

**HONOLULU AUTHORITY FOR RAPID
TRANSPORTATION**

HONOLULU RAIL TRANSIT PROJECT

NO. RFP-HRT- 547415

**ELEVATORS & ESCALATORS DESIGN-
FURNISH-INSTALL-MAINTAIN (DFIM)
CONTRACT**

**NOTICE OF ADDENDUM NO. 8
TO THE
REQUEST FOR PROPOSALS
(PART 2)**

SPECIAL PROVISIONS (1-7)

ISSUED DECEMBER 2012

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**SPECIAL PROVISIONS
OF DESIGN-BUILD CONTRACTS
HONOLULU AUTHORITY FOR RAPID TRANSPORTATION**

The SPECIAL PROVISIONS (SP) are intended to modify, amend, and provide specific Project requirements to the General Conditions of Design-Build (DB) Contracts for the City and County of Honolulu (GCDB) and the DB Contract.

The Special Provisions are organized as follows:

- (a) SP-1 through SP-7, including Attachments A, B, C and D, modifies or supplements the GCDB applicable to the Project;
- (b) SP-8 through SP-28 provide additional performance requirements specific to the Project..

Should there be any conflicts with other sections or provisions of this Contract they should be brought to HART's attention for clarification.

Whenever "Division 1" or a specific Division 1 Section is referenced in the Standard Specification or Standard Drawings it refers to the associated requirements in these Special Provisions and/or the GCDB.

The measurement and payment provisions of the Standard Specifications are superseded by SP-6 herein.

All words used in the singular shall extend to and include the plural. All words used in the plural shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

SPECIAL PROVISION

CHAPTER SP-1 DEFINITIONS; REFERENCES; REPRESENTATIONS

Chapter 1 of the GCDB is amended by being deleted in its entirety and replaced with the following Chapter SP-1 consisting of sections SP-1.1 through SP-1.5:

SP-1.1 DEFINITIONS

Wherever in the Contract Documents or HART correspondence the following terms or pronouns are used, the intent and meaning shall be interpreted as follows:

“**Acceptance**” means a determination by HART regarding satisfactory compliance with applicable Contract requirements and Governmental Rules.

“**Acceptance Program**” means all factors that comprise HART’s determination of the quality of the product as specified in the Contract Documents. These factors include Verification Sampling and Testing and HART Oversight and auditing of the DFIM Contractor’s activities and may include the DFIM Contractor’s Quality Control (QC).

“**Act of God**” means an unusual, sudden, and unexpected manifestation of the forces of nature, the effect of which could not have been prevented by reasonable human foresight, pains, and care.

“**Addendum**” means a written document issued by the Chief Procurement Officer during the RFP and Proposal period, involving changes to the RFP, which shall be considered and made a part of the RFP and the Contract.

“**Advertisement**” means a public announcement inviting prospective Offerors to obtain a Request for Proposal (RFP) and submit a Qualifications Proposal or a Technical and Price Proposal, as applicable.

“**Affiliate**” means any Person that:

(a) Directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the following:

- (1) the DFIM Contractor; or
- (2) Any Principal Participant

(b) Holds 10% or more of the equity interest directly or indirectly, beneficially or of record, by the following:

- (1) the DFIM Contractor; or
- (2) Any Principal Participant; or
- (3) Any Affiliate of the DFIM Contractor under part (1) of this definition.

For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, by family relationship, or otherwise.

“**Agreement**” means Contract.

“**Ancillary Area / Ancillary Space**” means the non-public areas or spaces of the stations used to house or contain operating, maintenance, or support equipment and functions.

“**Annunciator**” means a unit containing one or more indicator lamps, alphanumeric displays, computer monitor, or other equivalent means on which each indication provides status information about a circuit, condition, system, or location. An annunciator can signal audibly, visually, or both to indicate a change of status.

“**Approval**” means HART’s written statement indicating that the subject Work complies with Contract requirements. Approval shall not be construed as a warranty by HART that the DFIM Contractor’s methods will succeed or will be the most efficient or economical method of accomplishing the Work, nor shall the terms be construed as a warranty that the actual materials used in construction will perform as represented in test results supplied to HART by the DFIM Contractor. Approvals will only be given for those submittals, activities, or Work specifically identified for “Approval” or “approval” in the Contract Documents.

“**As-Built Plans**” means final drawings and specifications furnished by DFIM Contractor, documenting the details and dimensions of the completed Work, as further specified in GCDB Section 4.27.

“**At-Grade Station**” means a station that is any at-grade or unroofed station other than an elevated or underground station.

“**Award**” means the written notification by HART to the selected Offeror that the submitted Proposal has been determined to be the best value to HART, or the presentation of a Contract to the selected Offeror.

“**Baseline Schedule**” means the time-scaled and cost/resource-loaded Critical Path network, updated from monthly in accordance with the Contract and depicting the Price Items and subordinate activities and their respective prices (distributed over time), durations, sequences, and interrelationships that represent DFIM Contractor’s Work plans, DFIM Contractor’s Work Breakdown Structure (WBS) for designing, constructing, and completing the Project and the Contract Price distributed over the period of the Contract.

“**Baseline Design**” means the design of a particular system or component, apparatus, subsystems or materials, which have received both drawing approval and First Article approval by the Responsible Engineer.

“**Basic Project Configuration**” means the salient characteristics of the Project as defined and/or illustrated in the RFP Part 2, including any permitted Deviations thereto contained in DFIM Contractor’s Proposal. Basic Project Configuration elements may include the following:

- (a) The horizontal and vertical alignments;
- (b) The general location of the limits of the Project;
- (c) The minimum vertical clearances; and
- (d) The Right of Way (ROW) limits.

“**Basis of Payment**” means the terms under which DFIM Contractor is paid for Work.

“**Betterment**” means any improvement to an existing facility that is not integral to the Project, and is made solely for the benefit of and at the election of the facility’s owner or other third party; provided, however, that the following are not considered Betterments:

- (a) Any upgrade necessary for safe and effective construction of the Project;

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- (b) Replacement devices or materials that meet equivalent standards although they are not identical;
- (c) Replacement of devices or materials no longer regularly manufactured with the next highest grade or size, where replacement devices or materials that meet equivalent standards are not available;
- (d) Any upgrading required by applicable Governmental Rules in effect as of the Proposal Due Date;
- (e) Replacement devices or materials which are used for reasons of economy (e.g. non-stocked items may be uneconomical to purchase);
- (f) Any upgrading required by Standards in effect as of the Proposal Due Date; and
- (g) Any discretionary decision by an owner contemplated within a particular Standard.

“**Bid Security**” means the security furnished with a Proposal to guarantee that the Offeror will enter into the Contract if an award is made to the Offeror further specified in Section 3.3 of the GCDB.

“**Calculations**” means numerical computations performed to demonstrate compliance with the Contract Documents.

“**Calendar Day**” means every day shown on the calendar, beginning at 12:00 a.m. Hawai`i standard time.

“**Channel**” means a natural or artificial water course.

“**Chief Procurement Officer**” means the HART Executive Director and CEO or designee.

“**Code of Federal Regulations**” means the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

“**Consent Decree**” refers to the legal document “Consent Decree Civil Action No. CV05-00636-HG-KSC” between the United States Environmental Protection Agency, the Hawai`i Department of Health, and the Hawai`i Department of Transportation dated September 2005.

“**Construction**” means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

“**Construction Easement**” means an acquired right of use over the property of another for the purposes of constructing outside HART right of way limits. Right of use may be temporary in nature or permanent.

“**Construction Compliance Engineer**” means HART’s representative with primary responsibility for monitoring and/or auditing DFIM Contractor’s construction and environmental field activities for compliance with the Contract’s requirements.

“**Construction Compliance Monitor**” means a representative of the Construction Compliance Engineer (CCE), with responsibility for monitoring and/or auditing DFIM Contractor’s construction activities for compliance with the Contract’s requirements.

“**Construction Subcontractor**” means a Subcontractor (or Affiliate) retained by DFIM Contractor that is involved in the actual construction of the Project.

“**Constructor**” means a Principal Participant or Subcontractor (or Affiliate) retained by DFIM Contractor that is involved in the actual construction of the Project.

“**Contract**” means the written agreement between HART and DFIM Contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work, the furnishing of labor and Materials, and the Basis of Payment. The Contract includes the Contract Documents identified in the Agreement, including required post-Award documents approved by HART and authorized extensions, all of which constitute one instrument.

“**Contract Data Requirement List**” (CDRL) means items to be provided by the Contractor to HART as defined by these Contract Documents.

“**Contract Deviation**” means an agreed to change to any of the mandatory Contract Documents or requirements included in the RFP either directly or by reference.

“**Contract Documents**” means the documents identified as such in the Contract, including all provisions required by law to be inserted in the Contract whether actually inserted or not.

“**Contract Item**” means an item of Work specifically described and for which a price, either unit or lump sum, is provided. It includes the performance of all Work and the furnishing of all labor, equipment, and materials described in the text of a specific item included in the Contract or described in the Contract Documents.

“**Contracting Officer**” means the Chief Procurement Officer.

“**Contract Price**” means the total amount paid for the Work to be performed under the Contract, as it may be adjusted from time to time in accordance with the Contract Documents.

“**Contract Time**” means the time specified in the Contract for completion of the Contract. This time may be defined as a specified fixed date, a given number of Calendar Days, or a combination of the above. The Contract Time may be amended by mutual written agreement to include authorized extensions of time, as the performance of the Contract requires.

“**Contract Modification**” or “**Modification**” means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of the Contract accomplished by written, bilateral agreement of the parties to the Contract.

“**Contractor**” means DFIM Contractor.

“**Cost**” means all expenditures, including design costs, wholly and necessarily incurred, whether on or off the Site, with respect to the Work and overhead, finance, and other charges properly allocable thereto. Cost does not include any allowance for profit.

“**Critical Path**” means each path shown on the Baseline Schedule that contains the longest path from NTP to Substantial Completion for which there is zero Float. Also includes paths that due to constrained dates contain zero Float.

“**Cultural Resource**” means any prehistoric or historic period artifact, site, building, structure, material remain, or traditional use area resulting from, or associated with, human cultural activity. Historically important cultural resources are those eligible for inclusion on the National Register of Historic Places.

“**Days**” means consecutive Calendar Days unless otherwise specified. [HAR 3-120-2]

“**Deficiency**” means a material failure of a Proposal to meet HART’s requirements or a combination of significant Weaknesses in a Proposal that increases the risk of unsuccessful Contract performance to an unacceptable level.

“**Definitive Design**” means the point in the design process at which the design concepts are defined and the Basic Project Configuration is finalized.

“**Design Acceptance**” means written confirmation by HART, after submittal and review of the As-Built Plans, that the design conforms to the Contract Documents and reflects the As-Built conditions. Required as part of Final Acceptance.

“**Design-Build**” means the Project’s delivery methodology under which HART contracts with a single entity that has responsibility for the design and construction of the Project under a single contract with HART.

“**Design-Build-Operate-Maintain**” (DBOM) means a Project’s delivery methodology under which HART contracts with a single entity that has responsibility for the design, construction, commissioning, operations and maintenance of the Project.

“**DFIM Contractor**” means the Person selected pursuant to the RFP Part 2 undertaking the execution of the Work under the terms of the Contract with HART, and acting directly or through its agents or employees.

“**DFIM Contractor’s Project Manager**” means DFIM Contractor’s on-site designated representative and single point of contact for all aspects of the Work.

“**Design Compliance Engineer**” means HART’s representative with primary responsibility for monitoring and/or auditing DFIM Contractor’s design and engineering activities for compliance with the Contract’s requirements.

“**Design Compliance Monitor**” means a representative of the Design Compliance Engineer (DCE), with responsibility for monitoring and/or auditing DFIM Contractor’s design activities for compliance with the Contract’s requirements.

“**Design Documents**” means maps, Design Plans, Project Specifications, reports, calculations, records, submittals, and other specified documents prepared by DFIM Contractor in the course of performing project engineering and design Work.

“**Design Requirements**” means those specifications and design criteria contained in the Contract that specify the minimum acceptable technical standards and define the limits within which the design of the Project shall be developed and conducted.

“**Design Review**” means a comprehensive and systematic examination of the design as specified in the Contract to verify that the design is in conformance with the requirements of the Contract, as performed by DFIM Contractor for all stages of the design except As-Built Plans, which is performed by HART. During all stages of the design, except As-Built Plans, HART will contribute to the review through Oversight including participation, auditing and spot-checking.

“**Design Specifications**” means the dimensional and other physical requirements of the item being

purchased and how a product is to be fabricated or constructed.

“**Design Unit**” means a distinct portion of the Project of which the design is performed as a contiguous, integrated unit. A Design Unit typically leads to a construction Milestone as depicted on DFIM Contractor’s schedule.

“**Detour**” means a temporary route for vehicular and pedestrian traffic around a closed portion of road.

“**Deviation**” means a change to any of the mandatory Contract Documents or requirements included in the RFP either directly or by reference.

“**Differing Site Condition**” means subsurface or latent physical conditions that are encountered at the Site and differ materially from the conditions indicated in the Contract. Also, unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of Work provided for in the Contract, provided in all cases that DFIM Contractor had no actual or constructive knowledge of such conditions as of the Proposal Due Date.

“**Directive Drawings**” means RFP drawings which will be used project-wide; these are Mandatory Drawings.

“**Disadvantaged Business Enterprise**” means a for-profit, small business concern which meets the definition set forth in 49 Code of Federal Regulations (CFR) Part 26.

“**Discussion**” means an oral or written exchange of information to promote understanding of HART’s requirements and Offeror’s Proposal and to facilitate arriving at a Contract that will be the Best Value to HART.

“**Dispute**” means a matter of Contract performance or Contract compensation, including granting of extensions of time, in which there is or may be disagreement between DFIM Contractor and HART and which may involve adjustment of Contract Items or the addition of new items to the Contract, extension of time for performance, and/or adjustments in compensation necessitated by the resolution of such disagreement.

“**Elevated Station**” means a station greater than one story in height not otherwise defined as an at-grade or underground structure.

“**Elevated Structure**” means a structure not otherwise defined as a surface or underground structure.

“**Employee**” means any person working on the Project and who is under the direction or control of, or receives compensation from, DFIM Contractor or any Subcontractor.

“**Environmental Approvals**” means the Governmental Approvals contained or referenced in the environmental provisions of the Contract.

“**Environmental Resource**” means the physical and biological components of the human and natural environment.

“**Equal**” means whenever the words “equal” or “approved equal” are used in connection with make or quality of material or equipment in these Contract Documents, the Responsible Engineer recommends and HART accepts as to whether any material or equipment proposed is equal to that specified material or equipment; such recommendation shall be binding and final on both the Contractor and HART.

“**Equipment**” means all apparatus, machinery, tools, and equipment, together with the necessary supplies for their upkeep and maintenance, necessary for the proper construction and acceptable completion of the Work.

“**Erosion Control**” means any action taken or item used as part of the Project, or as a separate action, to minimize the destructive effects of wind and water on surface soil. The use and placement of berms and dams, fiber mats, grasses, sod, mulches, slope drains, sediment basins, and drainage systems may be temporary and used only during construction or permanent and installed for the anticipated useful life of the facility/project.

“**Escrowed Proposal Documents**” means pricing data assembled by DFIM Contractor, placed in escrow, which supports and explains the basis of the Price Proposal. The Escrowed Proposal Documents are used during project execution for negotiation of Change Orders and resolution of disputes and claims and other purposes set forth in the Contract.

“**Extra Work**” means an item of Work not provided for in the Contract as awarded but found essential to the satisfactory completion of the Contract within its intended scope.

“**Excusable Delay**” means a delay in contract schedule that is not the result of action or inaction by the DFIM Contractor or any of its subtiers in the execution of the Work.

“**Fabricator**” means an individual, partnership, firm, Limited Liability Company (LLC), corporation, or joint venture with which DFIM Contractor subcontracts to assemble, construct, or otherwise substantially alter Material or supplies into assemblies, components, or finished items for inclusion into the Work prior to resale.

“**Federal Transit Administration**” means the current designation for the former Urban Mass Transportation Administration, United States Department of Transportation. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration or its acronym UMTA is deemed a reference to the Federal Transit Administration.

“**Final Acceptance**” means the acceptance of the Work by HART upon the completion of the Work as defined in the Contract and through Oversight and Design Acceptance of that Work by HART.

“**Final Proposal**” means the final mutually-agreed terms of the proposal submitted by the awarded Offeror in response to HART’s RFP or the Best and Final Offer accepted by HART in accordance with HAR §3-122-53 and 3-122-54.

“**First Article**” means the first one of any production component of a particular core system or subsystem that is produced. The Contract Documents provide that production components not be manufactured prior to drawing approval, so the First Article shall have been made to approved drawings.

“**Float**” means the difference between early completion times and late completion times for activities as shown on the Baseline Schedule and including any float contained within an activity as well as any period containing an artificial activity.

“**Force Account**” means the Basis of Payment for the directed performance of design and/or construction Work, with payment based on the actual cost to DFIM Contractor of labor, Equipment, and Materials, and including various constant activities.

“**General Conditions Design-Build**” means the General Conditions for Design-Build Contracts for City and County of Honolulu, dated February 2009.

“**Governmental Approval**” means any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, registration, or ruling required by or with any Governmental Person in order to design and construct the Project.

“**Governmental Person**” means any federal, state, local, or foreign government; any political subdivision; or any governmental, quasi-governmental, judicial, public, or statutory instrumentality, administrative agency, authority, body, or entity other than HART.

“**Governmental Rule**” means any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement, other governmental restriction, or any similar form of decision of, determination by, interpretation of, or administration of any of the foregoing by any Governmental Person, which is applicable to the Work or the Project, whether now or hereafter in effect.

“**Guarantee**” or “**Warranty**” means a written agreement or assurance of the quality of or the length of use to be expected from equipment, material, device, or system offered, or work performed.

“**Guarantor**” means the Person assuming responsibility for the tangible net worth deficit or financing deficit obligations of the Offeror, as required by the Contract.

“**HAR**” means the Hawai`i Administrative Rules of the State of Hawai`i, as amended.

“**HART**” means the Honolulu Authority for Rapid Transportation of the City and County of Honolulu, State of Hawai`i. The acronym “HART” shall be substituted for the “City and County of Honolulu,” “CITY,” “Rapid Transit Division,” and “RTD” wherever those terms appear in the General Terms and Conditions, unless the context clearly indicates otherwise, and except in Section 4.1.1 of the General Terms and Conditions, where “City” shall mean “City and HART.”

“**HART-Directed Changes**” means any changes in the Work as described in the Contract (including changes in the standards applicable to the Work) that HART has directed DFIM Contractor to perform as described in the Contract.

“**Hazardous Materials**” mean and include any and all radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, hazardous wastes, toxic substances, and any and all other substances or materials defined as "hazardous materials," "extremely hazardous materials," "hazardous wastes" or "toxic substances" under or for the purposes of hazardous materials laws.

“**Hazardous Materials Laws**” mean and include all federal, state or local laws, ordinances, rules, regulations or codes, now or hereafter in effect, relating to environmental conditions, human health or industrial hygiene, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601, et seq., the Resource Conservation and Recovery Act, 42, U.S.C. section 6901, et seq., the Hazardous Materials Transportation Act, 42 U.S.C. section 1801, et seq., the Clean Water Act, 33 U.S.C. section 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. section 2601 - 2629, the Safe Drinking Water Act, 42, U.S.C. sections 300f - 300j, HRS Chapter 128D, Environmental Response Law, HRS Chapter 342B, Air Pollution Control, HRS Chapter 342D, Water Pollution, HRS Chapter 342H, Solid Waste

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Pollution, HRS Chapter 342J, Hazardous Waste, HRS Chapter 342L, Underground Storage Tanks, Chapter 342P, Asbestos, and any similar state or local laws or ordinances and the regulations now in effect or hereafter adopted, published or promulgated thereto.

“**Highway**” means a general term denoting a public way for purposes of vehicular travel, including the entire area within the right of way.

“**Holidays**” – In the State of Hawai`i, these occur on:

- (a) January 1 (New Year’s Day);
- (b) Third Monday in January (Martin Luther King Jr.’s Birthday);
- (c) Third Monday in February (Presidents Day);
- (d) March 26 (Prince Jonah Kuhio Kalaniana`ole Day);
- (e) Friday before Easter (Good Friday);
- (f) Last Monday in May (Memorial Day);
- (g) June 11 (King Kamehameha Day);
- (h) July 4 (Independence Day);
- (i) Third Friday in August (Statehood Day);
- (j) First Monday in September (Labor Day);
- (k) November 11 (Veterans’ Day);
- (l) Fourth Thursday in November (Thanksgiving Day);
- (m) December 25 (Christmas Day);
- (n) All election days in HART, except primary and special election days;
- (o) On any day that may be appointed by the President of the United States or Governor for public fast, thanksgiving or as a legal holiday;
- (p) If January 1, July 4, November 11, or December 25 falls upon a Sunday, the Monday following shall be observed as a holiday; and
- (q) If January 1, July 4, November 11, or December 25 falls upon a Saturday, the Friday preceding shall be observed as a holiday.

“**HRS**” means the Hawai`i Revised Statutes of the State of Hawai`i, as amended.

“**HSS**” means the State of Hawai`i Department of Transportation Standard Specifications.

“**Incidental Utility Work**” means all of the following Work necessary for the construction of the Project:

- (a) Relocations of Service Lines;
- (b) Protections in Place;
- (c) The adjustment of utility appurtenances (e.g., manholes, valve boxes, and vaults) for line and grade upon completion of roadway work;
- (d) All work necessary to remove any utilities (whether or not in use as of the Proposal Due Date) in situations for which leaving the utilities in place is not feasible or not permitted, or for facilities which DFIM Contractor proposes be removed to accommodate or permit construction of the Project,

regardless of whether replacements for such utilities are being installed in other locations; and

(e) All work necessary to abandon in place any utility in accordance with proper procedures (e.g., flushing, capping, slurry backfill, etc.).

“Independent Assurance” means activities that are an unbiased and independent evaluation of all the sampling and testing procedures, Equipment calibration, and qualifications of personnel (DFIM Contractor’s or HART’s) used in the Acceptance Program, including DFIM Contractor’s QC.

“Indicated” means (as used in Contract Documents) as shown in the RFP Drawings or Standard Drawings or as described in the Contract Documents.

“Informative Drawings” means HART-provided Plans or Drawings that reflect current designs for a component or system associated with the requirements of this Contract and shall be used as the basis of contracting.

“Inspection” means the act of viewing or looking carefully at construction, manufacturing, design, safety, and maintenance practices, processes, and products, including document control and Working Plans review, to ensure the practices, processes, and products comply with the requirements contained in the Contract and activities specified in the Contract, Design Plans, and/or Project Specifications.

“Inspector” means a DFIM Contractor representative detailed to inspect methods and Materials, Equipment, and Work both on and off the Site of the Project.

“Laboratory” means a testing laboratory retained by DFIM Contractor for QC sampling and testing or by HART for Verification Sampling and Testing.

“Lead Principal Participant” means the Principal Participant that is designated by the Offeror as having the lead responsibility for managing DFIM Contractor’s organization.

“Mandatory Drawings” means drawings that the Offeror must use as the basis of their Technical and Price Proposal without modification, unless the Offeror submits a written request for an Alternative Technical Concept during the Proposal phase. Any request for an Alternative Technical Concept shall be submitted in accordance with the RFP documents.

“Manufacturer” means an entity that operates or maintains a factory or establishment that produces on its premises the Material, Equipment, or supplies obtained by DFIM Contractor for incorporation into the Project.

“Material” means any approved material acceptable to HART and conforming to the requirements of the Standard Specifications.

“Material Supplier” means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A Material Supplier is a firm that engages in, as its principal business, and in its own name, the purchase and sale of the products in question. A Material supplier who deals in bulk items such as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Packagers, brokers, manufacturer’s representatives or other persons who arrange or expedite transactions are not Material Suppliers

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“**Milestone**” means a defined event toward the completion of Work. The Baseline Schedule has three types of milestones; Coordination Milestones, Contract Milestones and Payment Milestones. The Schedule of Milestones (ITO Exhibit 22) Price Item (PI), once achieved, shall serve as the Payment Milestones.

“**Necessary Basic Project Configuration Change**” means material changes in the Basic Project Configuration which are necessary to correct an error, omission, or defect in the Basic Project Configuration Plans as shown or described in the Contract (with the understanding that a change shall be deemed “necessary” only if the error, omission, or defect creates a problem which cannot reasonably be corrected without a material change in the Basic Project Configuration).

“**Notice to Offerors**” means the publication or the notice of a solicitation for offers.

“**Notice to Proceed**” or “**NTP**” means the document issued to DFIM Contractor designating the official commencement date of the performance of specific work under the Contract.

“**Offer**” means the Proposal.

“**Offeror**” means any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, an offer for the goods, service, or construction contemplated.

“**Officer-in-Charge**” means the HART representative with delegated authority for which construction is being procured or the Officer-in-Charge's delegated Designee.

“**Opening**” means the date set for opening of Proposals.

“**Oversight**” means actions by HART to satisfy itself that DFIM Contractor is designing, constructing and managing the Work in accordance with the Contract Documents. It includes actions identified in the Contract Documents by the terms QA, Review and Comment, accept/acceptance, audit, observe, monitor, verify or terms of similar import. Oversight may include *shadowing* DFIM Contractor's activities to assure that the Quality Plan is being implemented effectively. Neither the activity of Oversight nor the lack of Review and Comment on the part of HART shall be construed to relieve DFIM Contractor and its organization from the responsibility and costs for meeting all Contract and regulatory requirements.

“**Partial Suspension**” means suspension of Work on some, but not all, items.

“**Partnering**” means those actions taken to include all parties with an appropriate and vested interest in the Project in the management of the Project, such that the Project is completed in the most efficient, timely, safe, and cost effective manner for the mutual benefit of all concerned. These actions include, but are not limited to, communication, organization, establishing goals, continuous improvement, problem identification, conflict resolution, and managing change. Interested parties may include, but are not limited to, HART; DFIM Contractor; Subcontractors; Suppliers of goods and services to the Project; the community within which the Project is constructed; the community served by the Project; federal, State, and local governments or other public agencies; and utilities.

“**Pay Item**” means a component of the Schedule of Milestones for which DFIM Contractor provides a Pay Item Value for all Work included in a schedule milestone. A Pay Item may be a major contract item or series of interrelated items as identified in the Schedule of Milestones and DFIM Contractor's Baseline Schedule.

“**Pay Item Value**” means that value allocated by DFIM Contractor to a Pay Item that represents the dollar

value to be achieved or achieved upon the completion of a schedule milestone as indicated in the Schedule of Milestones and DFIM Contractor's Baseline Schedule.

"Payment Bond" means the approved form of security, executed by DFIM Contractor and its Surety or Sureties, guaranteeing the payment of all legal charges, costs, amounts, and debts pertaining to the design and construction of the Work.

"Performance Bond" means the approved form of security, executed by DFIM Contractor and its Surety or Sureties, guaranteeing performance of all Work in compliance with the requirements of the Contract Documents, including all Change Orders pertaining thereto.

"Performance Specifications" means the functional or performance requirements of the item, what a product does, and how well it performs.

"Periodic Payment Schedule" means the schedule submitted with DFIM Contractor's Proposal and updated prior to first pay request (which schedule may be amended by Change Order) that depicts the planned monthly disbursement of Contract Price. The PPS will be used for comparative assessment to the Schedule of Milestones table and monthly pay requests.

"Person" means any individual, firm, corporation, company, LLC, LLP, joint venture, voluntary association, partnership, trust, or public or private organization, other legal entity, or combination thereof.

"Price Item" means a component of the Schedule of Prices for which DFIM Contractor provides a Price Item Value (PIV) for all Work included in that item. A Price Item (PI) may be a major contract item or series of interrelated items as identified in the Pricing Information. This term also relates to the Schedule of Milestones that serves as a basis of payment. Items on the Schedule of Milestones are also referred to as PI and contain a PIV

"Price Item Value" means that value allocated by DFIM Contractor to a PI as set out in the Pricing Information.

"Price Proposal" means the portion of the Proposal that addresses the Project's cost including the Schedule of Prices, Price Items, Price Item Values, PPS-P, and Bid Security. With the exception of the Bid Security, the Price Proposal is included in the Contract Documents at Award.

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any good, service, or construction. The term also includes all functions that pertain to the obtaining of any good, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams, warnings and other information furnished by the Contractor, Subcontractor or Vendor to illustrate or explain the fabrication, assembly, installation, maintenance or operation of materials, equipment, or some portion of the Work.

"Professional Services" means those services within the scope of the practice of architecture, landscape architecture, professional engineering, and surveying, real property appraisal, law, medicine, accounting, dentistry, or any other practice defined as professional pursuant to Sections 415A-2, HRS, or the professional and scientific occupation series contained in the United States office of personnel management's Qualifications Standard Handbook.

“**Project**” means Work to be performed as set forth in the Contract, including furnishing all services, labor, goods, Materials, supplies, Equipment and other incidentals reasonably necessary for the successful completion of Work contemplated under the Contract.

“**Project Plans**” means those portions of the Contract Documents prepared by or for DFIM Contractor that receive HART’s Review and Comment, consisting of drawings, diagrams, illustrations, schedules and other data which show the scope, extent, and character of the Work. Project Plans will go through Definitive Design, Interim Design (if necessary), and Final Design prior to being issued for construction.

“**Project Specifications**” means those specifications developed by DFIM Contractor to define and control the specific requirements, conditions, means, and methods to be used on the Project. Project Specifications will be based on the Contract requirements, including HART’s Standard Specifications (as modified in the Contract Documents), and shall provide finished products that meet or exceed the quality requirements of the Contract. Project Specifications are subject to Review and Comment by HART during Design Reviews.

“**Proposal**” means the executed document submitted by an Offeror in response to the RFP. With respect to RFP Part 1, this means the Qualifications Proposal, and with respect to RFP Part 2, the Technical and Price Proposal.

“**Proposal Plans**” means plans that are developed and submitted by the Offeror in their Proposal.

“**Proposal Revision**” means a supplemental Proposal submitted at the request of HART allowing a responsive Offeror determined to be in the Competitive Range the opportunity to clarify its initial Proposal, correct Deficiencies or Weaknesses in the initial Proposal, submit additional information requested by HART and/or desired by the Offeror, and submit a revised Price Proposal. A Proposal Revision is also known as a “Best and Final Offer (BAFO).” A request for Proposal Revision generally follows Discussions between HART and the Offerors.

“**Protect in Place**” or “**Protection in Place**” means any activity undertaken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility’s location by construction Equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered a method in which to Protect in Place, whereas temporarily moving power lines to another location after cutting them would be considered a Temporary Relocation. The term includes both temporary measures and permanent installations meeting the foregoing definition.

“**Provisional Sum**” means an estimated amount set by HART and so designated in the Pricing Information serving to provide for payment for specified items of Work or an expenditure which has not been quantified or detailed at the time the Contract is executed, which sum may include provision for Work to be executed or for goods, Materials, or services to be supplied. Also referred to as an “Allowance Item”.

“**Qualifications Proposal**” means the information prepared and submitted by an Offeror in response to the RFP Part 1.

“**Quality Assurance**” means all planned and systematic actions by DFIM Contractor necessary to provide assurances that DFIM Contractor is effectively performing QC in accordance with the Quality Plan, that all Work complies with the Contract and that all Materials incorporated in the Work, all Equipment, and all elements of the Work will perform satisfactorily for the purpose intended. QA actions include, but are not limited to, monitoring, independent verification testing, auditing, spot-checking and training the Quality management professionals assigned to perform QC. All QA reviews, audits, and verification testing shall be

documented and part of DFIM Contractor's Quality Management Records that are available for HART review.

“Quality Assurance Program” means the overall quality program and associated activities including HART Oversight, DFIM Contractor QC and QA, the Contract's quality requirements, and DFIM Contractor's Quality Plan.

“Quality Control” means the total of all activities performed by DFIM Contractor, Designer, Subcontractor, producer or Manufacturer to ensure that the Work meets Contract requirements. For design this includes, but is not limited to, procedures for design quality, checking, design review including reviews for constructability, and review and approval of Working Plans. For construction this includes, but is not limited to, procedures for Materials handling and construction quality Inspection, sampling and testing of Materials, plants, production and construction; Material certifications; calibration and maintenance of Equipment; production process control; and monitoring of environmental compliance. Quality Control also includes documentation of all QC design and construction efforts.

“Quality Engineering Firm” means an independent engineering/testing firm responsible for administering, managing and conducting the construction QC and QA inspection, sampling and testing specified in the Contract Documents and DFIM Contractor's Quality Plan. The Quality Engineering Firm shall not be owned in any part or controlled by DFIM Contractor, any Principal Participant or by any Construction Subcontractor. The Designer or a firm associated with or subsidiary to the Designer, may serve as the Quality Engineering Firm, except any Designer who is a Principal Participant or any Designer (or subsidiary of a Designer) that is an Affiliate of any Principal Participant or Construction Subcontractor shall not serve in the capacity of Quality Engineering Firm.

“Quality Manager” means the individual employed by DFIM Contractor who is responsible for the overall Quality program of DFIM Contractor, including the quality of management, design, and construction.

“Quality Plan” means the plan that sets out DFIM Contractor's means of complying with its obligations in relation to QA/QC, which plan shall be provided and maintained in accordance with the Contract following Review and Comment thereon by HART.

“Reference Documents” means the documents provided with and so designated in the RFP Part 2. HART makes no representation or guarantee as to, and shall not be responsible for their accuracy, completeness, or pertinence, and, in addition, shall not be responsible for the conclusions to be drawn therefrom. They are made available to the Offeror for the purposes of providing such information as is in the possession of HART, whether or not such information may be accurate, complete or pertinent, or of any value.

“Reference Drawings” means drawings which represent HART's preference. The Offeror is allowed to make changes to these drawings provided the changes meet the Contract requirements.

“Referenced Standard” means any standard or specification applicable to the Project established by reference contained in the Contract to a described publication.

“Reliability” means the probability of performing a specified function without failure and within design parameters for the period of time or the number of cycles specified under actual service conditions.

“Relocation” means each removal, relocation, abandonment, and/or protection in place (including provision of temporary services as necessary) of any and all Utilities that is necessary in order to complete the Work as required by the Contract.

“**Request for Proposals**” or “**RFP**” means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

“**Request for Proposals Drawings**” or “**RFP drawings**” means drawings prepared by HART to support the design-build procurement, to the extent they are identified in the Contract Documents. These drawings include Mandatory and Reference Drawings.

“**Request for Proposals Plans**” or “**RFP plans**” means RFP Drawings.

“**Responsible Engineer**” means an engineer, employed by DFIM Contractor, who has qualified academically, has the requisite practical experience, has passed a recognized examination, and is currently licensed as such in the State of Hawai‘i and who is in direct charge of the design of a designated Design Unit.

“**Responsible Offeror**” means a person who has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability which will assure good faith performance. [HRS 103D-104]

“**Responsive Offeror**” means a person who has submitted an offer which conforms in all material respects to the RFP. [HAR 3-120-2]

“**Review and Comment**” means HART’s reviews, observations, and/or inspections based solely on information submitted by DFIM Contractor (not based on any independent investigation or inquiry by HART) and HART’s written responses resulting from such HART actions.

“**Revised Ordinances of Honolulu**” means the most recent update of that volume of ordinances and code originally compiled and published by the City of Honolulu in 1969.

“**Right-of-Way**” means a general term denoting land, property, or interests therein (including easements), usually in a strip or parcel acquired for or devoted to the Project.

“**Safe**” means secure from liability to harm, injure, danger or risk; free from danger or risk.

“**Safety**” means the condition in which persons are free from threat of danger, harm, or loss arising from improper design, manufacture, assembly, function, or failure of a system or any of its components or elements.

“**Safety Plan**” means the plan that sets out the DFIM Contractor’s means of complying with its obligations in relation to project safety, which plan shall be provided and maintained in accordance with the Contract Documents following Review and Comment by HART.

“**Samples**” means representative quantities of Materials taken in specified amounts and frequencies for subsequent testing in accordance with specified standard procedures. Or, physical examples of Materials to be supplied or workmanship which shall establish standards by which the Work shall be judged provided such samples meet Contract requirements.

“**Schedule of Milestones**” means table of schedule milestones that include a Pay Item, Pay Item description, Pay Item Value, planned or actual achievement date, a cross reference to a corresponding activity on DFIM Contractor’s Baseline Schedule, and serves as a basis, once achieved, for monthly payment. The Schedule of Milestones is a further breakdown of the Schedule of Prices and as such will sum to its Price Items.

“**Schedule of Prices**” means the schedule of Price Items that sum to the Contract Price and provided with

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DFIM Contractor's Price Proposal. The Schedule of Prices becomes part of the Contract and is used to evaluate and compare the PPS-C and Schedule of Milestones. The Schedule of Prices includes Price Items, Price Item description, Price Item Value and cross references to DFIM Contractor's Baseline Schedule activity codes.

"Scope of the Project" means the brief description of the Work to be performed to design and construct the Project as contained in the Contract.

"Service Line" or **"service line"** means a utility line, the function of which is to connect directly the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another utility line located off such property, which other utility line connects more than one such individual line to a larger system, as well as any cable or conduit that supplies an active feed from a utility owner's facilities to activate or energize a Governmental Person's local lighting and electrical systems, traffic control systems, street lights, communication systems or irrigation systems.

"Site" means those areas designated in writing by HART for performance of Work and such additional areas as may, from time to time, be designated in writing by HART for DFIM Contractor's use in performance of the Work. For purposes of insurance, indemnification, safety, security requirements, and payment for use of Equipment, the term Site also includes any areas on which Relocation Work is performed and any property being temporarily used by DFIM Contractor for storage of Equipment and/or construction Work.

"Site Security Plan" means the plan that sets out DFIM Contractor's means of complying with its obligations in relation to Site security, which plan shall be provided and maintained in accordance with the Contract following Review and Comment thereon by HART.

"Solicitation" means an invitation for bids, request for proposals, or a request for quotation issued by HART for the purpose of soliciting bids or proposals to perform under HART contract. [HRS 3-120-2]

"Special Provisions" means additions and revisions to the General Conditions Design-Build covering conditions applicable to this individual Project.

"Specialty Items" means Work not usually performed by general contractors and so designated in the Contract. Work that requires specialized knowledge, skill, or Equipment not ordinarily available in construction organizations and in general limited to minor components of the overall Contract. For purposes of this Contract, all engineering and design Work are considered Specialty Items.

"Specifications" mean any description of the physical or functional characteristics, or of the nature of a good, service, or construction item. The term includes descriptions or any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery. [HRS 103D-104]

"Standard Drawings" means detailed drawings that depict the dimensional requirements and clearances of certain features of the Project and components, subassemblies, or systems to be incorporated into the Project, issued by HART or other stakeholder, for general application and repetitive use in connection with the Project. The RFP Standard Drawings are Mandatory Drawings.

"Standard Specifications" means the HART Standard Specifications.

"State" means State of Hawai'i.

"Station" means a place designated for the purpose of loading and unloading passengers, including patron

service areas and ancillary spaces associated with the same structure.

“**Station Platform**” means the area of a station used primarily for loading and unloading passengers.

“**Structural Steel**” means shapes, plates, H-piling, and sheet piling.

“**Structures**” means bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, end walls, buildings, sewers, service pipes, underdrains, foundation drains and other features which may be encountered in the Work and not otherwise classed herein.

“**Subcontract**” means any agreement entered into by DFIM Contractor or a Subcontractor (at any tier) for a portion of the construction or any other part of the Work in connection with, and under the terms of, the Contract.

“**Subcontractor**” means any person who enters into an agreement with DFIM Contractor to perform a portion of the work for DFIM Contractor.

“**Substantial Completion**” means the point of which the Project, or segment thereof, is complete, such that it can be safely and effectively used by the public without further barriers, delays, disruption, or impediments as requested by DFIM Contractor and Approved by HART.

“**Substantial Completion Date**” means the Date on which DFIM Contractor is required to achieve Substantial Completion, per the Contract Documents.

“**Supplemental Selection Information**” means the information from the Appendices to the Technical Proposal that will not be made a part of the Contract Documents at Award. The Supplemental Selection Information is part of the Technical Proposal.

“**Surety**” means the corporate body properly licensed in the State which has issued the Performance and/or Payment Bond.

“**Suspension and Debarment**” means the disqualification of an Offeror or DFIM Contractor from proposing on the Work for a period of time determined in accordance with United States Department of Transportation (US DOT) regulations.

“**System**” also referred to as Honolulu Rail Transit Project means the 20-mile elevated rail line that will connect West O`ahu with downtown Honolulu and Ala Moana Center. The System features electric, steel-wheel trains each capable of carrying passengers from East Kapolei to Ala Moana Center with 21 station stops including the Airport and Downtown. The System consists of fixed facilities that include the Guideway structure, stations, and a Maintenance and Storage Facility (MSF); passenger vehicles; and transit core systems including train control, communications, traction electrification and fare vending.

“**Technical and Price Proposal**” means the information prepared and submitted by an Offeror in response to the RFP Part 2.

“**Technical Proposal**” means the portion of the Proposal consisting of the Proposal Information and the Supplemental Selection Information.

“**Temporary Relocation**” means any interim Relocation of a Utility (i.e., the installation, removal, and disposal of the interim facility) pending installation of the permanent facility in the same or a new location, and any removal and reinstallation of a Utility in the same place with or without an interim relocation.

“**Test**” means methods adopted by HART and DFIM Contractor to ascertain the quality, character, and acceptability of Materials and processes utilized in performing the Contract.

“**Time Related Dispute**” means any dispute arising from any event not within DFIM Contractor's control, performance, action, force, or factor which materially and adversely affects the scheduled time of performance depicted in DFIM Contractor's most recent Baseline Schedule submitted to HART.

“**Total Proposal Price**” means the total proposed amount that will be considered to be the correct sum of all proposed PIVs.

“**Traction Power Substation**” (TPSS) means a fixed facility within the rail system where electrical equipment is located for the specified purpose of receiving and converting or transforming incoming electrical energy to usable electrical energy.

“**Trainway**” or “**Trackway**” means that portion of the transit guideway in which the passenger vehicles operate.

“**Unbalanced Price Proposal**” means a Price Proposal that is unbalanced either materially or mathematically. A Materially Unbalanced Price Proposal is a Price Proposal that generates a reasonable doubt that awarding the Contract to the Offeror submitting the Price Proposal will result in the lowest ultimate cost to HART. A Mathematically Unbalanced Price Proposal is a Price Proposal containing lump sum or Unit Price items that do not reasonably reflect the actual costs plus a reasonable proportionate share of the Offeror’s anticipated profit, overhead costs, and other indirect costs.

“**Unit Price**” means the price established by the Contract for a specified unit quantity of Work that is measured for payment.

“**Utility**” or “**utility**” means a privately, publicly, or cooperatively owned facility (which term includes lines, systems and other facilities, and includes municipal and/or government facilities) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any fire or police signal system as well as streetlights associated with roadways owned by local agencies. However, when used in the context of the Relocation of facilities to accommodate the Project, the term "Utility" or "utility" excludes traffic signals, flashing beacon systems, and lighting systems for the Project. The necessary appurtenances to each utility facility shall be considered part of the facility, including the utility source, guide poles, feeder service lines, supports, etc. Without limitation, any service lateral connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such service lateral.

“**Utility Agreement**” means the agreements with Utility Owners as described in the Contract.

“**Utility Information**” means the Utility-related data set forth in the Contract.

“**Utility Owner**” or “**utility owner**” means the owner or operator of any Utility (including Governmental Persons and privately held entities).

“**Utility Standards**” means the standard specifications, standards of practice, and construction methods that are applicable to a Relocation pursuant to the terms and conditions of a Utility Agreement; provided that if a particular facility is not governed by a Utility Agreement or the applicable Utility Agreement does not specify applicable standards, the term “Utility Standards” shall mean the standard specifications, standards of practice, and construction methods that are customarily applied by a utility owner to its facilities, in effect

as of the Proposal Due Date.

“**Verification Sampling and Testing**” means sampling and testing performed to validate the quality of the product. HART, or a firm retained by HART, will perform Verification Sampling and Testing.

“**Weakness**” means a flaw in the Proposal that increases the risk of unsuccessful Contract performance. A significant Weakness in the Proposal is a flaw that appreciably increases the risk of unsuccessful Contract performance.

“**Work**” in addition to the definition described in the Agreement, means all of the administrative, design, engineering, real property acquisition support services, Utility support services, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, Material, Equipment, maintenance, documentation, and other duties and services to be furnished and provided by DFIM Contractor as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance of the Project except for those efforts which the Contract Documents specify will be performed by HART or other Persons. In certain cases, the term is also used to mean the products of the Work.

“**Work Site Access**” means that the contractor is provided access by the Work Site Controller to perform limited and focused construction work per a mutually established schedule between contractors. This work is coordinated with the Work Site Controller so as not to interfere with that contractor’s work.

“**Work Site Control**” or “**Work Site Controller**” means the contractor that controls the construction activity on a shared work site. For transit properties this may be the Core Systems Contractor when they plan to energize an element within the Work Site either temporarily for testing purposes or permanently. The contractor that controls the work site is held responsible for all activities on that work site in terms of safety, security, and overall management. Work Site Control may transfer between contractors, if necessary, to maintain project schedules but must be established prior to any work commencing by two or more contractors in a given work site.

“**Worker**” means Employee.

“**Working Day**” means any day on the calendar, exclusive of State holidays, Saturdays, and Sundays. Unless another meaning is intended, “Working Days” shall mean consecutive Working Days.

“**Working Plans**” means those plans prepared by DFIM Contractor to supplement Design Plans to specify additional details and procedures for construction of the Project, including the following:

- (a) Construction details;
- (b) Erection plans;
- (c) Fabrication plans;
- (d) Field design change plans;
- (e) Stress sheets;
- (f) Shop plans;
- (g) Lift plans;
- (h) Bending diagrams for reinforcing steel;
- (i) Falsework plans; and

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- (j) Similar data required for the successful completion of the Work.

SP-1.2 REFERENCES

Utility and HDOT standards referenced in the Standard Specifications shall apply only to Material and workmanship with respect to Work, which upon completion is to be accepted by HDOT, a municipality or a utility company. The commercial terms within these references (e.g. HDOT Division 100 General Provisions, Control of Work, Prosecution and Progress, and Measurement and Payment) are not applicable to this Contract.

- (a) Abbreviations:

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADA	Americans with Disabilities Act
ADAAG	Americans with Disabilities Act Accessibility Guidelines
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ANSI	American National Standard Institute
AOAC	Association of Official Agricultural Chemists
APTA	American Public Transportation Association
ARA	American Railway Association
AREA	American Railway Engineering Association
ARTBA	American Road and Transportation Builders Association
ASA	American Standards Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
APTA	American Public Transportation Association
AWG	American Wire Gauge
AWPA	American Wood-Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
BAFO	Best and Final Offer
BFS	Department of Budget and Fiscal Services, City and County of Honolulu
BMP	Best Management Practices
BWS	Board of Water Supply
CADD	Computer Aided Design and Drafting
CCE	Construction Compliance Engineer
CCH	City and County of Honolulu
CCM	Construction Compliance Monitor
CD-ROM	Compact Disc – Read Only Memory
CDR	Critical Design Review
CDRL	Contract Data Requirements List
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act

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CFR	Code of Federal Regulations
CO	Change Order
CPM	Critical Path Method
CS	Core Systems
CSL	Contract Submittal List
DB	Design-Build
DBA	Decibels, A-scale
DBE	Disadvantaged Business Enterprise
DBOM	Design-Build-Operate-Maintain
DCE	Design Compliance Engineer
DCM	Design Compliance Monitor
DRT	Disputes Review Team
DSC	Differing Site Conditions
DTS	Department of Transportation Services, City and County of Honolulu
ECP	Environmental Compliance Plan
EEI	Electrical Engineering Institute
EIA	Electronic Industries Association
EIS	Environmental Impact Statement
EMT	Emergency Medical Technician
ENR	Engineering News Record (Trade Magazine)
EPA	Environmental Protection Agency
ETL	Electrical Testing Laboratories
FAR	Federal Acquisition Regulations
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration, U.S. Department of Transportation
FONSI	Finding of No Significant Impact
FS	Federal Specifications
FTA	Federal Transit Administration
GBR	Geotechnical Baseline Report
GCDB	General Conditions of Design-Build Contracts for the City and County of Honolulu
G06	General Order No. 6 of the Public Utilities Commission, Rules for Overhead Electric Line Construction
GDR	Geotechnical Data Report
GRJP	General Rules for Joint Use of Poles
HAR	Hawai`i Administrative Rules
HBCTCA	Hawai`i Building and Construction Trades Council Affiliates
HDOT	State of Hawai`i Department of Transportation
H RTP	Honolulu Rail Transit Project
HST	Hawai`i Standard Time
HSS	State of Hawai`i Department of Transportation Standard Specifications
HRS	Hawai`i Revised Statutes
IA	Independent Assurance
IES	Illuminating Engineering Society
IMSA	International Municipal Signal Association
ISO	International Standards Organization
ITE	Institute of Transportation Engineers
ITS	Intelligent Transportation System
JV	Joint Venture
KHG	Kamehameha Highway Guideway Design-Build Project
LCC	Leeward Community College

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LLC	Limited Liability Company
LLP	Limited Liability Partnership
LOI	Letter of Interest
MIL	Military Specifications
MOT	Maintenance of Traffic
MSDS	Material Safety Data Sheet
MSF	Maintenance and Storage Facility
MURK	Manual on Uniform Record Keeping
MUTCD	Manual on Uniform Traffic Control Devices
N/A	Not Applicable
NCR	Non-Conformance Report
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act
NHS	National Highway System
NIST	National Institute of Standards and Technology
NPDES	National Pollutant Discharge Elimination System
NTP	Notice to Proceed
OCIP	Owner Controlled Insurance Program
OSHA	Occupational Safety and Health Administration, United States Department of Labor
PA/CR	Public Awareness and Community Relations
PCA	Pre-Construction Assessment
PE	Preliminary Engineering
PI	Price Item or Public Information
PIV	Price Item Value
PPS-C	Contract Periodic Payment Schedule
PPS-P	Proposal Periodic Payment Schedule
PS	Performance Specification
PTD	City Department of Transportation Services, Public Transit Division
QA	Quality Assurance
QC	Quality Control
QCM	Quality Control Manager
RFC	Request for Change
RFI	Request for Information
RFP	Request for Proposals
RFP Part 1	Request for Qualifications Proposals
RFP Part 2	Request for Technical and Price Proposals
ROD	Record of Decision
ROH	Revised Ordinances of Honolulu
ROW	Right-of-Way
RTD	Rapid Transit Division, Department of Transportation Services, City and County of Honolulu
RTSA	Rapid Transit Stabilization Agreement
RUS	Rural Utilities Service
SAE	Society of Automotive Engineers
SBA	Small Business Administration
SHPD	State Department of Land and Natural Resources, Historic Preservation Division
SI	International System of Units
SM	Schedule of Milestones

SP	Special Provision
SSPC	Steel Structures Painting Council
STAA	Surface Transportation Assistance Act of 1982
STURAA	Surface Transportation and Uniform Relocation Assistance Act of 1987
TBD	To Be Determined
TEA-21	Transportation Equity Act for the 21st Century
TPSS	Traction Power Substation
UBC	Uniform Building Code
UH	University of Hawai'i
UL	Underwriters' Laboratories, Inc.
UPC	Uniform Plumbing Code
US	United States
USC	United States Code
US DOL	United States Department of Labor
US DOT	United States Department Of Transportation
UST	Underground Storage Tank
VE	Value Engineering
VECP	Value Engineering Change Proposal
WBE	Women-owned Business Enterprise
WBS	Work Breakdown Structure
WCLA	West Coast Lumberman's Association
WOFH	West O'ahu/ Farrington Highway Design-Build Contract
WTF	Wheel Truing Facility

SP-1.3 DFIM CONTRACTOR'S REPRESENTATIONS

(a) License. DFIM Contractor represents that DFIM Contractor is a business entity which is experienced and skilled in furnishing and installing equipment and construction of projects of the type described in the Contract and that all work performed under the Contract will be performed by Contractors properly licensed by the State of Hawaii, and all Contractors are in compliance with all applicable laws and regulations.

(b) DFIM Contractor's warranty. By the act of submitting its Proposal in response to the RFP, DFIM Contractor warrants that:

(1) DFIM Contractor and all subcontractors intended to be used by DFIM Contractor have carefully and thoroughly reviewed the RFP and have found the RFP complete and free from ambiguities and sufficient for the purpose intended;

(2) DFIM Contractor has investigated and examined carefully the Site and the RFP and understands the nature, location and character of the Project and the Site;

(3) DFIM Contractor and all workers, employees and subcontractors intended to be used are skilled and experienced in the type of design and construction represented in the RFP;

(4) Neither DFIM Contractor nor any of DFIM Contractor's employees, agents, suppliers, or subcontractors has relied upon any verbal representations from HART, its employees or agents, including architects, engineers or consultants, in assembling its Proposal;

(5) DFIM Contractor's Proposal, including the Price Proposal, is based solely upon the RFP and properly issued written addenda and not upon any other written or verbal representation, and based upon DFIM Contractor's own examination and investigation of surface and subsurface condition and availability of materials and equipment; and

(6) DFIM Contractor has no obligations, commitments or impediments of any kind

that will limit or prevent performance of work as required by the Contract.

(c) Independent price determination; no collusion. Each Offeror certifies that the price submitted was independently arrived at without collusion. [HAR §3-122-192.]

(d) All materials submitted by DFIM Contractor under this Contract shall be provided in the English language. If material catalogs, instruction manuals, training materials and any other information are originally in another language, a full and complete translation shall be provided.

(e) Delivery. Notices, deliverables and correspondence shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:30 p.m. Hawai`i Standard Time and all other notices received after 4:30 p.m. shall be deemed received on the first business day following delivery (that is, in order for a facsimile to be deemed received on the same day, at least the first page of the fax must have been received before 4:30 p.m.). Any technical or other communications pertaining to the Work shall be conducted by DFIM Contractor's Project Manager and technical representatives designated by HART. DFIM Contractor's representatives shall be available at all reasonable times for consultation.

SP-1.4 MEANING OF TERMS

(a) The words "*shall*" and "*shall be*" are also implied, and when implied or stated are to be considered mandatory and generally pertain to requirements or actions of DFIM Contractor.

(b) Whenever DFIM Contractor is specifically directed or implied by these specifications to "*give notification*" or "*notify*," it is implied that DFIM Contractor give such notification to HART. Likewise, whenever the specifications state "*notification will be given*," or "*will be notified*," it is implied that HART will give such notification to DFIM Contractor.

(c) Whenever anything is, or is to be, done, if, as, or, when, or where "contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, or condemned," it shall be understood as if the expression were followed by the words "by HART" or "to HART."

SP-1.5 ATTACHMENTS TO SPECIAL PROVISIONS SP-1

There are four attachments to this Special Provision SP-1:

(a) Attachment A - contains an abbreviated Scope of Work and description of roles and responsibilities for HART and DFIM Contractor;

(b) Attachment B - contains the FTA required clauses;

(c) Attachment C - contains the Rapid Transit Stabilization Agreement; and

(d) Attachment D - contains the Rapid Transit Stabilization Agreement Hawai`i Building and Construction Trades Council Affiliates.

SPECIAL PROVISION

CHAPTER SP-2 GENERAL PROVISIONS

SP-2.5 PERSONAL INFORMATION PROTECTION

Chapter 2, Section 2.5(d), of the GCDB is amended by deleting the paragraph in its entirety and replacing with the following:

(d) Termination for cause. In addition to any other remedies provided for in this Contract, if HART learns of a material breach by the DFIM Contractor of this Section 2.5, HART may terminate the Contract if the DFIM Contractor fails to expeditiously cure the breach or end the violation. The DFIM Contractor and HART shall follow Chapter 487N, HRS, with response to notification of a security breach of personal information.

SP-2.6 COPYRIGHT OR PATENT

Chapter 2, Section 2.6, of the GCDB is amended by being deleted in its entirety.

SP-2.8 OWNERSHIP OF PROPERTY

Chapter 2, Section 2.8, Ownership of Results of the GCDB is amended by being deleted in its entirety and replaced with the following Section 2.8:

(a) DFIM Contractor agrees that any reports, materials, studies, photographs, negatives, drawings or other documents prepared by DFIM Contractor in the performance of its obligations under this Contract shall be the exclusive property of HART. Upon completion, termination or cancellation of the services embraced under this Contract, all such documents, together with all Work inclusive of research, investigation and analysis data, reports (including files on disks), computations, tabulations, original drawings (including CADD information on disks), correspondence input from external sources (including Subcontractors), etc., shall be delivered to and become the property of HART without limitation. Reuse of said materials, information or data, during performance or following termination of this Contract, on any other project or for any other purpose except as provided for herein, shall be at HART's discretion and HART's sole responsibility. DFIM Contractor shall not utilize any materials, information or data obtained as a result of performing the services called for in this Contract in any commercial or academic publication or presentation without the express written permission of HART. DFIM Contractor shall not reference an opinion of an employee or agent of HART obtained as a result of performing the services called for in this Contract in any publication or presentation without the written permission of the employee or agent to whom the opinion is attributed, in addition to the permission of HART.

SP-2.13 LIABILITY

Chapter 2, Section 2.13, of the GCDB is amended by being deleted in its entirety and replaced with the following Section 2.13:

(a) HART's obligations under this Contract shall be limited to the payment for services under this Contract, and

(b) The DFIM Contractor's liability to HART for damages arising out of Work performed under the Contract shall be limited to the total Contract Value of the Contract provided that excluded from the cap limit will be any liability, including defense costs, for any type of damage or loss to the extent it is covered by proceeds of insurance required under this Contract. This limitation of liability shall not apply with regard to fraud, criminal conduct, bad faith, gross negligence, intentional misconduct, or recklessness on the part of the DFIM Contractor, its subcontractors at any tier, and the DFIM Contractor's agents; the DFIM Contractor's obligations to pay liquidated damages under this Contract, the DFIM Contractor's

indemnities set forth in this Contract, including but not limited to SP-2.14; or losses arising out of the DFIM Contractor's release of hazardous materials. Furthermore, this limitation of liability shall not apply if the insurance requirements set forth in the Contract Documents are not in place and effective during the term of this Contract.

SP-2.14 INDEMNIFICATION

Chapter 2, Section 2.14, of the GCDB is amended by being deleted in its entirety and replaced with the following Section 2.14:

(a) Subject to the liability limitations noted in Section 2.13, the DFIM Contractor shall defend, indemnify and save harmless HART, including its elected and appointed officials, agents, employees, volunteers and construction managers, and any other entities required to be indemnified by HART under the Contract, and each of them (collectively referred to as "Indemnitees" and individually referred to as "Indemnitee"), of and from any and all claims, demands, causes of action in law or equity, damages, penalties, costs, expenses, actual attorneys' fees, experts' fees, consultants' fees, judgments, losses or liabilities, of every kind and nature whatsoever, including, without limitation, damages, losses or liabilities, of every kind and nature whatsoever, including, without limitation, damages from personal injury, bodily injury, emotional injury, sickness or disease, or death to persons (including, but not limited to any employees or agents of DFIM Contractor, HART or any other contractor or any person) arising out of or in any way connected or incidental to, the performance of the Work or any of the obligations contained in this Contract; provided, however, that DFIM Contractor shall not be responsible for such portion of damages, if any, proximately caused by the negligence or intentional misconduct of HART. It is expressly acknowledged and agreed that each of the obligations set forth herein is independent of any obligations to procure insurance for the benefit of HART and that each shall be given effect.

(b) Worker's compensation law. DFIM Contractor shall save harmless HART, its departments, and all of their officers, consultants, representatives, employees or agents, and the Construction Manager from all suits, actions or claims of any character brought on account of any claims or amounts arising or recovered under the Workers' Compensation Law or any other law, by-law, ordinance, order or decree.

(c) Copyright or patent. If DFIM Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the right for such use shall be procured by DFIM Contractor from the patentee or owner. DFIM Contractor shall indemnify and hold harmless HART from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright in connection with the work to be performed under the contract, and shall indemnify HART and all of their officers, employees or agents, for any costs, expenses and damages which it may be obliged to pay by reason of any such infringement at any time during the prosecution or after the completion of the work, including but not limited to attorneys fees and costs incurred in defense of any such claims.

SP-2.15 LIQUIDATED DAMAGES

Chapter 2, Section 2.15, of the GCDB is amended by adding the following as subparagraphs (b) and (c):

(b) If DFIM Contractor fails to achieve Substantial Completion by the deadline(s) specified herein, DFIM Contractor agrees to pay a Liquidated Damages charge of **\$20,000.00 per day**. If DFIM Contractor fails to perform any of the other items of Work described in the Contract Documents, DFIM Contractor agrees to pay the applicable Liquidated Damages charge specified herein.

(c) The Substantial Completion Date is **March 15, 2019**. If DFIM Contractor fails to achieve substantial completion by the Substantial Completion Date, Liquidated Damages will be paid in the amount specified above.

SP-2.18 LAWS, REGULATIONS

Chapter 2, Section 2.18, of the GCDB is amended by adding the following as subparagraph (b):

(b) Public Records Law. Information or documents received from DFIM Contractor may be open to public inspection and copying. HART will have the duty to disclose this information or these documents unless a particular record is deemed confidential by law. DFIM Contractor shall label specific parts of an individual document as a “trade secret” or “confidential” or “proprietary information” in accordance with HAR §3-122-46(9) and 3-122-58, provided that DFIM Contractor thereby agrees to indemnify and defend HART for honoring such a designation. The failure to so label any document that is released by HART shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

SP-2.20 GOVERNING LAW, VENUE AND DISCOVERY

Chapter 2, Section 2.20, Governing law and venue of the GCDB is amended by being deleted in its entirety and replaced with the following Section 2.20:

The provisions of this Contract shall be interpreted in accordance with the laws of the State of Hawai`i as those laws are construed and amended from time to time. All disputes arising out of or relating to this Contract shall be subject to the jurisdiction and venue of the State and federal courts in Honolulu, Hawai`i. DFIM Contractor agrees that, as a result of its willingness to do business with HART, it will resolve any dispute with HART in Honolulu, Hawai`i. All discovery between the parties undertaken pursuant to federal, State, or local rules shall be conducted within that county including, but not limited to, the production of documents and the appearance of expert and lay witnesses for deposition, if such depositions are permitted by court rules. Subject to Section 2.14, in the event of a dispute, DFIM Contractor and HART agree to bear the cost of producing their own employees for deposition in Honolulu, Hawai`i, including, but not limited to travel costs, per diem expenses and cost of employee time. The parties further agree that if court rules or the court itself permits the deposition of expert witnesses, the party seeking the testimony of the expert witness will bear that witness’ reasonable costs of travel, preparation costs and cost for time while in transit.

SPECIAL PROVISION

CHAPTER SP-3 INSURANCE; BID SECURITY, PERFORMANCE AND PAYMENT BONDS

SP-3.1 INSURANCE

Chapter 3, Section 3.1 of the GCDB is amended by being deleted in its entirety and replaced with the following Section 3.1:

(a) **Owner Controlled Insurance Program.** HART has elected to implement an Owner Controlled Insurance Program (OCIP) that will provide Workers Compensation and Employers' Liability, General Liability and Excess Liability, and Builders' Risk insurance coverage for contractors of every tier providing direct labor to the Project as further described in HART's OCIP Manual, to be provided to DFIM Contractor. All terms and conditions of SP-3.1 and the terms of the OCIP Manual, as amended, shall apply during the term of the Contract between HART and DFIM Contractor. HART agrees to pay all premiums associated with the OCIP, unless otherwise stated in the Contract Documents.

Although the OCIP is intended to provide broad coverages and high limits, DFIM Contractor acknowledges that the OCIP is not intended to and does not meet all the insurance needs of DFIM Contractor or subcontractors. In addition to any insurance provided by HART, an Enrolled Contractor (defined below) and all Ineligible Contractors (defined below), shall be responsible for providing certain insurance as specified in paragraph (h) "DFIM Contractor Provided Coverage" at their own expense.

DFIM Contractor acknowledges that DFIM Contractor has been advised to discuss OCIP with its insurance agent or consultant to ascertain that other necessary coverages are maintained, and DFIM Contractor has done so.

DFIM Contractor further acknowledges that DFIM Contractor has been advised to inform its Subcontractors of the contents of this SP-3.1 and to include this SP-3.1 in all its subcontracts for the Project and that it has done so.

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

(1) **"Eligible Contractor"** includes all contractors and subcontractors providing direct labor on the Project. Temporary labor services and leasing companies providing direct labor on the Project are to be treated as Eligible Contractors.

(2) **"Enrolled Contractor"** means any Eligible Contractor, whether DFIM Contractor or a Subcontractor, that follows and completes the enrollment procedures, and becomes enrolled in the OCIP.

(3) **"Ineligible Contractor"** includes (but is not limited to) consultants, demolition, hazardous materials abatement contractors, suppliers (that do not perform or subcontract installation), vendors, materials dealers, guard services, janitorial services, food services, and truckers (including trucking to the Project where delivery is the only scope of work performed). Ineligible Contractors shall be required to maintain their own insurance for their Work on the Project. Notwithstanding the foregoing, any Ineligible Contractor that has direct labor on the Project shall be required to participate in the Project Safety Program as further detailed in the OCIP Manual.

The Honolulu Rail Transit Project site is designated by HART and on file with the OCIP Insurance Carrier. The Project includes operations necessary or incidental to the Work of the DFIM

Honolulu Rail Transit Project

Contractor covered by this Contract. The DFIM Contractor's 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.

(c) **Exclusion of Costs for OCIP-Provided Coverages.** The DFIM Contractor warrants that it has excluded from its pricing, for itself and all its eligible subcontractors of all tiers, all costs for OCIP-Provided Coverages.

During the term of the Contract, the DFIM Contractor shall, and shall cause all its eligible subcontractors to price each change order to exclude costs for OCIP-Provided Coverages.

(d) **Audit and Recovery of DFIM Contractor and/or Subcontractor "Insurance Cost."** For insurance purposes, the DFIM Contractor shall, and shall cause all of its subcontractors, to keep and maintain accurate records of their payroll for operations at the Project site. The DFIM Contractor shall agree, and shall cause all its subcontractors to agree, to cooperate with HART and/or the OCIP carriers and/or the OCIP Administrator with respect to periodic audit and review of the DFIM Contractor's and subcontractors' payroll records for operations at the Project site.

The DFIM Contractor shall, and shall cause all its subcontractors to permit HART and its representatives to examine and/or audit their books and records pertaining to this Project. The DFIM Contractor shall, and shall cause all its subcontractors to provide any additional information to HART or its representatives as may be requested with respect to their insurance and insurance costs.

Retention payments, except as statutorily required, may not be released until all closeout documentation has been received and approved by HART.

(e) **OCIP-Provided Coverages.** The OCIP will be for the benefit of HART and its Enrolled Contractors (which includes subcontractors of all tiers that have employees on the Project site). Such coverage applies only to Work performed under the Agreement at the Project site. All Eligible Contractors must provide their own insurance for off-site exposures including, but not limited to, Automobile Liability insurance (see paragraph (h)).

HART, at its sole expense, will provide and maintain in force the types of insurance listed in subsection (1) through (4) below as a part of the OCIP for the Enrolled Contractors. Enrolled Contractors agree that the insurance policy limits of liability, coverage terms and conditions shall determine the scope of coverage provided by the OCIP.

(1) Workers' Compensation—Statutory limits with subrogation waivers and endorsements and minimum Employers' Liability limits provided as follows:

- i. \$1,000,000 Bodily Injury with Accident - Each Accident;
- ii. \$1,000,000 Bodily Injury by Disease - Policy Limit; and
- iii. \$1,000,000 Bodily Injury by Disease - Each Employee.

(2) Commercial General Liability Insurance shall be provided on an "occurrence" form under a master liability policy:

(A) Limit of Liability:

- (i) \$1,000,000 Each Occurrence Limit;
- (ii) \$2,000,000 Personal and Advertising Injury Limit;
- (iii) \$2,000,000 General Aggregate Reinstated Annually;
- (iv) \$2,000,000 Products and Completed Operations;

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- (v) \$100,000 Fire Legal Liability—any one fire; and
- (vi) \$5,000 Medical Payments—any one person.
- (B) Coverage and Terms:
 - (i) ISO Occurrence Form—CG 00 01 12 04;
 - (ii) Completed Operations Aggregate Limits apply as a single limit for the policy term, including the period of the Completed Operations extension of ten years;
 - (iii) Designated Project only; and
 - (iv) The Enrolled Contractor or subcontractor primarily responsible for causing any bodily injury or property damage liability loss shall be responsible for the first \$5,000 of each insured loss.
- (3) Excess Liability Insurance.
 - (A) \$50,000,000 per occurrence/Aggregate; and
 - (B) Completed Operations Aggregate Limits apply as a single limit for the policy term, including the period of the Completed Operations extension of ten years.
- (4) Builders Risk. Builder's Risk Insurance will provide "All-Risk" coverage subject to policy terms and conditions. This insurance will provide coverage for all Materials and Equipment permanently incorporated into the Project and Work performed under the Contract while in the course of construction, reconstruction, remodeling, or alteration. The Builders Risk policy will not provide coverage against loss by theft or disappearance of any Materials (unless the materials are to be incorporated into the Project), tools, or Equipment of the DFIM Contractor or any tier of subcontractor, or any other person furnishing labor or Materials for the Work to be performed under the Contract.

A deductible of \$25,000 per occurrence shall be borne by the DFIM Contractor or subcontractor(s) responsible for the Materials and Equipment to be incorporated into the Project or for the Work performed under the Contract.

(f) **Certificates and Policies for HART Provided Coverages.** Certificates of Insurance will be furnished for the Workers' Compensation, General Liability, Excess Liability and Builders' Risk coverages. These policies will be available for review by the Enrolled Contractor upon request to HART. The terms of such policies or programs, as such policies or programs may be from time to time amended, are incorporated by reference. The DFIM Contractor agrees to be bound by the terms of coverage as contained in such insurance policies and/or self-insurance programs.

(g) **Termination/Modification of the OCIP.** HART reserves the right to terminate or to modify the OCIP or the OCIP Manual. Prior to exercising such right, HART will provide thirty (30) Days advance written notice of termination or material modification to the Enrolled Contractors covered by the OCIP. In such an event, the DFIM Contractor will promptly obtain appropriate replacement insurance coverage acceptable to HART. Written evidence of such insurance shall be provided to HART prior to the effective date of the termination or modification of the OCIP coverages. The reasonable cost of such replacement insurance will be reimbursed by HART to the Enrolled Contractors.

SPECIAL NOTE: The DFIM Contractor understands and agrees that after the DFIM Contractor has completed its Construction Work under the Contract at the Project and its insurance, as provided by HART's OCIP, has been terminated, if the DFIM Contractor returns to the Project site to perform Warranty or Maintenance Work, it does so under its own insurance coverages and not under those provided by

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HART's OCIP.

(h) **DFIM Contractor Provided Coverage.** For any Work not covered under the OCIP, and until completion and Final Acceptance of the Work under this Contract, the DFIM Contractor shall, and shall cause its subcontractors, at their own expense, to furnish to HART OCIP Administrator, Certificates of Insurance giving evidence that no less than the following minimum coverages are in force. Such Certificate(s) shall identify the Project and shall name HART and all other entities as required by Contract, and their officers, commissioners, agents and employees of HART (as their interest may appear) as Additional Insureds on their Commercial General Liability and Automobile Liability policies:

- (1) Commercial Automobile Liability Insurance:
 - (A) Minimum Combined Single Limit that shall not be less than \$1,000,000 per occurrence; and
 - (B) Commercial Automobile Liability Insurance covering all vehicles owned by, hired by, or used by, or on behalf of, DFIM Contractor/ subcontractor.
- (2) Workers' Compensation and Employer's Liability Insurance:
 - (A) Statutory Limits with Other States Endorsement and minimum Employer's Liability Limits as follows:
 - (i) \$1,000,000 Bodily Injury with Accident - Each Accident;
 - (ii) \$1,000,000 Bodily Injury by Disease - Policy Limit;
 - (iii) \$1,000,000 Bodily Injury by Disease - Each Employee; and
 - (iv) The policy will be endorsed to exclude the Project if DFIM Contractor is an Enrolled Contractor.
- (3) Commercial General Liability Insurance:
 - (A) DFIM Contractor:
 - (i) \$1,000,000 Each occurrence;
 - (ii) \$2,000,000 General Aggregate;
 - (iii) \$2,000,000 Products/Completed Operations Aggregate; and
 - (iv) \$2,000,000 Personal and Advertising Injury.
 - (B) Subcontractor:
 - (i) \$1,000,000 Each occurrence;
 - (ii) \$2,000,000 General Aggregate;
 - (iii) \$2,000,000 Products/Completed Operations Aggregate; and
 - (iv) \$2,000,000 Personal and Advertising Injury.
 - (C) Coverage shall include the following:
 - (i) Occurrence Basis;
 - (ii) Premises Operations;
 - (iii) Contractual Liability;
 - (iv) Products/Completed Operations;
 - (v) Broad Form Property Damage; and

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- (vi) Subcontracted Work (Independent Contractor/Contractor's Liability).
- (4) Excess Liability Insurance:
- (A) \$25,000,000 for DFIM Contractor;
 - (B) \$25,000,000 for Automobile;
 - (C) \$2,000,000 for DFIM Contractor's subcontractors unless otherwise specified in the Contract Documents; and
 - (D) Coverage should apply and follow form over the primary coverages shown above.
- (5) Coverages and Terms:
- (A) Excess of General Liability;
 - (B) Excess of Employer's Liability; and
 - (C) Completed Operations.

If the Enrolled Contractor chooses to have its own policy endorsed to include the Project site during the construction period, coverage for DFIM Contractor shall only be Excess and/or Difference in Conditions (DIC) of the OCIP coverages. Inclusion of the Project site on such insurance policy shall not replace the OCIP coverages or otherwise affect DFIM Contractor's requirement in paragraph (c) to exclude from its pricing and from all change orders cost for OCIP-provided coverages.

(6) Builders Risk. Builder's Risk Insurance will provide "All-Risk" coverage subject to policy terms and conditions. This insurance will provide coverage for all Materials and Equipment permanently incorporated into the Project and Work performed under the Contract while in the course of construction, reconstruction, remodeling, or alteration. The Builders Risk policy will not provide coverage against loss by theft or disappearance of any Materials (unless the materials are to be incorporated into the Project), tools, or Equipment of DFIM Contractor or any tier of subcontractor, or any other person furnishing labor or Materials for the Work to be performed under the Contract.

(7) Professional Liability Insurance. The DFIM Contractor shall provide and ensure that all entities providing professional design services incorporated into the Work shall obtain professional liability insurance for their respective employees and agents for liability arising out of errors, omissions, or negligence in the performance of professional services provided in connection with this Project. Limits for the DFIM Contractor and first-tier subcontractor shall be not less than \$10,000,000 per claim, and limits for second-tier and lower subcontractors shall not be less than \$1,000,000.00 per claim. Such insurance shall remain in full force and effect continuously for the period of design and construction of the Work and for an additional one (1) year period following Substantial Completion of Work set forth in the Contract.

(8) DFIM Contractor's Pollution Liability. If required, the DFIM Contractor will purchase a policy, with limits of not less than \$2,000,000, covering third party injury and property damage claims including mold, cleanup costs, as a result of pollution conditions arising from the DFIM Contractor's operations or completed operations, performed by or on behalf of the DFIM Contractor. Completed operations coverage will remain in effect for not less than one (1) year after Substantial Completion of the Work set forth in this Contract. Coverage will be provided by a carrier acceptable to HART, name HART as an additional insured, and be written on an occurrence form, including Gradual and Sudden/Accidental Pollution. If applicable, coverage will apply to liability arising out of transportation and non-owned disposal sites.

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(9) Certificates of Insurance for the DFIM Contractor Provided Coverage:

(A) Certificate Holder:

City and County of Honolulu
c/o (Selected Broker)
Attn: TBD
Street Address
City, State Zip Code

Each policy and Certificate shall provide that HART must receive at least ninety (90) Days advance written notice of any cancellation or material modification or reduction of coverage. In the event that the DFIM Contractor or any subcontractor fails to procure and maintain such insurance coverages, HART shall have the right, at its option, to procure and maintain such insurance coverages and back charge the DFIM Contractor for the costs thereof. The amount of insurance required in Section (h), shall not be construed to be a limitation of liability on the part of the DFIM Contractor or any of its subcontractors. If the DFIM Contractor or any of its subcontractors maintain any insurance policies covering owned, leased or borrowed equipment, the DFIM Contractor shall obtain, and shall cause its subcontractors to obtain, waivers of subrogation in favor of HART and any other entities as required by contract in such policies.

Certificates of Insurance acceptable to HART shall be filed with HART by furnishing them to the OCIP Administrator, prior to commencement of any of the Work covered by this Contract. If any of the foregoing insurance coverages are required to remain in force after final payment, renewal Certificate(s) evidencing continuation of such coverage shall be submitted to HART on a timely basis throughout the period of time specified in the Contract Documents.

(i) **Other Insurance.** Any type of insurance or any increase of limits of liability not described in this Contract which the DFIM Contractor or any of its subcontractors require for its own protection or on account of any law, statute or regulation shall be the DFIM Contractor's own responsibility and at its own expense.

(j) **DFIM Contractor Responsibilities.** The DFIM Contractor will cooperate with, and will require all subcontractors to cooperate with, HART and/or its OCIP Administrator and other designated representatives with respect to the administration and operation of the OCIP. The DFIM Contractor or subcontractor's responsibilities shall include, but are not limited to:

(1) Compliance with all rules and regulations of the applicable State Insurance Bureau/Board. Failure to meet state requirements may result in fines being assessed. For any fines assessed against HART as a result of the DFIM Contractor's non-compliance, the DFIM Contractor shall deduct the full amount of any such fines or penalties from monies due, or to become due, under the provisions of this Contract;

(2) Compliance with applicable Construction Safety and Security Program;

(3) Provision of necessary Contract, operations and insurance information; and

(4) Cooperation with any OCIP insurance carrier and the OCIP Administrator with respect to requests for the DFIM Contractor's policy declarations and rating pages, claims, payroll or other information required under the program.

(k) **DFIM Contractor's Responsibility for its Subcontractors.** The DFIM Contractor shall include this Section with the subcontract bid documentation and require that all subcontractors of every tier

participate in HART's OCIP and comply with all OCIP requirements including enrollment, insurance cost identification and close-out procedures. It will be the DFIM Contractor's responsibility to submit to HART, and/or its designated representative, all subcontractor bid documentation for approval.

(l) **Assignment of Return Premiums.** HART will be the sole recipient of any dividend(s) and/or return premium(s) generated by the OCIP. In consideration of HART's provision of the insurance coverage under the OCIP, the DFIM Contractor and subcontractors agree to irrevocably assign to, and for the benefit of, HART, return all premiums, premium refunds, premium discounts, dividends, retentions, credits, interest, and any other monies in connection with the OCIP insurance. The DFIM Contractor agrees to evidence such assignment by executing the appropriate forms as provided in the OCIP Manual. The DFIM Contractor further agrees to require each subcontractor to execute the required forms for the benefit of HART.

(m) **Waiver of Subrogation and Other Rights of Recovery.** HART waives all rights of subrogation and recovery against the Enrolled Contractors to the extent any loss or damage is insured under the OCIP. The DFIM Contractor waives all rights of subrogation and recovery against HART and other Enrolled Contractors of all tiers, to the extent any loss or damage is covered under the OCIP. The DFIM Contractor and each subcontractor will require all subcontractors to similarly waive their rights of subrogation and recovery in each of their respective construction contracts with respect to their Work on the Project.

(n) **No Release.** HART provision of the OCIP shall in no way be interpreted as relieving the DFIM Contractor or any of its subcontractors of any other responsibility or liability under this Contract or any applicable law, statute, regulation or order, except the responsibility of securing the OCIP coverages if, and commencing when, the DFIM Contractor becomes an Enrolled Contractor.

(o) **Approval of Forms and Companies.** All insurance described in this Section will be written by an insurance company or companies authorized to do business in Hawai'i. Such insurance shall conform to the requirements of this Section and be in form and content satisfactory to HART. The DFIM Contractor shall not violate, or knowingly permit to be violated, any of the provisions of the policies of insurance described in this Section.

(p) **Coverage to be Provided by the DFIM Contractor after Completion of Work.** During any extended insurance coverage period, as described in the Contract Documents and following the Substantial Completion Date, the DFIM Contractor will maintain in full force and effect all insurance coverages specified in paragraph (h) covering all Work performed under this Contract.

(q) **Claims Responsibilities.** The DFIM Contractor shall, and shall cause all of its subcontractors to, cooperate fully with the OCIP Carrier's claims representatives in the investigation of all claims and adhere to and perform all claims or incident reporting requirements as set forth in the Claims Procedures portion of the OCIP Manual.

SP-3.3 Bid Security, Performance and Payment Bonds

Chapter 3, Section 3.3 (b), of the GCDB is amended by being deleted in its entirety and replaced with the following:

(b) **Bonding requirements.** For this Contract, performance and payment bond amounts shall be one-hundred percent (100%) of the Base Proposal Price (as established in Exhibit 16 of the Price Proposal and affixed to this Contract). Additional performance bond or payment bond may be required by HART for a contract change order or modification where the contract amount increases. [HAR §3-122-225]

SPECIAL PROVISION

CHAPTER SP-4 PERFORMANCE

SP-4.1 TIME IS OF THE ESSENCE

Chapter 4, Section 4.1, Time is of the Essence of the GCDB is amended by adding the following as subparagraph (b):

(b) Schedule Milestones. The following dates shall be incorporated into the DFIM Contractor’s Baseline Schedule and serve as a part of the Contract requirements for the Elevators & Escalators DFIM Contract occurring no later than (NLT):

SP-4.1 TABLE OF SCHEDULE REQUIREMENTS

Item	Description (Station Title)	Access Date Provided by Station Contractor (refer to SP- 4.9)		Installation Complete (NLT)*	Station Substantial Completion minus 1-month (Complete all Work, NLT)**
		Earliest Access	Latest Access		
1	Waipahu Station	August 2015	October 2015	October 2015	November 2015
2	W.Loach Station	October 2015	December 2015	December 2015	January 2016
3	Ho’opili Station	September 2015	November 2015	November 2015	December 2015
4	UHW Oahu Station	November 2015	January 2016	January 2016	February 2016
5	E.Kapolei Station	January 2016	March 2016	March 2016	April 2016
6	Pearlridge Station	February 2016	April 2016	April 2016	May 2016
7	Aloha Stadium Station	March 2016	May 2016	May 2016	June 2016
8	Pearl Highlands Station	May 2016	July 2016	July 2016	August 2016
9	Pearl Harbor Station	July 2016	September 2016	September 2016	October 2016
10	HNL Airport Station	September 2016	November 2016	November 2016	December 2016
11	Lagoon Dr Station	November 2016	January 2017	January 2017	February 2017
12	Middle St Station	January 2017	March 2017	March 2017	April 2017
13	Kalihi Station	March 2017	May 2017	May 2017	June 2017
14	Kapalama Station	May 2017	July 2017	July 2017	August 2017
15	Iwilei Station	July 2017	September 2017	September 2017	October 2017
16	Chinatown Station	September 2017	November 2017	November 2017	December 2017
17	Downtown Station	October 2017	December 2017	December 2017	January 2018
18	Civic Center Station	November 2017	January 2018	January 2018	February 2018
19	Kaka’ako Station	January 2018	March 2018	March 2018	April 2018
20	Ala Moana	March 2018	May 2018	May 2018	June 2018

Honolulu Rail Transit Project

21	Pearl Garage?	Highlands	September 2017	November 2017	November 2017	December 2017

(*) All DFIM installations complete, ready for testing and integration with Core Systems, at each station location.

Refer to RFP Plans for location and facilities provided by Station Contractor to DFIM Contractor.

(**) All DFIM required testing and integration with Core Systems, as well as architectural finishes at each station location.

Authorization to begin Design and Procurement (NTP1) – _____

Authorization to begin Fabrication (NTP2) – _____

Authorization to begin Construction (NTP 3) – _____

SP-4.2 COMMENCEMENT REQUIREMENTS

Chapter 4, Section 4.2, of the GCDB is amended as outlined below:

Delete paragraph (c) in its entirety.

Delete paragraph (d) in its entirety.

Delete paragraph (g), in its entirety and replace with the following:

(g) DFIM Contractor provided facilities, services and equipment. DFIM Contractor shall provide and pay for all office and other building space, facilities, and equipment necessary to construct the Project and meet the requirements of the Contract and of this Section:

(1) In making arrangements for its staff, DFIM Contractor shall provide for:

(A) Locating DFIM Contractor’s project management staff in close proximity to the project; and

(B) Providing facilities for Responsible Engineers to be present in the local office whenever they are required.

(2) Site Identification Signing. The DFIM Contractor shall provide site identification signing at all project offices and all sites of Work.

(3) Communication:

(A) The DFIM Contractor shall establish and maintain telephone and radio communications, as appropriate, to control the Work and maintain communications with HART, local and regional emergency response agencies or entities and Utility Owners. The DFIM Contractor shall not use police or other emergency services’ radio frequencies.

(B) The DFIM Contractor shall provide daily courier service between the DFIM Contractor’s main Project office and HART’s and any HART field office on the Project at 10:00 A.M. and 3:00 P.M. each working day or as mutually agreed by DFIM Contractor and HART.

(C) DFIM Contractor shall provide e-mail addresses for its main Project office and all Key Personnel.

(D) DFIM Contractor shall pay all charges for provision of the facilities and services specified herein.

Chapter 4, Section 4.6(e)(7), of the GCDB is amended by being deleted in its entirety and replaced with the following:

(7) Nothing contained in this subsection shall be construed to establish a period of limitation with respect to other obligations which the DFIM Contractor might have under the Contract. Establishment of the time period of one year as described in Section 4.26, of the GCDB “Guarantee” relates only to the specific obligation of the DFIM Contractor to correct Work, and has no relationship to the time within which the obligation to comply with the Contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the DFIM Contractor’s liability with response to the DFIM Contractor’s obligations other than specifically to correct Work.

SP-4.7 QUALITY MANAGEMENT

Chapter 4, Section 4.7, Quality of materials and equipment, of the GCDB is amended by being deleted in its entirety and replaced with the following SP-4.7:

(a) HART’s Quality Management Program (QMP) is founded upon accepted concepts and processes, which are recognized by APTA and the FTA and which have been applied successfully on other public transit projects. The following is a brief summary of the principal quality related concepts and processes as defined and as specifically applied to the Project:

(1) The objective of the QMP is to ensure that the Project is designed, procured, and constructed in accordance with established design, engineering, safety, security and quality requirements. These requirements provide the controls for design, procurement, construction, test and inspection, which enables HART to ensure that the quality necessary for safe, secured and reliable operation of the transit system provided is achieved.

(2) In conjunction with the QMP, the DFIM Contractor shall establish and implement a Quality Plan for the Project. The Quality Plan shall include all those planned and systematic actions and or activities necessary to provide HART with a high level of confidence that the product(s) or services to be provided shall be of the highest quality throughout and shall satisfy all areas of the Contract. The Quality Plan shall meet the requirements of FTA Quality Assurance/Quality Control Guidelines (FTA-IT-90-5001-02.1 February 2002 Issue), as described herein.

(b) Quality Plan. The DFIM Contractor within thirty (30) days from the issuance of Notice to Proceed (NTP) shall establish a Quality Plan for the Project, which meets the requirements of the FTA QA/QC Guidelines. The Project Quality Plan shall include the process and control to be used for assuring the quality of design and construction. The DFIM Contractor’s Quality Plan shall be reviewed and accepted by HART prior to use. The DFIM Contractor shall provide HART with their Quality Plan for the Project and maintain the plan in accordance with the following requirements:

(1) The Quality Plan shall include: a quality policy; a statement by a duly authorized officer stating the commitment and support by the DFIM Contractor’s management, which supports and takes responsibility for quality, and its personnel who undertake Quality Assurance and Quality Control activities; and implementing procedures to supplement the Quality Plan.

(2) No Work shall be undertaken by the DFIM Contractor and its Subcontractors prior to acceptance of the applicable Quality Plan(s) by HART.

(3) Contents of Quality Plan. The Quality Plan shall describe in detail all elements of the Quality System the DFIM Contractor proposes to implement for the Project. These elements shall be considered in the development of detailed quality procedures. The quality elements at minimum to be addressed in this plan are as follows:

(A) Organization. A functional organization chart showing the interrelationships between the DFIM Contractor and Subcontractors, and other supporting organizations and permitting review agencies. Based on the functional organization chart,

the organization structure, levels of authority, and lines of communication for activities affecting quality shall be clearly established and delineated. Quality personnel shall have the authority and responsibility to evaluate and assure that the Quality Plan is correctly and effectively executed and verified. Where problems are identified, Quality personnel shall have the authority and organizational freedom to initiate, recommend and provide solutions.

(B) Quality Management Program. The Quality Plan shall include consideration of the technical aspects of the activities affecting quality; provide control over activities affecting quality to the extent consistent to their importance; provide for the planning and accomplishment of activities affecting quality under suitably controlled conditions. Controlled conditions shall include the use of appropriate equipment, suitable environmental conditions for accomplishing the activity, and assurance that the prerequisites for any given activities have been satisfied; provide for any special controls, processes, test equipment, tools and skills to attain required quality and for necessary verification of quality such as inspection or test; provide orientation and training, as necessary, of personnel performing activities affecting quality to assure that suitable proficiency is achieved and maintained; and provide Management to assess regularly the adequacy of the Quality Plan and assure its effective implementation.

(C) Design Control. The Quality Plan shall include design control to assure that design specifications, regulatory and code requirements, and engineering standards are correctly translated into drawings, specifications, procedures, and instructions; appropriate quality standards are specified into the design documents; selection and review for application of materials and processes that are essential to construction are suitable; design review/checking, and certification by appropriate licensed professional engineers are performed; and issuance and distribution of all design documents are controlled.

(D) Procurement Control. The Quality Plan shall include a procurement control process to assure that design, engineering, construction, materials, machinery and equipment are procured in accordance with the contract and quality requirements; procurement documents are prepared and reviewed to include technical, quality and commercial requirements; and consultants, Subcontractors and suppliers are competent, reliable and qualified.

(E) Instructions, Procedures and Drawings. The Quality Plan shall include procedures where instructions, procedures and drawings used in the construction are prepared and accepted or approved by the appropriate agencies and regulators. Instructions, procedures and drawings shall also prescribe quantitative and qualitative acceptance criteria.

(F) Document and Data Control. The Quality Plan shall describe the procedures for issuance, approval, distribution, retention, and maintenance detail of drawings, specifications, reports, procedures, and other quality related documents applicable to the design and construction of the projects. All documents that specify quality requirements or prescribed activities affecting quality shall be controlled to assure that the correct documents are being employed.

(G) Control of Purchased Materials, Machinery, Equipment, and Services. This Quality element is required to assure that purchased materials, machinery, equipment, and services are delivered / performed by consultants, Subcontractors, and suppliers in conformance with the requirements stipulated in the Contract Documents; and are identified and verifiable to the documents submitted.

(H) Identification and Control of Materials, Parts, and Components. The Quality Plan shall include this element to assure that all materials, parts, and components are properly identified and controlled; identification is maintained by part number, serial number or other appropriate means either on the item or on the records that are traceable to the item as required throughout fabrication or construction of the item; and nonconforming work, materials, parts or components are prevented from being incorporated into the final product.

(I) Control of Special Processes. The Quality Plan shall include this element to assure that special processes, including but not limited to welding, heat treating, non-destructive testing, are properly controlled and performed by qualified personnel using approved procedures in accordance with the applicable codes and engineering standards under suitable conditions.

(J) Inspection. The Quality Plan shall include inspection during all phases to assure that requirements of contract documents (e.g., drawings, specifications, instructions, regulatory requirements, applicable codes and standards, etc.) are being complied with by the consultants, DFIM Contractor, and suppliers.

(K) Test Control. The Quality Plan shall include the element of test control to assure that all testing required to demonstrate that the equipment and systems will perform satisfactorily and are done in accordance with approved procedures; test procedures shall include all prerequisite requirements and acceptance criteria specified in the contract documents; and test results are evaluated by responsible and competent persons.

(L) Control of Measuring and Test Equipment. The Quality Plan shall include control of measuring and testing equipment to assure that tools, gauges, instruments, and other measuring and testing devices used in the activities affecting quality and safety are properly controlled, calibrated, and adjusted at specified periods to maintain accuracy within necessary limits; records of issuance and calibration are properly maintained; and measuring and test equipment are identified and marked to indicate calibration status.

(M) Handling, Storage, Shipping, and Preservation. The Quality Plan shall include control of handling, storage, shipping, cleaning and preservation of materials and equipment to prevent damages, deterioration, and loss at the work site(s).

(N) Inspection, Test, and Operating Status. The Quality Plan shall include inspection, test and operating status to assure that all manufactured or fabricated equipment, components, or systems have satisfactorily passed all required inspection, examination and testing. The Quality Plan shall assure that there is a system for final inspection and testing of completed construction, products and installation. Such testing shall provide a measure of the overall quality of the completed product and shall be performed so that it simulates product end use and function. Final inspection and testing shall require reporting to designers of any difficulties, deficiencies, or questionable conditions. When modifications, repairs, or replacements are required after final inspection or testing, there shall be re-inspection and re-testing of any characteristics affected thereby.

(O) Nonconforming Parts, Materials, and Components. The Quality Plan shall assure that nonconforming parts, materials and components are prevented from being incorporated in all manufacturing tasks and/or into the final product; are properly identified and segregated from conforming items while awaiting disposition; and reported for immediate disposition of nonconformance.

(P) Corrective Action. The Quality Plan shall include corrective action to assure that conditions which are adverse to quality are promptly identified and corrected;

determine the cause of nonconformance and take corrective measures to prevent recurrence; document and report to appropriate management all records and procedures used in correcting the condition of nonconformance; and assure that corrective actions resulting from the audits are properly corrected and immediately responded to.

(Q) Quality Records. The Quality Plan shall include procedures to assure that all Quality related documents and evidences are properly accumulated, maintained, organized and protected; and all documents are properly identified, controlled, and stored in a well defined location.

(R) Audits. The Quality Plan shall include audits to verify implementation and compliance with all aspects of the Quality Plan and to determine the effectiveness of the system; assure that audits are performed in accordance with a written checklist by qualified personnel; assure that all audit results are documented and reviewed by management responsible for the area being audited; and assure that follow-up actions and actual verification, including re-audit of deficient areas are performed.

(S) Training. The Quality Plan shall include documented procedures for scheduling and performing of training for key personnel on quality system and implementing procedures to assure that suitable proficiency is achieved and maintained.

(4) Quality Plan Revisions and Updates. Revisions and updates to the DFIM Contractor Quality Plan may be proposed as the Work progresses. Changes to the Quality Plan shall be provided to HART no later than thirty (30) days prior to the Work to the revision applies. HART will have fifteen (15) days to Review and Comment. These revisions and updates may occur in one or more iterations. DFIM Contractor shall not initiate any Work that is impacted by such a Plan change unless and until HART has provided Review and Comment regarding the change.

(c) Quality Team Organization (Key Personnel). The DFIM Contractor shall identify the Project Quality Manager as part of the key personnel.

Organizationally, the “checks and balances” are established with production/operation and quality being separate and independent. There is however close coordination and communication required making this on-site operation effective. The DFIM Contractor Project Principal must be able to keep the two sides in balance and both effectively performing their responsibilities. The communication remains point-to-point however, HART’s quality oversight personnel will directly interface with the Project Quality Manager, while HART’s Project Manager will deal with the DFIM Contractor’s Project Manager.

(1) DFIM Contractor’s Executive Management Review of the Quality Plan. The Executive Management will review their quality system at defined intervals sufficient to ensure its continuing suitability and effectiveness in satisfying the requirements of the FTA Guidelines and their stated Quality Policy and objectives.

(2) Records of such reviews shall be maintained. Minutes will be taken of the review meetings and these minutes will be maintained as Quality Records. Copies of these minutes will be made available to HART upon request.

(3) DFIM Contractor Design Organization. The DFIM Contractor shall appoint a suitably qualified and experience Designers to undertake the design of the temporary and permanent components of the Project.

(4) Responsible Engineers. The DFIM Contractor shall assign a Responsible Engineer(s) for each designated Design Unit (Construction Milestone). The Responsible Engineer(s) will sign and seal Design Reports, Project Plans and Project Specification for the assigned Design Units(s). The Responsible Engineer will also review Working Plans for conformance with the Final Design and oversee As-Built documentation. Each Responsible

Engineer must be a Registered Professional Engineer (P.E.) in the State of Hawai'i.

(5) Final Inspection, Testing, and Acceptance. The Responsible Engineer(s) must be present as necessary in the vicinity of the Project to coordinate the Work on assigned Design Units. The Responsible Engineer(s) must be present in the Project area to attend all Design Reviews for their respective Design Units. The Responsible Engineer(s) shall witness Final Testing and Acceptance of assigned Design Units.

(d) Design Quality Management. The Project design and its Design Quality Management shall be the sole responsibility of the DFIM Contractor.

(1) The DFIM Contractor's Quality Plan shall contain provisions regarding Design activities to ensure that:

(A) Adequate resources are available (Design Planning and Control);

(B) Organizational aspects are appropriate, especially where different organizations are involved (Organizational and Technical Interfaces);

(C) HART's specification and contract requirements are fully understood and all statutory requirements are incorporated (Input);

(D) Input can be expressed into drawings, reports, plans, and conformed specifications (Output);

(E) Design actually meets the requirements as set in the input (Review/Check);

(F) Design will produce what was originally intended (Verification);

(G) Actual results of the design fulfill HART's requirements (Validation);

(H) Where revisions occur to the design documents, there is a method of keeping everyone informed, and the latest design clearly identified; and

(I) Final Design Drawings and Reports are certified by appropriate Professional Engineer (P.E.) registered in the State of Hawai'i.

(2) The Quality Plan shall include Project Design Control Implementing Procedures to address the processes to meet the criteria listed above.

(3) Revisions and updates to the Quality Plan may be proposed as the Design Work progresses. Changes to the Quality Plan shall be provided to HART no later than thirty (30) days prior to the Work to which the revision applies. HART will have fifteen (15) days to Review and Comment. These revisions and updates may occur in one or more iterations. DFIM Contractor shall not initiate any Design Work that is impacted by such a change unless and until HART has Reviewed and Commented on the change.

(e) The DFIM Contractor shall not begin construction Work until all HART comments on the Final Design are resolved to the satisfaction of HART.

(f) The DFIM Contractor shall coordinate and obtain necessary approvals from authorities regarding temporary road diversions and detours, shutdowns, temporary traffic diversions, utility relocations and all matters for which authorization maybe required.

(g) The DFIM Contractor shall be responsible for obtaining appropriate permits and document how permit requirements are met in accordance with the Environmental Compliance Plan.

(h) Design Development, Coordination, and Interface

(1) Design Review Plan. The Design Review Plan shall be part of the Quality Plan, which shall be submitted to HART for Review and Comment prior to the start of the Work. The

Design Review Plan shall include the quality responsibilities of the Design Manager and the independence of the Quality Manager. The Design Review Plan shall be specific to each stage of design development. The DFIM Contractor shall make a single comprehensive design check and design review for the developed plans and specifications for each of the five (5) stages of the design development:

- (A) Definitive Design;
- (B) Interim Design;
- (C) Final Design;
- (D) Work Plans; and
- (E) As-Built Plans and Specifications.

On a separate cover letter, the DFIM Contractor shall submit a written submittal plan and schedule for all design documents, including but not limited to drawings, reports, management plans and manuals. The DFIM Contractor shall plan submittals to avoid an overload of HART reviewers at any particular time and incorporate submittal dates with the Baseline Schedule. HART's Review and acceptance of the Baseline Schedule includes the appropriate loading of submittals so that timely Review and Comment are achieved.

Should design interfaces and technical exchanges with other contractors and DFIM Contractors require CADD Files, the DFIM Contractor shall provide appropriate native files at appropriate time as determined in the Interface Management meetings.

(2) Design Deviations. All design exceptions from specified standards and/or industry practices shall be provided by the DFIM Contractor, justifying why exceptions are being proposed with supporting documentation, and shall be submitted to HART for Review and Comment during the Definitive Design Stage.

(3) Design Review. Design reviews and meetings shall be conducted by the Design Manager. The Quality Manager, Design Manager, Responsible Engineer, and any Design Professionals having significant input into the design or review shall be present. HART shall be notified and invited to attend in all design reviews. At a minimum, the Design Manager shall organize and facilitate design review workshops with HART to discuss the Definitive and Final Design submittals. During the review meetings, HART may also invite other stakeholders to attend. HART's participation in design reviews shall not relieve the DFIM Contractor of its responsibility for the satisfactory completion of the Work in accordance with the Contract requirements.

The DFIM Contractor shall provide or make available to review meeting participants all design documents (e.g., drawings, reports, specifications, Basis of Design Memorandum, and other technical memorandums as necessary to support the design decisions) that are pertinent to the design review, including all prior comments and actions resulting there from. The DFIM Contractor shall prepare and distributes minutes of the review meetings as part of the design review record. The Design Review documents shall be submitted to HART for its Review and Comment. Design Reviews shall be conducted for the following as planned:

- (A) Definitive Design Review shall be the first design review requiring participation of HART, and is intended to verify that the concept proposed by the DFIM Contractor meets the Concept Documents provided by HART or to provide substantiated justification for change and that the Definitive Design complies with the Contract requirements. The Quality Manager shall verify in writing the compliance and completeness of the design submittal prior to presenting the Definitive Design to HART for review. The following issues shall be discussed during the review meeting:

- (i) All Contract requirements applicable to the proposed concept documents including all applicable standards and legal requirements and environmental permit conditions, have been identified, and the proposed design are in compliance;
- (ii) The proposed concepts are substantiated and justified by adequate site investigation and analysis;
- (iii) Right of Way (ROW) requirements have been identified;
- (iv) The proposed concept is constructible;
- (v) Required resources, materials and equipment are available;
- (vi) The proposed concept meets all regulatory and quality requirements and all required design control implementing procedures have been followed including for site maps, concept drawings and draft specifications for any materials or methods that are not industry standards; and
- (vii) The proposed concept complies with permits and environmental compliance plan requirements.

If the design is amended subsequent to the Definitive Design review by HART, the DFIM Contractor shall re-check and re-certify the design as an additional Definitive Design review. Substantial changes to Plans and Specifications initiated by the DFIM Contractor and already checked by the Design Professional and certified by the Quality Manager shall be subjected to the design review process as entirely new design. The DFIM Contractor shall not be entitled to any increase in Contract Amount or additional Time for the re-check and re-certification except when the amended design results from a Change Order initiated by HART for the reasons other than non-compliance.

The DFIM Contractor's Responsible Engineer shall provide a Draft Basis of Design Memorandum with Definitive Design Plans that document the issues above as well as provides a report that describes, at a minimum, the design alternatives considered, materials choices, and construction means and methods that leads to the solution proposed.

(B) Interim Design Reviews are optional and intended to resolve conflicts and unresolved comments from the Definitive Design and prior to Final Design. The DFIM Contractor should perform Interim Design reviews to remedy conflicts, account for exceptions and incorporate betterments. The DFIM Contractor shall notify HART if Interim Design reviews are necessary, and shall schedule the design reviews following an independent review by the Quality Manager. Workshops, meetings, and "over-the-shoulder" reviews are means to facilitate interim reviews by the city.

The DFIM Contractor shall also use Interim Design reviews to verify that the concepts and the parameters established and represented by the Definitive Design are being adhered to, and that all Contract requirements continue to be met. The DFIM Contractor shall specifically highlight, check and bring to the attention of HART any information differing from or supplemented to that presented at the Definitive Design review.

(C) Final Design Reviews shall verify that the concepts and parameters established and represented by Definitive Design and any interim Design are being followed and that all Contract requirements continue to be met. The DFIM Contractor shall specifically highlight, check, and bring to the attention of HART any information differing from or supplemental to that presented previously. A Final Basis of Design shall be submitted. Prior to scheduling Final Design Review with HART, The Quality Manager's independent review shall have been completed. The DFIM Contractor shall be responsible

for demonstrating that any proposed specification(s) meets or exceeds the Contract and Permits requirements as determined by HART in its sole discretion, and are suitable and appropriate to control the Work.

(5) Work Plans Reviews are the responsibility of the DFIM Contractor to assure conformance with the Final Design plans and specifications and in accordance with the Contract requirements. The DFIM Contractor shall verify pertinent dimensions in the field (Field Check) prior to conducting a Work Plan review. The DFIM Contractor shall check, review, and certify Work Plans prior to their use in fabrication and construction. All approved Work plans shall be maintained and controlled by the DFIM Contractor and made available to HART, if requested. Discrepancies and changes to the Work Plans shall require reviews, approval and certifications by the Responsible Engineer, Design Manager, and Quality Manager. The Quality Manager shall notify HART in writing of any authorized changes to the Work Plans from the Final Design documents.

(6) “As-Built” (Quality Record Documents) review shall be performed initially by the DFIM Contractor to assure that “Red Lines” and authorized changes to the Final Design documents and Work Plans are properly notated on the record plans and specifications and that the quality of the documents and project records indicating variances or changes have been reflected on the As-Built plans and conformed specifications. Once the DFIM Contractor has completed their review, the Quality Record Documents shall be submitted to HART for review and acceptance.

(7) Quality Record Documents shall be maintained and controlled by the DFIM Contractor in accordance with their Quality Records and Document Control Implementing Procedures and are subject to Quality Audit by HART. Upon completion of the Project, Quality Records as enumerated in the DFIM Contractor’s Quality Plan shall be turned over to HART.

(i) Construction Quality Management. The Project construction and its Construction Quality Management shall be the responsibility of the DFIM Contractor.

(1) The DFIM Contractor’s Quality Plan shall contain provisions regarding Construction activities Quality Plan to ensure that:

(A) Adequate resources are available (Construction, Manufacturing Plants, Equipment, Fabricators, Erectors, and approved Materials) to perform the Work;

(B) Organizational aspects are appropriate, proficient, trained and qualified, specially where different organizations are involved (Project Management, Subcontractors, Vendors and Quality Assurance, including Inspection, Testing and Quality Control);

(C) HART’s specification and contract requirements are fully understood and all statutory requirements are incorporated per Issued for Construction (IFC) documents, Permits and Work Plans;

(D) Latest approved revision of construction documents, procedures and instructions are on the areas where Work is being performed;

(E) The environmental conditions for accomplishing the Work are suitable and assurance that the prerequisites for any given Work have been satisfied;

(F) Special controls, processes, test equipment, tools, and skills to attain required quality and for necessary verification of quality such as inspection or test are provided;

(G) Inspection and Test Plans are implemented; and

(H) Orientation and training of personnel affecting quality to assure that

suitable proficiency is achieved and maintained are provided;

(2) The Quality Plan shall include the Implementing Process and Control Procedures and Work Plans to be used for assuring the quality of design and construction.

(3) Revisions and updates to the Quality Plan may be proposed as the Construction Work progresses. Changes to the Quality Plan shall be provided to HART no later than thirty (30) days prior to the Work to which the revision applies. HART will have fifteen (15) days to review and comment. These revisions and updates may occur in one or more iterations. DFIM Contractor shall not initiate any Construction Work that is impacted by such a change unless and until HART has provided Review and Comment on the change.

(j) Construction Coordination and Interface. The DFIM Contractor designated Quality Manger shall be responsible for managing and administering the approved Quality Plan. The Quality Plan shall include Inspection and Test Plans (ITP), which will specify the DFIM Contractor's and HART's Witness Point and Hold Points on selected activities. The following QC activities shall be performed during construction:

(1) Inspection. All construction processes, procedures and workmanship shall be inspected by the DFIM Contractor Inspectors, or their approved Inspection subcontractors. Inspection shall include the observations, measurements, specified in the DFIM Contractor Quality Plan, Implementing Procedures and the Contract Documents.

(2) Testing. The DFIM Contractor Inspectors, or their approved Inspection subcontractors, shall perform sampling and testing of field test materials in accordance with the Quality Plan and Implementing Procedures and the Contract documents. The Inspector shall be certified to the level appropriate for the Work being sampled/ tested and shall provide HART copies of Certifications, names, and contact number of all personnel performing field testing. Testing requirements shall be defined in the Quality Plan and ITP and supported by a recognized national organization, and shall mean the latest version of that test method or Contract specification for the work in effect on the day the testing is performed, unless otherwise directed by HART in writing.

(3) New Materials and Equipment. All materials and equipment installed as part of any permanent construction shall be new unless otherwise specified. The Contract contemplates the use of first-class materials and equipment throughout the performance of the Contract, and it is agreed that any material for which no particular specification is given shall be of the highest quality of its class or kind. For the purpose of this subsection, "new" shall mean purchased specifically for the Project for which award was made.

(4) Quality Records. The DFIM Contractor shall have documentation that the materials and equipment conform to all Contract requirements at the site no less than twenty-four (24) hours prior to installation or use of materials or equipment. This documentation shall be maintained and controlled at the Project Site Office.

SP-4.8 CHARACTER OF WORKERS, METHODS AND EQUIPMENT

Chapter 4, Section 4.8, Character of Workers, Methods and Equipment of the GCDB is amended by adding the following subparagraphs (b) through (i):

(b) DFIM Contractor shall replace any Key Personnel who leave the Project due to circumstances beyond the control of DFIM Contractor. Replacement of any Key Personnel shall be by an individual with equivalent or greater experience and skills as required by the position. Key Personnel replacements will be subject to concurrence by HART.

(c) Key Personnel. DFIM Contractor shall staff the Project with appropriate personnel to perform all Work, including the design, construction supervision, and inspection to competently and

efficiently provide the services in accordance with the Contract Documents, devoting such attention thereto and applying such skills and expertise as may be necessary. DFIM Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of Construction and shall perform the Work in a professional manner. DFIM Contractor shall be responsible to see that the completed Construction complies accurately with the Contract Documents and shall keep HART advised as to the quality and progress of the Work.

(d) DFIM Contractor shall provide personnel that meet the requirements specified in this section. DFIM Contractor commits that the personnel resources listed in the Agreement shall be available to the extent within DFIM Contractor's control, and DFIM Contractor commits to undertake all reasonable efforts to provide the Key Personnel identified in the Contract Documents, on a full-time basis for all periods necessary to fulfill Contract obligations.

(e) DFIM Contractor's Project Manager, designated in the Contract Documents shall serve as DFIM Contractor's representative and single point of contact with HART. DFIM Contractor's Project Quality Manager shall interface and coordinate with HART's Quality oversight team during the execution of Work providing independent QA/QC services. Refer to the Quality Management requirements in Section SP-4.7.

DFIM Contractor's Project Manager and Project Quality Manager shall be located on or near the Project Site for the duration of the Project.

(f) Personnel Directory. Within fifteen (15) Calendar Days after NTP, DFIM Contractor shall submit to HART a directory and organizational chart showing all of its Key Personnel. The directory shall be updated throughout the Contract as changes occur. The directory shall include the names, titles, areas of responsibility, office address, office telephone, facsimile numbers, and cellular and/or pager numbers of Key Personnel. DFIM Contractor shall provide information sufficient for HART to contact any of the Key Personnel on a 24 hour basis for the duration of the Contract. The directory shall be incorporated into the Quality Plan.

(g) Temporary Absence of Project Manager and Project Quality Manager. If the Project Manager or the Project Quality Manager is planning to be absent from the Project Site for more than 48 hours, DFIM Contractor shall inform HART in writing in advance of the person substituting for either of these two key persons:

(1) Substitution of Key Personnel. DFIM Contractor shall not substitute Key Personnel. Notwithstanding the procedures set out herein, HART will have no obligation to consider or approve a request to substitute, but may, in its sole discretion, do so;

(2) Proposed Replacements. To seek to add, delete, or substitute any Key Personnel or a major subcontractor, DFIM Contractor must submit to HART a request at least thirty (30) Calendar Days in advance of any desired replacement. HART's approval shall not be unreasonably withheld; and

(3) Required Information. DFIM Contractor shall submit with any request for substitution:

(A) The name and qualifications of the proposed replacement Key Personnel or Major Subcontractor;

(B) The same selection evaluation information as was specified for inclusion in the Proposal; and

(C) The reason for the proposed change. If HART elects to consider the request, HART, in its sole discretion, will determine whether the proposed substitute is appropriately qualified or otherwise acceptable, and will notify DFIM Contractor of its determination whether or not to allow the substitution within fourteen (14) Calendar Days

of the original request. Failure of HART to respond within the response period shall indicate HART's election to not consider the request.

(4) HART Written Consent Required. HART, in its sole discretion, will determine whether or not to consider or authorize the replacement of any Key Personnel, which decision shall be final. Any authorization will be in writing, and DFIM Contractor shall not change Key Personnel or major Subcontractors except upon receipt of such written consent from HART. HART may require additional explanation from DFIM Contractor as to the reason for the replacement.

(h) Key Personnel Qualifications. In the qualifications section below, the word "shall" indicates a required minimum condition. The word "should" indicates HART's preferred qualifications, but such qualifications is not a mandatory requirement:

(1) Project Manager. Shall be DFIM Contractor's representative and single point of contact for the duration of the Contract. Shall have demonstrated experience in construction and management of construction on rail transit projects and on projects with similar size, complexity, and challenges as this Project.

(2) Project Quality Manager. Should be a Hawai'i-registered professional engineer and should have demonstrated design and/or construction experience in rail transit stations on aerial structures and shall have at least five (5) years of experience in Quality Management, including Quality Assurance/Quality Control activities, including preparation and implementation of Quality Plans and procedures for design and/or construction.

(3) Design Manager. Shall be a Hawai'i-registered professional engineer who is an employee of the Designer. Shall have demonstrated experience in managing design for multi-disciplinary rail transit projects with similar scope and complexity as this Project. Should have experience with the design of aerial structures of similar size and type as those involved in this Project and have Design-Build experience.

(4) Construction Manager. Shall have demonstrated experience in construction and management of construction on rail transit and/or aerial structure projects and on projects with similar size and complexity, and challenges as this Project.

(5) Construction Safety / Security Manager. Shall be a Work Zone Safety Supervisor, as certified by the American Traffic Safety Service Association or any HART or firm certification program, approved by HART. Shall have completed a 30-hour OSHA course on Construction Safety and Health. Shall have a minimum of five (5) years of experience implementing OSHA programs for construction projects of similar size and scope. Certification as any or all of the following is desired but not required: Certified Safety professional (CSP), Certified industrial hygienist (CIH), and Construction Safety and/or health Technician (CHST).

(6) Safety / Security Certification Manager. Shall manage and oversee DFIM Contractor's compliance with the Project safety and Security Certification Program. Shall ensure the completion of the DFIM Contractor's activities for achieving safety and security certification for all identified Certifiable Elements and manage the required documentation management system. Shall have a minimum of five (5) years experience working with transit safety and security certification programs.

(7) Interface Manager. The systems to fixed facilities interface is critical to the performance of the Work. As such, the DFIM Contractor shall provide an Interface Manager (IM) with a minimum of five (5) years of experience on rail transit projects. In addition, Interface Manager for this Project is to collaborate and coordinate on a weekly basis in support of other on-going and future contracts, specifically the Core Systems system-wide contract. All contracts will

have a position similar to this and HART will have a “facilitator” that will form an Interface Management Team to maintain communication, collaboration and coordination across the HRTTP contracts.

(i) DFIM Contractor’s Employees – Operations and Maintenance. This Agreement is not one of agency, partnership, master-servant, or joint employer, but one with DFIM Contractor engaged in the business of providing Services hereunder as an independent contractor. DFIM Contractor shall have sole responsibility for means, methods, techniques, procedures, and safety precautions in connection with performance of Services.

(1) DFIM Contractor shall be responsible for the supervision and execution of Services by its employees. An onsite condition review shall be conducted by a designated Supervisor of DFIM Contractor a minimum of twice during each 12 months of the contract (minimum to be every 6 months) to ensure that all Services hereunder are properly performed. DFIM Contractor shall inform HART of the name of its Supervisor responsible for execution of Services and Supervisor shall have the authority to act as DFIM Contractor’s agent. Supervisor shall notify HART of site inspection and provide HART with written summary of findings within ten (10) working days after completion of site review. DFIM Contractor shall employ a sufficient number of trained and capable employees to properly, adequately, safely, and promptly provide Services. All matters pertaining to employment, training, supervision, compensation, promotion, and discharge of DFIM Contractor’s employees are the responsibility of the DFIM Contractor, who is in all respects the employer and HART shall have no liability with respect thereto.

(2) DFIM Contractor agrees each of its employees is properly qualified and will use reasonable care in the performance of Services. If HART, in HART’s sole opinion, determines for any reason that the qualifications, actions, or conduct of any particular DFIM Contractor employee has violated this Agreement by performing unsatisfactory Services, interfering with operation of Transit System, bothering or annoying any patrons, employees, other contractors or subcontractors present in the Transit System, or that such actions or conduct are otherwise detrimental to HART, then upon receipt of HART’s written notice, DFIM Contractor shall immediately provide qualified replacement person(s). If the performance of this person is not acceptable to the Management, another technician shall be assigned by DFIM Contractor. If the second technician is not acceptable to either party, this contract may be terminated without penalty by HART upon thirty (30) days written notice.

(3) If the technician assigned by the DFIM Contractor to the Transit System is acceptable to HART, this individual will become the regular assigned field service technician responsible for performing the preventive maintenance specified in this Contract. Upon assignment to the Transit System, the technician deemed acceptable shall not be reassigned and HART shall be notified of any pending re-assignment. Re-assignment shall take place only after written approval by HART.

(4) The DFIM Contractor shall be allowed to replace the technician if by mutual Agreement between DFIM Contractor and HART, and in the event that technician fails to comply with DFIM Contractor’s policy or performance standards. Additionally, the DFIM Contractor shall be required to provide a technician of equal capability that must be demonstrated and be satisfactory to HART prior to the removal of the technician.

(5) DFIM Contractor shall not engage any subcontractors or other parties to perform Services unless first approved in writing by HART. HART’s acceptance of subcontractors or other parties shall not relieve, release, or affect in any manner any of DFIM Contractor’s duties, liabilities, or obligations hereunder, and DFIM Contractor shall at all times be and remain fully liable hereunder. DFIM Contractor shall provide a list of regularly engaged sub-contractors upon execution of the Agreement. If subcontractors cannot meet the requirements of HART, HART

reserves the right to require the DFIM Contractor to provide another subcontractor.

SP-4.9 COORDINATION

Chapter 4, Section 4.9, Other Contracts, of the GCDB is amended by being deleted in its entirety and replaced with the following SP-4.9:

(a) DFIM Contractor shall coordinate its operations with those of the other contractors who may be employed on adjacent or related projects of HART, shall avoid interference therewith, and shall cooperate with the other contractors so as to avoid unnecessary delay or hindrance of their respective contracts. Any difference or conflict which may arise between the DFIM Contractor and other contractors of HART in regard to their projects shall be resolved by HART.

(b) Weekly Meetings. DFIM Contractor shall report progress, schedule status, submittal status, procurement status, safety status, and issues associated with coordination with others to HART at weekly progress meetings (See Section SP-4.28).

DFIM Contractor is responsible for weekly coordination meetings with other agencies and HART departments.

(c) DFIM Contractor is advised that other HRTTP contractors will be performing Work on the same Site as this Contract. These other contracts will affect the Work and will require frequent coordination meetings to minimize the overall impacts. The following table of known HRTTP Contracts is provided. This schedule may change. HART makes no assertion that this list is complete, or will not change during this Contract. DFIM Contractor shall coordinate its Work with all HRTTP contractors. Dates of construction are estimated and are subject to change.

TABLE 4-2 COORDINATION WITH OTHER HRTTP CONTRACTORS

Contract	Description	Anticipated Schedule	Location of Work
DB200	Maintenance and Storage Facility (MSF)	Construction work commences in September 2013 with Substantial Completion on or about December 2015	Site is at the east end of WOFH Guideway Contract on the site of the former Navy Drum Yard.
DB120	W.Oahu / Farrington Highway Guideway (WOFH)	Construction work commences in September 2013 with Substantial Completion on or about April 2016	Guideway running from E.Kapolei to KHG interface (east of H1 crossing and Pearl Highlands Sta)
DB320	Kamehameha Highway Guideway (KHG)	Construction work commences in December 2013 with Substantial Completion on or about October 2016	Guideway running from east of H1 crossing and Pearl Highlands Station to east of Aloha Stadium Station
DBB520	Airport and City Center Guideway (AGW/CCGW)	Construction work commences in August 2014 with Substantial Completion on or about February 2018	Guideway running from east of Aloha Stadium Station (west end of Airport Guideway) to Ala Moana Station (east end of City Center Guideway)
DBOM920	Core Systems Contract (CSC)	Construction/installation work commences in June 2014 with Substantial Completion on or about March 2019.	CSC is a project-wide contract that schedules installation with HRTTP's fixed facility contractor and has full access /

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			control upon each fixed facility Substantial Completion. DFIM Contractor must integrate equipment with CSC communication & control sys
DBB185	WOSG / FHSG / KHSG Construction (9-Stations)	Anticipated construction commencing March 2014 with Substantial Completion in October 2016 (last of 9-Stations)	Station construction is alongside and off the Guideway decks of WOFH and KHG. DFIM Contractor must coordinate installation with Station Contractor
DBB470	Airport Station Group Construction (4-Stations)	Anticipate construction commencing March 2015 with Substantial Completion in June 2017 (last of 4-Stations)	Station construction is alongside and off the Airport Guideway decks. DFIM Contractor must coordinate installation with Station Contractor
DBB580	Dillingham & Kaka'ako Station Groups Construction (8-Stations)	Anticipate construction commencing May 2015 with Substantial Completion in June 2018 (last of 8-Stations)	Station construction is alongside and off the City Center Guideway decks. DFIM Contractor must coordinate installation with Station Contractor
DBB275	Pearl Highlands Parking Structure / Bus Transit Center Construction + H2 Ramp	Anticipate construction commencing February 2016 with Substantial Completion March 2018	Parking Structure is located alongside Pearl Highlands Station at the east end of the WOFH Guideway. DFIM Contractor must coordinate installation with Garage Contractor.

(d) All costs for coordination and working adjacent to other HRTP contractors shall be included as incidental costs in the DFIM Contractor's proposal. The DFIM Contractor shall coordinate with other HRTP contractors performing work on or within the Site.

(e) Other Contractor Advisory (Non-HRTP). DFIM Contractor shall coordinate with other public agencies, public and private utilities and/or their contractors may be performing work simultaneously in the vicinity of the Site. These other contracts may affect the Work and will require frequent coordination meetings. Insofar as the Work will be performed in busy urban corridors, all costs for coordination and working adjacent to other contractors shall be included in the DFIM Contractor's Price Proposal.

(f) Coordination with Adjacent Property Owners. DFIM Contractor shall protect private or public property on, or in the vicinity of, the Work site. DFIM Contractor shall ensure that no property is removed, damaged, destroyed, or prevented from being used unless the Contract so specifies. Property includes land, utilities, trees, landscaping, irrigation systems, street furniture, improvements legally on the right-of-way, markers, monuments, buildings, structures, pipe, conduit, sewer or water lines, lighting, signal systems, signs, and other property of all description whether shown on the Design Documents or not. DFIM Contractor shall install protection, acceptable to HART, for property that may be subject to damage by the

construction process.

(1) DFIM Contractor shall advise each property owner of upcoming Work that will have a direct impact on the property and shall schedule the Work to minimize as much as practical these impacts.

(2) DFIM Contractor is responsible for obtaining any Temporary Construction Easements (TCE) necessary to complete the work.

(3) Driveway and pedestrian access to all properties (residences and businesses) shall be maintained at all times unless prior written approval of the property owner is received by DFIM Contractor and provided to HART. If DFIM Contractor proposes to close a driveway or pedestrian access, it is DFIM Contractor's responsibility to make the necessary arrangements with the property owner and to inform HART's Public Information staff. The arrangements may include working at night, providing alternative access, or providing temporary structures. The costs of all arrangements with the property owners shall be borne solely by DFIM Contractor.

(4) Coordinate the Project schedule and work hours on a daily basis with the needs of local businesses and customers. This may include HART's Public Information staff checking with businesses abutting the construction site each day concerning that day's construction activities and determining the access needs for that day.

(5) Coordinate staging operations with the tenants of all adjacent properties to facilitate movement of trucks and equipment by others adjacent to the staging areas.

(g) Coordination with Public Transit Division. The DFIM Contractor shall coordinate its work with the City Department of Transportation Services, Public Transit Division (PTD) throughout the work. The DFIM Contractor shall be responsible for assuring that current levels of public transportation service and physical accommodation are maintained for all public transportation operations which include but are not limited to TheBus and TheHandivan. There shall be no claims by the DFIM Contractor for delay, interference, or other impacts due to the presence and operation of buses along the alignment or the presence of HART employees or their representatives performing work on their facilities concurrent with this Contract. Coordination with PTD shall include:

(1) Accommodation for public transportation operations and infrastructure when the DFIM Contractor is modifying traffic patterns. When such accommodation involves the rerouting of buses or the relocation of infrastructure a written agreement will be required with DTS Director.

(2) Attendance at meetings with PTD to coordinate operations with the construction of this Contract. The DFIM Contractor should plan to attend on average one meeting related to this Contract every two (2) weeks during the course of the Contract.

SP-4.10 WAGES AND HOURS

Chapter 4, Section 4.10, of the GCDB is amended by adding the following subsections (l)-(m):

(l) On November 7, 2009, the City entered into the Rapid Transit Stabilization Agreement and Rapid Transit Stabilization Agreement Hawai'i Building and Construction Trades Council Affiliates, attached as Exhibits C and D respectively hereto, and collectively referred to as Rapid Transit Stabilization Agreement ("RTSA") to ensure timely and efficient completion of the Project without delay due to labor disputes and to establish uniform working conditions for all signatory construction trades and crafts. Upon Award, the awarded Offeror, and all Subcontractors at any tier identified in Exhibit 4 of the awarded Offeror's Proposal, shall agree to be bound by the terms of the RTSA by executing the Letters of Assent attached thereto as Attachment A, prior to the execution of the Contract by HART. After execution of the Contract, it shall be the continuing obligation of DFIM Contractor to obtain executed Letters of Assent from all Subcontractors at any tier who were not identified in Exhibit 4 of the Proposal. Neither awarded Offeror

nor DFIM Contractor is required to obtain executed Letters of Assent from Subcontractors that are retained solely to perform work specified in Section 3.3 of the RTSA.

- (m) Operations and Maintenance - DFIM Contractors Hours and Manner or Work.
 - (1) DFIM Contractor maintenance and repair schedules shall be arranged to avoid downtime during periods of intense usage.
 - (2) Coordinate and follow the directives of HART with respect to scheduling Services and any deliveries hereunder or at time or times further specified in other provisions of this Agreement.
 - (3) Removal of units from beneficial usage to facilitate Services shall be coordinated with and approved by the Core Systems Contractor and HART unless removal is necessitated for emergency repair or adjustment. HART agrees to permit DFIM Contractor to remove units from service for a reasonable time during operating hours as identified for the Transit System.
 - (4) Initiate, maintain, and supervise all safety precautions and programs in connection with Services and comply with all applicable safety laws. Take all reasonable precautions for safety of HART, HART's patrons, HART's employees, DFIM Contractor's employees, and other persons on or about the property.
 - (5) Interruption of Work. If, as a result of fire, earthquake, acts of God, war, strikes, picketing, boycott, lock-outs, or other causes or conditions beyond the control of HART or if HART shall consider it inadvisable for DFIM Contractor to proceed with the services, then DFIM Contractor shall, upon receipt of written notice from HART, immediately discontinue any further Services until such time as HART may deem it advisable to resume the Services. DFIM Contractor will resume the Services promptly upon receiving written notice from HART to do so, and DFIM Contractor shall not be entitled to any damages or compensation during the period of or on account of cessation of the Services as a result of any of the causes mentioned above. This Paragraph shall not be construed as conferring upon DFIM Contractor the right to strike, picket, boycott or conduct lockouts in connection with the Services.

SP-4.13 DISCOVERY OF HAZARDOUS MATERIALS

Chapter 4, Section 4.13, Discovery of Hazardous Materials of the GCDB is amended by being deleted in its entirety and replaced with the following SP-4.13:

- (a) The DFIM Contractor will not be financially responsible for any hazardous materials encountered at the site which were not identified in the Contract Documents to be within the scope of work, provided that the DFIM Contractor complies with the method for management of undisclosed hazardous materials as set forth in Section 4.13(b) below and 4.14 of the GCDB. The DFIM Contractor shall submit a Hazardous and Contaminated Materials Health and Safety Plan within thirty (30) days after NTP 1 as specified in the H RTP Standard Specifications rev. 1.0. The DFIM Contractor shall be responsible for materials creating a hazardous materials condition by any Materials brought to the Site by the DFIM Contractor, Subcontractors, suppliers, or anyone else for whom the DFIM Contractor is responsible.
- (b) If the DFIM Contractor encounters hazardous materials, the DFIM Contractor shall legally and properly manage the situation and immediately:
 - (1) Secure or otherwise isolate such condition;
 - (2) Stop all construction in connection with such condition and in any areas affected thereby (except in an emergency); and
 - (3) Notify HART and confirm such notice in writing. HART shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if

any.

(c) The DFIM Contractor shall not resume construction in connection with such hazardous material or in any such affected area until after HART has obtained any required permits related thereto and delivered to the DFIM Contractor written notice:

(1) Specifying that such condition and any affected area is or has been rendered safe for the resumption of construction; or

(2) Specifying any special conditions under which such construction may be resumed safely. If HART and the DFIM Contractor cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Time as a result of such construction stoppage or such special conditions under which construction is agreed to be resumed by the DFIM Contractor, the process as set forth in Section 6.10 of the GCDB shall govern.

(d) If, after receipt of such special written notice, the DFIM Contractor does not agree to resume such construction under such special conditions, HART may:

(1) Terminate the Contract; or

(2) Order such portion of the Work that is related to such hazardous material to be deleted from the Work. If HART and the DFIM Contractor cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Time as a result of terminating the Contract or deleting such portion of the Work, then the DFIM Contractor may make a Claim therefore as provided in SP-5.3. HART may have such deleted portion of Work performed by HART's own forces or by a third party as determined by HART.

(e) To the fullest extent permitted by law, the DFIM Contractor shall indemnify and hold harmless HART, its elected and appointed officials, agents, employees, volunteers, HART's consultants and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such hazardous environmental condition created by the DFIM Contractor or anyone for whom the DFIM Contractor is responsible.

(f) Safeguards, signs and notices. The DFIM Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings and notices against hazards, promulgating safety regulations and notifying owners and users of adjacent site and utilities.

SP-4.15 NOISE CONTROL

Chapter 4, Section 4.15 of the GCDB is amended to add the following as paragraphs (g) through (h):

(g) The DFIM Contractor shall submit, for approval by HART, site specific noise monitoring equipment to be used for the Work, as well as develop and implement a best management practices plan as part of the Permit process.

(h) The DFIM Contractor shall take special care to mitigate noise in the vicinity of Waipahu High School and Leeward Community College facilities.

SP-4.16 RUBBISH DISPOSAL

Chapter 4, Section 4.16 of the GCDB is amended to add the following paragraphs (b):

(b) All other salvage materials are assumed to be the property of the DFIM Contractor.

SP-4.19 SURFACE AND SUBSURFACE CONDITIONS

Chapter 4, Section 4.19 of the GCDB is amended to add the following paragraphs (d) – (g):

(d) Existing site conditions: The DFIM Contractor agrees that it has investigated, carefully examined and definitely satisfied itself as to the conditions affecting the Agreement services, and the complete execution thereof, including but not limited to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, availability of materials, and the physical conditions of the Transit Stations prior to commencement of and during the prosecution of the Agreement services. The DFIM Contractor further agrees that it has definitely satisfied itself as to all specifications, data, instructions, performance standards and schedules. At the time the DFIM Contractor assumes responsibility for maintenance, the DFIM Contractor will be responsible for reviewing the existing site conditions and notifying HART of any possible impact on the execution of the services pertaining to the elevators and escalators included in this Agreement. This is not intended to allow the DFIM Contractor a claim for additional charges but is meant to allow the DFIM Contractor to notify HART of any conditions which might impede the progress of the operations and maintenance Work. Any failure of the DFIM Contractor to acquaint itself with the aforementioned information shall not relieve it from the responsibility for properly estimating the difficulty and cost of successfully performing the complete Agreement services.

(e) Protection of work and property: The DFIM Contractor shall take all necessary precautions during the period of service to continuously maintain adequate protection of all its construction Work from damage and shall protect HART's property from injury or loss arising out of this Agreement. The DFIM Contractor shall repair or replace, at DFIM Contractor's expense, any damaged property caused by lack of said precautions. The DFIM Contractor shall compensate HART or its employees for any injury or loss, except such as may be directly caused by agents or employees of HART. The DFIM Contractor shall provide all barricades required to protect open hoistways, shafts, or out-of-service escalators per State regulations. In addition, said barricades shall be of a commercially available, professional, or industry standard variety, and aesthetically maintained (clean, painted, kept in good repair, etc.).

(f) The DFIM Contractor shall provide a safe workplace for the DFIM Contractor's employees and a safe and secure storage location for materials to remain on-site.

(g) Waste disposal and removal of equipment:

(1) The DFIM Contractor at all times shall keep the premises free from accumulations of waste materials or rubbish caused by its operations and from leaks and spillage from equipment, and leave the premises at completion in perfect condition as far as its work is concerned to HART's complete satisfaction. In addition, upon completion of the Work, the DFIM Contractor shall remove tools, equipment, machinery and surplus materials and shall clean all building surfaces and leave the work area clean. The DFIM Contractor shall be responsible for cleaning building surfaces as required due to the DFIM Contractor's Work. All hazardous waste, including but not limited to solvents, paints, oil, soiled rags, etc., will be promptly disposed of in accordance with all laws and regulations at no additional cost to HART.

(2) The DFIM Contractor shall dispose of waste in conformance with HART's requirements for cleanup using containers supplied by DFIM Contractor.

SP-4.21 MATERIALS AND EQUIPMENT

Chapter 4 of the GCDB is amended is amended to add the following paragraph (a):

(a) Materials and Parts - Operations and Maintenance

(b) Materials: All materials shall be furnished, installed and maintained by the DFIM Contractor. The term "materials" shall include all tangible property directly related to the elevator and escalator equipment and maintenance of said equipment, whether designated as materials, goods, parts, and

supplies or otherwise. Storage of materials shall be located either in the machine room or on site in a location approved by HART. All such materials shall be:

- (1) New and of the best quality and suitable for their intended uses.
 - (2) Obtained from or recommended by original manufacturer of equipment for replacement or repair, including parts redesigned by and recommended as replacement parts by the original equipment manufacturer. Equivalent parts may be used if approved by HART in writing.
 - (3) Parts requiring repair shall be rebuilt to “like new” condition.
 - (4) All lubricants shall be suitable for purpose intended and shall meet or exceed minimum requirements specified by original equipment manufacturer of equipment to which the lubricant is applied.
 - (5) All materials delivered and stored at the Transit System, which are intended to become part of the completed services, shall pass to HART upon installation. Use of any parts previously purchased by HART or stored locally shall be immediately replaced within 30 days of use. If special manufacturing is required and 30 days is not sufficient time to replace used parts, HART will be notified in writing of order and delivery dates.
 - (6) HART will retain the right to require the DFIM Contractor to ship any or all such materials by overnight delivery, unless the materials cannot physically be transported by airplane. In such a case, the DFIM Contractor will ship the materials via express ground delivery.
 - (7) Provide metal cabinets of suitable size for storage of materials in each machine room. No open storage of materials shall be permitted. DFIM Contractor shall stock cabinets with adequate renewal parts and lubricants to maximize beneficial usage of equipment covered by this Agreement.
 - (8) Lubricants, cleaning fluids and all combustible liquids shall be stored in a metal cabinet in machine room and shall be disposed of in accordance with Federal or local jurisdiction guidelines. A metal can with lid shall be provided in each machine room for temporary storage of oily rags.
 - (9) DFIM Contractor shall maintain complete set of straight line wiring diagrams showing as built conditions with any changes or modifications to circuits resulting from control modifications, parts replacement or equipment upgrades. HART may reproduce these as built drawings and retains sole possession and ownership of these drawings in event contract is terminated.
- (c) No parts or equipment required by services may be removed from the Transit System without written approval of HART. This does not include renewal parts stocked on site by DFIM Contractor, which shall remain DFIM Contractor’s sole property until installed on the equipment or parts that need to be taken off site to be repaired. Exponentiously replenish parts/materials as utilized.
- (d) Storage of Materials: Only materials to be used in order to perform the services specified herein are to be stored at the job site. The DFIM Contractor shall confine storage of materials to limits approved by the Core Systems Contractor and HART and shall not unnecessarily encumber the premises or overload any portion with materials to a greater extent than the structure design load.
- (e) Parts installed on the elevators and escalators covered by this Agreement, either as preventive maintenance replacements and/or repairs, shall be supplied by, or authorized by, the original equipment manufacturer. The DFIM Contractor shall stock sufficient parts and materials to remain in compliance with this contract
- (f) The DFIM Contractor, by accepting and agreeing to the terms of this contract, certifies that it recognizes the importance of maintaining the original integrity of the vertical transportation system and

that it has a sufficient quantity of the necessary original equipment manufacturers parts, or authorized parts, on hand to engage itself in this Contract. Also, the DFIM Contractor shall likewise certify that it is not financially (or otherwise) encumbered with any vendor or supplier in any manner that would now or at any time during the term of this Contract limit the DFIM Contractor's ability to obtain parts, lubricants, service schedules and preventive maintenance bulletins relating to the equipment covered by this Contract.

(g) The DFIM Contractor shall maintain a current inventory of DFIM Contractor supplied spare parts at each jobsite. All non-operating parts will be considered the property of the DFIM Contractor.

(h) The DFIM Contractor shall maintain a supply of contacts, coils, leads motor brushes, generator brushes, escalator rollers, escalator steps, comb plates, escalator handrails, balustrade panels, car lights, microprocessor boards, call buttons, door rollers, lubricants, wiping cloths, and other minor parts in elevator machine rooms for the performance of routine preventive maintenance.

(i) The DFIM Contractor shall maintain a supply of spare lending and replacement parts in their warehouse inventory. Inventory shall be capable of supporting this Agreement with regard maximum allowable equipment downtime. This inventory shall include, but is not limited to, door operator motors, brake magnets, motor brushes, controller switch contacts, selector switch contacts, solid state components, selector tapes and/or cables, door hangers, door rollers, hoistway limit switches, traveling cable, escalator steps, escalator step chains, escalator handrails, etc.

SP-4.28 PROJECT MANAGEMENT / CONSTRUCTION MANAGEMENT

Chapter 4 of the GCDB is amended by adding the following new Section 4.28:

(a) The DFIM Contractor shall provide project and construction management (PM/CM) services for the scope of Work defined in the Contract. The PM/CM services associated with the Work shall include, but not be limited to, the following activities:

(1) Weekly Coordination Meetings – DFIM Contractor shall conduct and document weekly coordination meetings with HART and other stakeholders participating in the Project. The meetings will cover items of Work completed the previous week and planned for the next two (2) weeks (3-Week Look Ahead Schedule) and any current issues of concern, resolution of conflicts, and other meetings requiring HART participation. DFIM Contractor will maintain an action items log that reflects assigned responsibilities and due dates for actions raised in the meeting. Special meetings may be necessary to maintain schedule delivery on all aspects of the DFIM Contractor's Work. Typically these special meetings include, but are not limited to, design workshops, design reviews, utility coordination, public involvement, environmental clearances, construction easements, traffic management and control and integration with other HRTTP contracts.

(2) Monthly Progress Reports – DFIM Contractor shall prepare and submit monthly progress reports covering the current period performance and the next period's plan. The report shall include progress photos, schedule updates, and areas of concern. Progress photos shall include, but not be limited to, the photographic condition of active construction, utility protection, environmental protection, and traffic management. Photo documentation shall also be used for pre-construction surveys. Progress meetings will be conducted at least on a bi-monthly basis during design and weekly during construction with HART, HART's Representative, DFIM Contractor, active Subcontractors, and all other such representatives concerned with current progress or involvement in planning, design, coordination, or future critical activities.

The DFIM Contractor shall prepare and submit a monthly subcontractor utilization report (inclusive of subcontract amount, date of award, type of service and contact information) and a DBE monthly utilization report.

(3) Risk Management Participation / Assistance – DFIM Contractor shall support HART in risk assessment and mitigation workshops that will occur during the design and

construction of the project. This support may include development of position papers or design support for identified risk items of significance. Workshops will be scheduled quarterly upon the commencement of Work, but may require special meetings depending on the risk significance and responsible party.

(4) **Coordination with Other Work** – DFIM Contractor shall coordinate the Work with all other adjacent work and follow-on work to be performed by others. This coordination may include special meetings and workshops to efficiently and effectively resolve conflicts and / or interface issues associated with the Project. (See SP-4.9).

(5) **Management of Labor, Material, and Equipment** – DFIM Contractor is responsible for managing the labor, material, and equipment required to efficiently and effectively perform the Work. Should decisions be necessary to maintain the performance of Work, the DFIM Contractor will actively engage all affected parties and facilitate resolution.

(6) **Initial Acceptance of Baseline and Milestone Schedules** – At least ten (10) Days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), but after NTP, DFIM Contractor will arrange a conference attended by DFIM Contractor, HART and others appropriate to review for acceptability of the Schedules submitted. DFIM Contractor shall have an additional ten (10) days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to the DFIM Contractor until the schedules are submitted to and accepted by HART.

(b) **Project Controls** – The DFIM Contractor shall maintain the Baseline Progress Schedule, Periodic Payment Schedule, Schedule of Milestones and other project controls systems to effectively manage and control performance of the Work. Coordination and interface control schedules shall be utilized to maintain effective integration with all contracts associated with the HRTP. Prior to the start of Work, the DFIM Contractor shall submit the Contract’s Baseline Progress Schedule for HART acceptance. Whenever the Baseline Progress Schedule changes materially from the accepted version, the DFIM Contractor shall submit a revised Baseline Progress Schedule with narrative describing the cause and actions planned to remediate such that the Contract completion milestone(s) are not impacted. Written Notice by the DFIM Contractor is required if at any time the progress of the schedule is impacting the Contract completion milestones. Each submittal of a revised Baseline Progress Schedule requires the review and acceptance of HART. Failure to submit the Baseline Progress Schedule, revisions or updates shall affect the payment process for that particular month. This may affect a single pay item or multiple pay items at the sole discretion of HART until proper submittal is received by HART:

(1) The Baseline Progress Schedule (BPS) shall include, but not be limited to, the following:

(A) **Work Breakdown Structure (WBS)** – A hierarchal breakdown of the scope of Work into manageable components. HART shall provide the WBS that reflects its breakdown of the scope and associated code structure at NTP.

(B) **Activity Coding Structure** – There are three milestone types that a code structure is required to be incorporated into the BPS;

(i) *Contract Milestones* (SP-4.1 contains stipulated interface dates for the exchange of information or work area access by and to other HRTP contracts),

(ii) *Payment Milestones* (SP-6.1 defines the use of the Schedule of Milestones (ITO Exhibit 22) that serves as the measurement of earned value and the basis of payment), and

(iii) *Coordination Milestones* (SP-4.9 identifies the other HRTP

contracts that will require schedule integration and coordination) shall be incorporated in the BPS with unique coding.

(C) Contract Specific Coding Structure – as may be established by the DFIM Contractor to reflect the management plans and support the DFIM Contractor-reporting requirements.

(D) Schedule of Milestones Pay Item – each completion (finish) milestone established as a breakdown of the Schedule of Prices that serves as a Pay Item will contain a series of activities (logic) that depicts the associated Work leading to the payment milestone and shall contain unique coding to facilitate progress reporting of the Schedule of Milestones.

(E) Sufficient activities and milestones to support the “look ahead” schedules and reports used during the weekly coordination meeting. All look ahead reports should be a detailed snapshot of the BPS covering the current Work period (3, 4 or 5-weeks) from the data date. The look-ahead reports may include more details of the Subcontractors and suppliers efforts during this current period, but should summarize to the BPS activities. Any updates received during the Weekly Coordination Meetings should be reflected in the monthly updates of the BPS.

(F) The BPS shall include identity of the critical path as well as the longest path of the CPM-based schedule. Critical path reports shall be provided with status on a monthly basis.

(2) Scheduling requirements – The DFIM Contractor shall use Oracle Primavera P6 Schedule software to create, maintain and report on the Contract schedule. Should HART and/or HART’s consultant upgrade to a newer version of the Primavera schedule software, the DFIM Contractor shall also upgrade their Primavera schedule software to the same unless the newer version remains compatible with the DFIM Contractor’s existing version. DFIM Contractor shall provide with each update of the BPS an electronic copy (in Primavera file format) of the schedule along with a Basis of Schedule narrative that includes production rates, site constraints, work plan assumptions, and risk mitigation measures incorporated into the schedule. The schedule shall include as a minimum; activity ID, activity description, original duration, remaining duration, early dates, late dates and total float. The schedule will identify interface activities, exchange of information with other HRTP contracts and any known third party interfaces affecting the performance of the schedule. The Primavera schedule reports shall include as a minimum; critical path report, longest path report, constrained activities report, predecessor / successor report, activities planned for the next two reporting months (look-ahead) and a completed activities report. If significant variances are found in the BPS a variance report with corrective actions / work-arounds shall be provided.

(3) For purposes of establishing thresholds that trigger timely remediation of schedule delays the following guidelines are provided:

(A) Should the DFIM Contractor experience a delay, in excess of thirty (30)-days, in a specific activity or group of activities, the DFIM Contractor shall provide a recovery schedule for those activities with that month’s Progress Report.

(B) Should the DFIM Contractor experience a delay, in excess of sixty (60)-days, in a specific activity or group of activities, and should the DFIM Contractor not be able to recover the delay, the DFIM Contractor shall re-baseline the BPS and provide a narrative of cause and corrective actions taken.

(4) A Cost-loaded BPS requires the Schedule of Milestones to be incorporated into the

BPS with appropriate activities and logic leading into and out of each milestone. The Schedule of Milestones “pay value” shall be loaded on this completion milestone. Monthly management pay milestones are distributed across the duration. This will provide a planned and actual cost curve based on the pay values assigned to the Schedule of Milestones and integrated into the BPS.

(5) Cost control and reporting – The Schedule of Milestones shall serve as the basis of payment and provide the means to report earned value and financial performance. DFIM Contractor shall support and provide special schedule as may be necessary to report status to the FTA and its Project Management Oversight Consultant (PMOC). The Periodic Payment Schedule reports the monthly expenditure plan based on the BPS and the Schedule of Milestones. When either of those two documents is revised so is the Periodic Payment Schedule. All three schedules are required to be submitted to HART for review and acceptance at Contract commencement and whenever baselines are changed. The Schedule of Milestones depicts the Pay Item number, description, Pay Item value, planned achievement date, and cross-reference to the DFIM Contractor’s Baseline Schedule. This document shall be used for the monthly pay request and a further breakdown of the Schedule of Prices. The Schedule of Milestones from time-to-time will be reconciled with the Contract’s Schedule of Prices, which is typically a higher level of price breakdown provided with the Proposal and incorporated into the Contract. Any deviation between the Schedule of Prices and the Schedule of Milestones must be corrected by the DFIM Contractor prior to the next pay request. Failure will delay the Pay Request processing and eventual payment for progress achieved. Authorized change orders will be separately itemized on the Schedule of Milestones and may have unique payment milestones depending on the extent of the change. Refer to SP-6.1 for further requirements of the Schedule of Milestones. Each pay request shall include a 2-month look ahead of anticipated Schedule of Milestones achievement. Reports shall consist of, but not be limited to:

(A) Monthly Budget Report – reflecting the Pay Items and those agreed upon breakdowns that are established to effectively measure Contract performance. The report should summarize to the Schedule of Prices / Milestones established in the Contract. As part of the Budget Report, the DFIM Contractor shall provide and maintain a cash disbursement plan that charts actual expenditures (progress payments).

(B) Quarterly WBS Reports – provide cost information in a HART-defined format consistent with the WBS.

(6) Data Date. All reports, pay requests, schedule updates shall be based on a specific date(s) in the life of the Contract upon and through which the defined system of reporting is to provide actual status of the project and the accomplishments to date. All Contract status reports, progress measurements for payment, schedule updates, etc., shall be based on the last Friday of the Month, Quarter-end, and/or Year-end per the report frequency specified and shall serve as the report’s Data Date (DD). The DD is also referred to as the “as-of-date” and “time now date”.

(c) Communication and Collaboration. The DFIM Contractor shall develop and implement a project communication plan that defines the process to effectively communicate project information to all stakeholders. The plan shall include communication protocols and clear understanding as to where someone goes to get timely information about the Project and the Work. For Work elements that require coordination and collaboration, the DFIM Contractor shall establish appropriate communication links and discussions to maintain project schedules and clarity of information.

(d) Document Management. DFIM Contractor shall be responsible for maintaining the Project records system. Develop a listing of all required meetings and reports and provide to HART for Review and Comment. These records will be made available for HART to review and audit periodically throughout the Contract term. All Project records shall be turned over to HART upon Project completion. Refer to the quality management requirements in SP-4.7 for further definition of the Project quality records that are to be

maintained, available for audit, and serve as the official record of the quality control activities provided on the Project by the DFIM Contractor.

(e) Submittal Management – DFIM Contractor is responsible for managing all contract submittals, maintaining submittal logs, and follow-up responses/actions to HART-comments until satisfactorily resolved. The DFIM Contractor shall use Contractor-provided Oracle Primavera Contract Management Software or HART-accepted equivalent. The DFIM Contractor shall provide a list of submittals for client review fifteen (15)-days following NTP and provide periodic updates as to completion and status. DFIM Contractor has the option of utilizing “over the shoulder” reviews via meetings or workshops to facilitate the submittal reviews. DFIM Contractor shall provide the following with each submittal:

- (1) One (1) Hard Copy;
- (2) One (1) Electronic PDF Copy;
- (3) One (1) Electronic native file Copy at the conclusion of the preparation of Management Plan, Report, Drawing or Specification; and
- (4) One (1) Electronic native file Copy of the Drawing or Specification should it be required for other contracts, typically during interface and design exchange, as may be necessary.

(f) Contract Management Software (CMS) – HART will use a Web-enabled system to manage all documents submitted to and generated by HART. Oracle Primavera CMS will facilitate the flow of documents between the DFIM Contractor and HART and will be web-accessible by the DFIM Contractor to initiate submittals, correspondence, meeting minutes, issues / action items, RFIs, pay requests and change management documents.

SP-4.29 DOCUMENTATION – OPERATIONS AND MAINTENANCE

Chapter 4 of the GCDB is amended by adding the following new Section 4.29:

(a) Upon arrival and departure from the Transit Station, all DFIM Contractor employees shall report to designated personnel and manually sign a log book indicating name of person, time of arrival, purpose of visit, i.e., callback, preventive maintenance, scheduled repair, Supervisor's inspection, etc. Provide a brief description of work accomplished, including car and/or group designation, and time of departure. Conspicuously post Preventive Maintenance Schedule and work log in each machine room. Alternately, collect preventive maintenance history and testing logs electronically within unit computer control system. Data shall be accessible by HART via manual log or web access and hard copy printout at all times.

(b) A separate log shall be kept for each testing procedure required by Code and/or this document. A record of these procedures will be provided to HART no more than 48 hours after such request is made.

(c) Log or electronic printout shall include all entries for routine preventive maintenance, repairs, tests, callbacks and Supervisor's inspection. Entries shall include date work is completed, Mechanic's or Supervisor's name, brief description of work completed, including unit number and number of units serviced, repaired or inspected, and the approximate time required for work excluding travel time to and from property. HART shall be allowed to inspect and copy log or electronic printout and maintenance history and schedule at any time.

(d) DFIM Contractor shall make available an online service, which provides information such as maintenance history, callback data, etc. The callback data shall include but not be limited to dates, times and places of service or regular monthly inspection and the nature of any repairs needed and corrective action taken.

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(e) A separate report depicting planned maintenance procedures shall be available to HART upon request. Upon the making of an inspection, periodic maintenance, emergency and/or routine service call and/or the providing of any other service under this contract, DFIM Contractor shall provide written record of same to HART at the address specified on the first page of this contract, at the time such service is rendered.

(f) Further, DFIM Contractor shall maintain at the designated HART location a written log of any and all complaints, inspections and/or service calls regarding each and every elevator/escalator identified in this Contract. Said log shall be inspected by DFIM Contractor each and every time DFIM Contractor is on site, and it shall be the affirmative duty of DFIM Contractor to inspect such log and to be fully informed of complaints and comments pertaining to performance of the equipment covered by this contract.

(g) All records generated by DFIM Contractor in connection with the performance of any service, obligation, or duty undertaken pursuant to the terms and conditions of this Contract shall be provided to HART, immediately upon the making of a written request by HART, but in no event less than three (3) days following receipt of such written request.

(h) The DFIM Contractor shall, at a minimum, provide either semi-annually or more often if requested; a summary and review of all callbacks and unit downtime with HART. The intent of this review is to minimize callbacks by developing consistent communication between the DFIM Contractor and HART relative to callback trends, unit downtime and their causes.

(i) Maintain HART's complete set of straight line wiring diagrams in good condition. Drawings shall be consistently updated and properly noted with "as built" conditions with any changes or modifications to circuits resulting from control modifications, parts replacement or equipment upgrades made by DFIM Contractor during Agreement term. HART shall be allowed to reproduce these "as built" drawings and retain sole possession of these drawings in event Agreement is cancelled. If Agreement is cancelled, HART will withhold final payment due DFIM Contractor until all as built/as modified set(s) of wiring diagrams are delivered to HART.

SPECIAL PROVISION

CHAPTER SP-5 MODIFICATIONS; CHANGE ORDERS

SP-5.3 CHANGE ORDERS

Chapter 5, Section 5.3 (a), of the GCDB is amended by adding the following subparagraphs:

(1) HART acknowledges and agrees that the Contract is based on baselines provided by HART in its RFP Part 2. The DFIM Contractor is obligated to use these standards as a firm baseline, unless the DFIM Contractor demonstrates to HART that a change is necessary for these baseline standards. If the request for change to the baseline standards is approved by HART, HART will issue a Change Order according to the procedures set forth herein.

(2) Acceptance of RFP Part 2. The DFIM Contractor shall review all the plans and Specifications in the RFP Part 2 provided by HART. Unless the DFIM Contractor requests a Change Order for what it deems a discrepancy or inaccuracy in the plans and Specifications in the RFP Part 2, including the RFP Drawings, the DFIM Contractor shall be responsible for and deemed to have accepted the terms as provided in RFP Part 2. Any cost increases and/or delays which affect the duration of a Critical Path resulting from such discrepancies or inaccuracy shall be the responsibility of the DFIM Contractor.

Chapter 5, Sections 5.3 (b), of the GCDB is amended by being deleted in its entirety and replaced with the following:

(b) Adjustments of price or time for performance. If any change order increases or decreases the DFIM Contractor's cost of, or the time required for performance of any part of the Work under this Contract, an adjustment may be made and the Contract modified in writing accordingly. Any adjustment in Contract Price made pursuant to this section shall be determined in accordance with HAR § 3-125-13(a), which is included in Section 6.9 of this Special Provision, "Price Adjustments." Failure of the parties to agree to an adjustment in Contract Price shall be resolved in accordance with the price adjustment clause included in Section 6.9 pursuant to HAR § 3-125-13(a)(1)(E). Failure of the parties to agree to an adjustment in time shall not excuse the DFIM Contractor from proceeding with the Contract as changed, provided that HART, within fourteen (14) Days after the changed Work commences, makes such provisional adjustments in time as HART deems reasonable. The right of the DFIM Contractor to dispute the Contract Price or time required for performance or both shall not be waived by its performing the Work, provided however, that it follows the notice requirements for disputes and claims established by the Contract. [HAR 3-125-4(2)]

On any price adjustment, the DFIM Contractor shall submit a pricing breakdown in the format attached in the GCDB as Exhibit F, Estimate for Change Order Work for HART's Review and Comment, within thirty (30) Days or within such further time as HART may allow, from the time the DFIM Contractor is informed of the Work to be performed or of any changes. GCDB Exhibit H, Certification of Current Pricing must accompany the cost estimate. The substantiation shall include the DFIM Contractor's and subcontractor's cost breakdown to a level of detail acceptable to HART.

Should the DFIM Contractor delay or refuse to submit detailed cost breakdown for the changed Work, HART may pay the DFIM Contractor in accordance with SP-6.9 "Price Adjustments."

Chapter 5, Section 5.3 of the GCDB is amended by adding the following new paragraph (f):

(f) Claims Process. This section outlines the exclusive procedure to be followed if the DFIM Contractor believes that it is entitled to additional compensation, additional Contract Time or both. This section applies to all claims for additional compensation and all requests for additional Contract Time,

regardless of whether the basis for the claim for additional compensation, or request for additional Contract Time, or both, stems from the performance of extra or additional Work, changed Work, excusable delays of any nature, or any other reason whatsoever. For suspension of Work see GCDB Section 7.1.

(1) When the DFIM Contractor believes it is entitled to be paid more than that provided for in the Contract, the DFIM Contractor shall notify HART in writing as soon as the DFIM Contractor becomes aware of the event. Claims must be made within thirty (30) Days after giving written notice to HART. The DFIM Contractor's documentation of claim shall include:

- (A) A description of the disputed change condition that requires additional compensation.
- (B) The estimated amount of the additional cost to HART.
- (C) Any Contract provision(s) that support the claim.
- (D) The date upon which the condition occurred or was observed.

(2) When an event occurs that the DFIM Contractor believes entitles it to more time to complete the Work than Contract Time permits, the DFIM Contractor shall notify HART in writing as soon as the DFIM Contractor becomes aware of the event. Claims must be made within thirty (30) Days after giving written notice to HART. The DFIM Contractor's documentation of claim shall include:

- (A) A description of the disputed change condition that requires additional time, including a schedule analysis that shows the event delayed the completion of the project as a whole.
- (B) The estimated amount of the additional time (in days) to HART.
- (C) Any Contract provision(s) that support the claim.
- (D) The date upon which the condition occurred or was observed.

(3) HART may request additional documentation from the DFIM Contractor at any time regarding a Claim. Failure to provide additional documentation when requested and when such documentation exists constitutes a waiver of that portion of the DFIM Contractor's Claim to which the additional documentation relates.

(4) If the DFIM Contractor does not provide a written notice of a claim for additional compensation or additional Contract Time, any subsequent claim for additional compensation, additional Contract Time, or both, is waived.

(5) If HART agrees with the DFIM Contractor's request for additional compensation or Contract Time, the parties shall negotiate a Change Order setting forth their agreement. If HART disagrees, the DFIM Contractor shall continue promptly with the Work.

(6) Should the DFIM Contractor disagree with HART's determination of the claim, the DFIM Contractor may pursue remedies as set forth in SP-7.4.

SP-5.4 CLAIMS BASED ON ORAL DIRECTIVES

Chapter 5, Section 5.4, of the GCDB is amended by adding new subsection (c) as follows:

(c) Notice to Sureties. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be the DFIM Contractor's responsibility. A copy of the DFIM Contractor's notice to Surety shall be delivered simultaneously to HART. The amount of each applicable Bond will be adjusted to reflect the effect of any

such change.

SP-5.5 OVERTIME INSPECTIONS

Chapter 5, Section 5.5 of the GCDB is amended by being deleted in its entirety.

SP-5.6 DELAY; TIME EXTENSIONS; UNFORESEEABLE DELAYS; SUSPENSION

Chapter 5, Section 5.6 (d), Other Unforeseeable Delays, of the GCDB is amended by being deleted in its entirety and replaced with the following SP 5.6 (d), Force majeure events:

(d) Force Majeure Events:

(1) Time Extensions. HART will issue Change Orders to extend the completion deadlines as the result of any delay in the Critical Path on Baseline Schedule caused by a force majeure event. It shall be the responsibility of the DFIM Contractor to demonstrate to HART that the delay in the Critical Path is attributable solely to the force majeure event. The term “force majeure” shall mean any event beyond the control of the DFIM Contractor, not due to an act or omission of the DFIM Contractor, any Subcontractors, their employees, agents and officers or any other Person for whom the DFIM Contractor may be legally or contractually responsible, and to the extent that the event (or the effects of which event) could not have been avoided or prevented by due diligence and use of reasonable efforts by the DFIM Contractor. [HAR 3-125-18]

(2) Additional Compensation. HART will issue Change Orders to compensate the DFIM Contractor for reasonable, verifiable additional direct costs incurred arising from force majeure events as defined below, excluding delay damages except for any force majeure event, which is determined to be a HART-caused delay. The term “force majeure” is limited to the following:

(A) Any floods (fifty (50)-year or greater) within one (1) mile of the Project; any Windstorm (Cat-3 or more severe) within one mile of the Project; or any earthquake exceeding 3.5 on the Richter scale and epicentered within twenty-five (25) miles of the specific location of damage on the Site; exceeding 5.0 on the Richter scale and epicentered within 50 miles from the specific location of damage on the Site; or exceeding 6.5 on the Richter scale and epicentered within seventy-five (75) miles from the specific location of damage on the Site; in all cases based on the final determination regarding the location and magnitude of the earthquake published by the National Earthquake Information Center in Golden, Colorado;

(B) Any epidemic, blockade, rebellion, war, riot, act of terrorism or sabotage, or civil commotion;

(C) Any spill or release of Hazardous Materials by a third party at, near or on the Site which occurs after the Proposal Due Date and is required to be reported to HART;

(D) The discovery at, near, or on the Site of any archaeological, paleontological, biological, or cultural resources, or any species presently or in the future listed as threatened or endangered under the federal or state endangered species act; provided that the existence of such resources was not identified in the Contract Documents;

(E) The suspension, termination, interruption, denial or failure to obtain, nonrenewal, or amendment of any Environmental Approval, except as otherwise provided in the Contract;

(F) Any change in a Governmental Rule or change in the judicial or administrative interpretation of or adoption of any new Governmental Rules which is materially inconsistent with Governmental Rules in effect on the Proposal Due Date and

materially affects the Contract; and

(G) Any court action seeking to restrain, enjoin, challenge, or delay construction of the Project or the granting or renewal of any governmental approval for the Project, except to the extent that the court action is due to an act or omission of the DFIM Contractor or any Subcontractor, and could not have been avoided or prevented by due diligence and use of reasonable efforts by the DFIM Contractor.

(3) The term “force majeure” specifically excludes from its definition the following matters which might otherwise be considered force majeure:

(A) Any climatic conditions, storms, floods (less than fifty (50)-year), droughts, fires, Windstorms (less than Cat-3), earthquakes (3.5 or lower on the Richter scale), landslides, or other catastrophes as measured, recorded, or experienced within proximity to the Project;

(B) Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout, or other similar occurrence;

(C) The suspension, termination, interruption, denial or failure to obtain, or nonrenewal of any permit, license, consent, authorization, or approval (including all Governmental Approvals other than Environmental Approvals) which is necessary for the performance of the Work or the maintenance of the Project;

(D) Any change in a Governmental Rule (excluding material changes in Environmental Laws) which was proposed or was otherwise reasonably foreseeable at the Proposal Due Date or does not materially affect the Contract;

(E) The Work or the presence on the Project Site of any third party, including, but not limited to, that of other contractors or personnel employed by the State of Hawai'i; by other public bodies; by transportation, or utilities; or by private enterprises or any delay in progressing such Work by any third party as indicated or disclosed in the Contract Documents or ordinarily encountered or generally recognized as inherent in the Work;

(F) The existence of any facility or appurtenance owned, operated, or maintained by any third party, as indicated or disclosed in the Contract Documents or ordinarily encountered or generally recognized as inherent in the Work;

(G) The act, or failure to act, of any other public or governmental body, transportation company or corporation, or utility, including, but not limited to, approvals, permits, restrictions, regulations, or ordinances attributable to the DFIM Contractor's design, submission, action or inaction, or means and methods of construction;

(H) Restraining orders, injunctions, or judgments issued by a court which were caused by the DFIM Contractor's submissions, action or inaction, or means and methods of construction;

(I) Any shortages of supplies or Material required by the Contract Work;

(J) Any situation which was within the contemplation of the parties at the time of entering into the Contract; and

(K) All other matters not caused by HART or beyond the control of HART.

(4) The foregoing limitations shall not affect the DFIM Contractor's ability to obtain proceeds of insurance required under the Contract to be used for repair and replacement work associated with insured events.

Chapter 5, Section 5.6 (f)(4) of the GCDB is amended by adding the following paragraphs (G) through (M):

(G) Delays by Subcontractors or suppliers at any tier unless it can be shown that the delay was unforeseeable and not caused by any failure or neglect on the part of the Subcontractor or supplier;

(H) Delays that affect the DFIM Contractor's planned early completion, but do not affect the specified or adjusted Contract Time;

(I) Shortages of materials or equipment if the supplies, services, or equipment were obtainable from other sources in sufficient time to permit the DFIM Contractor to meet the required schedule;

(J) Financial difficulties;

(K) Lack of know-how or other inability to perform;

(L) Labor problems; and

(M) Any requirement that the DFIM Contractor use equipment designated by HART for the Project ("sole source" equipment).

Chapter 5, Section 5.6 (g) of the GCDB is amended by adding the following subparagraphs (1) through (5):

(1) HART will not be liable for any delays in contract schedule and/or cost that are the fault of the DFIM Contractor. Should the HARTP Schedule be delayed due to the fault of the DFIM Contractor the cost and/or schedule impacts shall be the responsibility of the DFIM Contractor.

(2) No additional compensation will be paid to the DFIM Contractor for any time period when the overall project completion date is delayed as a result of concurrent delay. Delays are considered to be concurrent when the DFIM Contractor encounters an excusable delay but also has caused its own delay to the Project for the same period of time. In that situation, the DFIM Contractor is only entitled to an adjustment to time and/or compensation for the period of time that the excusable delay exceeds the concurrent delay.

(3) Additional compensation shall be paid to the DFIM Contractor if unreasonable delays caused by HART are the sole reason that the overall project completion date is delayed. No additional compensation is warranted for delay if that delay does not affect the overall project completion date.

(4) When the DFIM Contractor is entitled to additional compensation as stated above, the DFIM Contractor is entitled to reimbursement during the period of time when overall project completion was actually delayed. Such reimbursement shall include direct costs, if any, incurred as a result of the delay and an amount, if applicable, for overhead and profit. Any other cost or consequential damage, including, but not limited to costs incurred on other construction projects, is not compensable.

(5) All adjustments of Contract Time shall be solely for the period of time during which the overall project completion date was actually delayed.

SP-5.7 VARIATIONS IN ESTIMATED QUANTITIES

Chapter 5, Section 5.7 (a) of the GCDB is amended by being deleted in its entirety and replaced with the following:

(a) Where the quantity of a Price Item in the Contract is an estimated quantity and where the

actual quantity of such Price Item varies more than fifteen percent (15%) above or below the estimated quantity stated in the Contract, an adjustment in the Contract Price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, HART shall, upon receipt of a timely written request for an extension of time, prior to final payment of the Contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of HART the findings justify. Any adjustment in the Contract Price shall be in accordance with SP-6.9 "Price Adjustments." [HAR 3-125-10]

SP-5.8 VALUE ENGINEERING INCENTIVE

Chapter 5, Section 5.8 of the GCDB is amended by being deleted in its entirety.

SP-5.9 ESCROWED PROPOSAL DOCUMENTS

Chapter 5 of the GCDB is amended by adding the following new Section SP-5.9.

(a) Upon Award of the Contract, designated representatives of HART and the DFIM Contractor shall jointly retrieve the Escrowed Proposal Documents from the designated escrow agent, and shall deliver to HART one (1) copy of all documentary information used in preparation of the Price Proposal, which shall be held in a locked fireproof cabinet supplied by the DFIM Contractor and located in HART's offices, with the key held only by the DFIM Contractor. Notwithstanding the foregoing, at the DFIM Contractor's option and at the DFIM Contractor's sole expense, the Escrowed Proposal Documents may remain with another depository reasonably acceptable to HART located in the Project vicinity, pursuant to instructions incorporating the provisions of this SP-5.9. Concurrently with submission of quotations or revisions to quotations provided in connection with formally proposed Amendments to this Contract and concurrently with approval of each Change Order, if appropriate, one copy of all documentary information used in preparation of the quotation or Change Order shall be added to the cabinet to be held with the other Escrowed Proposal Documents. The Escrowed Proposal Documents will be held in such cabinet or otherwise maintained subject to Section (b) below until all of the following have occurred:

- (1) Two hundred seventy (270) Days have elapsed from Final Acceptance or termination of the Work, as applicable;
- (2) All disputes regarding this Contract have been settled; and
- (3) Final payment on this Contract has been made by HART and accepted by the DFIM Contractor.

(b) Availability for Review. The Escrowed Proposal Documents shall be available during business hours for joint review by the DFIM Contractor and HART, in connection with review changes in the Baseline Schedule and/or PPS-C, negotiations of price adjustments and Change Orders, and the resolution of disputes. HART shall be entitled to review all or any part of the Escrowed Proposal Documents in order to satisfy itself regarding the applicability of the individual documents to the matter at issue. HART shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters, provided that HART has executed and delivered to the DFIM Contractor a confidentiality agreement specifying that the Escrow Proposal Documents will be kept confidential; that copies of such documents will not be distributed to any third parties other than HART's agents, attorneys, and experts, and other dispute resolvers hereunder; and that all copies of such documents (other than those delivered to the dispute resolvers) will be either destroyed or returned to the depository (or to the DFIM Contractor, if the Escrowed Proposal Documents have been returned to it) upon final resolution of the negotiations or disputes. The foregoing shall in no way be deemed a limitation on HART's discovery rights with respect to such documents.

(c) **Proprietary Information.** The Escrowed Proposal Documents shall be labeled “confidential.” The Escrowed Proposal Documents are, and shall always remain, the property of the DFIM Contractor, subject to HART’s right to review the Escrowed Proposal Documents as provided herein. HART acknowledges that the DFIM Contractor may consider that the Escrowed Proposal Documents constitute trade secrets or proprietary information. This acknowledgment is based upon HART’s understanding that the information contained in the Escrowed Proposal Documents is not known outside the DFIM Contractor’s business; is known only to a limited extent and by a limited number of Employees of the DFIM Contractor; is safeguarded while in the DFIM Contractor’s possession; and may be valuable to the DFIM Contractor’s construction strategies, assumptions, and intended means, methods, and techniques of construction. HART further acknowledges that the DFIM Contractor expended money in developing the information included in the Escrowed Proposal Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. HART acknowledges that the Escrowed Proposal Documents and the information contained therein are being provided to HART only because it is an express prerequisite to Award of this Contract. Thus, the Escrowed Proposal Documents will at all times be treated as proprietary and confidential information and will be used only for the purposes described in this SP-5.9.

At the DFIM Contractor’s request, confidentiality agreements will be executed and delivered to the DFIM Contractor by HART’s employees or agents who review or have access to the Escrowed Proposal Documents.

(d) **Representation.** The DFIM Contractor represents and warrants that the Escrowed Proposal Documents provided with the Proposal constitute all of the information used in the preparation of its Price Proposal and agrees that the information contained in the Escrowed Proposal Documents will be utilized in resolving disputes or claims. The DFIM Contractor also agrees that the Escrowed Proposal Documents are not part of the Contract and that nothing in the Escrowed Proposal Documents shall change or modify the Contract.

(e) **Contents of Escrowed Proposal Documents.** The Escrowed Proposal Documents shall, inter alia, clearly itemize the estimated costs of performing the Work required by the Contract Documents. All Work shall be separated into sub-items as required to present a complete and detailed estimate of all costs. Crews, Equipment, quantities, and rates of production shall be detailed. Estimates of costs shall be further divided into the DFIM Contractor’s usual cost categories such as direct labor, repair labor, Equipment ownership and operation, expendable Material, permanent Material, and subcontract costs, as appropriate. Plant and Equipment and indirect costs shall also be detailed in the DFIM Contractor’s usual format. The DFIM Contractor’s allocation of plant and Equipment, indirect costs, contingencies, markup, and other items to each direct cost item shall be clearly identified. The Escrowed Proposal Documents shall include all assumptions, quantity takeoffs, rates of production and progress calculations, quotes from Subcontractors and Suppliers, memoranda, narratives, and all other information used by the DFIM Contractor to arrive at the Price Proposal or Change Order price, as applicable.

(f) **Form of Escrowed Proposal Documents.** The Escrowed Proposal Documents shall be submitted in the format actually used by the DFIM Contractor in preparing its Proposal. It is not intended that the DFIM Contractor perform any significant extraordinary work in the preparation of these documents prior to the Proposal Due Date; however, the DFIM Contractor represents and warrants that the Escrowed Proposal Documents related to the Proposal have been personally examined prior to delivery to escrow by an authorized officer of the DFIM Contractor and that the Escrowed Proposal Documents meet the requirements of Section (e) above and are adequate to enable a complete understanding and interpretation of how the DFIM Contractor arrived at its Price Proposal. The DFIM Contractor further represents, warrants, and covenants that the Escrowed Proposal Documents related to each Change Order will be personally examined prior to delivery to escrow by an authorized officer of the DFIM Contractor and that the Escrowed Proposal Documents meet the requirements of Section (e) above and will be adequate to enable a complete understanding and interpretation of how the DFIM Contractor arrived at its Change Order price.

(g) Review by HART. HART may at any time conduct a review of the Escrowed Proposal Documents to determine whether they are complete. In the event HART determines that any data is missing, the DFIM Contractor shall provide such data within three (3) Working Days of the request, and at that time it will be date stamped, labeled to identify it as supplementary Escrowed Proposal Documents information, and added to the Escrowed Proposal Documents. The DFIM Contractor shall have no right to add documents to the Escrowed Proposal Documents except upon HART's request. At HART's option, which may be exercised at any time, the Escrowed Proposal Documents associated with any Change Order shall be reviewed, organized, and indexed in the same manner described in the RFP.

(h) Subcontractor and Supplier Pricing Documents. The DFIM Contractor shall require each Subcontractor and /or supplier to submit to the DFIM Contractor a copy of all documentary information used in preparing its sub-bid or sub-proposal immediately prior to executing the subcontract, to be held by the same escrow depository which is holding the Escrowed Proposal Documents and which shall be accessible by the DFIM Contractor and its successors and assigns (including HART) and other dispute resolvers on terms substantially similar to those contained herein. Each such subcontract shall include a representation and warranty from the Subcontractor stating that its Escrowed Proposal Documents constitute all the documentary information used in preparation of its sub-bid or sub-proposal.

SPECIAL PROVISIONS

CHAPTER SP-6 PAYMENT; PRICE ADJUSTMENTS

Chapter 6, Sections 6.1 through 6.4, of the GCDB is amended by being deleted in its entirety and replaced with the following SP-6.1 through SP-6.4.

This Chapter describes and specifies the lump sum pricing concepts and the means of determining the payment for the progress of Work.

SP-6.1 LUMP SUM PRICING CONCEPT

(a) The DFIM Contractor is required to break their Price down into a HART-provided list of Price Items, referred to as the “Schedule of Prices.” The sum of all the Price Items on the Schedule of Prices will be the Lump Sum Contract Price. The Schedule of Prices typically defines a summary level of Price items.

(b) Upon selection and prior to first payment, the DFIM Contractor is required to further break down the Schedule of Prices into a “Schedule of Milestones” (SM). The SM is intended to provide linkage between the Baseline Schedule, Project Work Breakdown Structure (WBS) and the Schedule of Prices. The DFIM Contractor shall provide a SM that is itemized by Pay Items that corresponds to the Schedule of Prices for comparative analysis purposes. The DFIM Contractor is paid the agreed upon amount upon satisfactory completion of the Pay Item.

Authorized changes to the firm price Contract are entered as separate line items on the SM and measured as mutually determined between the DFIM Contractor and HART.

(1) Relationship to the Baseline Schedule and HART-provided WBS. The Pay Item itemization is based on the DFIM Contractor’s Baseline Schedule and shall utilize HART-provided WBS, which provides a common framework for comparative analysis of cost and schedule progress.

(2) General requirements for establishing SM Pay Items. The Project shall be divided into Sections, as follows:

(A) Preliminary and General Requirements:

- (i) Mobilization;
- (ii) Project Management / Construction Management (PM/CM);
- (iii) Quality Management; and
- (iv) Safety & Security.

(B) Engineering & Design – itemized into Design Units reflective of the construction Milestones and the sequence of design development by the DFIM Contractor;

(C) Construction Milestone 1 – the DFIM Contractor shall itemize this Section into sequential construction activities by their associated Milestone. For example, Milestone 1 may consist of:

- (i) Site Preparation;
- (ii) Equipment Installation;
- (iii) Utility Terminations;
- (iv) Finish(es); and
- (v) Closure(s).

- (G) Construction Milestone 2;
- (H) Construction Milestone 3; and
- (I) Construction Milestone 4, and so on as defined by the DFIM Contractor's Baseline Schedule.

(3) Pay item measurement and payment shall be based on lump sum values assigned to all SM pay items, refer to the sample that follows SP-6;

(4) Completion of Milestones, established for each pay item, shall serve as the basis of payment for Sections B, C, D and beyond. Those "level of effort" activities associated with management and administration in Section A shall be based on monthly fixed payments scheduled over the timeline of an active item. Do not describe SM pay items in terms of "percent complete." A date or days from NTP should be used to establish the planned completion date of the assigned value;

(5) The following restrictions are established for SM pay item values assigned to Section A activities:

(A) Mobilization shall not exceed a fixed total of six percent (6%) of the construction value and shall be made up of three partial installments, as follows:

(i) When five percent (5%) of the total contract price is earned, fifty percent of the mobilization amount will be paid;

(ii) When ten percent (10%) of the total contract price is earned, seventy-five percent of the mobilization amount will be paid; and

(iii) When twenty percent (20%) of the total contract price is earned, one hundred percent of the mobilization amount will be paid.

(B) PM / CM shall not exceed a fixed total of ten percent (10%) of construction value, spread out over equal monthly installments.

(C) Quality management shall not to exceed a fixed total of five percent (5%) of construction value, spread out over equal monthly installments.

(D) Safety and security shall not exceed a fixed total of one and a half percent (1.5%) of construction value, spread by equal monthly installments.

(E) Monthly installments for Section A activities exclude draft and final management plans required to be submitted for HART review. Milestone Pay Items shall be established for these items using lump sum value.

(c) Request for Monthly Progress Payment. The DFIM Contractor shall submit monthly progress pay estimates for HART to process. The request shall consist of the status of SM Pay Items for the current month and cumulative to date.

(d) HART Processing Progress Payment Request. The DFIM Contractor shall prepare and submit the SM for HART review. Upon HART acceptance, the SM is then used for monthly progress payment requests. The payment request shall contain the update of the SM, Baseline Schedule, and a progress narrative addressing, at a minimum, areas of concern.

A sample "Schedule of Milestones" can be found in SP-6.17.

SP-6.2 CONTRACT PERIODIC PAYMENT SCHEDULE

(a) The DFIM Contractor shall provide a projection of the monthly payment schedule for the life of the Project, referred to here as the Contract Periodic Payment Schedule (PPS-C). The PPS-C should

reflect the Project schedule and the calculated value from the SM as planned to be completed on a monthly (periodic) basis. The table should also reflect the cumulative value which will equal the contract lump sum price at project end.

(b) The DFIM Contractor shall develop and submit the PPS-C to HART within forty-five (45) Working Days of Notice to Proceed (NTP) for review and written acknowledgement. The PPS-C, upon written acceptance of HART, will be incorporated into the Contract.

(c) Revisions to the PPS-C shall be allowed only for authorized Change Orders. The DFIM Contractor shall submit a revised PPS-C should there be significant schedule changes and/or Contract Price modifications to HART for Review and Comment. No other changes to the PPS-C will be accepted.

(d) A Proposed Periodic Payment Schedule (PPS-P) for the Work shall be submitted in the Price Proposal.

SP-6.3 SCHEDULE OF MILESTONES

Exhibit 22, Schedule of Milestones, will be incorporated into the Contract when and if HART accepts it.

SP-6.4 [NOT USED]

SP-6.5 RETENTION

Chapter 6, Section 6.5, of the GCDB is amended by adding the following as subparagraph (j):

(j) Prompt Payment of Retainage to Subcontractors upon Satisfactory Completion of Subcontractor Work. Upon satisfactory completion of accepted work by a subcontractor, the DFIM Contractor shall make a payment request for sums pursuant to subsection (f) that were withheld or retained from a Subcontractor and are due to the Subcontractor. The DFIM Contractor shall pay all retainage owed to the Subcontractor within ten (10) days after payment to the DFIM Contractor.

Chapter 6, Sections 6.8 through 6.9 of the GCDB is amended by being deleted in its entirety and replaced with the following SP-6.8 through SP-6.9.

SP-6.8 CONTRACT PAYMENTS

(a) Payments to the DFIM Contractor for Work satisfactorily performed will be made monthly:

(1) Scope of Payment. The DFIM Contractor shall receive and accept compensation provided for in the Contract as full payment for furnishing all Material and for performing all Work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof.

(2) Payment Concept. Payment will be calculated using the SM Pay Item table and compared to the PPS-C.

(3) Payment does not imply acceptance of Work. The granting of any payment by HART, or the receipt thereof by the DFIM Contractor, shall in no way imply acceptance of Work. The unsatisfactory character of such Work, Equipment, components or workmanship that do not conform to the requirements of this Contract may be rejected by HART and in such case must be replaced by the DFIM Contractor without delay.

(b) Payment will be based on the Schedule of Milestones and HART-accepted PPS-C. No payment will be made based on the PPS-P:

(1) Progress Payments. No payment will be made for Work until its completion in

accordance with the specifications; and

(2) No Payment on the DFIM Contractor's Non-Compliance. Payments are subject to compliance with any lawful or proper direction to the DFIM Contractor by HART or its Designee concerning the Work or Material (See also SP-6.1(b)).

(c) HART's obligation to make timely payment and the statutory interest that accrues to any late unpaid late balance shall be according to HRS § 103-10.

SP-6.9 PRICE ADJUSTMENTS

(a) The Lump Sum Contract Price shall be increased or decreased only by Change Order issued in accordance with Chapter 5 of the GCDB and as supplemented by Chapter SP-5 of the Special Provisions. Each Change Order shall be reflected on the SM as a separate line item. Payment against a Change Order will be made based on a mutually agreed upon method of progress measurement for the changed Work. In addition, the DFIM Contractor shall revise the PPS-C and any other table or schedule accordingly to reflect the authorized change.

(b) Any adjustments in Contract Price made pursuant to the Contract shall be determined in one or more of the following ways: [HRS 103D-501(b); HAR 3-125-13]

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance;

(2) By unit prices specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

(3) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, as specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

(4) In any other manner as the parties may mutually agree upon before commencement of the pertinent performance;

(5) In absence of agreement between the parties, the provisions of HRS 103D-501(b)(5), shall apply.

(c) The DFIM Contractor shall be required to submit cost or pricing data if there is any adjustment in Contract Price as defined in SP-5.3. A Change Order or other documents permitting billing for the adjustment in price under any method listed above in this Section shall be executed by both parties.

(d) The DFIM Contractor shall provide pricing for spare parts and this pricing shall be limited to a maximum 5% annual increase. Charges apply only if these parts are vandalized or misused as covered elsewhere in the Agreement. These parts shall include but are not limited to:

(1) Replace balustrades, per panel.

(2) Replace hall buttons.

(3) Reset the escalator.

(4) Replace handrails, escalators.

(5) Replace hoistway or car doors.

(e) The DFIM Contractor shall assume responsibility for 5% of the annual maintenance in upgrades on an annual basis. Should this not be used by HART, the funding will be either rolled over to the following year or will be refunded to HART.

(f) Billing for any event not caused by a unit malfunction must be approved and approval

must be counter signed by supervisor. Photographic evidence will be required to support all billing.

SP-6.10 FORCE ACCOUNT

Chapter 6, Section 6.10 first paragraph of the GCDB is amended by being deleted in its entirety and replaced with the following:

When the DFIM Contractor and HART cannot agree to the price adjustment of any change in Work, HART may, in accordance with SP-6.9, "Price Adjustment," require that the Work be performed under force account until such time that an equitable adjustment can be agreed to by both parties, provided that HART promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. Procedures and payment for Work under force account shall be according to [HAR 3-125-4 and HRS 103D-501(b)(5)(A) and (B)].

Chapter 6, Section 6.10(a)(6) of the GCDB is amended by being deleted in its entirety and replaced with the following SP6.10(a)6):

(6) Percentages for fee and overhead. The DFIM Contractor shall be required to submit cost or pricing data if there is any adjustment in Contract Price as defined in SP-5.3. A Change Order or other documents permitting billing for the adjustment in price under any method listed above in this Section shall be executed by both parties.

Chapter 6, Sections 6.11 and 6.12, of the GCDB is amended by being deleted in their entirety and replaced with the following SP-6.11

SP-6.11 PROMPT PAYMENT BY DFIM CONTRACTOR TO SUBCONTRACTORS

(a) The DFIM Contractor shall maintain records and documents of payments to Subcontractors for three (3) years following the final inspection and acceptance of the Work. These records must be available for inspection upon request by any authorized representative of HART and the U.S. Department of Transportation (US DOT). This requirement also extends to any Subcontractor.

(b) The DFIM Contractor shall pay each Subcontractor for satisfactory performance of the subcontract no later than ten (10) Days from the receipt of each payment the DFIM Contractor receives from HART, and each Subcontractor shall in turn make payment to its Subcontractors within ten (10) Days of receipt of payment. This clause applies to both DBE and non-DBE subcontractors. The retention amount withheld by the DFIM Contractor from its subcontractors of any tier shall not be more than the same percentage of retainage as that of the DFIM Contractor (See GCDB 6.5). Late payments shall accrue interest at the rate noted in HRS § 103-10.

(c) HART will review payments to DBE Subcontractors to ensure that the actual amount paid to Subcontractors is consistent with the dollar amounts stated in the schedule of DBE participation.

(d) HART will bring to the attention of the US DOT any false, fraudulent, or dishonest conduct by the DFIM Contractor in connection with the Federal requirements and the DBE program, so that the US DOT can take the steps provided in Subpart F of 2 CFR Part 1200 (e.g., referral to the Department of Justice for criminal prosecution, referral to the US DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules).

HART will consider action under its legal authorities, including responsibility determinations in future contracts, for any false, fraudulent, or dishonest conduct by the DFIM Contractor in connection with the Subcontractor information or payments.

SP-6.14 INTEREST

Chapter 6, Section 6.14, of the GCDB is amended by being deleted in its entirety and replaced with the following:

Interest on amounts determined to be due to the DFIM Contractor for payments deemed to be late payments for Work satisfactorily performed and accepted shall be payable at the applicable statutory rates.

Chapter 6 of the GCDB is amended by the following being added as new Sections SP-6.15 through SP-6.17

SP-6.15 ELIMINATED ITEMS

(a) Should any Work required by the Contract be found unnecessary, HART may, upon written order to the DFIM Contractor, eliminate such items from the Contract.

(b) When the DFIM Contractor is notified of the elimination of Work, actual Work done and all costs incurred will be reimbursed, including mobilization of Materials before said notification. No allowance, except as provided herein, will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits claimed by the DFIM Contractor resulting directly from such elimination.

(c) The Change Order authorizing reimbursements shall show how the reimbursements were derived. Except when otherwise authorized by HART, such derivation shall show breakdowns of costs as detailed in SP-5.

SP-6.16 ACCEPTANCE AND SUBSTANTIAL COMPLETION

(a) Substantial Completion. When the DFIM Contractor considers that the Project is substantially complete, the DFIM Contractor shall so notify HART in writing.

(1) Within fourteen (14) Calendar Days of receipt of the DFIM Contractor's written application for a certificate of Substantial Completion, HART, in the company of the DFIM Contractor, will inspect the Project covered by the notice. During the inspection, the Work will be examined and QC documentation will be reviewed. HART will prepare a written list of outstanding items, if any, to be completed or corrected before issuance of the certificate of Substantial Completion. The list shall be included in the QA/QC documentation with an agreed date of correction for each deficiency.

(2) The DFIM Contractor shall complete or correct the outstanding items, if any, to be done before issuance of the certificate of Substantial Completion and request re-inspection by HART in writing.

(3) Within seven (7) Calendar Days of the DFIM Contractor's request for re-inspections, HART will re-inspect the Project and issue notification of Substantial Completion if the outstanding items noted for Substantial Completion during the inspection are completed or corrected.

(b) Final Acceptance. Upon receipt of written notice from the DFIM Contractor of the projected completion date of all of the requirements for the Project, HART will inspect or review any remaining portions of the Project not inspected at the time of issuance of the certificate of Substantial Completion and review any activities required under the Contract not completed at the time of Substantial Completion on the projected completion date to verify that all Work items, including surveys, As-Built Plans, and Design Acceptance, have been completed. Prior to receiving notification for Final Acceptance for the entire Project, the DFIM Contractor must complete any specified training for HART personnel.

(c) Upon verification that all items have been completed, the final inspection by HART shall be scheduled and conducted within fourteen (14) Calendar Days. If the inspection discloses Work, in whole or in part, as being unsatisfactory, HART will give the DFIM Contractor the necessary written instructions within the time limit set by HART. Upon correction of the Work, HART will make an additional inspection and notify the DFIM Contractor accordingly as soon as reasonably possible thereafter.

(d) If there are no outstanding items to be completed or corrected before Final Acceptance of the Project, following inspection, the DFIM Contractor shall:

- (1) Submit to HART special guarantees, warranties, maintenance agreements, final certifications, and similar documents required under the Contract;
- (2) Deliver tools, spare parts, instructions, and similar items required to operate and maintain the Work; and
- (3) Make changeover of locks to all Equipment and facilities and deliver keys and/or combinations to HART.

When in the opinion of HART the DFIM Contractor has fully performed the Work under this Contract, HART shall recommend to the Contracting Officer the Final Acceptance of the Work so completed. If the Contracting Officer accepts the recommendation of HART, he/she shall thereupon by letter notify the DFIM Contractor of such Final Acceptance, and copies of such Final Acceptance shall be sent to other interested parties.

Upon Final Acceptance of the Work, the Contracting Officer will execute a certificate that the Work required by the Contract has been completed and accepted under the terms of the Contract.

SP-6.17 SCHEDULE OF MILESTONES, SAMPLE

The following is a sample of the SM. This form from ITPLO Exhibit 22 shall be submitted after Contract Execution and accepted prior to the first Pay Request by HART.

Honolulu Rail Transit Project

SCHEDULE OF MILESTONES (Provided by Design-Builder, Post-Award)					SAMPLE		PAY REQUEST No. _____		
Each SM pay item must sum to a SP price item and total the contract price. Each Pay Item below is measured upon schedule completion							Period Ending:		
SM	Pay Item	Description	Unit of Meas	SM Value	Restrictions	Planned Achievement	Schedule Activity ID	Current Month Achievement	Cumulative Achievement
				[Dollar Amt]		[Date]		[Actual \$\$ Amt]	[Actual \$\$ Amt]
1	a	Mobilization @ 5% Complete	1 LS		} See Note 1				
	b	Mobilization @ 10% Complete	1 LS						
	c	Mobilization @ 25% Complete	1 LS						
2	a	Design- Investigations	1 LS				Enter Act ID from the P6 Baseline Schedule (for cross referencing)		
	b	Design- Site Development DD	1 LS						
	c	Design- Site Development FD	1 LS						
	d	Design- Building Systems DD	1 LS						
	e	Design- Building Systems FD	1 LS						
	f	Design- Landscaping DD	1 LS						
	g	Design- Landscaping FD	1 LS						
	h	Design- MSF Trackwork DD	1 LS						
	i	Design- MSF Trackwork FD	1 LS						
	j	Design- OSB Foundation and Exterior DD	1 LS						
	k	Design- OSB Foundation and Exterior FD	1 LS						
	l	Design- OSB Interior DD	1 LS						
	m	Design- OSB Interior FD	1 LS						
	n	Design- MOW Foundation and Exterior DD	1 LS						
	o	Design- MOW Foundation and Exterior FD	1 LS						
	p	Design- MOW Interior DD	1 LS						
	q	Design- MOW Interior FD	1 LS						
	r	Design- TWF Foundation and Exterior DD	1 LS						
	s	Design- TWF Foundation and Exterior FD	1 LS						
	t	Design- TWF Interior DD	1 LS						
	u	Design- TWF Interior FD	1 LS						
	v	Design- WTF Foundation and Exterior DD	1 LS						
	w	Design- WTF Foundation and Exterior FD	1 LS						
	x	Design- WTF Interior DD	1 LS						
	y	Design- WTF Interior FD	1 LS						
	z	Design- City Road DD	1 LS						
	aa	Design- City Road FD	1 LS						
3	a	Quality Plan, Draft	1 LS						
	b	Quality Plan, Final	1 LS						
	c	Environmental Compliance Plan, Draft	1 LS						
	d	Environmental Compliance Plan, Final	1 LS						
	e	Safety & Security Plan, Draft	1 LS						
	f	Safety & Security Plan, Final	1 LS						
4	a	PM / CM	40 Mo		See Note 2	Starting Month			
	b	Quality Management	40 Mo		See Note 3	Starting Month			
	c	Coordination	40 Mo		See Note 4	Starting Month			
	d	Public Relations	40 Mo		See Note 5	Starting Month			
	e	Environmental Compliance	40 Mo		See Note 6	Starting Month			
5	a	Systemwide Track Supply- WOFH Section	1 LS						
	b	Systemwide Track Supply- Bal of System	1 LS						
6	a	Site Preparation, WP 1	1 LS						
	b	Site Preparation, WP 2	1 LS						
	c	Site Preparation, WP 3	1 LS						
	d	Site Preparation, WP 4	1 LS						
7	a	Yard Building Systems, WP1	1 LS						
	b	Yard Building Systems, WP2	1 LS						
	c	Yard Building Systems, WP3	1 LS						
	d	Yard Building Systems, WP4	1 LS						
8	a	OSB- Work Pkg 1	1 LS						
	b	OSB- Work Pkg 2	1 LS						
	c	OSB- Work Pkg 3	1 LS						
	d	OSB- Work Pkg 4	1 LS						
9	a	MOW- Work Pkg 1	1 LS						
	b	MOW- Work Pkg 2	1 LS						
	c	MOW- Work Pkg 3	1 LS						
	d	MOW- Work Pkg 4	1 LS						
10	a	Train Wash Facility- Work Pkg 1	1 LS						
	b	Train Wash Facility- Work Pkg 2	1 LS						
11	a	Wheel Truing Facility- Work Pkg 1	1 LS						
	b	Wheel Truing Facility- Work Pkg 2	1 LS						
12	a	Yard and Bldg Trackwork- Work Pkg 1	1 LS						
	b	Yard and Bldg Trackwork- Work Pkg 2	1 LS						
13	a	New City Road- Work Pkg 1	1 LS						
	b	New City Road- Work Pkg 2	1 LS						
14	a	Landscaping	1 LS						
TOTALS (Authorized CCOs should be listed item-by-item, prior to Total Line)									
THIS IS A SAMPLE "SM" TABLE THAT COULD BE FURTHER BROKEN DOWN TO REFLECT DESIGN-BUILDER'S SCHEDULE AND PAYMENT MILESTONES.									
Notes on SM Pay Items:					Notes on Restrictions:				
(A) Items can be further broken down as long as they represent a verifiable portion of completed work.					(1) Total Mobilization NTE 6% of Construction Value				
(B) Materials delivered to site may be listed as SM Pay Items					(2) Total Payment NTE 10% of Construction Value				
(C) Items listed as SM Pay Items must be included in Design-Builder's Baseline Schedule					(3) Total Payment NTE 5.0% of Construction Value				
(D) The SM Pay Items and Baseline Schedule shall utilize the Project WBS (provided by City at NTP).					(4) Total Payment NTE 2.5% of Construction Value				
					(5) Total Payment NTE 1.0% of Construction Value				
					(6) Total Payment NTE 2.5% of Construction Value				

SPECIAL PROVISIONS

CHAPTER SP-7 DISPUTES AND REMEDIES

**SP-7.2 TERMINATION FOR DEFAULT FOR NONPERFORMANCE OR DELAY;
DAMAGES FOR DELAY**

Chapter 7, Section 7.2 of the GCDB is amended by being deleted in its entirety and replaced with the following:

(a) Termination for Default. If a petition in bankruptcy should be filed by the DFIM Contractor, or if the DFIM Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed due to the insolvency of the DFIM Contractor, or if the DFIM Contractor should refuse or fail to supply enough properly skilled workmen or proper equipment, materials or services or should fail to make prompt payment to subcontractors, or to pay promptly for materials or labor, or disregard laws, ordinances or the instructions of HART, or if the DFIM Contractor should refuse or fail to abide by the Contract, the schedule requirements listed in the Contract Documents or otherwise violate any provisions of the Contract, unless the same is fully cured and corrected within fifteen (15) Days after HART gives notice thereof to the DFIM Contractor and does not recur or the DFIM Contractor submits a plan for cure which is approved by HART and the DFIM Contractor diligently commences implementation of the plan and continues the correction of the same within seven (7) Days after HART gives notice thereof to the DFIM Contractor if same cannot be corrected within the fifteen (15) day notice period, then HART, upon determination that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy available to it, terminate this Contract and take possession of the Work site. In the event of such a termination, HART may use all or part of the DFIM Contractor's equipment and materials and may finish the Work by whatever method HART may deem expedient. In such event, the DFIM Contractor shall not be entitled to receive any further payment hereunder until the Work is finished. If the expense of finishing the Work shall exceed the unpaid balance due to early termination of the Contract resulting from default of the DFIM Contractor, the DFIM Contractor shall pay the difference to HART within a reasonable time not to exceed forty-five (45) Days of receiving an invoice for same. The expenses incurred by HART herein, and the damage incurred through the DFIM Contractor's default, shall be determined by HART, at its sole discretion, which determination shall be binding between the parties subject to the procedures stated in the Contract Documents and pursuant to applicable law regarding the resolution of disputes.

(b) Without waiving any other right or remedy, HART may serve written notice upon the DFIM Contractor and the Surety on its Performance Bond demanding satisfactory compliance with the Contract. Upon receipt of such demand, the Surety shall, with reasonable promptness, but in no event more than fifteen (15) Days elect to either:

(1) Assume the Contract by:

(A) Arranging for the DFIM Contractor, with consent of HART, to perform and complete the Contract; or

(B) Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

(C) Obtain bids or negotiated proposals from qualified contractors acceptable to HART for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by HART and said contractor (to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract) and pay to HART the amount of damages in excess of the balance of the Contract Price incurred by HART resulting from the DFIM Contractor's default; or

(D) Waive its rights under (A), (B) and (C) above, and with reasonable promptness under the circumstances, determine the amount for which it may be liable to HART and, as soon as practicable after the amount is determined, tender payment therefore to HART, the acceptance of which shall not be deemed an acceptance by HART of the Surety's determination of the total amount due and payable by the Surety; or

(2) Deny liability in whole or in part and notify HART citing reasons therefore:

(A) If the Surety assumes the Contract, all money which may become due the DFIM Contractor shall be payable to the Surety as the Work progresses, subject to the terms of the Contract; and

(B) If the Surety does not assume the Contract and commence performance of the Work within a reasonable time not to exceed fifteen (15) Days after receiving HART's notice and demand, or fails to continue to comply, HART may remove the Surety from the premises. HART may then take possession of all Material and Equipment and complete the Work by use of its own forces, by letting the unfinished Work to another contractor, or by a combination of such methods. In any event, the cost of completing the Work shall be charged against the DFIM Contractor and its Surety and may be deducted from any money due or becoming due from the DFIM Contractor. If the amount unpaid under the Contract is insufficient for completion, the DFIM Contractor or Surety shall pay to HART within a reasonable time not to exceed thirty (30) Days after the completion and an itemized demand for payment from HART, all costs and damages incurred by HART in excess of the amount unpaid under the Contract.

(c) The DFIM Contractor, in having executed the Contract, shall be deemed to have waived any and all claims for damages because of Termination of Contract for any such reason, except to the extent that any termination has been found to be wrongful.

(d) In the event of a termination under the provisions of this Article, the DFIM Contractor shall transfer and assign to HART, in accordance with HART's instruction, all Work, all subcontracts, all construction records, reports, permits, data and information, other materials (including all HART-supplied materials), supplies, Work in progress and other goods for which the DFIM Contractor is entitled to receive reimbursement hereunder, and any and all plans, drawings, sketches, specifications, and information prepared by the DFIM Contractor or others in connection with the Work, and shall take such action as may be necessary to secure to HART, at HART's sole election, the rights of the DFIM Contractor under any or all orders and subcontracts made in connection with the Work. All subcontracts and supplier contracts of any tier shall contain language permitting HART to assume that contract in the case of Termination for Default.

(e) In the event that HART so directs or authorizes, the DFIM Contractor shall sell at a price approved by HART, or retain with approval of HART at a mutually agreeable price, any such materials, supplies, Work in progress, or other goods as referred to in the preceding paragraph. In any event, HART shall retain any and all records, plans, drawings, data, permits, specifications, sketches, reports or other information relating to the Work.

(f) In the event that a Termination for Default is determined in subsequent proceedings to be improper, then any such termination shall be deemed as a Termination for Convenience.

(g) HART may exercise any and all remedies available at law or in equity, including recovery of damages to the extent provided by law, subject to the limitations set forth herein, and the exercise or beginning of the exercise by HART of any one or more rights or remedies under this Section shall not preclude the simultaneous or later exercise by HART of any or all other rights or remedies, each of which shall be cumulative.

SP-7.4 AUTHORITY TO RESOLVE CONTRACT AND BREACH OF CONTRACT CONTROVERSIES

Chapter 7, Section 7.4, of the GCDB is amended by being deleted in its entirety and replaced with the following:

(a) Decision by the Officer-in-Charge. Any question or dispute concerning any provision of the Contract which may arise during the DFIM Contractor's performance shall be decided by the Officer-in-charge; provided, that decisions on questions or disputes relating to default or termination of the Contract, additional cost to HART where the cost is more than ten percent (10%) of the original Contract Price or twenty five thousand dollars (\$25,000) or more, and payment, shall be made only with the approval of the Contracting Officer.

(b) If the DFIM Contractor does not agree with the decision of the Officer-in-Charge, the DFIM Contractor and HART agree that the matter will be submitted to mediation. The mediator shall be chosen by mutual agreement. The mediation fees shall be borne equally by HART and the DFIM Contractor.

(c) All controversies between the Officer-in-Charge and the DFIM Contractor that cannot be resolved by mediation shall be decided by the Contracting Officer in writing, within the time limitations below, after receipt of a written request from the DFIM Contractor for a final decision:

(1) For controversies or for claims not exceeding fifty thousand dollars (\$50,000); ninety (90) Calendar Days after receipt of the claim.

(2) For claims exceeding fifty thousand dollars (\$50,000); ninety (90) Calendar Days after receipt of the claim; provided that if a decision is not issued within ninety (90) Calendar Days, the Contracting Officer shall notify the DFIM Contractor of the time within which the Contracting Officer will make the decision. The reasonableness of this time period will depend on the size and complexity of the claim and the adequacy of the DFIM Contractor's supporting data and other relevant factors.

(3) If a decision on a controversy or a claim not exceeding fifty thousand dollars (\$50,000) is not made within ninety (90) Calendar Days after receipt, or if a decision is not made within the time promised for a claim in excess of fifty thousand dollars (\$50,000), the DFIM Contractor may proceed as if an adverse decision has been received.

The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting the DFIM Contractor action concerning appeal. Such payments shall be without prejudice to the rights of either party and where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment. [HAR 3-126-28]

(d) Controversies involving HART claims against the DFIM Contractor. All controversies involving claims asserted by HART against the DFIM Contractor which cannot be resolved by mutual agreement shall be the subject of a decision by the Contracting Officer or the Officer-in-Charge as applicable. [HAR 3-126-29]

(e) Cost of dispute. The DFIM Contractor shall pay to HART the amount of HART's costs to enforce the Contract, including but not limited to amounts for attorneys' fees, consultants' fees and expenses.

(f) Decision. The Contracting Officer shall immediately furnish a copy of the decision to the DFIM Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. Any such decision shall be final and conclusive, unless fraudulent, or unless the DFIM Contractor brings an action seeking judicial review of the decision in a circuit court of this State within the six (6) months from the date of receipt of the decision.

(1) The DFIM Contractor shall comply with any decision of the Contracting Officer and proceed diligently with performance of the Contract pending final resolution by a circuit court of this State of any controversy arising under, or by virtue of, the Contract, except where there has been a material breach of contract by HART; provided that in any event the DFIM Contractor shall proceed diligently with the performance of the Contract where the Contracting Officer has made a written determination that continuation of Work under the Contract is essential to the public health and safety.

Chapter 7 of the GCDB is amended by adding the following new Sections SP-7.5 Cancellation Provisions – Maintenance and SP-7.6 Reserved;

SP-7.5 CANCELLATION PROVISIONS – MAINTENANCE

(a) HART shall have the right to cancel this Contract at the end of its initial term.

(b) The following items are listed to indicate reasons that may be used to terminate this contract by HART. The list is not all inclusive and will not be considered a limitation:

- (1) Failure to provide specified levels of preventive maintenance.
- (2) Failure to provide required information to HART upon request.
- (3) The necessity of HART to contract with another company to remedy specific problems.
- (4) Failure to make needed repairs and performs specified equipment and operational tests.
- (5) Failure to provide new parts unless approved by HART.
- (6) Failure to notify HART of changes of assigned employees, or job supervisor.
- (7) Failure to respond to emergency calls within the specified times.
- (8) Failure of personnel to follow work reporting requirements.
- (9) Illegal or unethical activities.
- (10) Failure to comply with insurance provisions.
- (11) Failure to comply with material handling, storage, and information requirements.
- (12) Unauthorized (written authorization from HART required) removal of material, keys, documents, or other information from the property.
- (13) Death or Disability of DFIM Contractor: If the DFIM Contractor is a sole proprietor, or if the DFIM Contractor is a corporation in which the members of the same family own seventy-five percent (75%) or more of the outstanding stock, the death or disability of the sole proprietor or the principal stockholder shall terminate this Contract at the option of HART.

SP-7.6 RESERVED