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August 28, 2016

The Honorable Colleen Hanabusa, Chairwoman HART Board
1099 Alakea Street, Suite #1700
Honolulu, HI 96813

Sub: HART Transit Projects (East & West Guideways and Station Contracts)

Madam Chairwoman,

The chief purpose of this letter is to honestly inform you and other board members that accepting the resignation of HART CEO is just a start but the real cure would come only after a transparent and a careful evaluation of current high level HART managers who are working on the program management and followed by the replacement of those who are reportedly more focused on self-preservation and/or balanced sheet of the consulting firm they represent rather than the interest of the program. Again, the Board may replace many more CEOs but the outcome is unlikely to change unless real changes are brought in and implemented for the good of the project.

Another objective is to bring attention to the fact that station contracts and East side contract are still at an infant level. If lessons learned on WOFH & MSF contracts can be implemented on upcoming projects, then HART could avoid repetition, streamline decision making process, get potential contention items resolved conceptually, enhance working relationship with contractors, and eventually benefit enormously.

Before I get into the subject matter (Exhibit A), let me briefly introduce myself. My name is Bart Desai and I am a California Registered Civil Engineer. I worked for California Department of Transportation (Caltrans) for over 25 years and retired in 2005 as the Deputy District Director. Thereafter, I worked for Transportation Consulting Firms before starting my own firm in 2013 to work on Cost Allocation among multiple transit projects that were part of one nearly \$2B Transit Project to ensure that FFGA funding is used for the authorized project and eligible elements of the project. At the end of 2015, I retired until brought on work on Changes & Claims of HART projects.

During these years in the transportation industry, my team and I worked on many large and complex design, construction, and maintenance projects involving civil work and structures including all Bay Area Toll bridges. I dealt with numerous contractors, analyzed and resolved many claims on the projects in Southern California, prepared arguments and reports for the Dispute Resolution Boards, and won the 21st Century International Award for the best Transportation Project in 2004.

Upon request, I joined PGH Wong Inc. to work as the Change & Claims Manager on HART projects. I arrived in Honolulu on March 4, 2016 and August 19, 2016 was my last day on HART projects, PGH Wong, Inc., and leaving for California to reunite with my family on August 24, 2016.

Upon learning that HART Management expressed a concern about my salary, one thing to note is that in an email dated February 19, 2016 to PGH Wong, I offered the following:

HART can withhold my pay for 3-6 months (HART decides the time) and only pay my all expenses. If at the end of the period, if HART is not satisfied with my performance then I leave w/o any pay. I guarantee that no one ever offered her (HART) such offer. Guys, with HART's required support, I am confident we can achieve our goal to meet her satisfaction. Not that I need money but I take this as a challenge and am sure this would speak a volume about PGH commitment.

Guys, while at Caltrans, I offered to put my house as collateral (very sincere offer) to US Coastal for their expeditious approval on a project in Marine County to not lose US Grant. I did receive the approval and we completed the project. This is just a summary and it is actually a true story.

Luckily, with the support of my wife, during 38 years of marriage life we have jointly achieved our goal and are 100% debt free so money is not an objective here. I have contributed positively thus far to HART projects and am very proud of it. I believe this letter is just an extension of the path. I have full faith in our system that reasonable and objective individual(s) would consider points outlined in Exhibit A and take the necessary corrective and preventative steps for the good of the project.

U.S. DOT Federal Transit Administration (FTA)'s Oversight Procedure 21 (Grantee Technical Capacity and Capability Review) expects HART's, organization and qualified (proven track record with adequate technical background and hands-on construction experience) managers to effectively plan, develop, and efficiently manage project costs, schedule, and risk assessment of Federally-assisted capital project. I believe HART's current and past managers have failed to meet this basic FTA's expectation. This in itself raises questions about the qualification of these managers.

Reportedly, HART has either a very conceptual or no comprehensive and logical program schedule for all contracts from the initial design phase to construction of guideways, stations, and core systems to interphase impact on costs during analysis of elements such as utilities.

Recently, the Airport Station contract was awarded and it turns out that the agreed upon Design-Build price tag was at or very close to HART's estimate. As we know from our guideway projects, this does not mean that this would be the completion costs. Final costs would depend on Design-Builder's assumptions with regards to their bid and a quality of Risk Assessment, if done by following FTA guideline. From the estimate of \$2.7B for 34 miles project, from September 2012 to now, the program costs have increased by around \$3B, a jump of around 58% for 20 miles project. HART should accept that there is a likelihood that it could even be higher and around \$10B if no remedial steps are taken, before December 2024 when revenue generation is expected.

As of now, our reported overall costs have gone up from around \$5.3B to \$8.1B. Based on my past experiences, if it hasn't happened yet then FTA will soon demand that HART provide clarification or a detailed plan for some or all of the followings:

- Financial "Recovery" Plan & how HART plans to fund over-budget costs?
- Is reducing scope part of equation? If yes, how would it impact schedule, and approved environmental plan, and effect on overall objective of the project?
- How would this impact project schedule of the project and what is the remedial plan? How does HART plan to contain costs going further?
- Impact on revenue generation and debt payout plan?
- Why should FTA participate on the project if HART is unable to complete the project due to increased costs and failure to generate additional funding to complete the project?
- What assurance FTA has that HART will not be in such situation again?

These are the undeniable realities and hence corrective and preventive options must be evaluated and implemented expeditiously.

It is likely that in response to this letter HART management may come back with a standard approach of discrediting me as a disgruntled individual and/or an individual who gets upset fast rather than accepting this letter and Exhibit A as a project punch list and do needful. To me, it is more important is to "do the right things for the right reasons" and ensure that do all I can for the good of the project and my records would unequivocally support it. I could have come forward before but I was part of a firm that is in contract with HART and has number of employees working on this project. I did not want to take a chance and take any step that could potentially impact others who have no knowledge of this letter and the Exhibit A.

In no way, do I intend to convey that all is bad or there is no hope or stop the project or all HART managers need scrutiny. Like many other US Citizens and taxpayers, I am simply trying to convey that in my opinion and based on my experience what is going on is not right and a lot of improvements are needed for the success of HART's project. Being a past governmental employee and executive, I know that many eyes are watching over the shoulders of the Board Members.

I don't believe a "potentially labelled disgruntled" individual would go through put forth the effort that I have as demonstrated by the details discussed in this letter.

With this letter out to you and others, I feel that I have done all I could within my control to help the project. I had two options – bring my opinions, observation, and findings out in open or take an easier path and do nothing, go back home and be with my family but in this case easier path is not the right path so I decided to practice what I preach.

I am available to talk over the phone or meet in person to answer any questions you or others may have.

You have my home address and could contact me at my cell (714) 450-5435 or at home (951) 674-8973.

A handwritten signature in blue ink, appearing to read 'Bart Desai', with a stylized flourish at the end.

Bart Desai

Enclosure: Exhibit A

CC: HART Board of Directors
Ms. Carolyn Flowers, Interim Administrator - Federal Transit Administration
Mr. Leslie Rogers, FTA Region IX Administrator
Mr. Calvin L. Scovel III, FTA Inspector General
The Honorable Mayor Mr. Kirk Caldwell, Honolulu
Mr. Charles Djou, 2016 Mayoral Candidate
Mr. Ernie Martin, Honolulu City Council Chairman
KHON2.com -email & Interview
Staradvertiser.com -email
KITV.com - email

EXHIBIT A

Being in the transportation industry dealing with contractors on major projects for years, and six months of hands-on effort as the Change & Claim Manager on HART guideway projects, I believe points discussed below have already and would continue to impact overall costs and schedule of projects, if remain unaddressed:

1. Quality of Risk Management

Sensible, reliable, well thought out risk management is one of the most critical practices that FTA expects from all agencies applying for grants to determine adequacy of project progress and funding as ownership of the risks plays a crucial role program/project's costs and schedule. This is nothing new to the industry and all grantees (sponsor agencies) are doing it with varying levels of efficacy. FTA's oversight procedure #40 (Risk and Contingency Review) outlines risk and contingency % tied to it. General FTA milestones for the risk assessment are set throughout the life of the project.

Honestly, with regards to Risk Management, I am not fully aware of how and who performed risk assessment for HART on a Program as well as on a project level but magnitude of increased costs compelled me to question the quality of the Risk Management effort. In last couple months I noticed some movement on this critical risk management issue including introduction of a software tool.

Rather than a tool, joint in-depth discussion with quality staff on factors such as proper risk identification, assessment, occurrence probability, developing mitigation or avoidance measures is much more valuable for determining better costs estimates and schedule. HART needs to immediately begin serious and sincere risk management on all remaining projects with the most qualified individuals leading the charge and develop a plan independently without any influence from HART management.

2. Lack of Transparency & Accountability

Dysfunctional reactive organization and a dictatorial management style with lack of transparency, accountability, adequate technical capability, and experience. This should be the topmost priority and be rectified.

3. Turnover and Lack of HART Management support to challenge

The management style has reportedly inadvertently conveyed a message of fear to hard working staff members that keep your mouth shut, do as you are told, go with the flow, and don't rock the boat. Never speak up to challenge what you know to be wrong or misguided or be prepared to get removed. Outflow of most individuals in last one year and removal of three (including myself) in just last one month alone supports this point.

4. Lack of Communication & open discussion

HART's interpretation of parts of specification, reasoning, attitude towards guideway contractor, lack of open communication and credible relationship, questionable approaches, and flawed tactics need re-evaluation. I strongly believe that these factors have taken HART towards more unilateral Change Orders. Unilateral CCOs are viewed as "Open Ended Black Holes." It appeared to me that knowingly HART was taking challenging and "big ticket" changes on a unilateral CCO path when we already negotiated with the contractor and HART management was fully aware of it.

Sadly, rather than having an open dialogue, I was asked to stop making arguments for the contractor when I attempted to point out these factors.

5. Potential unethical behavior & preferential treatment

Reportedly, on one of the station group contracts, work has just barely begun and a local contractor has already a delay claim for about \$12.4M.

Evidently, against staff's recommendation, one of the HART Managers has accepted this contractor's base schedule that reflects this potential claim. Reportedly, the same HART manager has also approved other changes of the same contractor though merits of the changes are questionable.

In fact, with regards to this project and the contractor, I learned on 08/26/2016 at around 09:10 PST that during a three party lunch on 08/25/2016, one Project Manager (PM) and a Resident Engineer (RE) were told to remember what happened to Mark Swatta and Bart Desai and cooperate with the HART Management. During the lunch discussion, the PM and the RE were also told that a key high level HART Manager wants to pay \$1.5M as a goodwill to the contractor involved in this issue. I do not know what to interpret, and why \$1.5M as goodwill but the message does raise a lot of question. If verified, this one item alone begs an in-depth investigation. If true, it seems various contractors are treated differently.

6. Lack of Objectivity & Preconceived Notion

There is an unwarranted sense that Kiewit (Design-Builder), is the enemy, a crook and a cheater. I was personally told by one of the high level management individual that "I hate Kiewit and they are liars." With such preconceived notion, one cannot be objective in resolving long awaited changes.

7. Inefficient use of time

In six months that I have been working on changes, for most part, I personally observed that HART Managers rather than listening to findings and suggestions

of the field personnel regarding changes and resolutions, time was spent in finger pointing and making condescending remarks at a specific consulting firm & a specific contractor. It is no surprise to me that Kiewit did not bid on the recent HART projects. I will leave it to your imagination as to why? But one thing is certain that by them not bidding it impacted HART whether HART management accepts the fact or not.

8. Avoiding going to HART Board & Lack of Transparency

I was directed to or told to find alternate ways to avoid going to Board for changes that are over \$1M threshold - e.g. splitting issues into more than one change orders or combine credit items with pay items issue to bring total to less than \$1M. We have examples of such cases where we negotiated changes with the contractor but as of today still no executed CCO.

9. Not Being Upfront

There are times when trickled down direction to us (Change Group) to not use the term "Betterment" in our write-up. I do not know why but based on my past experience, I guess it is because FTA does not participate in betterment costs. Again, be upfront and cover such items in a sensible and enforceable MOU with the third party for reimbursement.

10. Poor Judgement & Blame others

PGH Wong, Inc. (PGH) firm was brought in to perform Construction Management on the West Side projects. Without getting into a lot of detail at this point, during my stay, repeatedly I personally experienced and witnessed criticism that it is PGH's fault that things are not going so well and PGH is responsible for many issues including a long list of unresolved changes.

It is interesting to note that HART CEO, Deputy CEO, Project Director, and four other HDR Inc. personnel including Officer-In-Charge (OIC) were holding high level Management positions and directing PGH's field staff in role performance (there are documents to this fact). Yet, the same HART Managers never once took responsibility for their direction or poor judgement. How that one firm which is at the bottom of the totem pole is responsible for the current status, especially when the HART Managers were directing PGH's office and field staff (documents will prove)? Are these managers now trying to make the PGH a scapegoat?

Three people that I mentioned above who recently got laid off were all PGH employees. Is this a coincident? **An in-depth investigation is required in this matter especially during the time when Mr. Tom LeBeau and Ms. Karley Halsted controlled communication.** You would find that these two among others didn't meet required qualification that FTA's #21 Oversight Procedure

outlines. On the other hand, I recommend verifying capability of past and current qualification of managers

Based on the history, one can also easily make an impeccable case that it is the HART Managers (most happened to be from HDR Inc.); the decision makers for HART are the root cause of current project costs and schedule.

This is why departure of the CEO alone is not enough as long as the same management individuals who were guiding the ex-CEO and making decisions from downtown are still in place. You can expect little or no change in flawed understanding and misguided direction. If instead, the time spent on finger pointing was used to resolve changes, find ways to enhance and maintain working relationship with the contractor, HART would have made a notable positive progress. It is still not too late.

I believe everyone involved should remember: "Coming together is a beginning, staying together is a progress, working together is a success" and "Partnership begins at home."

11. Abuse of Power and Intimidation

I have seen intimidating text message from HART's high level manager to the contractor PM saying – do what I say or be prepared for punishment (I am paraphrasing but I am certain that the contractor has saved the message). Please see a June 07, 2016 email image below from Mr. Chris Takashige to HART managers:

I've received an e-mail from Kiewit that informs me they will prepare for formal litigation due to recent "threatening" situations we've either said or written to them in the field. I'd like to remind you that while we continue to see things differently from the perspective of merit on change orders, we need to stay professional as it'll keep things better postured even if we move into the courts.

12. Controlled Communication

As the Change & Claims Manager, I have seen a long list of unresolved changes where in some cases HART did not respond to Contractor's claim notice (for couple years), while some were responded as "no merit" with a standard template type letter kicking the issue to the disputed category. This is when HART management from downtown office controlled communication internally and externally with the contractor (documents on file would support this).

13. Potential Unfair Business practice

I was also told that the contractor would not pursue or go to court for small amount so we could deny merit using past examples. I did not follow the direction instead reopened the issues (a right thing to do) and either resolved if there was a merit or had contractor withdraw the claim if there was no merit.

14. Irresponsible and harmful decisions

In many instances, in absence of or lack of required response from HART, the contractor being the Design-Builder had to get the change work done to continue working base scope work to meet schedule and minimize claim delay. It is likely that other contractors could have taken a stand and demand for an executed Change Orders for HART initiated changes to perform change work and continued with a base work. Needless to say, such stand would have increased costs enormously. In absence of realizing this fact, **HART still has not issued CCOs on such issues and so contractor can't submit invoices and hence has not received any payments from HART** – several million dollars. Needless to say, this knowledgeable inaction on HART's part may have impacted subcontractors and other small businesses. This issue also demands an investigation.

15. Questionable approach and Intent

On WOFH project, there is a **station loading change** (multi-million-dollar change) that was planned to be on the Board agenda since July, will eventually come to the board in a near future. This change occurred because **HART caused multiple design changes** on stations between Requests for Proposal (RFP) phase to Info for Construction (IFC) phase. These changes compelled the guideway project to change its substructure elements (Shafts, Footings, Columns, and Hammerheads (Pier Cap)). As we know, Station Design is a Design-Bid-Build (DBB) project while Guideway is a Design-Build (DB) project. Guideway project construction was already in motion when the station design was on-going. One could ask a question: Could HART have designed stations without much or no impact to the guideway elements? OR Should HART have waited to delay issuance of Notice to Proceed (NTP) of the guideway project and give time to complete 75-90% design of station structure elements? Such option would have saved the taxpayers multi-million dollars.

Guideway construction work is done for over one year, HART is aware of it, but the contractor has yet to receive any payment. This is a classic example where the owner is the cause for the change but did nothing until change group started to review contractor's records as the work is done. HART management was kept in loop (my emails and documents will prove that), we negotiated with the contractor, and then for unknown reason, HART Management questioned our review and the change is being reviewed again. This approach raised a lot of questions in my mind. Needless to say, future is unknown of this change.

The contractor is now justifiably asking why they should work with the field personnel, if downtown HART managers want to reinvent the wheel and not support finding of its field personnel (I have documents to prove). **This is how a dysfunctional organization operates and interestingly the contractor still remains unpaid and now asking for interest payments.**

My point is: If HART is reluctant to take these long awaited multimillion dollar change orders to the board because of political or other reasons, why do they direct us to negotiate and settle these claims and then throw roadblocks in the way of getting them before the board.

Needless to say, I questioned management on this issue for last couple of months and last I know is HART management wanted me out by 08/19/2016.

16. Lack of Follow-through

Our team resolved and negotiated several large, complex, and long awaited changes that were initiated by HART but have not executed CCO yet because HART management has changed their decision/approach and the contractor has still not received any payment on many change orders.

17. Potential Twisting the truth

During earlier suspension of the project, HART executed couple of **escalation** related changes. HART management and the Design-Builder (KIWC) are not on the same page. **I strongly recommend investigating this issue.** I have a good idea but would stay silent until investigation finding comes out (I have emails and documents with regards to this issue).

18. Lack of Experience and Foresight – HART on Sinking Sand

Another important item is utility relocation. Unfortunately, HART has a “general” MOU with HECO but has no “teeth” into it. Reportedly, the contractor prepared a matrix of various utilities relocation candidates, schedule for relocation, and asked HART to include the matrix in the MOU but per KIWC, HART did not do so. In fact, sad part is one of the current high level HART manager served as the utility coordinator but the job was “half done.”

HECO is just one example and needless to say HART management and I differed on our positions about responsibility. *HART managers expect, demand and claim that it is contractor's responsibility to coordinate and be responsible for all costs including delay even if the contractor proves that adequate coordination was done but HECO could not/did not relocate utility timely.*

I honestly believe HART is NOT on a strong ground on this issue. In fact, during National Transit Institute (NTI) training on contract administration that was attended by several HART Managers also, I specifically asked the question about this issue and the trainer agreed with my position.

19. Ambiguity In Specification

There are other items such as disposal of Hazardous and contaminated material and differing site conditions that need a discussion among individuals who are open, reasonable, and willing to discuss without any preconceived notion since one contract is very specific about the responsibility and other is not as clear but interpretation of definition of what is part of Hazardous and contaminated material would generate dispute. Joint discussion could help come to some terms and that would alleviate disputes and additional costs. Currently, HART and the Design-Builder are apart.

20. Questionable Understanding of Mark-up and Overhead

Other items that impact costs of the project globally are: first, what does 20% mark-up involve? Does it involve mark-up + off-site overhead + on-site overhead? In a recent settlement discussion about Traffic Signal change, HART & KIWC have come to an understanding of 2.85 craft hours = 1 hour of on-site supervision. At this it is unclear as to does this ratio applies to all past and future changes or not? Second item is risk and who owns it? How do we assess risk level and negotiate if contractor's and HART's risk levels are not the same?

21. Management's Unsound Belief

Regardless of number of changes, HART management believes a contractor must complete base scope work on or before significant completion date. **This is HART's significantly unsound belief.** The industry understands and accepts that if there are justified changes and completion of the change work affects completion timing of base scope work then a contractor receives time extension since the contractor has to use base scope resources to do the change work and at times contractor's base work schedule is impacted due to changes.

22. HART Management's Lost Credibility

There is a lack of trust since HART management reneged on HART's previous commitment to the contractor with regards to change terms and conditions (example: Traffic Signal), and many changes until current time still are without executed CCOs. In light of this, the contractor demands an executed change order before begin any work on changes. I am sure, anyone would do the same if end up facing such unreasonable position.

Rather than addressing **HART's current change procedure that takes several months to get a CCO executed** and find ways to streamline current unwarranted lengthy change procedure, lately HART management chose to de-scope work from the Design-Builder and give it to an on-call contractor. This path brings some unknowns with regards to liability, coordination between contractors,

and impact of one contractor's work schedule on the other one. It could offer some benefits too but only time will tell.

23. Human Trafficking and costs to Taxpayers

I believe this project has become a provider of "HUMAN TRAFFICKING" (for the lack of proper term on my part) platform, on HART as well as on Consultant side. Interestingly, HART has been adding more bodies at management level in the changes and claim area resulting in confusion with regards to role of each of these individuals. More people on a task do not resolve issues or change facts but factors such as focused organization, open mind, attitude of doing right things for the good of a project, having broader view, look for alternatives and honest open discussion with field staff and contractor do bring acceptable resolution for lesser costs.

In summary, we need to consider following:

- Set a high level and decision makers committee – HART/HECO/HTI/HDOT; etc. to discuss issues and develop a roadmap for timely delivery of services
- Ensure on-going interface communication between contractors of projects
- Come to understanding and develop a roadmap with regards to Hazardous and contaminated material, differing site conditions, 3rd party issues and coordination
- Streamline Change and CCO procedure – it is unreasonable that it takes months to get an executed CCO (I did submit recommendation for various scenarios but never received any response from anyone)
- Assign more field inspectors – specially to perform oversight on force account changes or changes
- Consider bringing fresh, qualified, unbiased, qualified, and experienced leaders at management level
- Establish qualified Risk Management team and set on-going meetings to discuss potential risks, risk ownership, potential mitigating measures, and impact on costs and schedule. This should have been done before but it is never too late for certain things including risk management.
- Attitude Adjustment – No more dictatorial approach – no more decision based on preconceived notion – no more reneging of previous commitments – follow fair practice and treat all contractors same
- Re-establish working relationship with contractors

- Stop finger pointing – think HART Program and Projects, own issues and focus on resolving
- Stop reinventing wheels at Downtown office – empower PM/RE and field staff
- Stop making decisions on an on-going construction project without field staff participation
- Discuss and develop fair understanding on Time Delays
- Jointly clarify what is covered under Mark-up (I did submit my understanding referring to Specification and HRS Statues but never received any response from any recipients)