

**AGREEMENT
FOR PROFESSIONAL SERVICES**

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THIS AGREEMENT FOR PROFESSIONAL SERVICES dated April 20, 2007 (this "Agreement") 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, (the "CITY"), and INFRACONSULT LLC, a Delaware limited liability company, whose offices and mailing address is Seven Waterfront Plaza, 500 Ala Moana Boulevard, Suite 400, Honolulu, Hawaii 96813, (the "CONSULTANT").

WITNESSETH THAT:

WHEREAS, the CITY desires to engage the CONSULTANT to provide project management support services for the Preliminary Engineering/Environmental Impact Statement for the Honolulu High-Capacity Transit Corridor Project, (the "PROJECT"); and

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-303 of the Hawaii Revised Statutes as amended and related Hawaii Administrative Rules, relating to competitive sealed proposals;

NOW, THEREFORE, the CITY and the CONSULTANT, in consideration of the foregoing and of the mutual promises hereinafter set forth, 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 set forth in the Contract Documents as hereinafter described, shall furnish all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of the PROJECT and work contemplated under the Contract Documents (the "Work"), and the CONSULTANT shall receive and accept as full compensation for all of the Work the price for the various items of the Work as hereinafter set forth.

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

- a. This Agreement;
- b. The Special Provisions and any attachments and exhibits thereto;
- c. The General Terms and Conditions for Contracts for Goods and Services for the City and County of Honolulu, dated 01/09/07;
- d. Exhibit A, the CONSULTANT's proposal dated February 23, 2007; and
- e. Exhibit B, RFP No. 15016, Project Management Support Services for the Honolulu High-Capacity Transit Corridor Project,

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 modification, 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 and Exhibit A of the CONSULTANT's proposal dated February 23, 2007 attached hereto.

4. This is a cost-reimbursement contract, and subject to the provisions of this paragraph and in accordance with Section 22 of the General Terms and Conditions, the total aggregate amount of ELEVEN MILLION FIVE HUNDRED TWENTY-FOUR THOUSAND FIVE HUNDRED THIRTEEN DOLLARS (\$11,524,513) 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 relating to reducing or increasing the compensation of the CONSULTANT.

The CITY agrees to pay the CONSULTANT, for the satisfactory performance and completion of the Basic Services, in accordance with invoices received, and further as set forth in the Special Provisions attached hereto. The aggregate amount of such payments for Basic Services shall not exceed TEN MILLION ONE HUNDRED ONE THOUSAND TWO HUNDRED SIXTY-THREE DOLLARS (\$10,101,263) for the CONSULTANT's staff services and related services of subconsultants, inclusive of State general excise and use tax. Payments of labor-related services performed by CONSULTANT's employees and subconsultants under this Agreement shall include salary, overhead, general and administrative expense and other direct costs and fixed fees, and shall be invoiced to the CITY in accordance with the hourly professional services rates as set forth in the CONSULTANT's proposal attached hereto, Exhibits 5B-1 and 5B-2.

The CITY agrees to establish an Allowance for Reimbursable Expenses of FOUR HUNDRED TWENTY-THREE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$423,250), which amount shall not be exceeded without a Contract amendment. This reimbursable allowance is provided for items such as project-related business travel, hotel and per diem charges, car rental and mileage, computer-related hardware, software and external internet service, temporary office rent and such other expenses as incurred in the performance of the Work. Reimbursement to the CONSULTANT shall be made upon submission of an Expense Reimbursement Invoice, which shall include copies of pertinent vendor bills or invoices. Any funds remaining in this account at the conclusion of this Agreement shall revert back to the CITY.

The CITY agrees to establish an Allowance for Extra Work of ONE MILLION DOLLARS (\$1,000,000), which amount shall not be exceeded without a Contract amendment. Extra Work requested by the CITY within this ONE MILLION DOLLARS (\$1,000,000) allowance shall be set forth in writing through execution of a Contract amendment. Each such amendment shall include a description of the additional services to be provided and the estimated price of such services. Any funds remaining at the end of this Agreement shall revert back to the CITY.

5. 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 Agreement, is accurate, complete, and current as of the date of this Agreement. This certification includes the cost or pricing data supporting any advance agreement(s) between the CONSULTANT and the CITY which are a part of the proposal.

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

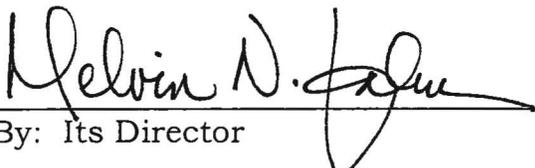
7. When notice is to be given to the CONSULTANT, it shall be mailed or delivered to:

InfraConsult LLC
Seven Waterfront Plaza
500 Ala Moana Boulevard, Suite 400
Honolulu, Hawaii 96813

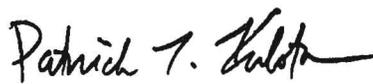
Attention: Mr. Michael I. Schneider, Managing Partner

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.

APPROVED AS TO CONTENT:
Department of Transportation Services


By: Its Director

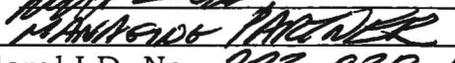
CITY AND COUNTY OF HONOLULU


By: Director of Budget and Fiscal
for Services

APPROVED AS TO FORM AND
LEGALITY:

REID M. YAMASHIRO
Deputy Corporation Counsel

CONSULTANT
InfraConsult LLC

By: 
Its 
Federal I.D. No. 223 938 178

Certificate

The attached contract for consultant services to provide project
management support services for the Preliminary Engineering/Environmental Impact Statement for the
Honolulu High-Capacity Transit Corridor Project

(\$11,524,513.00)

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. F65107
FUND Transit Fund (690)
ACCOUNT NO. 690/7802-07-07005D (4063)

HONOLULU, HAWAII

APR 20 2007

Patrick T. Kulata

for Director of Budget & Fiscal Services

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

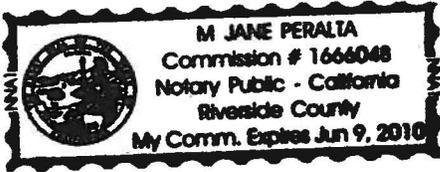
County of Riverside

On 4/6/07 before me, M. Jane Peralta, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Michael J. Schneider
Name(s) of Signer(s)

personally known to me

(or 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.

Place Notary Seal Above

M. Jane Peralta
Signature of Notary Public

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: April 6, 2007 Number of Pages: 1 page

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Michael J. Schneider

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

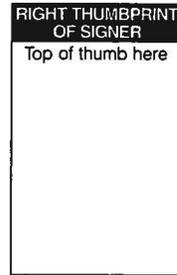
Signer Is Representing: Tygra Consult, LLC



Signer's Name: N/A

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

Signer Is Representing: _____



**SPECIAL PROVISIONS TO THE
AGREEMENT FOR PROFESSIONAL SERVICES**

This Special Provisions to the Agreement for Professional Services (“this 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 INFRACONSULT LLC, “the CONSULTANT”, dated _____, 2007 (“the Agreement”). This Special Provisions and the General Terms and Conditions for Goods and Services for the City and County of Honolulu shall apply to, and are incorporated by reference into the Agreement, except as modified by reference herein. All defined terms in the Agreement shall have the same meaning in this Special Provisions.

1.0 Payment

- 1.1. The CONSULTANT shall submit invoices to the CITY on a monthly basis for services rendered under the Contract in a format approved by the CITY.
 - a. The invoices shall be substantiated with timesheets and approved travel and mileage reimbursement forms for CONSULTANT employees, and invoices from CONSULTANT sub-consultants and vendors.
 - b. The monthly invoice shall be accompanied by:
 - i. A progress report describing the work accomplished during the invoice period;
 - ii. A critical path schedule for PE/EIS activities to be determined by the CITY; and
 - iii. A work plan for the following month, including work needed to address the critical path activities.
- 1.2 An allowance for extra work for ONE MILLION DOLLARS (\$1,000,000) is established for additional work, including additional staffing needed to satisfy the requirements of an FTA-approved Project Management Plan, and shall not be exceeded without a Contract amendment. Any funds remaining at the end of the Contract shall revert back to the CITY.

- 1.3 An allowance for reimbursable expenses shall not be exceeded without a Contract amendment; and that any funds remaining at the end of the Contract shall revert back to the CITY. The allowance for reimbursable expenses shall be the same amount as the "Total Allowance For Reimbursable Expenses" in Exhibit 5A, Cost Proposal Summary Form.
 - a. Compensation for travel cost as a reimbursable expense shall be made as follows:
 - i. Airfare for travel approved by the CITY shall be for coach class seating.
 - ii. The per diem allowance for out-of-state travel approved by the CITY shall be set at the per diem allowance rate and terms under the collective bargaining agreement for CITY Unit 13 Professional and Scientific Employees, which is currently one hundred thirty dollars \$130.00 per twenty-four hour day. The \$130.00 allowance amount includes an \$85.00 allowance for commercial lodging. Reimbursement for excess lodging costs is allowable if such excess amounts are identified in the travel request approved by the CITY.
 - b. Mileage reimbursement for CONSULTANT personnel using their private vehicles to attend public meetings shall be reimbursed at the rate of forty-eight and one-half cents (\$0.485) for each mile traveled for business purposes.

2.0 Equipment

Computer-related hardware and software purchased under the Contract shall revert back to the CITY at the end of the Contract.

3.0 Insurance

- 3.1 The CONSULTANT shall procure or cause to be procured and maintain (as provided herein), at no cost to the CITY, during the life of the Contract and any extensions thereof, all insurance to cover the operations under the Contract, that

may be required under the laws, ordinances or regulations of any governmental authority, including but not limited to the coverages below. The CONSULTANT shall either include all tiers of subcontractors, if any, under the policies required under subparagraphs 3.1.b through 3.1.d, to the extent permitted by law, or shall require all subcontractors to maintain coverages described in subparagraphs 3.1.a through 3.1.d.

- a. Workers Compensation and Employers Liability Insurance. The CONSULTANT 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.
- b. Commercial General and Umbrella Liability Insurance. The CONSULTANT 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.
- c. Business Automobile and Umbrella Liability Insurance. The CONSULTANT 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 the 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.

- d. Professional Liability Insurance. The CONSULTANT 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.

3.2 The insurance specified above shall:

- a. Provide that such insurance is primary coverage with respect to all insureds for claims arising from the CONSULTANT'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;
- b. Contain a standard Cross Liability endorsement providing that the insurance applies separately to each insured, applicable to policies specified in 3.1.b and 3.1.c above;
- c. 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;
- d. Except for Professional Liability insurance required in 3.1.d above, be written on an "Occurrence" form of policy, unless otherwise specifically approved by the CITY.

- e. 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.
- 3.3 Certificate of insurance. The CONSULTANT shall 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 the Contract as required herein to the CITY. Certificates shall clearly identify the project by name and/or contract number, 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.