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SPECIAL PROVISIONS TO THE AGREEMENT FOR PROFESSIONAL SERVICES

These Special Provisions to the Agreement for Professional Services ("Special Provisions") shall be incorporated into and be a part of that certain Agreement for Professional Services, by and between HART and CONSULTANT, dated JUN 5 2012 (the "Agreement"). These Special Provisions and the General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu, dated 8/2000 ("General Terms and Conditions") shall apply to, and are incorporated by reference into the Agreement, except as modified by reference herein. All defined terms in the Agreement shall have the same meaning in these Special Provisions except as modified by reference herein.

I. PROJECT

The H RTP is identified in the Final Environmental Impact Statement (FEIS). It is described as an approximate twenty (20) mile, grade-separated fixed guideway rail system with twenty-one (21) stations between East Kapolei and Ala Moana Center. The fixed guideway rail system begins at UH-West O'ahu (near the future Kroc Center), via Farrington Highway and Kamehameha Highway (adjacent to Pearl Harbor), to Aolele Street serving the Airport, to Dillingham Boulevard, to Nimitz Highway, to Halekauwila Street, and ending at Ala Moana Shopping Center.

II. SERVICES

HART and HART's consultants and/or contractors are required to conduct design and construction work in compliance with the State of Hawaii Department of Transportation ("HDOT") requirements and their policies and procedures for permits, approvals, and coordination. The CONSULTANT will provide design review, construction review, and other engineering services, facilitate obtaining of permits and approvals, and assist HDOT in coordinating and overseeing the Work. The services the CONSULTANT shall provide under the Agreement are more fully set forth in the Scope of Services, attached hereto and incorporated herein as Exhibit A.

III. TIME

The CONSULTANT shall complete the Work required under this Agreement within one thousand eight hundred twenty-seven (1827) calendar days from the date of the Notice to Proceed.

IV. INDEPENDENT CONTRACTOR

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

"The CONSULTANT shall perform the work as an independent contractor and shall indemnify and hold harmless the Honolulu Authority for Rapid Transportation ("HART"), Hawaii State Department of Transportation ("HDOT"), the City and County of Honolulu ("CITY") and its departments, and all of their respective officers, directors, employees or agents, from any and all deaths, injuries, losses, damages to persons or property, and any additional claims, demands, suits, action and liability therefore including reasonable attorneys' fees and costs of defense, caused by error, omissions or negligence in the performance of the contract by the CONSULTANT or the CONSULTANT's subcontractors, agents and employees and this requirement shall survive the termination of the 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 the CONSULTANT and HART or the CITY."

V. RESERVED

VI. DEFINITIONS

The following definitions are added to the General Terms and Conditions:

"FEDERAL GOVERNMENT" means the United States of America and any executive department or agency thereof.

"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.

"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.

"HART" means the "Honolulu Authority for Rapid Transportation", including its Board of Directors, duly authorized officers and representatives.

"PMOC" means the FTA's Project Management Oversight Consultant.

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

“PROJECT” means all Work within the scope of services as described in the Agreement executed by the Parties and as further described in these Special Provisions for the Honolulu Rail Transit Project and its component elements, which include the 28-mile Locally Preferred Alternative and the 20-mile Airport Alignment.

“SUBCONSULTANT” means any subcontractor or subconsultant that is to furnish work or services at any tier under this contract.

“U.S.C.” means the United States Code.

“U.S. DOT” means the United States Department of Transportation, including its operating administrations.

“WORK” means the furnishing of all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary to the successful completion of the Agreement.

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

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

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

“CONSULTANT” OR “CONTRACTOR” 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 or the Director’s duly authorized representative or designee, unless the context specifically indicates otherwise.

“OFFICER IN CHARGE” means HART’s Executive Director or the Director’s duly authorized representative or designee.

VII. INSURANCE REQUIREMENTS

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

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

VIII. CHANGE ORDERS

Section 5.1.1 (c) of the General Terms and Conditions is hereby deleted in its entirety and replaced with the following:

“(c) ***Within thirty (30) days*** after receipt of a written change order, unless the period is extended by the Officer-in-Charge in writing, the CONSULTANT shall respond with a claim for an adjustment. The requirement for a timely written response cannot be waived and shall be a condition precedent to the assertion of a claim.”

IX. COMPENSATION AND INVOICING

- a. 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. No futures increases in tax shall be passed through to HART or the City. The amount to be paid to the CONSULTANT shall be computed as hereafter set forth, provided that such payment shall not exceed the Total Price amount of ONE MILLION SIX HUNDRED THOUSAND DOLLARS and NO/100 DOLLARS (\$1,600,000.00) OR the amount appropriated for each fiscal year, which includes all costs, fees, and taxes associated with this Agreement. In the event the CONSULTANT incurs costs, fees or other compensation in excess of the Total Price, adjusted as provided herein, the CONSULTANT shall pay such excess from its own funds and HART shall not be required to pay any part of such excess and the CONSULTANT shall have no claim against HART on account thereof.
- b. Compensation for work and services shall be on a time and material basis. Compensation shall be calculated using the applicable rate as set forth in Exhibit B to the Special Provisions, attached hereto and incorporated herein, multiplied by the number of authorized hours worked on the Project. The CONSULTANT shall obtain advance written approval by Category from the HDOT for each and every employee that the CONSULTANT proposes to work on the Project and for which reimbursement will be requested. Upon request from HART, the CONSULTANT shall provide a current certified payroll register that documents the current rates of pay which will be used to validate employee work assignment by Category in Exhibit B to the Special Provisions.

- c. Reimbursable expenses referred to in paragraph 4 of the Agreement, and identified in Exhibit B to the Special Provisions, shall be billed at cost without markup by the CONSULTANT and shall include actual authorized expenses incurred by the CONSULTANT for Work performed.
- d. Progress Report. The CONSULTANT shall submit a progress report along with the monthly invoice. The progress report will identify the Work activities for which compensation is being requested.
- e. Payment Schedule. Each month the CONSULTANT shall submit to HART an invoice for payment for 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 herein above. Invoices shall be supported by adequate documentation as determined by HART and shall detail the work, hours, and employee name for which payment is being requested and shall itemize, with receipts and invoices attached, the reimbursable expenses 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 Work exceed the Total Price.
- f. The agreed rates of pay shall be subject to appropriate audit evaluation in compliance with the cost principles of the Federal Acquisition Regulation (FAR) as set forth in 48 C.F.R. Part 31, and other applicable Federal, State and City laws, rules or procedures.

X. PROMPT PAYMENT TO SUBCONTRACTORS

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

"8.6 PROMPT PAYMENT TO SUBCONTRACTORS

- (a) Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes.
- (b) Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona

vide disputes over the subcontractor's performance under the subcontract. See HAR § 3-125-33.

(c) A payment request made by a contractor to the Officer-in-Charge that includes a request for sums that were withheld or retained from a subcontractor and are due to the subcontractor may not be approved, unless the payment request includes:

1. Substantiation of the amounts requested; and
2. Certification by the contractor, to the best of the contractor's knowledge and belief; that:
 - i) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Agreement;
 - ii) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the Agreement and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
 - iii) The payment request does not include any amounts that the contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

(d) Prompt Payment of Retainage to Subcontractors upon Satisfactory Completion of Subcontractor Work. Upon satisfactory completion of accepted work by a subcontractor, the contractor shall request sums that were withheld or retained from a subcontractor and are due to the subcontractor pursuant to subsection (c). The contractor shall pay all retainage owed to the subcontractor within ten (10) days after payment to the contractor."

XI. FEDERAL REQUIREMENTS

FEDERAL FUNDING, INCORPORATION OF FTA TERMS, AND CHANGES TO FEDERAL REQUIREMENTS

This Agreement includes, in part, certain standard terms and conditions required by the Federal Transit Administration ("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, dated November 1, 2008 (including any changes), are herein 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 request 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 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 and FTA, 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 C, attached hereto and incorporated by reference.

XII. 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 A

TO THE SPECIAL PROVISIONS TO THE AGREEMENT FOR PROFESSIONAL SERVICES SCOPE OF SERVICES

This Exhibit A to the Special Provisions to the Agreement for Professional Services ("Exhibit A"), shall be incorporated into and be part of that certain Agreement for Professional Services, by and between the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION ("HART") and ICx Transportation Group, Inc. ("CONSULTANT"), dated JUN 5 2012 (the "Agreement"). All defined terms in the Agreement and the Special Provisions shall have the same meaning in this Exhibit A.

SCOPE OF SERVICES

1. General

The CONSULTANT, under Agreement with HART, shall assist the State of Hawaii Department of Transportation Highways Division ("HDOT") by providing technical and engineering services for the Honolulu Rapid Transit Project ("H RTP"). The CONSULTANT will provide HDOT with design and construction phase review, facilitate and coordinate permits, compliance and other issues, and inspect HDOT rights-of-way. The CONSULTANT shall perform such services under the direction and on behalf of HDOT.

Design submittal reviews for matters that affect public safety and HDOT operations and maintenance will primarily include PROJECT design reviews of highway infrastructure and appurtenances, and include, but not be limited to, reviews of civil roadway, street lighting, Maintenance of Traffic (MOT), traffic, Traffic Management Plans (TMP), traffic signals, roadway signage, pavement markings, and Intelligent Transportation Systems (ITS).

The CONSULTANT and HDOT review comments on design submittals and other design reviews are to be completed within twenty-one (21) calendar days of receipt from HART or HART's consultant and/or contractor, unless the level of design complexity or its urgency requires shorter or longer review times as mutually agreed upon by HART and HDOT. Timely design reviews of PROJECT submittals by the CONSULTANT are critical and essential to maintaining PROJECT schedule. The CONSULTANT shall prioritize its work to review items that are on the critical path as indicated in HART's master schedule. The CONSULTANT shall use its best efforts to expedite such activities in coordination with HDOT, HART, HART's consultants/contractors, and the General Engineering Consultant (GEC). The GEC oversees H RTP design and construction activities for HART.

The CONSULTANT shall represent HDOT's interests in maintaining public safety and protecting the environment during PROJECT construction and shall perform observation visits. The primary purpose of the CONSULTANT's observation visits to the PROJECT site is to provide oversight of HART's contractors' construction work and monitor their conformance to the construction documents. However, the CONSULTANT shall not, during its PROJECT observation visits supervise, direct or exercise control over the contractors' work nor shall the CONSULTANT have any authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by the contractors.

HDOT will assign a point of contact ("POC") to act as the principal liaison between the CONSULTANT and HDOT to resolve any questions and to expedite decisions and progress reports. The POC will also act as the principal HDOT liaison with HART.

HDOT engineers and designers are currently performing PROJECT reviews for PROJECT works which have commenced prior to the Notice to Proceed of this Agreement. The CONSULTANT shall coordinate its efforts with the POC and current HDOT reviewers such that the Work is performed in the best and most expeditious manner. Progress schedules will be prepared in coordination with the POC and HDOT reviewers. It is anticipated that as the PROJECT work progresses, the CONSULTANT will assume an increasing and greater role in the PROJECT reviews, subject to satisfactory performance by the CONSULTANT as determined by HDOT.

2. Project Management and Administration

CONSULTANT services shall include, but are not limited to, the following:

- Designating in writing a project manager ("PM"), who holds a current professional civil or structural engineering license and is registered in the State of Hawaii. The PM 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.
- Preparing a project control plan describing scope, schedule, and cost control that includes the CONSULTANT's organizational approach, staffing plan, position descriptions, cost control, project management, and administration procedures in providing design reviews and construction observations for the PROJECT.
- Attending the PROJECT Safety and Environmental Orientation conducted by HART or its designated training provider prior to accessing the PROJECT work site.
- Providing management, technical, and administrative staff to assist HDOT in managing, maintaining files, monitoring, and reporting its design reviews and construction observations for the duration of the PROJECT.

- Managing its design reviews to ensure timely processing of all PROJECT documentation including correspondences, technical reports, design plans, specifications, estimates, calculations, and any other PROJECT-related information.
- Communicating and coordinating its PROJECT activities with HART, GEC, and CONTRACTOR on an ongoing basis for the full duration of the PROJECT through the POC, unless otherwise directed by the POC.
- Attending monthly PROJECT progress meetings or other design or construction coordination meetings, as deemed necessary by HDOT and/or HART. Monthly progress meetings to review the CONSULTANT's work will be held with HDOT, HART, and contractors. The CONSULTANT shall submit to HDOT at the end of each calendar month a written narrative report that describes progress made by the CONSULTANT on items of work being performed in relation to PROJECT schedule requirements.
- Obtaining a license for Oracle's Primavera Contract Manager and Oracle Primavera P6 for PROJECT document and management controls so as to be compatible with HART's Contract Management System (CMS) and scheduling system. The CONSULTANT shall submit monthly schedule updates of its activities using Oracle Primavera P6 to the POC. PROJECT related reports, communications and documentation will be maintained in CMS.

3. Design Phase

CONSULTANT services shall include, but are not limited to, the following:

- Reviewing, commenting, and providing recommendations, as appropriate, on major design submittals and other required design reviews on an ongoing basis for the full duration of the PROJECT in conformance with all HDOT procedures, standards, and policies. Reviewers shall be experienced and qualified highway design professionals. Reviews will be accomplished by reviewers in appropriate design disciplines including, but not limited to, civil roadway, street lighting, traffic, Maintenance of Traffic (MOT), Intelligent Transportation Systems (ITS), Traffic Management Plans (TMP), traffic signals, roadway signage, and pavement markings.
- Assisting HDOT in the resolution of design issues that may arise.
- Completing its reviews, comments, and recommendations to HDOT in order to make timely submittals to HART, HART's consultants and contractors.

4. Construction Phase

CONSULTANT services shall include, but are not limited to, the following:

- Providing an experienced and qualified highway engineer(s) to observe the quality of the various aspects of the CONTRACTOR's work on permanent highway infrastructure and its appurtenances.
- Making observation visits to the PROJECT site at various stages of construction. The frequency of such observation visits to PROJECT site by the CONSULTANT will be as mutually agreed to by HDOT and HART.
- Assessing if work is generally proceeding in accordance with the construction documents, based on information obtained during observation visits. The CONSULTANT shall inform HDOT of its determinations and shall submit a report of each observation visit to the PROJECT site to HDOT and HART.
- Utilizing existing Intelligent Transportation Systems (ITS) and the transportation management center capabilities to manage traffic on this corridor, implement new ITS strategies to complement existing ITS for the purpose of managing traffic effectively and efficiently on this corridor, and be responsible for all costs to implement new ITS strategies due to traffic impacts caused by the Guideway Facility.

HART's public involvement team will coordinate with the Transportation Management Consultant for the purpose of providing current information to the public and media.

5. Additional Services

The CONSULTANT may be requested to perform additional services as deemed necessary by mutual agreement of the HDOT and HART. Additional services may include PROJECT issues that affect the safety, security, operations, and maintenance of HDOT owned highways. HART reserves the right to alter the CONSULTANT's scope of services at any time by notifying the CONSULTANT in writing.

EXHIBIT B

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

AGREED RATES OF PAY

Dated: February 13, 2012

<u>Category</u>	<u>Agreed Hourly Rate</u>
<u>Engineer</u>	
Systems Engineer (ITS) I	
Engineer VIII	
Engineer VII	redacted pursuant to HRS 92F
Engineer VI	
Engineer V	
Engineer IV	
Engineer III	
Engineer II	
Engineer I	
Engineer Admin	

The hourly rates above shall be inclusive of all costs including but not limited to: labor, materials, profit, overhead, taxes and insurance.

<u>FISCAL YEAR 2012</u>	<u>AMOUNT</u>
LABOR ALLOWANCE	\$285,000.00
REIMBURSABLE EXPENSES	<u>\$ 15,000.00</u>
TOTAL PRICE INCLUDING TAX	\$300,000.00

EXHIBIT C

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

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FEDERAL REQUIREMENTS

1.0 GENERAL

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

1.1 *No Government Obligation to Third Parties*

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

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

1.2 *Program Fraud and False or Fraudulent Statements and Related Acts*

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

(b) The CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under 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 CONSULTANT, to the extent the Federal Government deems appropriate.

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

1.3 Access to Records and Reports

(a) The CONSULTANT shall provide 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 CONSULTANT which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The CONSULTANT shall, pursuant to 49 C.F.R. § 633.17, provide the FTA Administrator or his authorized representatives, including any Project Management Oversight Contractor, access to the CONSULTANT'S records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(l), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

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

(c) The CONSULTANT shall maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the CONSULTANT shall maintain the same until 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 CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between HART and the FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The CONSULTANT'S failure to so comply shall constitute a material breach of this Agreement.

1.5 Civil Rights Requirements

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

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

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

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

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

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

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

1.6 Disadvantaged Business Enterprises (DBE)

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

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

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

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

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

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

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

(d) Reports to HART. The CONSULTANT shall report its DBE participation obtained through race-neutral means throughout the period of performance. The CONSULTANT shall submit the "DBE PARTICIPATION REPORT" reflecting payments made by the CONSULTANT to DBE subcontractors. Payments to the CONSULTANT will not be processed if the DBE PARTICIPATION REPORT is not properly completed and attached.

The DBE PARTICIPATION REPORT shall be prepared in the format set forth in ATTACHMENT 1.6 a) to this Exhibit.

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

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

(f) The CONSULTANT shall promptly notify HART, whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work. The CONSULTANT 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 CONSULTANT is required to verify that none of the CONSULTANT, its principals, as defined at 2 C.F.R. § 180.995, or affiliates, as defined at 2 C.F.R. § 180.905, are excluded or disqualified as defined at 2 C.F.R. § 180.940 and 2 C.F.R. § 180.935.

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

The certification in this clause is a material representation of fact relied upon by HART. If it is later determined that the CONSULTANT 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 CONSULTANT 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 CONSULTANT further agrees to include a provision requiring such compliance in its lower tier covered transactions equal to or exceeding \$25,000.

1.8 Lobbying

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

1.9 Clean Air Requirements

(a) The CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant shall report each violation to 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 CONSULTANT shall include the above clause in each subcontract exceeding \$100,000.

1.10 Clean Water Requirements

(a) The CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The CONSULTANT shall report each violation to 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 CONSULTANT shall include the above clause in each subcontract exceeding \$100,000.

1.11 Fly America Requirements

(a) The Consultant shall comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. Parts 301-10, which provide that 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 CONSULTANT shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

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

1.12 Energy Conservation Requirements

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

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

1.13 Recycled Products

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

1.14 ADA Access

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

1.15 Seismic Safety

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

1.16 Text Messaging While Driving

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

a. Definitions.

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

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

b. Safety. The CONSULTANT is encouraged to:

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

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

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

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

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

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

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

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

1.17 Incorporation of FTA Terms

a. The Special Provisions include, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any HART requests which would cause HART to be in violation of the FTA terms and conditions.

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

EXHIBIT D
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 ICx TRANSPORTATION GROUP INC I certify that:
(Name of Offeror)

(Check one)

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)

GLEN FROMM

(Print Name)

3/15/12

(Date)

EXHIBIT E
LETTER OF SUBCONTRACT INTENT

IC TRANSPORTATION GROUP, INC intends to subcontract Work for the
HDOT Design Review Project to AUSTIN TSUTSUMI & ASSOCIATES, INC
(Name of Subcontractor/Consultant)

to perform the following type of work:

DESIGN REVIEW & OTHER ENGINEERING SERVICES

The minimum value of the Subcontract is \$100,000.

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 Consultant:

[Signature]
(Signature)

GREG FRANK
(Printed Name)

VICE PRESIDENT
(Title)

3/15/12
(Date)

For the Subcontractor/Sub Consultant:

[Signature]
Confirmed by: (Signature)

Terrance S. Arashiro
(Printed Name)

Senior Vice President
(Title)

3-10-12
(Date)

EXHIBIT F
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, GLEN FROMM, VICE PRESIDENT hereby
(Name of Certifying Officer) (Title of Certifying Officer)

certify that ICx TRANSPORTATION GROUP, INC.
(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 Name HDOT Maintenance of Traffic Consultant;
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.

ICx TRANSPORTATION GROUP, INC.
Name of Contractor

1003 BISHOP STREET, SUITE 720
Street Address of Contractor

HONOLULU, HAWAII 96813
City, State, Zip

808 548 4298
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 G
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

Terrance S. Arashiro

Typed or Printed Name

Austin, Tsutsumi & Associates, Inc.

Company Name

3-10-12

Date

EXHIBIT H
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: ICx TRANSPORTATION GROUP INC, 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: ICx TRANSPORTATION GROUP, INC
Signature: [Signature]
Print Name: GRIN FINN
Title: VICE PRESIDENT
Date: 2/15/12

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