

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("this Agreement") is entered into and is effective as of October 11, 2013 (the "Effective Date"), by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, with its principal place of business and mailing address at Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813 ("Assignor" or the "City"), and the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a semi-autonomous agency of the City and County of Honolulu, with its principal place of business and mailing address at 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813 ("Assignee" or "HART").

WITNESSETH:

WHEREAS, the City, by HART, is constructing the Kamehameha Highway Guideway, the Airport Guideway, and the City Center Guideway Sections (the "Project") of the Honolulu Rail Transit Project, which is a fixed guideway system ("HRTTP");

WHEREAS, the Project is proposed to be situated within highway rights-of-way that are under the jurisdiction, authority, and control of the State of Hawaii, Department of Transportation ("State");

WHEREAS, in connection with the HRTTP, Assignor and the State entered into that certain Master Agreement between the City and County of Honolulu and the State of Hawaii for the Honolulu Rail Transit Project (Sections to and from: Kamehameha Highway Guideway, Airport Guideway and City Center Guideway) dated October 11, 2013 (the "Master Agreement");

WHEREAS, the Master Agreement contemplates Assignor and the State entering into incidental or related agreements in connection with the HRTTP, including, but not limited to, Joint Use and Occupancy Agreements and Airport Special Provisions (collectively, "Related Agreements"; the Master Agreement and the Related Agreements being collectively called the "Agreements");

WHEREAS, under Section 17-103 of the Revised Charter of the City and County of Honolulu 1973, as amended (the "Charter"), HART has the authority to develop, operate, maintain, and expand the HRTTP;

WHEREAS, Ordinance 07-001 (2007) ("Ordinance 07-001") requires that capital costs to construct the HRTTP shall be paid entirely from general excise and use tax surcharge revenues, interest earned on those revenues, and any federal, state, or private revenues;

WHEREAS, HART, as a semi-autonomous agency of the City, negotiated the terms and conditions of the Agreements; and

WHEREAS, in accordance with the provisions of the Charter and Ordinance 07-001, Assignor wishes to assign all of its rights, duties, liabilities, and obligations under the Agreements to Assignee and Assignee wishes to assume all such rights, duties, liabilities and obligations under the Agreements;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. **TERMS.** Terms not defined herein shall have the meanings ascribed to them in the Agreements.
2. **ASSIGNMENT.** Assignor hereby assigns, transfers, sets over and delivers unto Assignee, and its successors and permitted assigns, all of the right, title and interest of Assignor and all of Assignor's rights, duties, liabilities and obligations in and to the Agreements, to have and to hold the same with the benefit of all rights, powers, promises, covenants and agreements which are set forth in the Agreements, as set forth in the Agreements.
3. **ASSUMPTION.** Assignee, for itself and its successors and assigns, hereby agrees to succeed to and to assume all of Assignor's rights, duties, liabilities and obligations in and to the Agreements. Furthermore, ASSIGNEE does hereby promise, covenant and agree that Assignee will observe and perform all of the covenants in the Agreements contained and on the part of Assignor to be observed and performed, including, without limitation, the obligation to pay for all capital costs to construct the H RTP;
4. **FUTURE RELATED AGREEMENTS.** Assignor and Assignee hereby agree that, if the City is required by to enter into any future Related Agreements with the State (the "Future Agreements"), the City shall have the right to approve of the terms and conditions of the Future Agreements and, upon execution of the Future Agreements by the parties thereto, the rights, duties, liabilities and obligations of the City in and to such agreement(s) shall be assigned to HART and HART shall assume all such rights, duties, liabilities and obligations in and to the Future Agreements.
5. **INDEMNITY.** Assignee will indemnify, defend and hold Assignor harmless from and against all obligations, liabilities, claims, accounts, and demands (including, without limitation, attorneys' fees) arising or accruing under the Agreements and Future Agreements.
6. **GENERAL PROVISIONS.** The parties hereto agree that (1) the terms "Assignor" and "Assignee," as used herein, or any pronouns used in place thereof, shall mean and include the named Assignor and Assignee and their respective successors and permitted assigns, and shall be so construed such that, whenever applicable with reference to any of them, the use of the singular shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include either or both of the other genders, and (2) except as specifically set forth in this Agreement, all terms and conditions of the Agreements shall remain in full force and effect.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of the Effective Date.

“Assignor” or “City”

CITY AND COUNTY OF HONOLULU



Michael D. Formby, Director
Department of Transportation Services

APPROVED AS TO FORM
AND LEGALITY



Deputy Corporation Counsel
For the City

KRISHNA F. JAYARAM

“Assignee” or “HART”

HONOLULU AUTHORITY FOR RAPID
TRANSPORTATION



Daniel A. Grabauskas
Executive Director and CEO

APPROVED AS TO FORM
AND LEGALITY



Deputy Corporation Counsel
For HART

GARY Y. TAKEUCHI