

SPECIAL PROVISIONS

HONOLULU RAIL TRANSIT PROJECT

REAL ESTATE MAPPING AND SURVEYING SERVICES

PROFESSIONAL SERVICES CONTRACT

SPECIAL PROVISIONS TABLE OF CONTENTS

- I. PROJECT
- II. SERVICES
- III. TIME
- IV. RESERVED
- V. INSURANCE REQUIREMENTS
- VI. COMPENSATION AND INVOICING
- VII. MODIFICATIONS TO THE GENERAL TERMS AND CONDITIONS FOR CONTRACTS FOR PROFESSIONAL SERVICES FOR THE CITY AND COUNTY OF HONOLULU (08/2000)
- VIII. FEDERAL CLAUSES
- IX. ASSIGNMENT
- X. HEADINGS; GENDER; NUMBER
- XI. COMPLIANCE WITH OMB CIRCULAR A-87 - OFFICE OF MANAGEMENT AND BUDGET

LIST OF SPECIAL PROVISIONS EXHIBITS

- EXHIBIT 1 - SCOPE OF SERVICES
 - A. LIST OF PARCELS
- EXHIBIT 2 - A. CONTRACT COST
 - B. COMPENSATION AND INVOICING
 - B-1 AGREED RATES OF PAY
- EXHIBIT 3 - CERTIFICATION REGARDING CONFLICT OF INTEREST
- EXHIBIT 4 - LETTER OF SUBCONTRACT INTENT
- EXHIBIT 5 - CERTIFICATE REGARDING INELIGIBLE CONTRACTORS
- EXHIBIT 6 - CERTIFICATE REGARDING INELIGIBLE SUBCONTRACTORS
- EXHIBIT 7 - CERTIFICATION REGARDING LOBBYING
- EXHIBIT 8 - FEDERAL REQUIREMENTS
 - 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 and the General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu dated 08/2000 (“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 in these Special Provisions.

I. PROJECT

The Honolulu Rail Transit Project (“HRTP”) is described in the Final Environmental Impact Statement as a twenty (20) mile grade separated fixed guideway transit system between East Kapolei and Ala Moana. The CONSULTANT will provide professional services in the fields of real estate mapping and surveying services in support of the HRTP, herein referred to as the “PROJECT.”

II. SERVICES

The CONSULTANT’s responsibilities under this Agreement include providing services set forth in the Scope of Work attached hereto and incorporated herein as Exhibit 1.

III. TIME

A. The term of this Agreement is for three (3) years commencing with a written Notice to Proceed. HART may extend the period of performance of this Agreement for up to an additional two (2) years if compensation to CONSULTANT is provided under the same rates of pay reflected in Exhibit 2B-1. The Agreement may be extended pursuant to Section 5 of the General Terms and Conditions at any time prior to the end of the first year of performance (Initial Term) by an amendment to the Agreement.

B. This is a multi-term Agreement subject to the availability of funds in accordance with HAR § 3-122-149. Funds are available for only the initial year of the Agreement. The contractual obligations of both Parties in each fiscal period succeeding the first will be subject to the appropriation and availability of funds. HART shall notify the CONSULTANT, on a timely basis, whether or not funds are available for the continuation of the Agreement for each succeeding fiscal period. The Agreement will be terminated if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the initial year of the Agreement; however, this does not affect either HART's rights or the CONSULTANT's rights under any termination clause of the Agreement. If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the Agreement shall be terminated and the CONSULTANT shall be reimbursed for the unamortized, reasonably incurred, nonrecurring costs.

IV. RESERVED

V. INSURANCE REQUIREMENTS

See Paragraph 4.3., Insurance, of the General Terms and Conditions as modified by Section VII (D) below.

VI. COMPENSATION AND INVOICING

A. Compensation to the CONSULTANT under this Agreement shall not exceed the amount stated in the Agreement. Payment shall be made in accordance with Exhibits 2A, 2B and 2B-1, attached hereto and incorporated herein, inclusive of all taxes.

VII. MODIFICATIONS TO THE GENERAL TERMS AND CONDITIONS FOR CONTRACTS FOR PROFESSIONAL SERVICES FOR THE CITY AND COUNTY OF HONOLULU (08/2000)

The General Terms and Conditions 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:

“AIRPORT ALIGNMENT” means the approximately twenty (20)-mile minimum operable segment of the Locally Preferred Alternative identified by Honolulu City Council Resolution No. 08-261.

“C.F.R.” means the Code of Federal Regulations.

“CHIEF PROCUREMENT OFFICER” shall mean and refer to the HART Executive Director and CEO or designee.

“CONFORMANCE CHECKLIST” is the formal checklist used by the Project team to verify design criteria and construction specification conformance for each certifiable element in accordance with the H RTP Safety and Security Management Plan dated June 1, 2011.

“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.

“FULL FUNDING GRANT AGREEMENT (“FFGA”) means the designated means for the FTA to provide New Starts funds to projects with a Federal share of \$25 million or more. An FFGA establishes the terms and conditions for Federal financial participation in a New Starts project; defines the project; sets the maximum amount of Federal New Starts funding for a project; covers the period of time for completion of the project; and facilitates efficient management of the project in accordance with applicable Federal statutes, regulations, and policy.

“HART” means the Honolulu Authority for Rapid Transportation. The acronym “HART” shall be substituted for the “City and County of Honolulu”, “CITY”,

“Rapid Transit Division”, and “RTD” wherever those terms appear in the General Terms and Conditions, unless the context clearly indicates otherwise.

“**PMOC**” means the FTA’s Project Management Oversight Contractor.

“**PMSC**” means InfraConsult LLC, the HART Project Management Services consultant or any successor entity.

“**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.

“**STANDARD**” or “**REQUIREMENT**” means any provision of any Federal, State, or City law, 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.

“**SUBCONTRACTOR**” means any subcontractor or subconsultant who enters into an agreement with the CONSULTANT or CONSULTANT’s subcontractors at any tier to perform a portion of the Work for the CONSULTANT.

“**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.

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

“**CITY AND COUNTY OF HONOLULU**”, “**CITY**”, shall be replaced by “**HART**” whenever those terms appear unless the context specifically indicates otherwise.

“**CONTRACTOR**” or “**CONSULTANT**” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity engaged by HART to perform the Work under this Agreement.

“**DIRECTOR**” or “**DIRECTOR OF BUDGET AND FISCAL SERVICES**” shall be replaced by HART’s Executive Director and CEO or the Director’s duly authorized representative or designee unless the context specifically indicates

otherwise.

“OFFICER-IN-CHARGE” means the HART Executive Director and CEO or designee.

B. DESIGNATION OF PROJECT MANAGERS

The Officer-in-Charge will designate a key representative to coordinate the Work under this Agreement, to coordinate work under other HART contracts with the Work under this Agreement, and to act as the liaison between HART and the CONSULTANT in order to assist in expediting the resolution of questions or controversies, the making of HART decisions, and the review and approval by HART of documents, progress reports, requests, and other matters as required.

The CONSULTANT shall, subject to written approval from HART, designate a key representative, who shall maintain close and frequent communications with HART'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 HART. 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 representatives in order to maintain continuity of effort and control.

C. INDEPENDENT CONTRACTOR

Section 4.1.1 of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following:

“4.1.1 The CONSULTANT shall perform the work as an independent CONTRACTOR and shall defend, indemnify and hold harmless HART, the City, its departments, and all of their officers, and employees from death, injuries, losses and damages to persons or property, including reasonable attorney fees and cost of defense, caused by the negligent act, error or omission in the performance of the contract by the CONSULTANT or the CONSULTANT's subconsultants, agents and employees and this requirement shall survive the termination of contract.

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

D. INSURANCE

Section 4.3 of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following:

“4.3.1 Unless otherwise specified in contract documents, the CONSULTANT shall procure or cause to be procured and maintain (as provided herein), at no cost to HART, during the life of this contract and any extensions thereof, all insurance to cover the CONSULTANT’s 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 CONSULTANT shall either include all tiers of subconsultants, if any, under the policies required under paragraphs 2 through 4, to the extent permitted by law, or shall require all subconsultants to maintain coverages described in paragraphs 1 through 4.

1. 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.

2. 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 consultants, 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). HART and the City shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent), provide that the coverage provided under the additional insured is primary using ISO endorsement CG 20 01 such additional insured provisions shall also apply under the commercial umbrella, if any. The policy(ies) shall contain a waiver of subrogation in favor of HART.

3. 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 CONSULTANT 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.

“4.3.1 Unless otherwise specified in contract documents, the CONSULTANT shall procure or cause to be procured and maintain (as provided herein), at no cost to HART, during the life of this contract and any extensions thereof, all insurance to cover the CONSULTANT’s 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 CONSULTANT shall either include all tiers of subconsultants, if any, under the policies required under paragraphs 2 through 4, to the extent permitted by law, or shall require all subconsultants to maintain coverages described in paragraphs 1 through 4.

1. 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.

2. 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 consultants, 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). HART and the City shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent), provide that the coverage provided under the additional insured is primary using ISO endorsement CG 20 01 such additional insured provisions shall also apply under the commercial umbrella, if any. The policy(ies) shall contain a waiver of subrogation in favor of HART.

3. 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 CONSULTANT 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.

4. 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 CONSULTANT, the CONSULTANT's employees or agents for liability arising out acts, errors or omissions 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 three years 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 insurance specified in 4.3.1.2 and 4.3.1.3 above is primary coverage with respect to General Liability for claims arising from CONSULTANT's negligent acts and/or missions or misconduct; and that insurance (or self-insurance) carried by HART shall be excess and non-contributing;

2. Contain a standard Cross Liability coverage 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 canceled or substantially changed without thirty (30) days prior written notice to HART, 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 HART.

5. Be provided by insurers authorized to provide insurance in the State of Hawai'i and with a current Best's rating of not less than A-7 or otherwise approved by HART.

4.3.3 Certificate of Insurance:

1. The CONSULTANT will provide and thereafter maintain current and renewal certificates of insurance, prepared by a duly authorized agent, evidencing the insurance in effect at all times during the term of this contract as required herein to HART. In the event of a claim, the City or HART may request a copy of the insurance policies.

2. Certificates shall clearly identify the project by name and/or contract number.

3. Certificates shall show the Certificate Holder as the Honolulu Authority for Rapid Transportation, and be delivered to the Executive Director and CEO, 1099 Alakea Street, Suite 1700, Honolulu, Hawai'i 96813. Certificates

shall name the Honolulu Authority for Rapid Transportation and the City and County of Honolulu as additional insured as to General Liability and Automobile Liability insurances.”

E. STANDARD OF CARE

Section 4 of the General Terms and Conditions is changed by inserting the following provision 4.4:

“4.4 Standard of Care

The standard of care applicable to the CONSULTANT’s services will be the degree of skill and diligence normally employed by professional consultants performing the same or similar services at the time said services are performed. The CONSULTANT will re-perform any services not meeting this standard without additional compensation.”

F. MODIFICATIONS

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.”

Section 5.2 of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following:

“5.2 PRICE ADJUSTMENT.

- (a) 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;
 2. By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
 3. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
 4. In any other manner as the parties may mutually

agree before commencement of the pertinent performance; or

5. In the absence of agreement between the parties, the provisions of section 103D-501(b)(5), HRS, shall apply.
- (b) Submission of costs or pricing data. The CONSULTANT shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 103D-312, HRS. The submission of any cost or pricing data shall be made subject to the provisions of subchapter 15, chapter 3-122. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraph (a)(1) through (a)(4) above shall be issued within ten days after agreement on the method of adjustment.

G. RESERVED

H. SAFETY AND SECURITY CERTIFICATION

A new Section 6.8 of the General Terms and Conditions, entitled "SAFETY AND SECURITY CERTIFICATION," is hereby inserted.

“6.8 SAFETY AND SECURITY CERTIFICATION.

- (a) The purpose of the safety and security certification is to ensure that:
 1. The design, construction, fabrication, installation, testing, and commissioning of all safety- and security-certifiable elements (civil, structural, and systems) have been evaluated for conformance with the safety and security design criteria and specifications requirements and to verify their readiness for operational use; and
 2. The rail system is operationally safe and secure for customers, employees, emergency responders, and the general public.
- (b) The objective is to achieve an acceptable level of risk through a systematic approach to safety hazard and security vulnerability management, design criteria adherence, specification and construction compliance, and testing and commissioning verification.
- (c) The CONSULTANT shall implement and successfully complete safety and security certification for all certifiable

elements contained in the Agreement. Safety and security certification shall be conducted in accordance with the latest version of the Federal Transit Administration (FTA) Handbook for Transit Safety and Security Certification as tailored to the CONSULTANT's scope of work. HART has developed a Project Safety and Security Certification Plan (SSCP) based on FTA guidelines to describe how these activities will be implemented for the H RTP. The CONSULTANT's activities include, but are not limited to, the following:

1. Participate in safety and security committees and working groups established by HART to perform safety and security certification activities as requested.
 2. Demonstrate within its schedule the integration and completion of safety and security certification activities, including the development and completion of Conformance Checklists.
 3. Develop and support the development of safety and security analyses for safety and security certifiable elements as needed.
 4. Support the resolution of identified safety hazards and security vulnerabilities identified through safety and security analyses.
 5. Submit completed and signed Conformance Checklists to HART for review and acceptance.
 6. Submit supporting verification documentation to demonstrate that the design has incorporated and complies with safety and security design criteria and requirements provided in the contract documents.
 7. Submit required documents using HART's document management system for safety and security certification.
 8. Identify on its organization chart the representative assigned to manage and facilitate the CONSULTANT's implementation of the safety and security certification process.
- (d) The safety and security certification process for each certifiable element is not complete until Conformance Checklists that are completed, signed, and submitted by the

CONSULTANT have been reviewed and accepted by HART. Additional requirements for safety and security certification are detailed in the Project SSCP. The CONSULTANT shall refer to Engineering Data for a copy of the Project SSCP.”

I. FIELD SAFETY AND SECURITY

A new Section 6.9 of the General Terms and Conditions, entitled “FIELD SAFETY AND SECURITY”, is hereby inserted.

“6.9 FIELD SAFETY AND SECURITY

- (a) The CONSULTANT is responsible for initiating and maintaining a safety and health program that complies with applicable local, state and federal occupational safety and health regulations, including but not limited to the Hawai‘i Administrative Rules, Title 12, Department of Labor and Industrial Relations Subtitle 8, Division of Occupational Safety and Health Part 3, Construction Standards.
- (b) The CONSULTANT shall be familiar with the Honolulu Rail Transit Project Construction Safety and Security Plan (CSSP) current revision and comply with applicable sections, such as, but not limited to, visitor control, public access, first aid/emergency response, safe work practices, personal protective equipment and safety and security reporting requirements. All personnel who have who will be accessing field locations must attend the HART Safety and Environmental Orientation.
- (c) The CONSULTANT shall designate at least one person as the Safety and Security Representative (this may be a collateral duty position and/or prime sub-CONSULTANT designee) to be on-site any time field activities are taking place and is responsible to ensure the proper implementation of the Site-Specific Safety and Security Plan (SSSP). The Safety and Security Representative shall have completed the OSHA 10 Hour Construction Safety Outreach Program or equivalent and be a competent person for applicable subject matter including, but not limited to, fall protection, excavation and trenching, the control of hazardous energy (Lock Out Tag Out (LOTO) Procedure), scaffolding and confined spaces.
- (d) The CONSULTANT shall ensure employees and/or subconsultants comply with applicable regulations and the SSSP submitted by CONSULTANT for this project.
- (e) The CONSULTANT shall submit an SSSP, which shall address field work-related hazards and mitigation measures. This plan shall take into account all work, including any activities subcontracted. This plan must interface with the CONSULTANT’s overall safety

and health program and be submitted to the HART Safety and Security Manager for review and acceptance 30 (thirty) days prior to field work taking place. The plan shall include, but not be limited to the following criteria:

1. Title, signature and phone number of the Plan Preparer (this person must be a qualified person), Company Officer and Safety and Security Representative (SSR).
2. Background information: CONSULTANT name, Contract name and number, Description of work to be performed (with attention to field related work).
3. Responsibilities and Lines of Authority. Include a statement of the Prime CONSULTANT's ultimate responsibility for the implementation of the SSSP. Identification and accountability of subconsultants, subconsultants and personnel responsible for safety at all levels. Provide to HART to review the SSR's qualifications and letter of designation assigning the authority to carry out safety and security responsibilities. HART will review the qualifications for acceptance.
4. Safety Policy Statement detailing the CONSULTANT'S commitment to providing a safe and healthy workplace for all employees.
5. Training: Provide a statement requiring completion of the HART Safety and Environmental Orientation for all personnel prior to accessing field work locations. List end user, competent or qualified person training requirements, as applicable.
6. List procedures for field site inspections and documentation. Include the assignment of this responsibility, frequency and documentation method.
7. List procedures for complying with applicable portions of the CSSP.
8. Emergency Planning: Describe emergency plan and means to ensure employees are not permitted to work alone and to ensure an effective means of emergency communication is provided, readily available and in working condition.
9. Describe method of providing drinking water, toilet and washing facilities.
10. First Aid and CPR training: Describe methods to ensure and provide copies of at least two employees on site who are qualified/certified to administer first aid and CPR and

provision of first aid kit (type/size).

11. Personal Protective Equipment: At minimum, without limitation, all personnel, including visitors, on work site locations associated with the PROJECT shall wear the following minimum PPE:
 - i) Head protection complying with ANSI Z89.1-2009 and ANSI Z89.2-2009 shall be worn at all times when on the work site.
 - ii) High visibility, retro-reflective clothing (class 2 or 3) complying with ANSI/ISEA 107, 23 CFR Part 634, MUTCD 6E-3, and 29 CFR 1926.201(a) shall be worn at all times within the traffic work zone.
 - iii) Eye protection complying with ANSI Z87.1-2003 shall be worn at all times on when on the work site.
 - iv) Foot protection complying with ASTM F2413-05 or ANZI Z41-1999 shall be worn at all times when on the work site. Work boots are the preferred type of protective footwear. No tennis-type shoes are permitted.
 - v) Hearing protection with a Noise Reduction Rating (NRR) appropriate for the exposure shall be worn by personnel exposed to noise levels in excess of the 29 CFR 1926.101 Table D-2 Permissible Exposure Limit (PEL). When in the field, personnel must have hearing protection readily available for use.
12. Hazardous substances: Describe when any hazardous substances are to be procured, used, stored or disposed. Provide a hazard communication program and describe how Material Safety Data Sheets (MSDSs) will be made readily available for review. Employees shall have received training in hazardous substances being used and emergency equipment (such as eye wash) shall be readily available at the work area.
13. Describe how traffic control will be accomplished in accordance with the Department of Transportation Manual for Uniform Traffic Control Devices (current edition).

14. Control of Hazardous Energy (Lock Out Tag Out): Describe procedures to ensure adequate control of energy before an employee performs any inspection, servicing or maintenance on any equipment where the unexpected energizing or startup of the equipment could occur.”

J. PAYMENT

Section 8.2 of the General Terms and Conditions, entitled “PROGRESS PAYMENT”, is hereby deleted in its entirety and replaced with the payment provisions set forth in Exhibit 2-B attached hereto and incorporated herein.

K. RETAINAGE

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

L. PROMPT PAYMENT BY CONTACTORS TO SUBCONSULTANTS

Section 8.6 of the General Terms and Conditions, entitled "PROMPT PAYMENT TO SUBCONSULTANTS," is hereby deleted in its entirety and replaced with the following:

“8.6 PROMPT PAYMENT BY CONSULTANTS TO SUBCONSULTANTS

- (1) Generally. Any money paid to the CONSULTANT shall be disbursed to subconsultants within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subconsultant has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the procurement agency has withheld payment.
- (2) Final payment. Upon final payment to the CONSULTANT, full payment to the subconsultant, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subconsultant's performance under the subcontract.
- (3) Penalty. The procurement officer or the CONSULTANT, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subconsultant has provided evidence to the CONSULTANT of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in paragraph (4), and:
 - a. Has provided to the CONSULTANT an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or

- b. The following has occurred:
 - i. A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to CONSULTANT and the surety, as provided for in section 103D-324, HRS; and
 - ii. The subconsultant has provided to the CONSULTANT, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the CONSULTANT; any other bond acceptable to the CONSULTANT; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subconsultant and otherwise due to the subconsultant for satisfactory performance under the subcontract shall be paid by the procurement officer to the CONSULTANT and subsequently, upon receipt from the procurement officer, by the CONSULTANT to the subconsultant within the applicable time periods specified in paragraph (2) and section 103-10, HRS. The penalty may be withheld from future payment due to the CONSULTANT, if the CONSULTANT was the responsible party. If the CONSULTANT has violated paragraph (2) three or more times within two years of the first violation, the CONSULTANT shall be referred by the procurement officer to the CONSULTANT's licensing board for action under section 444-17(14), HRS.

- (4) A properly documented final payment request from a subconsultant, as required by paragraph (3), shall include:
 - a. Substantiation of the amounts requested;
 - b. A certification by the subconsultant, to the best of the subconsultant's knowledge and belief, that:
 - i. The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;
 - ii. The subconsultant has made payments due to its subconsultants and suppliers from previous payments received under the subcontract 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 subconsultant intends to withhold or retain from a subconsultant or supplier in accordance with the terms and conditions of their subcontract; and

c. The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the CONSULTANT within seven days after receipt, with a statement identifying the defect.

(5) In the case of a construction contract, a payment request made by a CONSULTANT to the procurement officer that includes a request for sums that were withheld or retained from a subconsultant and are due to a subconsultant may not be approved under paragraph (3) unless the payment request includes:

a. Substantiation of the amounts requested; and

b. A certification by the CONSULTANT, to the best of the CONSULTANT's knowledge and belief, that:

i. The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

ii. The subconsultant has made payments due to its subconsultants and suppliers from previous payments received under the contract 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 CONSULTANT intends to withhold or retain from a subconsultant or supplier in accordance with the terms and conditions of their subcontract.

The procurement officer shall return any final payment request that is defective to the CONSULTANT within seven days after receipt, with a statement identifying the defect.

(6) This section shall not be construed to impair the right of the CONSULTANT or a subconsultant at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subconsultant shall be entitled to receive final payment under paragraph (3); provided that any such payments withheld shall be withheld by the procurement officer.”

**VIII. FEDERAL CLAUSES
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, as set forth in FTA Circular 4220.1F, as amended, 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 HART requests which would cause HART to be in violation of FTA terms and conditions. This Agreement will be subject to any financial assistance agreement between HART/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 HART/City and FTA relating to HRTP, as they may be amended or promulgated from time to time during the term of the Agreement (collectively, "Federal Requirements"). These Federal Requirements may change and the changed Federal Requirements will apply to this Agreement as required unless the Federal Government determines otherwise. The CONSULTANT's failure to comply with the Federal Requirements shall constitute a material breach of the Agreement.

The Federal Requirements are contained in Exhibit 8, attached hereto and incorporated by reference.

IX. ASSIGNMENT

The CONSULTANT agrees that the CONSULTANT shall not transfer or assign this Agreement in whole or in part, except by an instrument, in writing, approved by HART.

X. HEADINGS; GENDER; NUMBER

The titles of headings of Sections, Subsection 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.

XI. COMPLIANCE WITH OMB CIRCULAR A-87 - OFFICE OF MANAGEMENT AND BUDGET

The CONSULTANT shall at all times comply with the Office of Management and Budget (OMB) Circular A-87, Revised 05/10/2004, which establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State, Local, and Indian Tribal Governments. This Circular and its

Attachments (A-E) establish the principles and standards to provide a uniform approach for determining allowable costs.

**EXHIBIT 1 -
REAL ESTATE MAPPING AND SURVEYING SERVICES
SCOPE OF SERVICES**

Illustrative Scope of Services

The CONSULTANT will provide HART with boundary surveys, right-of-way and parcel mapping, survey descriptions, easement and subdivision processing, property and document review, and other mapping and/or surveying requests, as needed, in support of construction of the Honolulu Rail Transit Project (“project”).

Tasks

The CONSULTANT, as directed by HART, will support HART in real estate acquisition and other related activities. This support includes, but is not limited to, the following:

- Conduct boundary and property surveys necessary for land acquisition or other project-related requirements.
- Prepare Right-of-Way maps and other documents necessary to satisfy agency requirements.
- Prepare parcel maps, permanent easement maps, utility easement maps and survey descriptions.
- Prepare maps and materials to support acquisition of utility easements that conform to the utility owners’ requirements, and in support of legal requirements that convey real property and property rights.
- Provide field survey layout of easements and property acquisitions for negotiations with property owners or other related activity.
- Prepare maps and materials required for third-party agreements; consents to enter, other real estate related documents, and other project-related documents.
- Prepare and process subdivision maps, applications and other required documents.
- Prepare and complete subdivisions on behalf of HART.
- Coordinate with third parties to ensure maps accurately reflect existing parcel conditions including ownership, restrictions and encumbrances.
- Review design documents to confirm all land encumbrances and mapping are correct.
- Prepare maps and materials as requested by HART.
- Attend meetings at the request of HART.
 - Submit statements of clarifications to HART personnel, as required per HRS Section 464-1, to show positional accuracy of land.

- Prepare and provide field surveys and measured survey data.
- Provide above documentation to HART staff for review.
- Interface with HART personnel and other contractors, as required by HART.

Assumptions:

- The project has identified approximately 184 parcels impacted by the project. Currently it is anticipated there are approximately 110 parcels that require subdivision, and 9 full acquisition parcels remaining to be acquired. The number of utility easements and permanent easements are still pending. CONSULTANT's fee proposal is based upon the 130 affected parcels listed on its Exhibit 1A, attached hereto. Additional parcels or work may result in additional fees, as may be mutually agreed to by the parties.
- The CONSULTANT will obtain permits unless mapping and surveying are related to the Hawai'i Department of Transportation ("HDOT") or City and County of Honolulu roadways and facilities.
- The CONSULTANT will not be required to perform title searches. Title searches will be performed by others.
- Filing and processing of maps at the Land Court or the Bureau of Conveyances is not included in CONSULTANT's scope.
- Application or filing fees shall be reimbursed by HART as a direct cost.
- Revised fee based on grouped parcels being prepared, surveyed, mapped, and processed simultaneously resulting in a reduction of hours.

The following is a list of indicative deliverables under this Contract:

- Draft and Final Right-of-Way and Easement Maps.
- Draft and Final Parcel Maps and Legal Descriptions.
- Subdivision Maps and Documents and Subdivision Approvals.
- Maps, drawings and documents as requested by HART.
- Other mapping and survey related deliverables, as requested by HART.

List of Affected Parcels for Scope of Work

Right of Way

TMK	Address	Owner	Section	Take
9-1-140-042	91-400 Malakole St	Kapolei Properties LLC	1	Lease or License
1 9-6-004-023	Waihona St	BP Bishop Trust Estate (1)	1	Partial Acquisition
2 9-7-024-034	1000 Kamehameha Hwy	PHSC Holdings LLC	1	Partial Acquisition
3 1-1-002-001	3600 Aolele St	Gov't-Federal - US Postal Service	3	Easement
4 1-1-002-004 E	351 Elliot St Hono Hi (Ma	Gov't-Federal - US Navy (2)	3	Easement
5 1-1-002-004 Pa	351 Elliot St Hono Hi (Ma	Gov't-Federal - US Navy (2)	3	Partial Acquisition
6 1-1-003-001	Honolulu Intl Airport 110	HART - Gov't-State - DOT Airports Div	3	Easement
7 1-1-003-003	Keehi Lagoon	HART - Gov't-State - DOT Airports Div	3	Easement
8 1-1-003-004	2685 N Nimitz Hwy	HART - Gov't-State - DOT Airports Div	3	Easement
9 1-1-003-006	465 Lagoon Drive, Keehi	Gov't-City - Parks (1) (City has jurisdic	3	Easement
10 1-1-003-007	N Nimitz Hwy	Gov't-City - Parks (1) (City has jurisdic	3	Easement
11 1-1-016-007	2656 Waiwai Lp	Watumull Enterprises Ltd	3	Easement
12 1-1-016-012	2620 Waiwai Lp	Window World Inc	3	Partial Acquisition
13 1-1-016-013	2612 Waiwai Lp	Queen Bee Limited Partnership	3	Partial Acquisition
14 1-1-016-013	2612 Waiwai Lp	Jeans Warehouse	3	Partial Acquisition
15 1-1-016-016	2613 Waiwai Lp	International Express Inc	3	Partial Acquisition
16 1-1-016-017	2621 Waiwai Lp	Waiwai Lp Rental Inc	3	Easement
17 1-2-013-020	2323 Kamehameha Hwy	First Hawaiian Bank (2)	3	Easement
18 1-2-013-021	2323 Kamehameha Hwy	First Hawaiian Bank (1)	3	Easement
19 9-9-002-004	4361 Salt Lake Blvd (Littl	Gov't-Federal (2)	3	Easement
20 9-9-003-029	Kamehameha Hwy	Gov't-Federal (4)	3	Partial Acquisition
21 1-2-003-006	1733 Dillingham Blvd	TCT Inc	4	Partial Acquisition
22 1-2-003-014	1829 Dillingham Blvd	Service Printers Inc	4	Partial Acquisition
23 1-2-003-016	1819 Dillingham Blvd	Kong, Charles M TRUST	4	Full Acquisition
24 1-2-003-017	1815 Dillingham Blvd	Kong, Charles M TRUST	4	Partial Acquisition
25 1-2-003-018	1803 Dillingham Blvd	Rosebud Holdings Ltd	4	Partial Acquisition
26 1-2-003-020	1723 Dillingham Blvd	BLDG Industry Assn of Hawaii	4	Partial Acquisition
27 1-2-003-082	1825 Dillingham Blvd	Kong, Charles M TRUST	4	Partial Acquisition
28 1-2-003-101	1701 Dillingham Blvd	Fujii, Jerry J Trustee	4	Partial Acquisition
29 1-2-003-106	1811 Dillingham Blvd	Central Building Co Ltd	4	Partial Acquisition
30 1-2-009-005	1973 Dillingham Blvd	Hawaiian Host Inc	4	Partial Acquisition
31 1-2-009-006	2009 Dillingham Blvd	Tong, Clair M/ Sugimoto, Kevin S/ kihiro	4	Partial Acquisition
32 1-2-009-011	2043 Dillingham Blvd	Blood Bank Real Property Inc	4	Partial Acquisition
33 1-2-009-016	1966 Dillingham Blvd	Hawaiian Host Inc	4	Partial Acquisition
34 1-2-009-017	1935 Dillingham Blvd	Afuso, Tsuyoshi	4	Partial Acquisition
35 1-2-009-018	1927 Dillingham Blvd	Hinch, Ann T Trustee	4	Partial Acquisition
36 1-2-009-098	2043 Dillingham Blvd	Blood Bank Real Property Inc	4	Partial Acquisition
37 1-2-013-002	2109 Kamehameha Hwy	Gov't - State-Public Safety (OCCC)	4	Partial Acquisition
38 1-5-007-001	377 King Street	Gov't-State (3)	4	Easement
39 1-5-007-016	504-508 Kuwili St Hono H	Hawaiian Electric Co Inc	4	Easement
40 1-5-007-021	545 Kaaahi St	Nuuanu Auto Company Ltd	4	Full Acquisition
41 1-5-007-024	525 Kaaahi St	Bo Wah Investment Inc	4	Partial Acquisition
42 1-5-007-026	519 Kaaahi St	Four K Properties LLC	4	Partial Acquisition
43 1-5-008-008	230 N Nimitz Hwy	Jiroichi Otani Family Ltd Partnership	4	Partial Acquisition
44 1-5-008-013	N Nimitz Hwy	Weinberg, The Harry & Jeanette Found	4	Partial Acquisition
45 1-5-008-018	Nimitz Hwy	Gov't-State (3)	4	Easement
46 1-5-008-020	230 N Nimitz Hwy	Jiroichi Otani Family Ltd	4	Partial Acquisition
47 1-5-015-001	735 Dillingham Blvd	Weinberg, H&J Foundation Inc	4	Partial Acquisition
48 1-5-015-005	Dillingham Blvd	Weinberg, H&J Foundation Inc	4	Partial Acquisition
49 1-5-015-006	935 Dillingham Blvd	CPY Partners LLC	4	Partial Acquisition
50 1-5-015-007	985 Dillingham Blvd	ASN Enterprises Hawaii Ltd Partnership	4	Partial Acquisition
51 1-5-015-008	1001 Dillingham Blvd	DTC Investments LLC	4	Partial Acquisition
52 1-5-015-010	909 Dillingham Blvd	Bank of Hawaii (1)	4	Partial Acquisition
53 1-5-015-013	925 Dillingham Blvd	Castle and Cooke Commerical Inc	4	Partial Acquisition

List of Affected Parcels for Scope of Work

54	1-5-015-017	925 Dillingham Blvd	Tradewind Dillingham LLC	4	Partial Acquisition
55	1-5-017-006	840 Dillingham Blvd	Gov't State - University of Hawaii-Honolu	4	Partial Acquisition
56	1-5-018-001	Kōkea St	Gov't State - University of Hawaii-Honolu	4	Partial Acquisition
57	1-5-020-001	1199 Dillingham Blvd	BP Bishop Trust Estate (1)	4	Partial Acquisition
58	1-5-020-003	1095 Dillingham Blvd	BP Bishop Trust Estate (1)	4	Partial Acquisition
59	1-5-020-007	1199 Dillingham Blvd	BP Bishop Trust Estate (1)	4	Partial Acquisition
60	1-5-021-009	1363 Dillingham Blvd	BP Bishop Trust Estate (1)	4	Partial Acquisition
61	1-5-021-010	Colburn St	BP Bishop Trust Estate (1)	4	Partial Acquisition
62	1-5-021-011	1346 Colburn St	BP Bishop Trust Estate (3)	4	Partial Acquisition
63	1-5-028-019	1535 Dillingham Blvd	BP Bishop Trust Estate (1)	4	Partial Acquisition
64	1-5-028-019	1535 Dillingham Blvd	BP Bishop Trust Estate (3)	4	Partial Acquisition
65	1-5-028-022	1555 Dillingham Blvd	BP Bishop Trust Estate (1)	4	Partial Acquisition
66	1-5-028-022	1555 Dillingham Blvd	BP Bishop Trust Estate (3)	4	Partial Acquisition
67	1-5-028-066	1603 Dillingham Blvd	BP Bishop Trust Estate (1)	4	Partial Acquisition
68	1-5-028-073	1617 Dillingham Blvd	Fujii, Jerry J Trust// Shimotsu, Frances//F	4	Partial Acquisition
69	1-5-029-049	1505 Dillingham Blvd	BP Bishop Trust Estate (1)	4	Partial Acquisition
70	1-5-029-050	1505 Dillingham Blvd	BP Bishop Trust Estate (1)	4	Partial Acquisition
71	1-5-029-060	1404 Colburn St	BP Bishop Trust Estate (1)	4	Partial Acquisition
72	1-5-029-065	1415 Dillingham Blvd	BP Bishop Trust Estate (1)	4	Partial Acquisition
73	2-1-014-003	733 Bishop St	Pacific Guardian Center	4	Partial Acquisition
74	2-1-014-006	170 Aloha Tower Dr	Hawaiian Electric Co Inc	4	Partial Acquisition
75	2-1-026-022	825 Milliani St	Gov't State (7)	4	Partial Acquisition
76	2-1-027-002	300 Ala Moana Blvd	Gov't-Federal (2)	4	Easement
77	2-1-030-001	555 South Street - 1	BP Bishop Trust Estate (1)	4	Partial Acquisition
78	2-1-031-002	598 Halekauwila St	Aoyagi, Dora H (Lessee - B E And C Pr	4	Partial Acquisition
79	2-1-031-002	598 Halekauwila St	Gov't-Federal - US Postal Service	4	Partial Acquisition
80	2-1-031-030	616 Keawe St	Servco Pacific Inc	4	Partial Acquisition
81	2-1-050-001	404 Ward Ave	Victoria Ward Limited (1)	4	Easement
82	2-1-050-062	404 Ward Ave	Victoria Ward Limited (1)	4	Easement
83	2-1-050-067	Cooke St	Gov't State - Hawaii Community Develop	4	Easement
84	2-1-052-005	753 Halekauwila St	Fuji Sake Brewing Co Ltd	4	Partial Acquisition
85	2-1-052-016	534 Koula St	Victoria Ward Limited (1)	4	Easement
86	2-1-052-022	Halekauwila St	Victoria Ward Limited (1)	4	Easement
87	2-1-052-027	901 Halekauwila St	Victoria Ward Limited (2)	4	Easement
88	2-1-052-035	549 Ahui St	Victoria Ward Limited (1)	4	Easement
89	2-1-052-036	855 Halekauwila St	Victoria Ward Limited (1)	4	Easement
90	2-1-052-045	801 Halekauwila St Honc	Victoria Ward Limited (1)	4	Easement
91	2-1-052-046	544 Ahui St	Victoria Ward Limited (1)	4	Easement
92	2-1-052-053	849 Halekauwila St	Victoria Ward Limited (1)	4	Easement
93	2-3-002-001	1020 Auahi St	First Hawaiian Bank Trustee	4	Easement
94	2-3-002-059	333 Ward Ave	First Hawaiian Bank Trustee	4	Easement
95	2-3-002-067			4	
96	2-3-002-069	975 Queen St	Tropical Lamp & Shade Co	4	
97	2-3-002-086	987 Queen St	Victoria Ward Limited (1)	4	Easement
98	2-3-002-087	987 Queen St	Victoria Ward Limited (1)	4	
99	2-3-003-006			4	
100	2-3-003-007			4	
101	2-3-004-028	347 Kamakee Street	Victoria Ward Limited (2)	4	Partial Acquisition
102	2-3-004-029	401 Kamakee Street	Ka'a Limited Partnership	4	Partial Acquisition
103	2-3-004-080	1141 Waimanu St	Gov't State - Hawaii Community Develop	4	Easement
104	2-3-005-013	1170 Auahi St	Victoria Ward Limited (1)	4	Easement
105	2-3-005-013	1170 Auahi St	SF Broadcasting Of Hon Inc	4	Easement
106	2-3-005-023	335 Kamakee Street	Victoria Ward Limited (2)	4	Partial Acquisition
107	2-3-007-027	1221 Kona St	1218 Waimanu LLC's	4	Partial Acquisition
108	2-3-007-028	1215 Kona St	Takemoto, Van H//Takemoto, Wanda M	4	Partial Acquisition
109	2-3-007-033	1169 Kona St	Kakaako Associates LLC	4	Full Acquisition
110	2-3-007-036	1174 Waimanu St	Nawa, Hideko TRUST//McArthur, Robert	4	Full Acquisition
111	2-3-007-036	1174 Waimanu St	McArthur, Robert T Trust	4	Full Acquisition
112	2-3-007-039	1163 Kona St	Nelson, Andres Jr	4	Full Acquisition
113	2-3-007-044	1201 Kona St	ROKH Holdings Inc	4	Full Acquisition
114	2-3-007-045	1209 Kona St	Honolulu Hardwoods Inc	4	Partial Acquisition

List of Affected Parcels for Scope of Work

115	2-3-007-049	1235 Kona St (450 Piikoi	Kewalo Development LLC	4	Partial Acquisition
116	2-3-007-054	1246 Kona St	Taran, Virginia L Trust	4	Full Acquisition
117	2-3-007-056	1237 Hopaka St	RSD Corp	4	Partial Acquisition
118	2-3-007-057	1217 Hopaka St	Hollis, Donald JR Trust	4	Partial Acquisition
119	2-3-007-061	1211 Hopaka St	Scott Shoe Co Ltd	4	Partial Acquisition
120	2-3-007-062	1207 Hopaka St	K Iida Properties Ltd	4	Partial Acquisition
121	2-3-007-063	1206 Hopaka St	K Iida Properties Ltd	4	Partial Acquisition
122	2-3-038-001	1450 Ala Moana Blvd	GGP Ala Moana LLC (2)	4	Easement
123	2-3-038-003	451 Piikoi St	GGP Ala Moana LLC (1) 2014/3/21 eo	4	Easement
124	2-3-038-006	Atkinson Dr	GGP Ala Moana LLC (1) 2014/3/21 eo	4	Easement
125	2-3-039-004	1423 Kapiolani Blvd	Izuo Brothers Ltd.	4	Partial Acquisition
126	2-3-039-005	1415 Kapiolani Blvd	P H Hawaii Corp	4	Partial Acquisition
127	2-3-039-006	1405 Kapiolani Blvd	P H Hawaii Corp	4	Partial Acquisition
128	2-3-039-011	1391 Kapiolani Blvd	Samkoo Hawaii LLC 2014/3/21 eod	4	Partial Acquisition
129	2-3-039-013	1357 Kapiolani Blvd	Kaanapali Kai Inc	4	Partial Acquisition
130	2-3-039-017	1344 Kona St	Watumull Properties Corp 2014/03/21	4	Partial Acquisition

**SPECIAL PROVISIONS
EXHIBIT 2A**

**HONOLULU RAIL TRANSIT PROJECT
REAL ESTATE MAPPING AND SURVEYING SERVICES
PROFESSIONAL SERVICES CONTRACT**

CONTRACT COST ESTIMATE

**EXHIBIT 2A
CONTRACT COST ESTIMATE**

Cost Description	Total
Total Estimated Direct Labor Costs (including Overhead ¹):	\$2,583,341.00
Fixed Fee	\$232,501.00
Other Direct Costs ²	\$50,000.00
Sub-Total	\$2,865,842.00
GET Taxes – (Estimated)	\$132,158.00
Total Price	\$2,998,000.00

1. Negotiated Overhead Rate 2014:

redacted pursuant to HRS 92F

2. Approved Other Direct Costs

- Permits
- Subdivision Fees

**SPECIAL PROVISIONS
EXHIBIT 2B**

**HONOLULU RAIL TRANSIT PROJECT
REAL ESTATE MAPPING AND SURVEYING SERVICES
PROFESSIONAL SERVICES CONTRACT**

COMPENSATION AND INVOICING

**EXHIBIT 2B
COMPENSATION AND INVOICING**

1. Subject to the provisions set forth in this Agreement, the CONSULTANT will be paid on a monthly basis by HART 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 TWO MILLION NINE HUNDRED NINETY-EIGHT THOUSAND AND NO/100 DOLLARS (\$2,998,000.00), (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 claims for compensation in excess of the Total Price, adjusted as provided herein, the CONSULTANT shall pay such excess from its own funds and HART shall not be required to pay any part of such excess and the CONSULTANT shall have no claim against HART 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.

Cost:	\$2,765,499.00
Fixed Fee:	<u>\$ 232,501.00</u>
Total Price:	<u>\$2,998,000.00</u>

Compensation shall be the sum of direct labor costs, indirect costs, subconsultant costs including other direct costs, CONSULTANT other direct costs via the allowance for reimbursable expenses, fixed fee and General Excise and Use Tax as described below. Costs to be paid are identified in the "Contract Cost Estimate" schedule, which is attached hereto as Exhibit 2A 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. Employee's direct hourly rates shall not be increased by more than two percent (2%) for any twelve-month period during the term of this Contract. The list of employees authorized to charge to the PROJECT shall be named in the Exhibit 2B-1 AGREED RATES OF PAY. Requests by the CONSULTANT to add employees to the list shall be submitted in writing to HART for approval. The request will identify the individual by name, position, primary task to be assigned, estimated hours, current raw hourly rate and the overhead rate applicable for the charges. Charges made by employees who are not on the authorized list at the time the charges were incurred will not be reimbursed by HART. Employees who are no longer authorized to charge to the PROJECT will be removed from the authorized list. In no event shall overtime be classified or billed as direct labor without prior HART approval.

b. Indirect Costs. Indirect costs shall be the product of all direct labor costs multiplied by an overhead rate. The Parties agree that the negotiated Overhead Rate shown in Exhibit 2A shall be used for the purpose of invoicing for the period ending December 31, 2014. 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

Real Estate Mapping and Surveying Services

Part 31, Subparts 31.1 and 31.2 of the Federal Acquisition Regulations and be supported by a "Report of Independent Auditors". The CONSULTANT's negotiated overhead rates will be reviewed annually by HART and adjusted if deemed acceptable to HART. The negotiated, initial Overhead Rates are contained in Exhibit 2A and are incorporated by this reference. This initial rate shall be used from date of Notice to Proceed until December 31, 2014 unless modified via a bilateral contract amendment.

c. Other Direct Costs. Other direct costs shall be billed at cost without markup by the CONSULTANT and shall include actual, preauthorized expenses incurred by the CONSULTANT for PROJECT work that is identified in the Contract Cost Estimate which is attached hereto as Exhibit 2A and incorporated herein by reference. All other reimbursable expenses not listed in Exhibit 2A shall be approved by HART prior to incurring the expense. At no time shall other direct costs exceed the allowance set forth on page 2 of the Agreement without a bilateral contract amendment.

d. Fixed Fee. HART shall pay the CONSULTANT a fixed fee of TWO HUNDRED THIRTY TWO THOUSAND FIVE HUNDRED ONE AND 00/100 DOLLARS (\$232,501.00). 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 HART 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 the 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. HART may permit an increase in the fixed fee only due to "Additional Work" anticipated beyond that work that is contained in the Scope of Services, attached hereto and incorporated herein as Exhibit 1. In the event HART deletes work from the Scope of Work in Exhibit 1, a proportional decrease in the fixed fee may be required.

e. Subconsultant Costs. It is agreed that HART has the right to approve any CONSULTANT subconsultants related to the PROJECT. The provisions contained in Exhibit 2B shall apply to Subconsultant costs. Subconsultant costs shall be billed to HART 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 Contract Cost Estimate, attached hereto as Exhibit 2A. Subconsultants listed in Exhibit 2A are deemed approved and authorized to charge to this PROJECT.

f. The CONSULTANT's personnel contained in Exhibit 2B-1 shall designate by employee the expected overhead rate schedule to be used for billing and any changes will require advance HART approval.

3. Payment Schedule. Each month the CONSULTANT shall submit to HART 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 HART. 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 hereinabove. Invoices shall be supported by adequate documentation as determined by HART and shall detail the work, charge(s) by sub-task, hours, amount 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, HART will pay the invoice as approved. At no time shall the total cumulative amount paid for the PROJECT work exceed the Total Price. A copy of invoices submitted by the authorized subconsultants identified in Exhibit 2B-1 for which payment is requested by the CONSULTANT shall be attached to the CONSULTANT's invoice submitted to HART. The CONSULTANT shall notify the HART Project Manager in writing no later than ten (10) days after incurring seventy-five percent (75%) of the Total Price or whenever the CONSULTANT believes the PROJECT Work cannot be completed for the Total Price.

**EXHIBIT 2B-1
 AGREED RATES OF PAY**

<u>Name</u>	<u>Job Category</u>	<u>Negotiated OH Rate</u>	<u>2014 Hourly Rate</u>	<u>2015 Hourly Rate**</u>
David Tanoue	Project Principal			
James Yamamoto	Project Principal			
Ryan Suzuki	Project Coordinator			
Erik Kaneshiro*	Project Coordinator			
Andy Harada*	Project Coordinator			
Dan Akita	Computer Draftsman			
Pamela Figueiroa	Computer Draftsman			
Edgar Gamiao	Computer Draftsman			
Daniel Toba	Computer Draftsman			
Shane Tsukayama	Computer Draftsman			
Donna Gonzales	Computer Draftsman			
Justin Lapp*	Computer Draftsman			
Marcus Hoapili*	Computer Draftsman			
James Katasako*	Computer Draftsman			
Michael Salindron*	Computer Draftsman			
Clayton Kaneshiro*	Computer Draftsman			
Vernon Nakagawa*	Computer Draftsman			
Lester Poon*	Computer Draftsman			
Benjamin Valdez	Field Crew			
Mario Layugan	Field Crew			
Daniel Miranda	Field Crew			
Robert Gabriel	Field Crew			
Amador Godoy	Field Crew			
Medardo Rocimo	Field Crew			
Florendo Bonilla	Field Crew			
Pio Mailo	Field Crew			
Alexander Smith Jr.*	Field Crew			
Dennies Duropan*	Field Crew			
Brandon Inouye*	Field Crew			
Makena Fernandez*	Field Crew			
Corey Yamamoto*	Field Crew			
Brandon Robinson*	Field Crew			
John Heagerty*	Field Crew			
Rudy Munoz*	Field Crew			
Howard Harbottle*	Field Crew			
Kacey Miyasato*	Field Crew			

redacted pursuant to HRS 92F

* Subject to adjustment via Contract Amendment

** 2015 Escalation on Labor Rates: ≤ redacted pursuant to HRS 92F

Approved Subcontractors (Evaluated with Proposal dated 12/13/2013):

- Austin Tsutsumi & Associates, Inc. (ATA)
- Engineers Surveyors Hawaii, Inc. (ESH)

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 potential Contractor (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 Honolulu Authority for Rapid Transportation (HART); or the potential Contractor’s objectivity in performing the Contract Work would or might be otherwise impaired; or the potential Contractor has an unfair competitive advantage.

On behalf of R. M. Towill Corporation I certify that:
(Name of Offeror)

(Check one)

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

() The Offeror 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, HART 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 Offeror with these named firm(s)/individual(s) have been fully disclosed on the attached sheet.



(Signature of Authorized Official)

Greg H. Hiyakumoto

(Print Name)

May 15, 2014

(Date)

Honolulu Rail Transit Project

EXHIBIT 4
LETTER OF SUBCONTRACT INTENT

R. M. Towill Corporation _____ intends to subcontract Work for the
Real Estate Mapping and Surveying Services Contract to

Austin Tsutsumi & Associates, Inc. (ATA)
(Name of Subcontractor/Consultant)

to perform the following type of work:

Real Estate Mapping and Surveying Services

_____.

The minimum value of the Subcontract is \$10,000.

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 Contractor:


(Signature)

Greg H. Hiyakumoto
(Printed Name)

President
(Title)

May 15, 2014
(Date)

For the Subcontractor/Subconsultant:


Confirmed by: (Signature)

Erik S. Kaneshiro
(Printed Name)

Vice President
(Title)

May 16, 2014
(Date)

Real Estate Mapping and Surveying Services

Honolulu Rail Transit Project

EXHIBIT 4
LETTER OF SUBCONTRACT INTENT

R. M. Towill Corporation intends to subcontract Work for the

Real Estate Mapping and Surveying Services Contract to

Engineers Surveyors Hawaii, Inc. (ESH)

(Name of Subcontractor/Consultant)

to perform the following type of work:

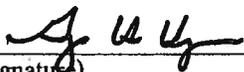
Real Estate Mapping and Surveying Services

The minimum value of the Subcontract is \$10,000.

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 Contractor:

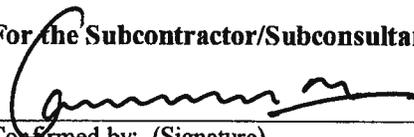

(Signature)

Greg H. Hiyakumoto
(Printed Name)

President
(Title)

May 15, 2014
(Date)

For the Subcontractor/Subconsultant:


Confirmed by: (Signature)

KENDALL HEE
(Printed Name)

PRES. + TREAS.
(Title)

5-16-14
(Date)

Real Estate Mapping and Surveying Services

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, Greg H. Hiyakumoto, President, hereby
(Name of Certifying Officer) (Title of Certifying Officer)

certify that R. M. Towill Corporation :
(Name of Contractor)

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 the Honolulu Authority for Rapid Transportation Project No. RFQ-HRT-674804;
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.

R. M. Towill Corporation
Name of Contractor

2024 North King St., #200
Street Address of Contractor

Honolulu, Hawaii 96819
City, State, Zip

808-842-1133
Telephone Number of Contractor



Signature of Certifying Officer

(Note: The above certification merely certifies that an Offeror 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.)

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. _____ 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

Erik S. Kaneshiro

Typed or Printed Name

Austin Tsutsumi & Associates, Inc. (ATA)

Company Name

May 16, 2014

Date

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. _____ 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 _____

KENDAN HEG

Typed or Printed Name _____

Engineers Surveyors Hawaii, Inc. (ESH)

Company Name _____

5-16-14

Date _____

Honolulu Rail Transit 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 Offeror, R. M. Towill Corporation, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Offeror understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Company Name: R. M. Towill Corporation

Signature: 

Print Name: Greg H. Hiyakumoto

Title: President

Date: May 15, 2014

NOTE: THE CONTRACTOR 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

Real Estate Mapping and Surveying Services

EXHIBIT 8

HONOLULU RAIL TRANSIT PROJECT

**REAL ESTATE MAPPING AND SURVEYING SERVICES
PROFESSIONAL SERVICES CONTRACT**

FEDERAL REQUIREMENTS

Table Of Contents

1.0 General3

1.1 NO GOVERNMENT OBLIGATION TO THIRD PARTIES3

1.2 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS3

1.3 ACCESS TO RECORDS AND REPORTS.....3

1.4 FEDERAL CHANGES.....4

1.5 CIVIL RIGHTS REQUIREMENTS4

1.6 DISADVANTAGED BUSINESS ENTERPRISES (DBE).....5

1.7 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT).....6

1.8 LOBBYING7

1.9 CLEAN AIR REQUIREMENTS.....7

1.10 CLEAN WATER REQUIREMENTS7

1.11 FLY AMERICA REQUIREMENTS7

1.12 ENERGY CONSERVATION REQUIREMENTS.....7

1.13 RECYCLED PRODUCTS.....8

1.14 ADA ACCESS.....8

1.15 SEISMIC SAFETY8

1.16 TEXT MESSAGING WHILE DRIVING.....8

1.17 SENSITIVE SECURITY INFORMATION9

1.18 INCORPORATION OF FTA TERMS9

1.19 INCORPORATION OF THE OFFICE OF MANAGEMENT AND BUDGET (OMB) CIRCULAR A-879

Attachment 1.6 a) - DBE PARTICIPATION REPORT.....-10 -

Attachment 1.6 b) - FINAL REPORT DBE PARTICIPATION-11 -

INSTRUCTIONS FOR COMPLETION OF THE FINAL REPORT OF DBE PARTICIPATION.....-12 -

FEDERAL REQUIREMENTS

1.0 GENERAL

The CONTRACTOR 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 CONTRACTOR agrees that the most recent of such Federal requirements will govern the administration of the Agreement at any particular point in time, except if HART issues a written determination otherwise. To achieve compliance with changing Federal requirements, the CONTRACTOR 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) HART and the CONTRACTOR 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 HART, the CONTRACTOR, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

(b) The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR to the extent the Federal Government deems appropriate.

(b) The CONTRACTOR 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 an 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 CONTRACTOR, to the extent the Federal Government deems appropriate.

(c) The CONTRACTOR 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 CONTRACTOR shall provide HART, 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 CONTRACTOR which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) The CONTRACTOR shall maintain all books, records, accounts and reports required under this Agreement for a period of not less than three (3) 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 CONTRACTOR shall maintain the same until HART, 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 CONTRACTOR 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 CONTRACTOR's failure to so comply shall constitute a material breach of this Agreement.

1.5 Civil Rights Requirements

The CONTRACTOR 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 CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall comply with any implementing requirements FTA may issue.

(4) Access for Individuals with Disabilities. The CONTRACTOR 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 CONTRACTOR and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONTRACTOR 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 CONTRACTOR 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 HART deems appropriate.

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

(b) Prompt Payment. The CONTRACTOR 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 HART. Full and prompt payment by the CONTRACTOR to all subcontractors shall include retainage, if applicable.

(c) DBE Goal. HART has established an overall DBE goal of 13.00% for the duration of this agreement and a separate contract goal has not been established for this contract. DBE firms and small businesses shall have an equal opportunity to participate in the agreement. The CONTRACTOR 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 HART. The CONTRACTOR shall report its DBE participation obtained through race-neutral means throughout the period of performance. The CONTRACTOR shall submit the “DBE PARTICIPATION REPORT” reflecting payments made by the CONTRACTOR to DBE subcontractors. Payments to the CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall promptly notify HART, whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work. The CONTRACTOR shall also promptly notify HART 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 CONTRACTOR is required to verify that none of the CONTRACTOR, 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 CONTRACTOR 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 CONTRACTOR certifies as follows:

The certification in this clause is a material representation of fact relied upon by HART. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to HART, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. § 180, Subpart C, as supplemented by 2 C.F.R. § 1200, Subpart C, throughout the Agreement period. The CONTRACTOR 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 CONTRACTOR in Exhibit 7 of the Special Provisions is incorporated herein by reference. The CONTRACTOR 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 HART.

1.9 Clean Air Requirements

(a) The CONTRACTOR 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 CONTRACTOR shall report each violation to HART and understands and agrees that HART will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

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

1.10 Clean Water Requirements

(a) The CONTRACTOR 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 CONTRACTOR shall report each violation to HART and understands and agrees that HART will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

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

1.11 Fly America Requirements

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

1.12 Energy Conservation Requirements

(a) The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR agrees to comply with all applicable implementing Federal regulations and directives and any subsequent amendments thereto.

1.15 Seismic Safety

The CONTRACTOR 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 CONTRACTOR 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 U.S.DOT Order 3902.10, Text Messaging While Driving December 30, 2009, the CONTRACTOR 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 CONTRACTOR 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:

(i) CONTRACTOR-owned or CONTRACTOR-rented vehicles or Government-owned, leased or rented vehicles;

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

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

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

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

(ii) 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 Sensitive Security Information

The CONTRACTOR, as a third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. § 40119(b) and implementing U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. § 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.

1.18 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 CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any HART requests which would cause HART to be in violation of the FTA terms and conditions.

(b) The CONTRACTOR 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.

1.19 Incorporation of the Office of Management and Budget (OMB) Circular A-87

The CONTRACTOR shall at all times comply with the Office of Management and Budget (OMB) Circular A-87, Revised 05/10/2004, which establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State, Local, and Indian Tribal Governments. This Circular and its Attachments (A-E) establish the principles and standards to provide a uniform approach for determining allowable costs.

ATTACHMENT 1.6 a) – DBE PARTICIPATION REPORT

Acknowledgment Prompt Payments by Contractors to Subcontractors:

As a duly authorized representative of the company I fully understand and testify that our company has complied with the following prompt payment by Contractors to subcontractors, terms and conditions.

- 1) Any money paid to Contractor for work performed by a subcontractor shall be disbursed to the subcontractor 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 on which the Contracting Officer has withheld payment.
- 2) Upon final payment to Contractor, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

Printed Name and Title

Signature

Date

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

ATTACHMENT 1.6 b) - FINAL REPORT OF DBE PARTICIPATION

Acknowledgment Prompt Payments by Contractors to Subcontractors:

As a duly authorized representative of the company I fully understand and testify that our company has complied with the following prompt payment by Contractors to subcontractors, terms and conditions.

- 1) Any money paid to Contractor for work performed by a subcontractor shall be disbursed to the subcontractor 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 on which the Contracting Officer has withheld payment.
- 2) Upon final payment to Contractor, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

Printed Name and Title

Signature

Date

ATTACHMENT 1.6 b) - FINAL REPORT OF DBE PARTICIPATION

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
Consultant 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
Acknowledgement of Prompt Payment	Self-Explanatory