

HONOLULU AUTHORITY FOR RAPID TRANSPORTATION

ADDENDUM NO. 3

TO THE

REQUEST FOR SEALED BIDS

FOR THE

HONOLULU RAIL TRANSIT PROJECT
AIRPORT SECTION GUIDEWAY SEVEN- (7) PIER CONSTRUCTION CONTRACT
REQUEST FOR BIDS NO. RFP-HRT-768909

ISSUED July 28, 2014:

NOTICE TO ALL OFFERORS:

This Addendum is hereby made a part of the Request for Bids (RFB) for the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION AIRPORT SECTION GUIDEWAY SEVEN- (7) PIER CONSTRUCTION CONTRACT, and it shall amend the said Request for Bids in the following respects:

SPECIAL PROVISIONS

The following changes are hereby made to the Special Provisions of RFB-HRT-768909:

SP - 4.2; INSURANCE REQUIREMENTS

Delete Section 4.2 of the General Conditions and its corresponding Special Provisions, Items 2 and 3 of Addendum No. 1, in their entirety and replace with the following:

“4.2 Insurance Requirements

(a) **Owner Controlled Insurance Program**

- (1) HART may elect to implement an Owner Controlled Insurance Program (“OCIP”) for the Honolulu Rail Transit Project. If an OCIP is implemented by HART, then all contractor(s) and subcontractor(s) at any tier will be required to participate as further described herein.
- (2) HART will, through an OCIP, procure and maintain at all times during the performance of this Agreement, and for such extension periods for completed operations, at its own expense, Workers' Compensation and Employer's Liability, Commercial General Liability, and Umbrella/Excess Liability insurance described in the “OCIP Insurance Provided by HART” section, for the benefit of Enrolled Parties (as defined below). Builders Risk coverage will

also be procured by HART in addition to the OCIP lines of coverage mentioned above.

(b) **Applicability of the OCIP.** Participation in the OCIP is mandatory but not automatic. Each Eligible Party and subcontractor at any tier must follow the enrollment procedures as further detailed in the OCIP Manual.

(1) The following terms as used herein this Section are defined below:

“Eligible Party(ies)” includes all Contractors and its subcontractors of all tiers providing direct labor at the Project Site, except for Excluded Parties as defined below, for Work performed under this Contract at the Project Site. Temporary labor services and leasing companies providing such direct labor are to be treated as Eligible Parties.

“Enrolled Party(ies)” means any Eligible Party and its subcontractors of all tiers that follows and completes the enrollment procedures, and becomes enrolled in the OCIP.

“Excluded Party(ies)” means:

- Off-site fabricators, vendors, suppliers (who do not perform or subcontract installation), material dealers;
- Guard services, janitorial services, and other service providers not performing construction activities;
- Cranes, demolition, blasting;
- Truckers and haulers (including trucking to the Project where delivery is the only scope of Work to be performed);
- Asbestos abatement or other hazardous waste removal Contractor(s) and their respective Subcontractor(s) of any tier;
- Architects, engineers, surveyors or other professional services providers; and
- Others whose sole function is to transport, pickup, deliver or carry materials, supplies, tools equipment, parts or other items to or from the Project Site, or who do not perform any actual on-site labor.

Any other entity specifically determined by HART to be excluded will not be covered by insurance purchased by HART through the OCIP.

“Project Site,” as used in the context of OCIP, is designated by HART and is on file with the OCIP Insurance Carrier(s). It encompasses the Minimum Operable Segment (MOS) that extends along an east-west corridor approximately twenty (20) miles long from East Kapolei to Ala Moana Center. It includes operations necessary or incidental to the Work covered by this Contract. The Eligible Parties’ regularly established workplace, plant, factory, office, shop, warehouse, yard or other property, even if such operations are for fabrication of materials to be used at the job site or training of apprentices, shall be considered off-site and are not covered by the OCIP, unless specifically agreed in writing and approved by HART.

- (2) The insurance coverage described in the “OCIP Insurance Provided by HART” section will not apply to those contractors and subcontractors at any tier who are not Enrolled Parties.
 - (3) While the OCIP is intended to provide coverage for the Project Site, the OCIP is not intended to meet all of the Enrolled Parties’ insurance needs. The OCIP does not provide coverage for Automobile Liability, Contractor’s Equipment, Contractors Pollution Liability or Performance and Payment Bonds. Enrolled Parties will be responsible for procuring and maintaining, at their own expense throughout the term of this agreement the insurance coverage described in the “Insurance Required of Enrolled Parties” section and will be responsible for requiring that each Enrolled Parties of any tier procure and maintain, at their own expense coverage in accordance with the requirements as outlined in the “Insurance Required of Enrolled Parties” section of this document.
 - (4) Contractor(s) will be responsible for requiring that a subcontractor of any tier who is not an Enrolled Party, procure and maintain during the term of this Project the insurance coverage required under “Insurance Requirements of Excluded Parties” section.
 - (5) It is recommended that the Enrolled Parties discuss the OCIP with their insurance agent to assure that other proper coverages are maintained.
- (c) **HART’s Insurance Obligations; Enrolled Party’s Obligations**
- (1) HART assumes no obligation to provide insurance other than that stated in the “OCIP Insurance Provided by HART” and “Other OCIP Insurance Provided by HART” sections. Unless specifically approved by HART in writing, the policies set forth in the “OCIP Insurance Provided by HART” and “Other OCIP Insurance Provided by HART” sections will cover only those operations of the Enrolled Parties performed in connection with the Work at the Project Site.
 - (2) Each Enrolled Party will review the OCIP coverages, limits of liability and insurance policies to satisfy itself that the coverage offered herein meets its needs and those of its subcontractor(s) at any tier. Nothing contained herein will be deemed to place any responsibility on HART for ensuring that the insurance provided by the OCIP is sufficient for the conduct of any Enrolled Party’s business or performance of the Work. HART reserves the right at its option, without obligation to do so, to furnish other insurance coverage of various types and limits, provided that such coverage is not less than that specified in the Contract Documents. The furnishing of insurance by HART through the OCIP will in no way relieve or limit or be construed to relieve or limit any Enrolled Party of any responsibility, liability, or obligation imposed by the Contract Documents or by law, including without limitation any indemnification obligations which any Enrolled Party has to HART hereunder.
 - (3) Any type of insurance coverage or limits of liability not provided by the OCIP which any Enrolled Party desires for its or its own protection will be its sole

responsibility and expense and will not be billed to HART. Each Enrolled Party represents and warrants that they have had the opportunity to read and analyze copies of the OCIP policies which are available upon request and understand the contents thereof. Any reference in this Contract, the OCIP Manual or elsewhere in any other Contract Documents as to amount, nature, type or extent of coverage provided under the OCIP and/or potential applicability to any potential claim or loss is for reference only and each Enrolled Party represents and warrants that they have not relied upon said reference but solely upon their own independent review and analysis of the OCIP policies in formulating any understanding and/or belief as to amount, nature, type or extent of any coverage provided by the OCIP policies and/or its potential applicability to any potential claim or loss.

(d) **Excluded Parties.** Excluded Parties as defined above will not be covered by insurance purchased by HART through the OCIP.

(e) **HART's Election to Discontinue OCIP Coverage; Termination of OCIP**

- (1) If HART, for any reason, is unable to furnish coverage, elects to discontinue the OCIP, modifies the limits of liability provided in the OCIP, or requests that an Enrolled Party withdraw from the OCIP, then upon thirty (30) days written notice from HART, the Enrolled Party specified by HART in such notice, will obtain at HART's expense, as approved by HART, and thereafter maintain during the performance of the Work, all or a portion thereof as specified by HART of the insurance required to be provided by Excluded Parties and as otherwise required under the Contract Documents, and HART will thereafter no longer be obligated to furnish all or a part of such insurance through the OCIP. The form, content, limits of liability and cost of such insurance and the insurer issuing such insurance secured by the Enrolled Party pursuant to the provisions of this section will be subject to HART's approval, which approval will not be unreasonably delayed or withheld.
- (2) Enrolled Parties will in accordance with the terms of the Contract request reimbursement for the cost of their insurance based on the Insurance Premium Worksheet completed at time of bid, prorated based on the percentage the Contract is complete at time of cancellation of the OCIP.
- (3) The OCIP insurance coverage will terminate on the "Contract Completion Date" as defined in the General Conditions, except for the extended completed operations coverage.
- (4) Should the coverage be cancelled prior to Contract acceptance by HART, coverage will be that stated in the "Insurance Required of Enrolled Parties" section in which case such coverage shall apply to all Work performed under the Contract.

(f) **Limits of Liability**

- (1) The furnishing of said insurance by HART will in no way relieve, or limit or be construed to relieve, or limit the Contractor(s) and Subcontractor(s) of any tier

of any responsibility or obligation whatsoever otherwise required under this Contract.

- (2) The Enrolled Parties and Excluded Parties agree that if said party has any cause of action against HART related to the Project (other than HART's obligation to pay for the materials and services provided herein), HART's sole liability will be limited to the coverage provided under the OCIP Insurance and Builders Risk Insurance provided by HART.

(g) **OCIP Insurance Provided By HART.** HART's representative will provide the Enrolled Party an OCIP Manual, which will include a summary of insurance coverage, loss control procedures and claims procedures as well as enrollment forms and reporting requirement for the OCIP. The Enrolled Party will use and comply with the requirements in said manual.

The OCIP Insurance provided by HART to Enrolled Parties is as follows:

- (1) **Workers' Compensation Insurance.** Statutory Limits of the Workers' Compensation Laws of the State of Hawaii and Coverage B - Employer's Liability limits:
 - (A) \$1,000,000 each accident for Bodily Injury by accident,
 - (B) \$1,000,000 each employee for Bodily Injury by disease, and
 - (C) \$1,000,000 policy limit for Bodily Injury by diseasecovering operations of the Enrolled Party performed on or incidental to Work at the Project Site.
- (2) **Commercial General Liability Insurance.** (Excluding Automobile and Professional Liability) in form providing coverage not less than a Commercial General Liability insurance policy, including hazards of explosion, collapse, underground, independent Contractor(s), completed operations for 10 years after "project completion date", contractual liability coverage and personal injury liability coverage for claims arising out of the Work for personal injury, bodily injury and property damage on an "occurrence" form. Policy or policies of insurance total available limits, to all insureds combined, will not be less than:
 - (A) \$2,000,000 per occurrence,
 - (B) \$2,000,000 personal and advertising injury aggregate,
 - (C) \$4,000,000 general aggregate (reinstating annually),
 - (D) \$4,000,000 completed operations aggregate term limit.Such insurance will not include coverage for products liability for any product(s) manufactured, assembled, or otherwise worked upon away from the Project Site for any Enrolled Party or excluded party performing such off-site work.
- (3) **Umbrella/Excess Liability Insurance.** Policy or policies written will intend to follow the terms and conditions of the primary Commercial General Liability

policy, except as specifically noted within the umbrella/excess liability form, and provide limits of not less than:

(A) \$200,000,000 general aggregate,

(B) \$200,000,000 products/completed operations aggregate, excess of Commercial General Liability and Employers Liability stated above, to all insureds combined, unless written notice is supplied to all Enrolled Parties under this program.

- (4) **Primary and Non-Contributing.** Workers' Compensation and Employers Liability insurance is primary and non-contributing with respect to any persons (other than HART's employees) covered by such insurance. Commercial General Liability and Umbrella/Excess insurance is primary insurance and non-contributing with any other insurance carried by the Enrolled Parties.
- (5) **Assignment:** In consideration of HART purchasing OCIP insurance as stated above, the Enrolled Parties will assign to HART all return premiums, premium refunds, dividends and other monies due or to become due in connection with the insurance which HART provides under the OCIP, all of which will inure to the benefit of the OCIP. The Enrolled Parties will execute such further documentation as may be required by HART to effect this assignment.
- (6) **Waiver of Subrogation Rights.** Except for the amount of the deductibles as stated elsewhere in this Contract, the Enrolled Parties each on their own behalf and on behalf of anyone claiming by, through or under them, whether by way of subrogation or otherwise, hereby waive any and all subrogation rights which they may now or hereafter have against each other and the parent, related and affiliated companies, the successors and assigns of each other, in connection with the performance of the Work to the extent such subrogation rights are not the result of any intentional wrongful act or omission of the party causing such loss and are covered losses under the insurance provided hereunder.

(h) **Other OCIP Insurance Provided by HART.** The following insurance coverage will be provided by HART for the Project, which does not require enrollment for coverage to apply:

(1) "All Risk" Builder's Risk

(A) Builder's "all risk" subject to policy terms and conditions shall cover all property in the course of construction, transit or off-site storage including the Work, plant hardware, miscellaneous equipment, buildings and structures, machinery, furnishings and other properties constituting a part of the Project from physical loss or damage caused by perils covered by a builder's all risk policy form insuring the interest of HART and Contractor(s) or Subcontractor(s) of any tier.

(B) Such insurance shall include but not limited to, coverage against; fire, lightning, hail, explosion, riot or civil commotion, and collapse.

- (C) Coverage shall include all materials, supplies and equipment that are intended for specific installation in the Project while such materials, supplies and equipment are located at the Project Site and while temporarily located away from the Project Site for the purpose of repair, adjustment or storage at one of the Contractor(s) or Subcontractor(s).
- (D) Coverage shall be written on a replacement cost basis and the limit of liability shall be the full replacement cost of the Work in progress.
- (E) The policy(ies) for such insurance will be secured and maintained by HART. The Contractor(s) and Subcontractor(s) must report the value, time and means/location of any such transit or storage to HART or HART's designee prior to transit or storage. The Contractor(s) and Subcontractor(s) will be responsible for any loss that is uninsured or underinsured arising out of such failure to notify HART or HART's designee.
- (F) This insurance will not include any tools or clothing of workers or any tools, equipment, protective fencing, scaffolding, and equipment owned, rented, leased or used by the Contractor(s) and Subcontractor(s) in the performance of the Work, not intended for specific installation into the Project.
- (G) HART will not be liable or responsible for any loss or damage whatsoever to the excluded items and the Contractor(s) and Subcontractor(s) will indemnify and hold harmless HART, from any claims or causes of action brought by any person or parties as a result of loss or damage to such excluded items.
- (H) The Contractor(s) and Subcontractor(s) waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Contractor(s) and Subcontractor(s) will require similar waivers from their Subcontractor(s).
- (I) The Builder's Risk policy will be endorsed (a) waiving the carrier's rights of recovery under subrogation against the Contractor(s) and Subcontractor(s) whose interest is insured under such policy, (b) each policy will contain a provision that the policy will not be cancelled or allowed to expire until at least thirty 60 days' prior written notice has been given to the Contractor(s) and Subcontractor(s), and (c) policy will be primary and non-contributory.
- (J) Any loss insured as outlined above is to be adjusted with HART and made payable to HART as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause. The Contractor(s) and Subcontractor(s) will pay such Subcontractor(s) an applicable share of any insurance monies received by the Enrolled Parties and by appropriate agreement, written where legally required for validity, will require Subcontractor(s) to make payments to their sub-subcontractor(s) in similar manner.

- (K) Contractor(s) and Subcontractor(s) will not make a claim against the Builders Risk policy without written notice to HART as the primary holder of the policy.

(i) **Deductible Chargeback.** Notwithstanding the actual policy deductible, each Contractor or Subcontractor at any tier involved in a covered loss will be responsible for up to the first \$25,000 of that loss, to the extent losses payable are attributable to its acts or omissions, or the acts or omissions of its Subcontractor(s) of any tier, as determined by HART. The deductible applying to Contractor(s) and Subcontractor(s) is the responsibility of the Contractor(s) and Subcontractor(s) and may be withheld from progress payments if not reimbursed. HART is responsible for any and all remaining amounts up to the policy deductible.

(j) **Enrolled Parties Responsibilities**

- (1) **Contract Insurance Cost.** Failure of Enrolled Parties to enforce the enrollment of their subcontractor(s) at any tier does not relieve the Enrolled Parties of the financial responsibility for their insurance deductions. HART maintains the right to pursue insurance deductions for all Subcontractors at any tier through the first tier Contractor(s).
- (A) Contractors bid price for the Work shall be net of insurance, excluding all costs for Workers' Compensation, General Liability, and Umbrella/Excess as described in the "Insurance Required of Enrolled Parties" section. However, each Enrolled Party is required to clearly identify in its escrow documents the total cost of Workers' Compensation, Commercial General Liability and Umbrella/Excess Liability insurance that has been excluded from its base bid price for the proposed scope of Work, as if they were required to provide the coverage and limits of liability for onsite Work
- (B) The Enrolled Parties will complete and submit in its escrow documents the Insurance Premium Worksheet, identifying their insurance costs, regardless of the risk financing technique employed for Workers' Compensation and General /Excess Liability exposures, including but not limited to insurance premiums, expected losses within any retention or deductible amount, loss handling expenses and administrative expenses. The Enrolled Parties warrant by submission of its bid that all insurance premium calculations have been correctly identified and removed from their bid price.
- (C) If the insured party carries a deductible under any of its policies, then the following shall also be included in the Enrolled Parties escrow documents:
- (i) Copies of the rating pages from the deductible agreement, **or**
- (ii) Three (3) years of loss history for all entities that retains losses. Paid, outstanding and total incurred losses must be evidenced by policy period, **and**
- (iii) Three (3) years of payroll history for all entities

- (D) If Contractor(s) will be subcontracting out Work and has not yet identified all of its Subcontractor(s) or does not have the insurance cost for its Subcontractor(s), the Contractor(s) should include 2.75% of the subcontracted value on its Insurance Premium Worksheet, to account for its Subcontractor's excluded insurance costs.
- (E) All contract awards and subsequent changes orders will be submitted and processed net of insurance and labor rates will be reduced to reflect the insurance reduction.
- (F) Upon completion of Work, or on policy expiration, or processing of subsequent changes orders, HART's insurance carriers have the right to audit payroll records and the Enrolled Parties escrow documents.
- (G) Costs for overlapping insurance coverage maintained by the Enrolled Parties will not be reimbursable. No OCIP Insurance costs, as provided by HART will be attributable to the Work. All changes orders will be submitted net of insurance and labor rates will be reduced to reflect the insurance reduction.
- (H) If any Enrolled Party does not provide the OCIP Administrator with information sufficient to allow verification of the applicable insurance cost, then the OCIP Administrator may independently calculate an appropriate insurance cost on based on undiscounted or "manual" rates in which case the manual rates shall apply.
- (I) **Conflicts:** The provisions of the Agreement will govern in the event of a conflict between the Agreement and the OCIP Manual.
- (J) **Warranty Statement:** The Enrolled Parties will provide and warrant the accuracy of the information provided on the Insurance Premium Worksheet and Enrollment Package, including the supporting documents (copies of the policy declaration page and policy rate pages or Deductible Agreement pages if on a large deductible program or a letter from your insurance carrier evidencing the deductible rate and loss content rate) and/or any change order forms and agrees that HART, the OCIP Administrator and/or the OCIP insurance companies may, but are not required to audit the Contractor(s) and/or Subcontractors records to confirm the accuracy for any and all allowable insurance credits including, the changes to the Contract section of this Contract. The Enrolled Parties agree and warrant that HART is entitled to and may collect additional insurance costs as may be developed as a result of said audits and/or changes/change orders as may be agreed to in connection with the Work. The Enrolled Parties agree to provide insurance records, policies, declaration pages of policies, certificates of self-insurance and such other documents as may be requested in order to assure the accuracy of insurance data.
- (K) **Application For Insurance:** The Enrolled Parties shall submit a completed Enrollment Application within fifteen (15) days after contract

award for contracts awarded after the OCIP has been initiated by HART. Enrolled Parties under Contract with HART prior to initiation of the OCIP shall submit a completed Enrollment Application within fifteen (15) days after receipt of the Enrollment Application from the OCIP Administrator. In addition, the Enrolled Parties will cooperate with the OCIP Administrator regarding such application. An OCIP Manual will be distributed to the Enrolled Parties in connection with this Contract. This manual describes the procedures to be followed by the Enrolled Parties for enrolling in and complying with the OCIP, and is hereby included as part to of this Contract by reference. The Enrolled Parties will complete the Enrollment Application and other such forms contained in the Enrollment Package as are applicable to their Agreement, as well as complete the monthly payroll reporting form and follow the procedures as outlined in the OCIP Manual. The Enrolled Parties will include these insurance specifications in its Contract for Subcontractor(s) of any tier providing Work at the Project Site and will ensure that such Subcontractor(s) of any tier receive the OCIP Manual, enroll in the OCIP, and comply with the OCIP procedures.

- (L) **Cooperation:** The Enrolled Parties will:
- (i) Furnish to HART, its insurance representatives or the insurance company all information and documentation which the OCIP may require in connection with the issuance of any policies, in such form and substance as HART or its designee may require.
 - (ii) Furnish to HART, its insurance representative or the insurance company, on-site payroll reports on the form as required and described in the OCIP Manual by the 15th of the following month for the prior month (including months with no payroll).
 - (iii) Permit HART, its insurance representative and/or the insurance company to access and audit Enrolled Parties' escrow documents and audit the Enrolled Parties books and records and provide documentation as may be required to assure accuracy of those payroll reports. The Enrolled Parties agree that their failure to submit documents as required may result in withholding progress payments until said payroll reports are received by HART or its designee.
 - (iv) Promptly comply with the requirements, obligations and recommendations of HART, its insurance representative or insurance company so that the OCIP may be properly administered and so that the insurance companies will continue to provide the coverage as specified in this the document under the OCIP. If the Enrolled Parties should fail to comply with any requirement, obligation or recommendation, HART may withhold any payments due the Enrolled Parties until such time as they will have performed

the requirements, obligations and recommendations as required by this Contract.

- (v) The Enrolled Parties will provide HART and HART's representative with all information necessary for the issuance of said policies and will maintain and make available to the insurance companies payroll records and such other records relating to the Work as may be necessary for the proper computation of the insurance premiums.
- (vi) The Enrolled Parties will cooperate with HART with regard to administration and operation of OCIP. The Enrolled Parties' responsibilities will include but are not limited to: operations and insurance information; inclusion of OCIP provisions in all subcontracts; notification to HART's representative of all subcontracts awarded; maintenance and provision of monthly payroll records and other records as necessary for premium computation; OCIP Notice of Work Completion form completed as part of the punch-list process; compliance with applicable loss control (safety) and claims reporting procedures; maintenance of an HIOSH or OSHA Log to be provided monthly to HART and/or HART's Representative.
- (vii) Milestone/Progress payments will be withheld for failure of the Contractor(s) to comply with the OCIP requirements as defined herein and enforce Subcontractor(s) compliance.

(k) **Insurance Required of Enrolled Parties.** The OCIP provided coverage is for Work at the Project Site only. For Work performed away from the Project Site not covered by OCIP because of the Work location and for coverage not otherwise provided by the OCIP the Enrolled Parties will provide and maintain the types of insurance described below with a company or companies legally authorized to transact insurance business in the state of Hawaii and be rated at least A- VIII in the current A.M. Best ratings or must be otherwise acceptable to HART. The Enrolled Parties will maintain the specified insurance coverage until all obligations under this Contract are satisfied.

- (1) **Workers' Compensation and Employer's Liability:** The Enrolled Parties will maintain Statutory Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over its employees while engaged in the performance of the Work at locations other than those covered under the OCIP. This insurance will also cover any Enrolled Parties' employees working away from the Project Site, employees not otherwise covered under OCIP, employees coming on the Project Site after the Project has been accepted by HART as complete, and Subcontractors' employees after Subcontractors have finally performed its contract.

Workers' Compensation coverage will comply with the statutory limits of the State of Hawaii, and will provide for Employers Liability insurance with limits as follows:

- (A) \$1,000,000 bodily injury by accident for each person;

- (B) \$1,000,000 bodily injury by disease for each person; and
 - (C) \$1,000,000 bodily injury by disease—policy limit.
- (2) **Commercial General Liability:** insurance for premises and operations away from the Project Site or not otherwise covered by OCIP of the Enrolled Parties (including products liability for any product manufactured, assembled or otherwise Worked upon away from the Project Site) in a form providing coverage not less than that of Commercial General Liability insurance policy ("Occurrence Form") for operations of the party required to furnish same, including hazards of elevators, independent Contractors, products and completed operations, with contractual liability and personal advertising injury liability coverage for claims arising out of the Work hereunder for personal injury, bodily injury and property damage in policy or policies of insurance such that the total available limits combined will not be less than:
- As respects Contractors and Subcontractors of any tier \$1,000,000 per occurrence, \$2,000,000 personal and advertising injury aggregate, \$2,000,000 general aggregate limit and \$2,000,000 aggregate products and completed operations.
- (3) **Commercial Automobile Liability:** Covering all owned, hired, borrowed, leased, or non-owned automobiles. Such insurance will provide coverage not less than that of the Commercial Automobile Liability policy in limits not less than:
- (A) Contractors and all Subcontractor(s) of any tier, \$1,000,000 Combined Single Limit each occurrence for Bodily Injury and Property Damage.
- (4) **Umbrella/Excess Liability:** Umbrella/Excess liability insurance, insuring against bodily injury, personal and advertising injury, and property damage, and all other coverage as specified above; (Employers' Liability, Commercial General Liability and Commercial Automobile Liability). The limits of liability are as follows:
- (A) Contractor(s), \$10,000,000 each occurrence, \$10,000,000 annual aggregate limit and \$10,000,000 products and completed operations aggregate.
 - (B) As respects Subcontractors of any tier, \$5,000,000 each occurrence, \$5,000,000 annual aggregate limit and \$5,000,000 products and completed operations aggregate.
- (5) **Contractor's Equipment:** The Enrolled Parties are responsible for their construction tools and equipment, including but not limited to construction trailers and their contents, temporary scaffolding, whether owned, leased, rented, borrowed or used at the Project Site; and the Enrolled Parties agree that HART will not be responsible for any loss or damage to its tools and equipment. If insured, the Enrolled Parties' insurance policy covering tools and equipment will include a waiver of subrogation in favor of HART, designer, engineer and all Enrolled Parties. If uninsured, the Enrolled Parties

will hold harmless HART, designer, engineer, and all other Enrolled Parties for loss or damage to their tools and equipment.

- (6) **Contractors Pollution Liability.** Coverage will apply to claims as a result of Bodily Injury, Property Damage or Clean-up Costs caused by Pollution Conditions resulting from Covered Operations that are performed by or on the behalf of the Contractor at the Project site. Coverage shall also include transportation, disposal site coverage and 10 years of completed operations. Mold coverage is included.

(A) Coverage Limits:

- (i) \$10,000,000 Each Occurrence
- (ii) \$10,000,000 General Aggregate

In the Premium Worksheet, the Contractor shall provide a separate pricing for Contractors Pollution Liability. If the Contractor or Subcontractors can satisfactorily demonstrate to HART that its Work does not require Contractors Pollution Liability or that the limits should be reduced, HART will allow a deductive change order based on the separate pricing provided by the Contractor and its subcontractors on their Premium Worksheets. Otherwise, the Contractor and its subcontractors at any tier shall be required to carry this coverage.

(l) **Insurance Requirements of Excluded Parties.** Excluded parties as defined, performing Work will obtain and maintain, and will require each of its excluded Subcontractors to obtain and maintain, the insurance coverage specified in the “Insurance Required of Enrolled Parties” section. Such insurance will be primary and non-contributing with any other insurance and be in a form and from insurance companies reasonably acceptable to HART. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy. HART reserves the right to require higher limits of liability or other insurance coverage as appropriate.

(m) **Provisions Applying to Insurance Requirements of Enrolled and Excluded Parties**

- (1) **Additional Insureds:** Each policy required (except Worker's Compensation) will name as additional insured HART and their Board of Directors, officers, employees, representative, consultants, agents, Construction Manager, and Construction Manger’s subcontractors, the City and County of Honolulu, the State of Hawaii, the General Contractor, their respective parent companies, their subsidiaries, related and affiliated companies of each and the officers, directors, agents, employees and assigns of each. General Liability coverage maintained by contractors and sub -contractors shall contain Additional Insured endorsement CG 2010 and CG 2037 or equivalent. Completed Operations coverage shall be maintained for a minimum of ten years after contract expiration or project completion, whichever occurs later.
- (2) **Waiver Of Subrogation:** The Enrolled Parties and their respective insurers providing the required coverage as indicated in Workers’ Compensation and Commercial General Liability, Umbrella/Excess Liability or any required

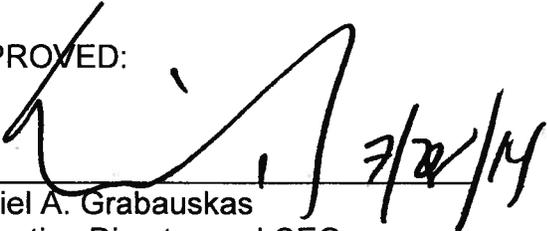
coverages, will waive all rights of recovery against HART and HART's agents, officials, and employees.

- (3) Each Enrolled Party will pay all insurance premiums for such insurance, including any charges for required waivers of subrogation or the endorsement of additional insureds.
- (4) **Primary And Non-Contributing:** Insurance coverage for Work away from the Project Site, or as otherwise noted, required of the Enrolled Parties is primary and non-contributory.
- (5) **Certificates of Insurance:** The Enrolled Parties and Excluded Parties will provide certificates of insurance to HART as evidence that policies specified in this section providing the required coverage, conditions, and limits are in full force and effect. Certificates of insurance will be labeled and addressed as follows:

Identify Contract by HART Contract Number
Honolulu Authority for Rapid Transportation
Attention: Procurement Department
1099 Alakea Street Suite 1700
Honolulu, HI 96813

- (6) **Notice of Cancellation:** All insurance policies will include a requirement providing for at least thirty (30) days prior written notice to HART of any cancellation or reduction of coverage. If any such notice is given, HART will have the right to require that a substitute policy be obtained prior to said cancellation with appropriate evidence thereof at the discretion of HART. The Enrolled Parties and excluded parties will immediately notify HART and will cease operations on the occurrence of any such cancellation or reduction and will not resume operations until the required insurance is in force and new certificates of insurance have been filed with HART.

APPROVED:



Daniel A. Grabauskas
Executive Director and CEO
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