

**MEMORANDUM OF UNDERSTANDING**

**Between**

**STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION**

**And**

**CITY AND COUNTY OF HONOLULU, DEPARTMENT OF TRANSPORTATION SERVICES; CITY AND COUNTY OF HONOLULU, HONOLULU AUTHORITY FOR RAPID TRANSPORTATION; HAWAII COUNTY, DEPARTMENT OF PUBLIC WORKS; MAUI COUNTY, DEPARTMENT OF PUBLIC WORKS; KAUAI COUNTY, DEPARTMENT OF PUBLIC WORKS; AND THE OFFICE OF HAWAIIAN AFFAIRS**

**I. PURPOSE:**

To establish and operate a Unified Certification Program (UCP) for the State of Hawaii whereby the State of Hawaii, Department of Transportation (HDOT) Office of Civil Rights will provide state-wide certification, renewal of certification, and de-certification for the HDOT Disadvantaged Business Enterprise (DBE) Program. The HDOT's Airport, Harbor and Highway Divisions, the Statewide Transportation Planning Office and the Oahu Metropolitan Planning Organization are direct recipients of funds from the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA) and/or the Federal Transit Administration (FTA) and are located within HDOT's organizational structure.

**II. CERTIFYING AGENCY:**

Hawaii Department of Transportation

**III. PARTICIPANTS:**

HDOT; City & County of Honolulu, Department of Transportation Services (DTS); City and County of Honolulu, Honolulu Authority for Rapid transportation (HART); Hawaii County, Department of Public Works (DPW-H); Maui County, Department of Public Works (DPW-M); Kauai County, Department of Public Works (DPW-K); and the Office of Hawaiian Affairs ("OHA"). DTS, DPW-H, DPW-M, DPW-K, and OHA are hereinafter collectively referred to as "PARTICIPANTS."

**IV. AUTHORITY:**

Title 49 Code of Federal Regulations (CFR), Section 26.81, requires that all United States Department of Transportation (USDOT) recipients in Hawaii participate in a UCP. 49 CFR 26.81 further requires that the Unified Certification Program follow all the Certification Standards of 49 CFR, Part 26, Subpart D, and the Certification Procedures in 49 CFR, Part 26, Subpart E.

## V. RESPONSIBILITIES

1. HDOT agrees that it has been and will continue to act as the sole certifying agency for the USDOT DBE Program in the State of Hawaii. All applicants that are seeking DBE certification or renewal of certification will be directed to the HDOT which will undertake the responsibility to review, investigate and determine DBE eligibility.
2. The DBE Program Certifier shall be responsible for investigating, reviewing, and making a determination regarding the initial certification application of a firm that is interested in participating in the DBE Program, as well as the determination regarding the renewal or decertification of an existing DBE firm.
3. The Civil Rights Coordinator shall process and hear appeals made by DBE firms that have been de-certified. As stated in the HDOT's DBE Program Plan, the Civil Rights Coordinator shall not be involved in the initial de-certification review and determination. The Civil Rights Coordinator shall also be responsible for providing the USDOT with information requested by the USDOT which pertains to the denial of a firm's initial application for DBE certification.
4. HDOT's DBE Program Plan was approved by the USDOT in February 2005 and adopted by the PARTICIPANTS. It specified the responsibilities of the HDOT DBE Liaison Officer (DBELO) and each HDOT DBELO division, planning office and sub-recipient.
5. HDOT agrees that it will undertake certification and renewal of certification reviews in accordance with the certification standards that are included in 49 CFR, Subpart D, 26.61, 26.63, 26.65, 26.67, 26.69, 26.71 and 26.73, as may be amended, and the certification procedures of 49 CFR, Subpart E, 26.81, 26.83, 26.86, 26.87, 26.89, and 26.91, as may be amended, and any other applicable statute, rule, or regulation that is implemented by HDOT in its DBE Program Plan.
6. HDOT agrees that it will not process an application for certification from a firm having its principal place of business outside the State of Hawaii if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The HDOT will share its information and documents concerning the firm with other UCPs that are considering the firm's application.
7. HDOT agrees that it will cooperate fully with the oversight, review, and monitoring activities of the USDOT, and will implement USDOT's directives and guidance concerning certification matters.

8. HDOT agrees that it will compile, maintain, and make available on its website a DBE Directory consisting of all eligible DBEs. The DBE Directory will include the firm's name, address, type of work that the firm has been certified to perform, and the date of the most recent certification. The DBE Directory shall be updated weekly and posted on HDOT's website.
9. HDOT also agrees that it will accept from the PARTICIPANTS, referrals relating to complaints concerning DBE eligibility, and will review complaints in accordance with the provisions of 49 CFR Subpart D, 26.61, 26.63, 26.65, 26.67, 26.69, 26.71 and 26.73, as may be amended, 49 CFR Subpart E, 26.81, 26.83, 26.85, 26.87, 26.89, and 26.91, as may be amended, and any other applicable statute, rule, or regulation that is implemented by HDOT in its DBE Program Plan.
10. The PARTICIPANTS agree to refer all complaints that may be filed by any individual, firm, or agency regarding the eligibility of a DBE firm to HDOT, and HDOT agrees to investigate and issue a written decision on such complaints.
11. HDOT shall advise all new applicants that have been denied certification of their right to appeal the HDOT's denial of their certification application to the USDOT, provided that the appeal is filed within 90 days from the date of the applicant's receipt of the written notification of denial from HDOT. The appeal must be filed with the USDOT, Office of Civil Rights, 1200 New Jersey Ave., S.E. Washington D.C. , 20590.
12. HDOT shall advise all firms that have been decertified by the HDOT (hereinafter "Decertified Firm") of their right to an administrative hearing before a neutral third party. HDOT agrees to provide a neutral third party to conduct the hearing challenging the HDOT's decision to decertify a firm for failure to meet the DBE eligibility criteria. As provided in the DOT DBE Program Plan, the HDOT Civil Rights Coordinator or a designated representative, who has not participated in the initial fact-finding, review, or decertification decision, shall conduct the hearing (hereinafter "Hearings Officer"). The Hearings Officer shall be knowledgeable in the DBE Program and Plan. If the Decertified Firm is not satisfied with the decision of the Hearings Officer, the Decertified Firm may file an appeal of the decision with the USDOT by mailing a written appeal to the U.S. Department of Transportation, Office of Civil Rights 1200 New Jersey Ave., S.E. Washington, D.C. 20590 within 90 days of the Decertified Firm's receipt of a copy of the decision from the Hearings Officer.
13. The PARTICIPANTS agree to refer all applicants seeking DBE certification to HDOT.
14. The PARTICIPANTS agree to abide by all HDOT and USDOT's DBE certification and decertification findings and determinations.

15. The PARTICIPANTS agree that it shall not count a firm as a DBE unless the firm has been certified as a DBE as follows: 1) prior to the opening of a sealed bid and 2) at contract award for all other methods of procurement.
16. The PARTICIPANTS agree to provide all reasonable assistance to ensure that HDOT has sufficient resources as may be requested by HDOT to facilitate the HDOT review and processing of DBE certification applications.
17. HDOT has been the single certifying agency since the adoption of the DBE Program. Upon approval of the UCP, the HDOT shall continue in this capacity and the PARTICIPANTS agree to fully implement all terms and conditions of the UCP no later than 18 months following the approval of the agreement by the FHWA.

**VI. LIMITATIONS:**

Nothing in this Memorandum of Understanding between HDOT and the PARTICIPANTS shall be construed as limiting or expanding the statutory or regulatory responsibilities of the HDOT or any PARTICIPANT with regard to the implementation and operation of the DBE Program. Each provision of this Memorandum of Understanding is subject to the laws and regulations of the State of Hawaii and of the United States.

Nothing in this Memorandum of Understanding shall be construed as expanding the liability of any party with regard to the DBE Program. In the event of a lawsuit or claim arising from this Memorandum of Understanding, or the HDOT's DBE certification review or determination, each party shall be responsible for its own defense, and all costs related thereto. No party shall be required to provide indemnification of any other party.

**VII. EFFECTIVE DATE:**

This Memorandum of Understanding shall become effective immediately upon its execution by all the parties.

**VIII. METHOD OF TERMINATION:**

This Memorandum of Understanding shall remain in force until the USDOT DBE Program terminates or changes its requirements.

**IX. AMENDMENTS:**

No amendment of this Memorandum of Understanding shall be effective until it has been approved by the USDOT and the Director of HDOT has approved the amendment in writing, and the PARTICIPANTS and HDOT execute a written amendment of this Memorandum of Understanding.

State of Hawaii, Department of Transportation

  
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GLENN M. OKIMOTO  
Director

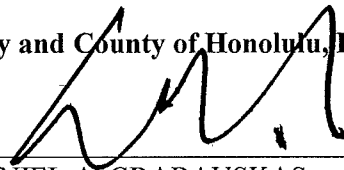
SEP 10 2013  
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Date

City and County of Honolulu, Department of Transportation Services

  
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MICHAEL D. FORMBY  
Director

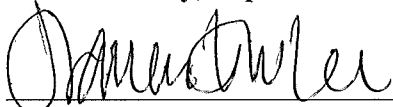
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Date

City and County of Honolulu, Honolulu Authority for Rapid Transportation

  
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DANIEL A. GRABAUSKAS  
Executive Director and CEO

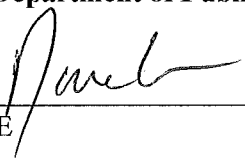
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Date

Hawaii County, Department of Public Works

  
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WARREN H.W. LEE  
Director


30 SEP 2013  
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Date

Maui County, Department of Public Works and Environmental Management

  
\_\_\_\_\_  
DAVID GOODE  
Director

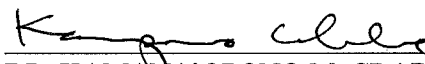
10-29-13  
\_\_\_\_\_  
Date

Kauai County, Department of Public Works

  
\_\_\_\_\_  
LARRY DIL  
County Engineer

11-18-13  
\_\_\_\_\_  
Date

Office of Hawaiian Affairs

  
\_\_\_\_\_  
DR. KAMANANA'OPONO M. CRABBE  
Administrator

12/4/13  
\_\_\_\_\_  
Date