

CONSULTANT SERVICES CONTRACT

THIS CONTRACT, made by and between the COUNTY OF HAWAII, a municipal corporation, by HARRY KIM, its Mayor, whose address is 25 Aupuni Street, Hilo, Hawaii 96720, hereinafter referred to as "County" and PARSONS BRINCKERHOFF QUADE & DOUGLAS, INC. a Hawaii corporation, whose address is 1001 Bishop Street, Suite 2400, Honolulu, Hawaii 96813, hereinafter referred to as "Consultant,"

Witnesseth:

WHEREAS, in recognition of the rapidly deteriorating vehicular traffic conditions in the Waimea area of North Kohala, the Planning Department has determined the need to identify short-term solutions that can be implemented prior to the realization of the existing long-range roadway improvement projects planned for the Waimea area;

WHEREAS, a selection committee represented by the Planning Department, Department of Public Works, and a member from the community duly determined that the Department of Public Works professional services categories applicable to Civil Engineers and Traffic Engineers and recommended the selection of Consultant based on criteria including experience and professional qualifications, past performance on projects of similar scope, capacity to accomplish the work in the required time, community planning experience, extent of involvement firm's principals, Big Island experience, and transportation planning experience;

WHEREAS, the Consultant is qualified, ready, willing and able to provide such services;

NOW, THEREFORE, in consideration of the premises set forth herein, the County and the Consultant hereby agree to the following:

A. Employment of Consultant. The County hereby agrees to engage the Consultant and the Consultant hereby agrees to perform the services hereinafter set forth. The Consultant represents that it has, or will secure at its own expense, all personnel required in performing the services under this contract. All of the services required hereunder shall be performed by the Consultant or under its supervision, and none of the work or services covered by this contract shall be subcontracted without the prior written approval of the County.

B. Best Effort. Consultant agrees that it will, at all times, faithfully, industriously, and to the best of its ability, experience, and talents, perform all of the duties that may be required of it pursuant to the express and implicit terms hereof to the reasonable satisfaction of the County.

C. Scope of Services. The Consultant shall do, perform and carry out in a satisfactory, and proper manner, as determined by the Planning Director or as may be modified by written agreement by the parties as hereinafter set forth, the services described in the Exhibit A, and incorporated herein by reference.

D. Services of the County.

1. The various participating departments of the County shall place at the disposal of the Consultant all pertinent information that it may have in its possession or to which it may have access.
2. The Planning Director shall cooperate fully with the Consultant and shall coordinate all information needs and requests of the Consultant, including but not limited to arranging for Consultant's access to various County departments for information relevant to this contract.
3. The Planning Director shall process invoices from the Consultant within thirty (30) days of receipt of the invoices.

E. Term of the Contract. The services of the Consultant under this contract shall commence immediately from the date of this contract and shall be for a period not exceeding Eight (8) Months, unless otherwise extended by written agreement. Upon fulfillment of the scope of work, as determined by the Planning Director, the Planning Director shall notify the Consultant in writing of satisfactory completion of this contract.

F. Compensation.

1. Total compensation shall include the contract amount of ONE HUNDRED SEVENTY THOUSAND DOLLARS (\$170,000.00) (including taxes and expenses), which includes a fixed fee of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) and reimbursable items not to exceed TWENTY THOUSAND DOLLARS (\$20,000).
2. The fixed fee of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) (including taxes and expenses) is payable on a percent completed basis. Invoices may be submitted monthly, shall itemize the work performed, shall be subject to verification by the Planning Director, and shall be payable within 30 days of submittal of invoices.
3. Consultant shall be compensated on a time and material basis not to exceed TWENTY THOUSAND DOLLARS (\$20,000.00) for additional public meetings and/or studies beyond the basic scope of work as approved by the Planning Director. Costs shall be reimbursed based on rates established in Exhibit A. Invoices shall include supporting documentation of actual expenses, such as receipts or similar verification of expenditure.
4. In the event of termination, Consultant shall be paid for such time and expenses as was expended prior to notification of termination.

G. Ownership. It is understood that the County is the exclusive owner of all work products developed by the Consultant for the County and that the Consultant is prohibited from selling such work to other parties.

H. Employment Status. It is agreed and understood that the Consultant shall not be entitled to the benefits and privileges of an employee of the County of Hawaii under the County's Civil Service System, and it is further agreed and understood that the Consultant shall be excluded from participating in any fringe benefits resulting from work performed under this contract.

I. Termination. It is agreed and understood that the Consultant may terminate this contract upon mutual agreement after ten (10) days written notice to the County. In the event of any violation by the Consultant of any of the terms of this contract, the County may elect any remedy available to it in law or in equity without limitation, including but not limited to, termination of this contract for independent services without prior notice in which event the County shall be liable to pay for such satisfactory services performed as of the day of the breach of this contract. All materials, data, documents or information gathered, compiled, produced, or obtained pursuant to this contract shall be the property of the County, and the Consultant shall immediately, upon termination of this contract, deliver said materials to the County.

It is understood and agreed that any services to be provided in accordance with the terms of this contract may be terminated immediately, in whole or in part, upon a finding by the County that the services must be provided by public employees pursuant to Civil Service Laws or that such services will be discontinued. It is further understood, that should such a finding be made, the County will not be liable under this contract for any resulting damages, and such a termination will not be considered a breach of this agreement.

J. Modification of Contract. No waiver or modification of this agreement or any covenants, conditions, or limitations herein contained shall be valid unless in writing and duly executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence of any proceedings, arbitration, or litigation between the parties hereto arising out of or affecting this agreement, or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing, duly executed as aforesaid, and the parties further agree that the provisions of this section may not be waived except as herein set forth.

K. Changes. The County may from time to time require changes in the scope of services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, shall be incorporated by written amendment to this agreement.

L. Liability. The Consultant shall indemnify, defend, and hold harmless the County from claims, suits, actions, damages, and costs resulting from its errors, omissions, and negligent acts in the performance of these services.

M. Assignment. Portions of this contract may be sub-consulted; however, not without the County's prior written permission.

N. Non-Discrimination. The Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant will assure that applicants for employment and employees are treated fairly during employment without regard to their race, color, religion, sex, or national origin. Such actions 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 of training.

O. Tax Clearance. In accordance with section 103-53, Hawaii Revised Statutes, this contract shall not be executed by the County until receipt of tax clearances from the State Director of Taxation and the Internal Revenue Service. In addition, final payment on the contract shall be withheld until the receipt of tax clearances from the State Director of Taxation and the Internal Revenue Service.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed this _____ day of _____, 2006.

RECOMMENDED APPROVAL:

COUNTY OF HAWAII

CHRISTOPHER YUEN
Planning Director

By HARRY KIM
Its Mayor

APPROVED AS TO FORM
AND LEGALITY:

CONSULTANT:
PARSONS BRINCHERHOFF QUADE &
DOUGLAS, INC.

CORPORATION COUNSEL

By Tadahiko Ono
Its Vice-President

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this _____ day of _____ 2006, before me personally appeared HARRY KIM, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Hawaii, a municipal corporation of the State of Hawaii; that the seal affixed to the foregoing instrument is the corporate seal of the said County of Hawaii; that the foregoing instrument was signed and sealed in behalf of the County of Hawaii by authority given to said Mayor of the County of Hawaii by Section 5-1.3(g) of the County Charter, County of Hawaii (1991), as amended; and said HARRY KIM acknowledged said instrument to be the free act and deed of said County of Hawaii.

Notary Public, State of Hawaii

My commission expires: _____

STATE OF HAWAII)
) SS.
COUNTY OF _____)

On this _____ day of _____ 2006, before me personally appeared TADAHIKO ONO, Vice-President of PARSONS BRINCHERHOFF QUADE & DOUGLAS, INC., a Hawaii corporation, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he/she is authorized and executed the same as the corporation's free act and deed.

Notary Public, State of Hawaii

My commission expires: _____