trustee as aforesaid, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that said person executed the same as said person's free act and deed, as such individual and as such Trustee.



Notary Public, State of New Jersey

My commission expires September 3, 2011

STATE OF ~~HAWAII~~ NEW JERSEY )  
 ) ss.  
CITY AND COUNTY OF ~~HONOLULU~~ )

On this 6<sup>th</sup> day of JANUARY, 2010, before me appeared GREGORY A. KELLY, personally known to me, who, being by me duly sworn, did say that he/she is the PRESIDENT, TRANSPORTATION of AB AMERICAS, a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and said officer severally acknowledged said instrument to be the free act and deed of said corporation.

Theresa F. Conway  
Notary Public, State of ~~Hawaii~~ NEW JERSEY

My commission expires: 9/3/2011

<b>NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)</b>	
Document Identification or Description: _____ _____ _____ _____	
Doc. Date: _____	No. of Pages: _____ Jurisdiction: _____
<u>Theresa F. Conway</u> Signature of Notary	_____ Date of Certificate
<u>THERESA F. CONWAY</u> Printed Name of Notary	_____ (Official Stamp or Seal)