

HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT
CONTRACT NO. SC-DTS-0700001
AMENDMENT NO. 1

THIS AMENDMENT NO. 1 dated JUN 23 2008 (this "Amendment No. 1"), 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 CONSULTANT was selected pursuant to Section 103D-304 of the Hawaii Revised Statutes, as amended, and related Hawaii Administrative Rules ("HAR"), related to the procurement of professional services;

WHEREAS, the parties entered into Agreement No. SC-DTS-0700001 for Professional Services (CONSULTANT Agreement No. 16471A), dated August 24, 2007 (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, during the PE/EIS phase of the Project, the CONSULTANT is to develop utility composite drawings identifying the locations of above-ground and subsurface electric utility facilities and equipment within 100 feet of the Project corridor (the "Electric Utility Infrastructure Information");

WHEREAS, the CITY has requested that the CONSULTANT obtain the existing Electric Utility Infrastructure Information (EUII) directly from the Hawaiian Electric Company, Inc. ("HECO"), which is the sole source of the EUII, for use in the preparation of the utility composite drawings by the CONSULTANT;

WHEREAS, the CITY and the CONSULTANT recognize that HECO has an interest in maintaining the confidentiality of and protecting from public disclosure the EUII to be provided by HECO to the CONSULTANT;

WHEREAS, the CITY and the CONSULTANT agree that the CONSULTANT should be entitled to rely on the accuracy of the EUII obtained from HECO, and should not be responsible for errors in the utility composite drawings attributable solely to inaccuracies, errors, or omissions in the EUII provided, or HECO's failure to provide completely current EUII; and

WHEREAS, the CITY and the CONSULTANT now desire to modify the Agreement to state the parties' agreement with respect to the CITY's handling of the EUII to maintain confidentiality and the CONSULTANT's use of and reliance upon the EUII.

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

1. In the Agreement, SPECIAL PROVISIONS TO THE AGREEMENT FOR PROFESSIONAL SERVICES, Section VII, MODIFICATIONS TO THE GENERAL TERMS AND CONDITIONS FOR CONTRACTS FOR PROFESSIONAL SERVICES FOR THE CITY AND COUNTY OF HONOLULU (8/2000), a new Subparagraph I is added to include the following:

"I. NONDISCLOSURE OF DESIGNATED TRADE SECRETS OR PROPRIETARY INFORMATION: ELECTRIC UTILITY INFRASTRUCTURE INFORMATION

EUII, defined as all information, including drawings, schematics, models, plans, specifications, standards, diagrams, field notes, reports, correspondence, and other information in paper, photographic, or digital format, provided by Hawaiian Electric Company, Inc. ("HECO"), concerning the location, configuration, and nature of the above-ground and subsurface utility facilities and equipment within the limits of the Project site, as denoted in Project plans, models, and schematics, and within 100 feet of either side of the Project site, shall be considered confidential information, which shall not be disclosed by the CITY absent court order, and the CITY shall notify the CONSULTANT as soon as practicable upon receipt of any such order. The CITY shall not compel disclosure of the EUII by the CONSULTANT or handle any EUII it may obtain from the CONSULTANT in such a manner as to subject otherwise confidential

information to public disclosure under applicable public records laws. The CITY agrees to follow such procedures as may be required under public records laws to establish and maintain the confidential status of the EUUI, or otherwise lawfully protect it from public disclosure during the term of this Agreement. It is specifically agreed that the utility composite drawings prepared by the CONSULTANT shall not be considered confidential information."

2. In the Agreement, SPECIAL PROVISIONS TO THE AGREEMENT FOR PROFESSIONAL SERVICES, Section VII, MODIFICATIONS TO THE GENERAL TERMS AND CONDITIONS FOR CONTRACTS FOR PROFESSIONAL SERVICES FOR THE CITY AND COUNTY OF HONOLULU (8/2000), a new Subparagraph J is added to include the following:

"J. PROSECUTION OF THE WORK: UTILITY COMPOSITE DRAWINGS

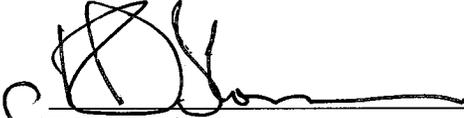
Notwithstanding any provision of this Agreement to the contrary, including but not limited to Section 6.4 of the General Terms and Conditions, the CONSULTANT shall not be responsible for inaccuracies in the utility composite drawings to be produced in the PE/EIS phase of the Project, or delays in their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

3. All other terms and conditions of the Agreement shall remain in full force and effect.

4. 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, HAR, 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. 1, is accurate, complete, and current as of the date of this Amendment No. 1. 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.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Agreement, effective as of the date first written above.

APPROVED AS TO CONTENT:
Department of Transportation Services



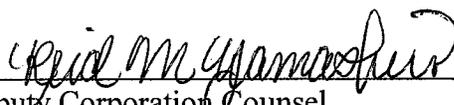
By: Its Director
Department of Transportation Services

CITY & COUNTY OF HONOLULU



By: Its Director
Department of Budget and Fiscal Services *uh*

APPROVED AS TO FORM AND
LEGALITY:



Deputy Corporation Counsel

CONSULTANT
PB AMERICAS, INC.

By: 

Its: Vice President and Project Manager
Federal ID No.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Francisco } ss.

On June 5, 2008, before me, Stephanie D Brown Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared James Van Epas
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Stephanie D. Brown Notary Public
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement For Professional Services

Document Date: June 5, 2008 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

