



CITY AND COUNTY OF HONOLULU

**HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR
PROJECT**

NO. RFP-DTS-198413

CORE SYSTEMS

**DESIGN-BUILD-OPERATE-MAINTAIN (DBOM)
CONTRACT**

REQUEST FOR PROPOSALS (PART 2)

2ND CALL FOR BEST AND FINAL OFFERS

SPECIAL PROVISIONS (1-7)

ADDENDUM NO. 46

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SPECIAL PROVISIONS OF DESIGN-BUILD CONTRACTS CITY AND COUNTY OF HONOLULU

These SPECIAL PROVISIONS (SP) are intended to modify, amend, and provide specific Project requirements to the General Conditions of Design-Build Contracts for the City and County of Honolulu (GCDB) and the Core Systems Contract. The Core Systems Contract includes operations and maintenance Work for a defined period of time and as such SP-1 through 7 have been amended accordingly. Also refer to the following other provisions found in Part 2 of this Request for Proposal (RFP) and the Call for BAFOs for further performance requirements:

- (a) SP-1 through SP-7 modify or supplement the GCDB applicable to the Project;
- (b) MP-1 through MP-10 provide additional performance requirements specific to the Project related to the management responsibilities; and
- (c) TP-1 through TP-8 provide performance requirements specific to the Project related to the technical aspects.

Should there be any conflicts with other sections or provisions of this Contract they should be brought to the City's attention for clarification. Whenever "Division 1" is referenced in the Standard Specification or Standard Drawings it refers to these Special Provisions (SP, MP, and TP) and/or the GCDB.

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.

In the GCDB, whenever the following terms are used, they shall be interpreted as the corresponding equivalent term for this Contract:

Contractor = Core Systems Contractor = DBOM Contractor to whom the Contract has been awarded by the City.

SPECIAL PROVISION

CHAPTER SP-1 - DEFINITIONS; REFERENCES; REPRESENTATIONS

Chapter 1 of the GCDB is amended by deleting the Chapter in its entirety and substituting in lieu thereof the following Chapter SP-1, consisting of sections SP-1.1 through SP-1.6:

SP-1.1 DEFINITIONS

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

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

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

“**Access Control**” means the monitoring and control of communications traffic through portals of a protected area by identifying the requestor and approving entrance or exit. Access control portals are doors, gates, and so forth.

“**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 Contracting 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 RFP and submit a Qualifications Proposal or a Technical and Price Proposal, as applicable.

“**Affiliate**” means any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the following:

- (a) The Core Systems Contractor; or
- (b) Any Principal Participant; or
- (c) Holds 10% or more of the equity interest directly or indirectly, beneficially or of record, by the following:
 - (d) The Core Systems Contractor;
 - (e) Any Principal Participant; or
 - (f) Any Affiliate of the Core Systems 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.

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“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 the City’s written statement indicating that the subject Work complies with Contract requirements. Approval shall not be construed as a warranty by the City that the Core Systems 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 the City by the Core Systems 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 the Core Systems 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 the City to the selected Offeror that the submitted Proposal has been determined to be the best value to the City, or the presentation of a Contract to the selected Offeror.

“Baseline Schedule” means the time-scaled and resource-loaded Critical Path network, updated from time to time 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 the Core Systems Contractor’s Work plans and the Core Systems 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 core system or any of its components, apparatus, systems, 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 and Call for BAFOs, including any permitted deviations thereto contained in the Core Systems 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 the Core Systems Contractor is paid for Work.

“Best Value” means the most advantageous Proposal determined by evaluating and comparing all relevant criteria in addition to price so that the Proposal meeting the overall combination that best serves the City is selected. These criteria may include, in addition to others, the total cost of ownership, performance history of the Offeror, quality of goods, services, or construction, delivery, and proposed technical performance.

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

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that the following are not considered Betterments:

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

If a Utility Agreement includes a definition of “betterment,” that definition shall control over the foregoing with respect to the facilities subject to such agreement.

“**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. Specific requirements for bid security for this Contract are further specified in GCDB Section 3.3.

“**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.

“**Central Supervising Station**” (CSS) means the principal manned location in the Operating Control Center where fire and intrusion alarm, supervisory and trouble signals are displayed, and where personnel are in attendance at all times to supervise the circuits, monitor signals, and immediately retransmit any signal indicative of a fire to the public fire department communication center.

“**Cat5**” means four twisted pairs in a single cable jacket (also referred to as Category 5 cables). This use of balanced lines helps preserve a high signal-to-noise ratio despite interference from both external sources and other pairs (this latter form of interference is called crosstalk). It is most commonly used for 100Mbit/s networks, such as 100BASE-TX Ethernet.

“**Casting Yard Subcontractor**” means the Subcontractor (if applicable) that provides pre-cast segments and/or other pre-cast Materials to the Core Systems Contractor.

“**Change Order**” means an amendment or modification of the Contract signed by the Contracting Officer or, when delegated by the Contracting Officer, by the Officer-in-Charge, directing the Core Systems Contractor to make changes, with or without the consent of the Core Systems Contractor.

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

“**Chief Procurement Officer**” means the Director of the Department of Budget and Fiscal Services of the City and County of Honolulu (BFS).

“**City**” means the City and County of Honolulu, State of Hawai‘i.

“**City-Directed Changes**” means any changes in the Work as described in the Contract (including changes in the standards applicable to the Work) that the City has directed the Core Systems Contractor to

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perform as described in the Contract.

“**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.

“**Communications**” means radio, telephone, video and data services throughout the system and particularly at the CSS and command post.

“**Component**” means any device having distinct electrical or mechanical characteristics and having connection points to be connected to other components to form a sub-assembly.

“**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 highway related features outside City right of way limits. Right of use may be temporary in nature or permanent.

“**Construction Compliance Engineer**” (CCE) means the City’s representative with primary responsibility for monitoring and/or auditing the Core Systems Contractor’s construction and environmental field activities for compliance with the Contract’s requirements.

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

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

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

“**Contract**” means the written agreement between the City and the Core Systems 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 the City and authorized extensions, all of which constitute one instrument.

“**Contract Administrator**” means the Second Deputy Director of the Department of Transportation Services of the City and County of Honolulu (DTS), who is the person designated to manage the various facets of the Contract to ensure that the Core Systems Contractor’s total performance is in accordance with the Contractual commitments and that obligations to the City are fulfilled.

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

“**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 Director of BFS, or the BFS Director’s delegated Designee.

“**Contract Price**” means the total amount paid for the Work to be performed under the Contract, as it

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may be adjusted from time to time in accordance with the Contract Documents.

“**Contract Time**” means the time specified in the Contract and/or RFP Part 2 and Call for BAFOs for completion of the Contract. This time may be defined as a specified fixed date, a given number of Working Days, 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 mutual action of the parties to the Contract.

“**Contractor**” means the Core Systems Contractor or Design-Build Operate & Maintain (DBOM) Contractor.

“**Controller**” means a control unit used to provide the logic in an access control system.

“**Control Unit**” means a system component that monitors inputs and controls outputs through various types of circuits.

“**Core Systems Contractor**” means the Person selected pursuant to the RFP undertaking the execution of the Work under the terms of the Contract with the City, and acting directly or through its agents or employees (also referred to as the “Design-Build Team”).

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

“**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]

“**DBOM Project**” means System or Core Systems Contract.

“**Deficiency**” means a material failure of a Proposal to meet the City’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 the City 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 the City contracts with a single entity that has responsibility for the design and construction of the Project.

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

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“Design-Build Team” means Core Systems Contractor or DBOM Contractor or Design-Builder.

“Design-Builder” means the Person selected pursuant to the RFP Part 2 undertaking the execution of the Work under the terms of the Contract with the City, and acting directly or through its agents or employees (also referred to as the “Design-Build Team” or “Core Systems Contractor”).

“Design Compliance Engineer” (DCE) means the City’s representative with primary responsibility for monitoring and/or auditing the Core Systems Contractor’s design and engineering activities for compliance with the Contract’s requirements.

“Design Compliance Monitor” means a representative of the DCE, with responsibility for monitoring and/or auditing the Core Systems 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 the Core Systems Contractor and/or Designer in the course of performing project engineering and design Work.

“Design Plan” means the plan prepared by the Designer during the design development to represent the Project.

“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 the Core Systems Contractor for all stages of the design except As-Built Plans, which is performed by the City. During all stages of the design, except As-Built Plans, the City 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 the Core Systems Contractor’s schedule.

“Designee” means a person appointed by the Director of BFS or the Director of DTS to act on its behalf with delegated authority.

“Designer” means a Principal Participant, specialized Subcontractor, or in-house designer that leads the team furnishing or performing the design of the Project.

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

“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 the Core Systems 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.

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

“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 the Core Systems Contractor and the City 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 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, the Core Systems 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 the City 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 the City.

“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 the Core Systems 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 CSC 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 the Core Systems 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” (FTA) 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

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Administration or its acronym UMTA is deemed a reference to the Federal Transit Administration.

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

“**Final Proposal**” means the final mutually-agreed terms of the proposal submitted by the awarded Offeror in response to the City’s RFP or the Best and Final Offer accepted by the City 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 the Core Systems Contractor of labor, Equipment, and Materials, and including various constant activities.

“**General Conditions Design-Build**” means the General Conditions for Design-Build Contracts for the City and County of Honolulu, dated February 2009, which are available at the following website www.honolulu.gov/pur/index.htm.

“**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 the City.

“**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.

“**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. §§ 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., the Hazardous Materials Transportation Act,

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42 U.S.C. §§ 1801, et seq., the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the Clean Air Act, 42 U.S.C. §§ 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 - 2629, the Safe Drinking Water Act, 42 U.S.C. §§ 300f - 300j, HRS Chapter 128D, Environmental Response Law, HRS Chapter 342B, Air Pollution Control, HRS Chapter 342D, Water Pollution, HRS Chapter 342H, Solid Waste Pollution, HRS Chapter 342J, Hazardous Waste, HRS Chapter 342L, Underground Storage Tanks, HRS 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 the City, 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;

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(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 the Core Systems 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 (Core Systems Contractor’s or City’s) used in the Acceptance Program, including the Core Systems Contractor’s QC.

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

“**Informative Drawings**” means City-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 a basis of contracting. For example, the Guideway alignment drawings or Maintenance and Storage Facility RFP drawings are labeled as “Informative”.

“**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 Plan 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 Core Systems Contractor representative detailed to inspect methods and Materials, Equipment, and Work both on and off the Site of the Project.

“**Interface**” means the points where two or more systems, subsystems or structures meet, transfer energy, or transfer data or information.

“**Laboratory**” means a testing laboratory retained by the Core Systems Contractor for QC sampling and testing or by the City 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 the Core Systems 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.

“**Maintainability**” means the ability of the Core System or subsystem to be maintained by the Operations and Maintenance staff, including enhancement of access to equipment and components that require maintenance.

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

“**Material**” means any approved material acceptable to the City 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

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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.

"Mean Cycles Between Failures" (MCBF) means the mean number of operating cycles between successive independent failures.

"Mean Time Between Failures" (MTBF) means the mean operating time interval between successive independent failures.

"Milestone" means a defined event towards 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) shall be used as the Payment Milestones.

"Modular" means composed of standardized, interchangeable units, designed to facilitate maintenance and repair.

"Module" means a standardized, interchangeable unit, designed to facilitate maintenance and repair.

"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 the Core Systems 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 Director of DTS or the department head of the agency 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.

"Operating Control Center" (OCC) means the operations center where the City or City's Operations and Maintenance staff controls and coordinates the systemwide movement of passengers and trains and maintains communication with its supervisory and operating personnel and with participating agencies when required.

"Oversight" means actions by the City to satisfy itself that the Core Systems 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* the Core Systems 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 the City shall be construed to relieve the Core Systems 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,

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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, the City; the Core Systems 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 the Core Systems 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 the Core Systems Contractor’s Baseline Schedule.

“Pay Item Value” means that value allocated by the Core Systems 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 the Core Systems Contractor’s Baseline Schedule.

“Payment Bond” means the approved form of security, executed by the Core Systems 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 the Core Systems 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 the Core Systems 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” (PI) means a component of the Schedule of Prices for which the Core Systems Contractor provides a Price Item Value (PIV) for all Work included in that item. A PI may be a major contract item or series of interrelated items as identified in the Pricing Information. This term also applies to the Schedule of Milestones that serves as a basis of payment and which is provided prior to Contract Execution. Items on the Schedule of Milestones are also referred to as PI and contain a PIV.

“Price Item Value” means that value allocated by the Core Systems 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 Proposal Bond. With the exception of the Proposal Bond, the Price Proposal is included in the Contract Documents at Award.

“Principal Participant” means any of the following entities:

- (a) The Core Systems Contractor (or Offeror);
- (b) An individual firm, all general partners, or joint venture members of the Core Systems Contractor (or Offeror); and/or
- (c) All Persons and legal entities holding (directly or indirectly) a 15% or greater interest in the Core Systems Contractor (or Offeror).

“Priority List” means the list of those Offerors who: 1) have submitted a Qualifications Proposal in

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response to the RFP Part 1, and 2) that the City determines acceptable or potentially acceptable. If more than four acceptable or potentially acceptable Proposals have been submitted, it will be limited through evaluation and ranking to no more than four responsive and responsible Offerors who submitted the highest-ranked Proposals.

“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 the Honolulu High-Capacity Transit Corridor Project (HHCTCP) of which the Core Systems Contract Work is associated with and shall 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. Core Systems Contract Work also embodies the HHCTCP “System” which is used within the RFP / Contract documents and means the Project.

“Project Plans” means those portions of the Contract Documents prepared by or for the Core Systems Contractor that receive City’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 the Core Systems 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 the City’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 the City during Design Reviews.

“Proof” (used as a suffix) means apparatus designed as dustproof, waterproof, etc., when so constructed, protected, or treated that its successful operation is not interfered with when subjected to the specified material or condition.

“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 and the Call for BAFOs, the Technical and Price Proposal.

“Proposal Due Date” means the date on which the Proposal is to be received by the City. If BAFO are requested, the term shall mean the date on which the BAFO is to be received by the City.

“Proposal Information” means the documents so designated in the RFP Part 2 and/or the Call for BAFOs and submitted to the City by the Offeror/Core Systems Contractor in accordance with the RFP Part 2 and/or the Call for BAFOs that will be included in the Contract Documents at Award. The Proposal Information is part of the Technical Proposal.

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

“Proposal Revision” means a supplemental Proposal submitted at the request of the City 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 the City 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, also known as a Call for BAFOs generally follows Discussions between the City 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 the City 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”.

“Purchasing Agency” means the agency requesting the design-build project for the using agency.

“Purchasing Division” means the Division of Purchasing, Department of Budget and Fiscal Services, with delegated authority to solicit bids and award contracts.

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

“Quality Assurance” (QA) means all planned and systematic actions by the Core Systems Contractor necessary to provide assurances that the Core Systems 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 the Core Systems Contractor’s Quality Management Records that are available for City review.

“Quality Assurance Program” means the overall quality program and associated activities including City Oversight, Core Systems Contractor QC and QA, the Contract’s quality requirements, and the Core Systems Contractor’s Quality Plan.

“Quality Control” (QC) means the total of all activities performed by the Core Systems 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 including 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

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specified in the Contract Documents and the Core Systems Contractor's Quality Plan. The Quality Engineering Firm shall not be owned in any part or controlled by the Core Systems 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 the Core Systems Contractor who is responsible for the overall Quality program of the Core Systems Contractor, including the quality of management, design, and construction.

"Quality Plan" means the plan that sets out the Core Systems 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 the City.

"Reference Documents" means the documents provided with and so designated in the RFP Part 2 and Call for BAFOs. The City 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 the City, whether or not such information may be accurate, complete or pertinent, or of any value.

"Reference Drawings" means drawings which represent the City'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 the City 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 the Core Systems 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 the City's reviews, observations, and/or inspections based solely on information submitted by the Core Systems Contractor (not based on any independent investigation or

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inquiry by the City) and the City's written responses resulting from such City 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” (ROW) 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.

“Right of Way Acquisition Schedule” means the schedule for acquisition of ROW permits or easements by the City set forth in the Contract and/or RFP Part 2 and the Call for BAFOs.

“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 or danger, harm, or loss arising from improper design, manufacture, assembly, malfunction, or failure of a system or any of its components or elements.

“Safety Plan” means the plan that sets out the Core Systems 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 the City.

“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 the Core Systems Contractor's Baseline Schedule, and serves as a basis 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 is provided with the Core Systems Contractor's Price Proposal. The Schedule of Prices becomes part of the Contract and used to evaluate and compare the PPS and Schedule of Milestones. The Schedule of Prices includes Price Items, Price Item description, Price Item Value and cross references to the Core Systems 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.

“Service-Proven” means identical or near identical equipment, which has demonstrated successful operation in a transit industry environment similar to that anticipated for the City, in accordance with the requirements of Technical Provisions Section 2.6.1.

“Site” means those areas designated in writing by the City for performance of Work and such additional areas as may, from time to time, be designated in writing by the City for the Core Systems 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 the Core Systems Contractor for storage of Equipment and/or construction Work.

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“**Site Security Plan**” means the plan that sets out the Core Systems 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 the City.

“**Solicitation**” means an invitation for bids, request for proposals, or a request for quotation issued by the City for the purpose of soliciting bids or proposals to perform under City 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 the City 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 Standard Specifications of the DTS Rapid Transit Division (RTD).

“**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 passenger vehicles.

“**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.

“**Sub-Assembly**” means two or more components combined into a unit for convenience in assembling or servicing equipment.

“**Subcontract**” means any agreement entered into by the Core Systems 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 the Core Systems Contractor to perform a portion of the work for the Core Systems Contractor.

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

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

“**Substructure**” means all of that part of the Structure below the bearings of simple and continuous spans, skewbacks of arches and tops of footings of rigid frames, together with backwalls, wingwalls and wing protection railings.

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“**Superstructure**” means that part of an elevated fixed-guideway Structure above the bearings of simple and continuous spans, skewbacks of arches and top of footings of rigid frames; excluding backwalls, wingwalls and wing protection railings.

“**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 Core Systems 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 HHCTCP means the 20-mile elevated rail line that will connect West Oahu 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 consist 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.

“**Tamperproof**” means items designated as tamperproof when they cannot be easily loosened, opened, or penetrated with commonly available tools such as a flat blade or Phillips screwdriver or pliers.

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

“**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 the City and the Core Systems Contractor to ascertain the quality, character, and acceptability of Materials and processes utilized in performing the Contract.

“**Tight**” (used as a suffix) means an apparatus designated as watertight, dust tight, etc., when so constructed that the enclosing case shall exclude the specified material.

“**Time-Out**” means when a prescribed amount of time has elapsed during which a specified action has not occurred.

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

“**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 specific 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.

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“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 the City. 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 used to determine a change order and form a portion 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 Relocation Plans” means the Design Plans for Relocation of a Utility impacted by the Project, to be prepared by the Core Systems Contractor or the Utility Owner, as designated in any applicable Utility Agreements.

“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. The City, or a firm retained by the City, 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” 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 the Core Systems Contractor as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance of the fabricated and constructed items of the Contract and to operate and maintain the System, except for those efforts which the Contract Documents specify will be performed by the City 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

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

“Yard Control Tower” means the location of the Yard Control Workstation(s) as defined in this section.

“Yard Control Workstation” means any workstation in the OCC or Yard area, whether dedicated or shared, used to monitor and/or control operations in the Yard/MSF area.

“Yard Controller” means any train control operator in the OCC or Yard area, responsible for monitoring and/or controlling operations in the Yard/MSF area.

SP-1.2 REFERENCES

(a) Utility and HDOT standards referenced in the Standard Specifications shall apply only to Material and workmanship with respect to the 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.

(b) Abbreviations:

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ABA	American Bankers Association
ACI	American Concrete Institute
ADA	Americans with Disabilities Act

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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
ASCII	American Standard Code for Information Interchange
ASIC	Application Specific Integrated Circuits
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
A-TEL	Administrative Telephone
ATP	Acceptance Test Procedure
AWG	American Wire Gauge
AWS	American Welding Society
AWPA	American Wood-Preservers Association
AWS	American Welding Society
AWWA	American Water Works Association
BAFO	Best and Final Offer
BCP	Bank Card Processor
BIN	Bank Identification Number
BFS	Department of Budget and Fiscal Services, City and County of Honolulu
BLS / E-TEL	Blue Light Station Emergency Telephone
BOCA	Back-Up OCC
BTU	British Thermal Units
CADD	Computer Aided Design and Drafting
CCE	Construction Compliance Engineer
CCH	City and County of Honolulu
CCM	Construction Compliance Monitor
CCTV	Closed Circuit Television
CDR	Critical Design Review
CDRL	Contract Data Requirements List
CD-ROM	Compact Disc – Read Only Memory
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CFR	Code of Federal Regulations
CIF	Common Intermediate Format
CMF	Central Monitoring Facility
CO	Change Order
COF	Central Office Facility
COS	Class of Service
COTS	Commercial Off-The-Shelf
CPM	Critical Path Method
CSL	Contract Submittal List

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CSCTS	Communications Sub-Committee Technical Recommended Practices
dB	Decibel
DB	Design-Build
dBA	Decibels, A-scale
DBE	Disadvantaged Business Enterprise
DBOM	Design-Build-Operate-Maintain
DCE	Design Compliance Engineer
DCM	Design Compliance Monitor
DES	Data Encryption Standard
DRT	Disputes Review Team
DTS	Department of Transportation Services, City and County of Honolulu
DVD	Digital Video Disc
DVR	Digital Video Recorder
ECU	Electronic Control Unit
EEl	Electrical Engineering Institute
EIA	Electronic Industries Association
EIS	Environmental Impact Statement
EMI	Electromagnetic Interference
EMP	Emergency Management Panel
EMT	Emergency Medical Technician
ENR	Engineering News Record (Trade Magazine)
EPA	Environmental Protection Agency
E-TEL	Emergency Telephone
ETL	Electrical Testing Laboratories
FAR	Federal Acquisition Regulations
FBI	Federal Bureau of Investigation
FACI	First Article Configuration Inspection
FAI	First Article Inspection
FHWA	Federal Highway Administration, U.S. Department of Transportation
FIT	Factory Integration Test
FMP	Fire Management Panel
FOCN	Fiber Optic Cabling Network
FONSI	Finding of No Significant Impact
FOV	Field of View
FS	Federal Specifications
FTA	Federal Transit Administration
F-TEL	Fire Emergency Telephone
GBS	Gap Breaker Station
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
GFCI	Ground Fault Circuit Interrupter
GRJP	General Rules for Joint Use of Poles
HAR	Hawai'i Administrative Rules
HBCTCA	Hawai'i Building & Construction Trades Council Affiliates
HDOT	State of Hawai'i Department of Transportation
HHCTCP	Honolulu High-Capacity Transit Corridor Project
HST	Hawai'i Standard Time
HRS	Hawai'i Revised Statutes
HVAC	Heating, Ventilating, and Air Conditioning

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IA	Independent Assurance
IC	Integrated Circuits
IEEE	Institute of Electrical and Electronics Engineers
IEC	International Electrotechnical Commission
IES	Illuminating Engineering Society
IMSA	International Municipal Signal Association
IP	Internet Protocol
ISDN	Integrated Services Digital Network
ISO	International Standards Organization
ITE	Institute of Transportation Engineers
ITS	Intelligent Transportation System
JEDEC	Joint Electronic Device Engineering Council
JPEG	Joint Photographic Experts Group
JV	Joint Venture
LAN	Local Area Network
LCC	Leeward Community College
LCD	Liquid Crystal Display
LED	Light Emitting Diode
LLC	Limited Liability Company
LLP	Limited Liability Partnership
LOI	Letter of Interest
MAN	Metro Area Network
MDS	Mobile Data System
MIL	Military Specifications
MOT	Maintenance of Traffic
MPEG	Moving Picture Experts Group
MSDS	Material Safety Data Sheet
MSF	Maintenance and Storage Facility
MURK	Manual on Uniform Record Keeping
MUTCD	Manual of 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
NFPA	National Fire Protection Association
NHS	National Highway System
NIST	National Institute of Standards and Technology
NIU	Network Interface Unit
NPDES	National Pollutant Discharge Elimination System
NTP	Notice to Proceed
NTSC	National Television Standards Committee
OCC	Operations Control Center
ODBC	Open Database Connectivity
OEM	Original Equipment Manufacturer
OSHA	Occupational Safety and Health Administration, United States Department of Labor
PA	Public Address
PA/CR	Public Awareness and Community Relations
PAL	Phase Alternating Line
PC	Personal Computer

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PLC	Programmable Logic Controller
PE	Preliminary Engineering
PI	Price Item or Public Information
PIV	Price Item Value
PLC	Programmable Logic Controller
PM	Preventative Maintenance
PMF	Police Monitoring Facility
POP	Proof of Payment
PPS-C	Contract Periodic Payment Schedule
PPS-P	Proposal Periodic Payment Schedule
PS	Performance Specification
PSDB	Police Scientific Development Board (UK)
P-TEL	Passenger Telephone
PTZ	Pan-Tilt-Zoom
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
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
SCADA	Supervisory Control and Data Acquisition
SCC	Station Control Center
SCSI	Small Computer Systems Interface
SHPD	State Department of Land and Natural Resources, Historic Preservation Division
SI	International System of Units
SIT	System Integration Test
SLAN	Station Local Area Network
SM	Schedule of Milestones
SMT	Surface Mount Technology
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
UBC	Uniform Building Code
UH	University of Hawai'i
UL	Underwriters' Laboratories, Inc.
UPC	Uniform Plumbing Code
US	United States
USC	United States Code

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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 Guideway

SP-1.3 CORE SYSTEMS CONTRACTOR'S REPRESENTATIONS

(a) License. The Core Systems Contractor represents that the Core Systems Contractor is a business entity which is experienced and skilled in the design and construction of projects of the type described in the Contract and that the Core Systems Contractor and its Subcontractors are licensed by the State of Hawai'i to engage in the type of design and construction required by the Contract and is in compliance with all applicable laws and regulations.

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

(1) The Core Systems Contractor and all subcontractors intended to be used by the Core Systems 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) The Core Systems 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) The Core Systems 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 the Core Systems Contractor nor any of the Core Systems Contractor's employees, agents, suppliers, or subcontractors has relied upon any verbal representations from the City, its employees or agents, including architects, engineers or consultants, in assembling its Proposal;

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

(6) The Core Systems Contractor has no obligations, commitments or impediments of any kind that will limit or prevent performance of work as required by the Contract.

(7) The Core Systems Contractor shall recognize the City's right to expand the System and/or acquire additional passenger vehicles from other manufacturers during the life of the Contract. The Core Systems Contractor also recognizes that:

(A) All performance requirements of this Contract shall remain in effect regardless of the City's possible procurement of different suppliers/manufacturers of the systems and/or passenger vehicles for any future system expansion, except where there is substantially certain demonstration that the design, implementation, or performance of the equipment supplied by others negatively impacts the safety, performance, schedule, availability or maintainability of the equipment provided by the CSC, during both DB and O&M stages, thereby preventing the CSC from meeting its performance

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requirements, in which case the CSC shall request in writing that the performance requirements of this Contract shall be equitably adjusted.

(B) If the City chooses to procure equipment from another supplier, the Core Systems Contractor shall provide its full cooperation to the City in defining interface requirements for such equipment with the existing systems provided by the Core Systems Contractor; however, the Core Systems Contractor will have no obligation, except to the extent the CSC did not fully cooperate with the City to define the interface requirements, to evaluate, ensure, or guarantee that the equipment supplied by others can meet the performance requirements of the System, or that the non-CSC supplied systems or equipment is compatible with the existing system to the extent that it will not negatively impact the performance of the system.

(C) The Core Systems Contractor shall not be held responsible for failure or deficient levels of performance of equipment supplied by others, or the negative impact on the overall system performance caused by the equipment supplied by others upon substantially certain demonstration that the equipment caused the negative impact of the overall System performance, except insofar as the failure of such equipment is a direct and sole result of the Core Systems Contractor's failure to meet its obligations under this Contract.

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

(d) All materials submitted by the Core Systems 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 telefacsimile 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 fax 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 the Core Systems Contractor's Project Manager and technical representatives designated by the City. The Core Systems 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 the Core Systems Contractor.

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

SP-1.5 [RESERVED]

SP-1.6 ATTACHMENTS TO SPECIAL PROVISION SP-1

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

- (a) Attachment A contains an abbreviated Scope of Work and description of roles and responsibilities for the City and the Core Systems Contractor;
- (b) Attachment B contains the FTA required clauses;
- (c) Attachment C contains the Rapid Transit Stabilization Agreement;
- (d) Attachment D contains the Rapid Transit Stabilization Agreement Hawai'i Building and Construction Trades Council Affiliates; and
- (e) Attachment E contains the Book of Pricing Forms for the O&M period.

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 the City learns of a material breach by the Contactor of this Section 2.5, the City may terminate the Contract if Contractor fails to expeditiously cure the breach or end the violation. The Core Systems Contractor and the City shall follow Chapter 487N, HRS, with response to notification of a security breach of personal information.

SP-2.6 COPYRIGHT AND PATENT

Chapter 2, Section 2.6, of the GCDB is amended by deleting the section in its entirety.

SP-2.8 OWNERSHIP OF PROPERTY

Chapter 2, Sections 2.7 and 2.8, of the GCDB are amended by deleting the sections in their entirety and substituting in lieu thereof the following:

(a) The Core Systems Contractor agrees that any reports, materials, studies, photographs, negatives, drawings or other documents prepared by the Core Systems Contractor in the performance of its obligations under this Contract, with the exception of the Intellectual Property Rights (IPR) which reside with the Core Systems Contractor, shall be the exclusive property of the City. 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., which are not IPR, shall be delivered to and become the property of the City subject to the limitation herein. Use of said materials, information or data, during performance or following termination of this Contract shall be limited to the purpose as provided for herein and shall be at the City's sole responsibility. The Core Systems 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 the City. The Core Systems Contractor shall not reference an opinion of an employee or agent of the City 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 the City.

(b) Intellectual Property Rights – The Core Systems contractor shall specifically identify the Intellectual Property Rights it owns that will be used as part of this Contract. The Core Systems Contractor shall retain ownership of its IPR relating to the Project utilized in the Work under this Contract; however, the Core Systems Contractor hereby grants the City a non-exclusive, non-transferable, perpetual and royalty free license to use the IPR, documentation and software, as well as those rights of suppliers which are granted to the Core Systems Contractor, solely for the purposes of use, operation, maintenance upgrade and repair of the rail equipment or services provided under this Contract.

(c) Software shall mean the computer code (source code) stored in permanent or semi-permanent form used to define the functions of, or drive microprocessors and similar devices installed in the equipment, or equipment to be used in conjunction with the System.

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(d) Notwithstanding the above:

(1) Nonproprietary as-built deliverables shall describe all aspects of the site installation work and conditions and all designs that are unique to and provided specifically for the System, including the application design data for any proprietary and commercially available items.

(2) Commercially available item is defined to be a product, component, subsystem, or other item that is produced for a multiplicity of other purposes or can be used with other transit system technologies and is not unique to the Core Systems Contractor's transit system technologies that is being applied to the System. For all commercially available items (including software), the as-built deliverables shall include the purchase specifications, the names and addresses of the Original Equipment Manufacturers (OEMs) from which the items were purchased (i.e., contractors or otherwise), theorems identifying information / model numbers for reordering, and a complete set of the documentation supplied by the OEM with the items.

(3) Proprietary as-built deliverables shall provide all the necessary design information (except for production tooling and manufacturing process design) to reproduce all subsystems, equipment and components that are not commercially available and not unique to the Work. "Proprietary," as distinct from "commercially available," shall mean that the design of the subsystem, equipment or component was not carried out under this Contract, or other contract with the City, or a federally-funded contract but that such designs were included in the Core Systems Contractor's development of the items as part of the basic system technology that the Core Systems Contractor is applying under this Contract as part of the System. All proprietary as-built deliverables shall be provided to the City or shall be, at the Core System Contractor's option, provided to a Trustee under a trust agreement as described in subsection (e)(10) below.

(4) All "nonproprietary" and "commercially available" plans, designs, and drawings provided shall be the unrestricted property of the City. The City shall have the unrestricted use of all documentation provided for "nonproprietary" and "commercially available" products.

(e) Software Documentation. Special attention shall be given to the delivery of software and software documentation procedures for all computer software programs supplied as part of the System. The Core Systems Contractor shall submit to the City for review and approval a Software Documentation Plan, indicating its proposed methods and procedures for software documentation which may be rejected by the City if not drafted to the City's satisfaction. At a minimum, the Software Documentation Plan shall address the following:

(1) Identify the subsystems and equipment that are processor controlled and the type of software (e.g., Core Systems Contractor-developed or commercially available) used by each.

(2) For Core Systems Contractor-developed software, identify and describe all of the relevant documentation from the initial design (software requirements specifications) through the detailed design (software design descriptions and/or specifications) and including documentation associated with the verification and validation process. Identify which documents will be provided at which stage (PDR or FDR) for the City to review. Identify the applicable standards for development, documentation, quality assurance, verification and validation and configuration control.

(3) For commercially available software, identify which type of documentation (e.g. user's manuals, programmer's manuals, installation guides, etc.) will be provided for each.

(4) Describe the organization and division of the Work within the Core Systems Contractor's organization for each step of the software development/documentation cycle.

(5) Describe the software change control process (for developed software) and the

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associated documentation (e.g., abnormality reports, change reports, temporary change authorizations, etc.). Particularly describe how this documentation addresses/specifies the requirements for verification and validation of the changes.

(6) Describe the make-up/content of the as-built software documentation as required by this SP Section 2.8(e).

(7) For any software that is not "commercially available" and is not resident in hardware as firmware, the Core Systems Contractor shall provide on Site the final version of all such software. The software shall be supplied on suitable electronic media, and with any necessary equipment, so as to provide a backup that can be reloaded into associated computers by site personnel.

(8) For all software unique to the System and not "commercially available" as defined in subsection (d)(2) above, the As-Built Deliverables shall include all of the information necessary to make revisions to the software program applications for the System for changes and/or expansions or extension of the System. At a minimum, this information shall include functional, performance and interface requirements; descriptions of the supervisory, control, and operating software; source listings; flow charts; configuration control documentation; and programmer and user manuals incorporating appropriate modification and control procedures, including the name of any subcontractor if employed for preparation of this software.

(9) For all "commercially available" software used in the System, the As-Built Deliverables shall include all of the documentation that is available from the supplier of such software. One reproducible master and two copies of all programmer and user manuals and other similar material shall be provided to the City with the As-Built Deliverables, along with a complete and fully documented listing of all software programs (one-copy on electronic media, two printed copies). The Core Systems Contractor shall also provide licenses covering use of the commercially available software, properly transferred to the name and ownership of the City.

The software provided for this Project shall not be limited by calendar events that would require editing or replacement of the software and/or hardware.

(10) All "proprietary" As-Built Deliverables, as that term is defined previously, shall be provided to the City or shall be, at the Core Systems Contractor's option, provided to a Trustee under a trust agreement entered into by the City, the Core Systems Contractor and the Trustee. The basic terms of the trust agreement shall be as follows:

(A) The trustee shall be a trust company qualified to do business in the State of Hawaii and authorized to engage in a trust business in the State of Hawaii which shall be mutually acceptable to both the City and the Core Systems Contractor.

(B) All proprietary As-Built Deliverables shall be placed with the Trustee for safekeeping in the State of Hawaii.

(C) Title to the designs, copyrights and patents divulged in the proprietary As-Built Deliverables shall remain with the Core Systems Contractor subject to the rights and license granted to the City by and in accordance with this section and the trust agreement.

(D) The trust agreement shall include the provision that in the event the Core Systems Contractor fails to complete the Contract and the Contract is terminated for default in accordance with the GCDB and the Special Provisions, the Trustee, upon receipt of written notice from the City shall turn over to the City all proprietary As-Built Deliverables in its possession within a 60-day period from the date of receipt of the notice.

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(E) At such time as the proprietary As-Built Deliverables are turned over to the City by the Trustee, the City shall have the right and license to use the drawings and documents or allow any party to use same without restrictions for the System and any future resupply, expansion, or extension of the System; however, the City may not sell the proprietary As-Built Deliverables or allow any party to use same for any other project without the Core Systems Contractor's written approval. The Core Systems Contractor shall continue to have the full and complete right to use any and all duplicates or other originals of the As-Built Deliverables in any manner it chooses.

(F) In the event the Contract is completed or terminated for reasons other than default of the Core Systems Contractor, and the Core Systems Contractor is ready, willing and able to meet any requirement of the City for future resupply, expansion or extension of the System, and has proposed to do so in accordance with the City's procurement process and requirements but the City has not selected the Core Systems Contractor for such resupply, expansion or extension, then the City may use the proprietary As-Built Deliverables only upon agreement to pay a license fee to the owner of the proprietary design; where the license fee is to be incorporated into the trust agreement and not to exceed three percent (3%) of the price paid for that portion of Work contracted and performed by others that directly uses and copies the designs provided in the proprietary As-Built Deliverables. For example, if the vehicle suspension system is a proprietary design then it would be the portion of the vehicle price upon which the license fee is paid. The Trustee, upon receipt of written notice from the City shall turn over to the City all proprietary As-Built Deliverables in its possession within a 60-day period from the date of receipt of the notice.

(G) The trust agreement shall automatically terminate after twenty (20) years and all such proprietary As-Built Deliverables shall be turned over to the City. Upon termination of the trust agreement, the City shall have the right and license to utilize the proprietary As-Built Deliverables for its own use, without payment of any license fee to the Core Systems Contractor; however, title to any designs covered by the proprietary As-Built Deliverables shall remain with the Core Systems Contractor.

(H) The Core Systems Contractor shall have no liability for any use authorized herein subsequent to completion of this Project unless the Core Systems Contractor is employed for such subsequent use.

(I) In the event that the proprietary As-Built Deliverables are not placed in trust, but are delivered to the City by the Core Systems Contractor, the restrictive covenants set forth above shall govern the City's possession and use of the documentation.

(11) Protection of Information. The City shall employ sound business practices no less diligent than those used for the City's own confidential information to protect all proprietary As-Built Deliverables and other materials provided by the Core Systems Contractor pursuant to the Contract, which contain confidential commercial or financial information, trade secrets or proprietary information, against disclosure of such information and material to third parties except as permitted by the Contract. The Core Systems Contractor shall be responsible for ensuring that confidential commercial or financial information, trade secrets or proprietary information bears appropriate notices relating to its confidential character.

(12) Continuing Obligation. The Core Systems Contractor shall have a continuing obligation that survives Final Acceptance of the System to provide all associated information and data necessary for the City to fully utilize and benefit from its property rights in products, components, designs, systems, subsystems, and other items provided, furnished, installed, or

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otherwise supplied under this Contract. The continuing obligations hereunder are to be broadly construed and apply to the Core Systems Contractor and its subcontractors, and as such, the Core Systems Contractor shall be responsible for obtaining this information and data without limitation from suppliers, subcontractors, vendors, consultants, sub-consultants, and the like. The Core Systems Contractor shall supply this information within thirty (30) days of a request by the City.

SP-2.13 LIABILITY

Chapter 2, Section 2.13, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

(a) The City's obligations under this Contract shall be limited to the payment for services under this Contract.

(b) The Core System Contractor's liability to the City for damages arising out of Work performed under the Design-Build component of the Contract shall be limited to the total Contract Value of the Design-Build component of the Contract provided that excluded from the cap limit will be any liability, including defense costs, for any type of damage or loss in excess of the Design-Build component of the Contract amount 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 Core System Contractor, its subcontractors at any tier, and the Core System Contractor's agents; the Core System Contractor's obligations to pay liquidated damages under this Contract, the Core System Contractor's indemnities set forth in this Contract, including but not limited to SP-2.14; or losses arising out of the Core System 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 deleting the section in its entirety and substituting in lieu thereof the following:

(a) Subject to the liability limitations contained herein, the Core Systems Contractor shall defend, indemnify and save harmless the City, including its elected and appointed officials, agents, employees, volunteers and Construction Managers, and any other entities required to be indemnified by the City 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 the Core Systems Contractor, the City 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 the Core Systems Contractor shall not be responsible for such portion of damages, if any, proximately caused by the negligence or intentional misconduct of the City. 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 the City and that each shall be given effect.

(b) Worker's Compensation Law. The Core Systems Contractor shall save harmless the City its departments, and all of its officers, consultants, representatives, employees or agents, and Construction

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Managers 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 the Core Systems 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 the Core Systems Contractor from the patentee or owner. The Core Systems Contractor shall indemnify and hold harmless the City 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 the City and all of its 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 subparagraph (b), (c), (d) and (e):

(b) If the Core Systems Contractor fails to achieve Substantial Completion by the deadline(s) specified herein, the Core Systems Contractor agrees to pay a Liquidated Damages Charge as defined with the operating segment below. For the Core Systems Contractor, Substantial Completion shall occur at the transfer from construction to operations, following commission testing and System demonstration (prior to Passenger Service). If the Core Systems Contractor fails to perform any of the other items of Work described in the Contract Documents, the Core Systems Contractor agrees to pay the applicable Liquidated Damages Charge specified herein.

(c) The Substantial Completion Dates and the Liquidated Damage Charge have been set for each operating segment as follows:

(1) Not Used

(2) Not Used

(3) East Kapolei to Aloha Stadium Station (includes Pearl Highlands Station) full operation is to occur no later than the Core Systems Contractor's accepted Baseline Schedule date [\$20,000 per day];

(4) East Kapolei to Middle Street Station full operation is to occur no later than the Core Systems Contractor's accepted Baseline Schedule date [\$30,000 per day]; and

(5) East Kapolei to Ala Moana Center Station full operation is to occur no later than the Core Systems Contractor's accepted Baseline Schedule date [\$40,000 per day].

(d) If the Core Systems Contractor fails to achieve substantial completion by the Completion Date Liquidated Damages will be paid in the amount specified above.

(e) In no event shall the aggregate amount of the liability for liquidated damages exceed fifteen percent (15%) of the total Contract Value of the Design-Build component of the Contract.

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 the Core Systems Contractor may be open to public inspection and copying. The City will have the duty to disclose this information or these documents unless a particular record is deemed confidential by law. The Core

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Systems Contractor shall label specific parts of an individual documents as a “trade secret” or “confidential” or “proprietary information” in accordance HAR §§3-122-46(9) and 3-122-58, provided that the Core Systems Contractor thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any document that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

SP-2.20 GOVERNING LAW AND VENUE AND DISCOVERY

Chapter 2, Section 2.20, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

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. The Core Systems Contractor agrees that, as a result of its willingness to do business with the City, it will resolve any dispute with the City 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, the Core Systems Contractor and the City 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 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):

(a) **OWNER CONTROLLED INSURANCE PROGRAM.** The City 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 the City's OCIP Manual, to be provided to the Core Systems 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 the City and the Core Systems Contractor. The City 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, the Core Systems Contractor acknowledges that the OCIP is not intended to and does not meet all the insurance needs of the Core Systems Contractor or subcontractors. In addition to any insurance provided by the City, an Enrolled Contractor (defined below) and all Ineligible Contractors (defined below), shall be responsible for providing certain insurance as specified in paragraph (h) "Core Systems Contractor Provided Coverage" at their own cost and expense.

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

The Core Systems Contractor further acknowledges that the Core Systems 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 the Core Systems 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 High-Capacity Transit Corridor Project site is designated by the City and on file with the OCIP Insurance Carrier. The Project includes operations necessary or incidental to the

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Work of the Core Systems Contractor covered by this Contract. The Core Systems 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 CORE SYSTEMS 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 CORE SYSTEMS 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 Core Systems Contractor and/or Subcontractor "Insurance Cost." For insurance purposes, the Core Systems 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 Core Systems Contractor shall agree, and shall cause all its subcontractors to agree, to cooperate with the City and/or the OCIP carriers and/or the OCIP Administrator with respect to periodic audit and review of the Core Systems Contractor's and subcontractors' payroll records for operations at the Project site.

The Core Systems Contractor shall, and shall cause all its subcontractors to permit the City and its representatives to examine and/or audit their books and records pertaining to this Project. The Core Systems Contractor shall, and shall cause all its subcontractors to provide any additional information to the City 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 the City.

(e) OCIP-Provided Coverages. The OCIP will be for the benefit of the City 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)).

The City, 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. The 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 and Employer's Liability Insurance. Workers' Compensation and Employer's Liability Insurance shall be provided with statutory limits with subrogation waivers and endorsements and minimum Employers' Liability limits provided as follows:

- (A) \$1,000,000 Bodily Injury with Accident - Each Accident;
- (B) \$1,000,000 Bodily Injury by Disease - Policy Limit; and
- (C) \$1,000,000 Bodily Injury by Disease - Each Employee;

(2) Commercial General Liability Insurance. Commercial General Liability Insurances 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;

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- (iii) \$2,000,000 General Aggregate Reinstated Annually;
 - (iv) \$2,000,000 Products and Completed Operations;
 - (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. Excess Liability Insurance shall be provided with the following limits:
- (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 Core Systems 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 Core Systems 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 City Provided Coverages.** Certificates of Insurance will be furnished for the Workers' Compensation and Employer's Liability, Commercial General Liability, Excess Liability and Builders' Risk coverages. These policies will be available for review by the Enrolled Contractor upon request to the City. The terms of such policies or programs, as such policies or programs may be from time to time amended, are incorporated by reference. The Core Systems 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.** The City reserves the right to terminate or to modify the OCIP or the OCIP Manual at any time. Prior to exercising such right, the City will provide ninety (90) days advance written notice of termination or material modification to the Enrolled Contractors covered by the OCIP. In such an event, the Core Systems Contractor will promptly obtain appropriate replacement insurance coverage acceptable to the City. Written evidence of such insurance shall be provided to the City 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 the City to the

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Enrolled Contractors.

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

(h) **Core Systems Contractor Provided Coverage.** For any Work not covered under the OCIP, and until completion and Final Acceptance of the Work under this Contract, the Core Systems Contractor shall, and shall cause its subcontractors, at their own expense, to furnish to the City 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 City and all other entities as required by Contract, and their officers, commissioners, agents and employees of City (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, the Core Systems 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 the Core Systems Contractor is an Enrolled Contractor.
- (3) Commercial General Liability Insurance:
 - (A) Core Systems 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;

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- (ii) Premises Operations;
 - (iii) Contractual Liability;
 - (iv) Products/Completed Operations;
 - (v) Broad Form Property Damage; and
 - (vi) Subcontracted Work (Independent Contractor/Contractor's Liability).
- (4) Excess Liability Insurance:
- (A) \$25,000,000 for Core Systems Contractor;
 - (B) \$25,000,000 for Automobile;
 - (C) \$ 2,000,000 for Core Systems 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 the Core Systems 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 the Core Systems Contractor's requirement in paragraph (c) to exclude from its pricing and from all change orders cost for OCIP-provided coverages.

(6) Professional Liability Insurance. The Core Systems 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 Core Systems Contractor and first-tier subcontractor shall be not less than \$10,000,000, and limits for second-tier and lower subcontractors shall not be less than \$1,000,000. 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.

(7) Core Systems Contractor's Pollution Liability. If and as required, the Core Systems 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 Core Systems Contractor's operations or completed operations, performed by or on behalf of the Core Systems 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 the City, name the City 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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(8) Certificates of Insurance for Core Systems 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 the City must receive at least thirty (30) days advance written notice of any cancellation or material modification or reduction of coverage. In the event that the Core Systems Contractor or any subcontractor fails to procure and maintain such insurance coverages, the City shall have the right, at its option, to procure and maintain such insurance coverages and back charge the Core Systems Contractor for the costs thereof. The amount of insurance required in this paragraph (h), shall not be construed to be a limitation of liability on the part of the Core Systems Contractor or any of its subcontractors. If the Core Systems Contractor or any of its subcontractors maintain any insurance policies covering owned, leased or borrowed equipment, the Core Systems Contractor shall obtain, and shall cause its subcontractors to obtain, waivers of subrogation in favor of the City and any other entities as required by contract in such policies.

Certificates of Insurance acceptable to the City shall be filed with the City by furnishing them to the City 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 the City 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 Core Systems Contractor or any of its subcontractors require for its own protection or on account of any law, statute or regulation shall be the Core Systems Contractor's own responsibility and at its own expense.

(j) **Core Systems Contractor Responsibilities.** The Core Systems Contractor will cooperate with, and will require all subcontractors to cooperate with, the City and/or the City OCIP Administrator and other designated representatives with respect to the administration and operation of the OCIP. The Core Systems 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 the City as a result of the Core Systems Contractor's non-compliance, the Core Systems 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 Program;

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

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

(k) **The Core Systems Contractor's Responsibility for its Subcontractors.** The Core

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Systems Contractor shall include this Section with the subcontract bid documentation and require that all subcontractors of every tier participate in the City's OCIP and comply with all OCIP requirements including enrollment, insurance cost identification and close-out procedures. It will be the Core Systems Contractor's responsibility to submit to the City, and/or its designated representative, all subcontractor bid documentation for approval.

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

(m) **Waiver of Subrogation and Other Rights of Recovery.** The City waives all rights of subrogation and recovery against the Enrolled Contractors to the extent any loss or damage is insured under the OCIP. The Core Systems Contractor waives all rights of subrogation and recovery against the City and other Enrolled Subcontractors of all tiers, to the extent any loss or damage is covered under the OCIP. The Core Systems 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.** The City provision of the OCIP shall in no way be interpreted as relieving the Core Systems 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 Core Systems 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 Hawaii. Such insurance shall conform to the requirements of this Section and be in form and content satisfactory to the City. The Core Systems 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 Core Systems Contractor after Completion of Work.** During any extended insurance coverage period, as described in the Contract Documents and following the Substantial Completion Date, the Core Systems Contractor will maintain in full force and affect all insurance coverages specified in paragraph g) covering all Work performed under this Contract.

(q) **Claims Responsibilities.** The Core Systems 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.

(r) **O&M Insurance.** During the Full O&M Period, the City intends to provide insurance coverage to the Core Systems Contractor that is substantially the same as those provided in subsection (e) above. The Core Systems Contractor shall, and shall cause all of its subcontractors, to provide insurance coverage substantially similar to those found in subsection (h) above.

SP-3.3 BID SECURITY, PERFORMANCE AND PAYMENT BONDS

Chapter 3, Section 3.3 (b), of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

(b) Bonding requirements. For this Contract, performance and payment bond amounts shall be required as outlined below.

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(1) The Contract consists of a Design-Build component and an Operations and Maintenance (O&M) component. Performance and payment bonds are required for the Design-Build component of the Contract. Separate performance and payment bonds are required for the O&M component of the Contract.

Delivery of the performance and payment bonds covering the Design-Build component of the Contract is to be pursuant to Section 7.2, Instructions to Priority-Listed Offerors.

Delivery of the performance and payment bonds required for the O&M component of the Contract will be concurrent with Substantial Completion sign-off by the City of the Design-Build component prior to revenue operations of the first operating segment. Sign-off will not be completed until the O&M bonds are provided to the City. At the time of the return of the executed Contract, the Core Systems Contractor shall also furnish a letter of commitment from its surety that indicates the surety's willingness to issue a similar bond for the O&M component of the Contract prior to its commencement (see Section 7.2, Instructions to Priority-Listed Offerors). The surety form of the bonds and commitment letter must be acceptable to the City.

(2) Design-Build Component - The coverage provided under the performance and payment bonds for the Design-Build component shall include all Work to be performed under this Contract. The categories of sections provided in Exhibit 16 collectively represent all Work to be provided under the Design-Build component of the Contract. The performance and payment bond amounts are to be calculated based on Exhibit 16, Schedule of Prices for the DB portion of Work. The Performance and Payment Bond amounts shall be one-hundred percent (100%) of the values in Section A (excluding the cost of the Performance and Payment Bonds from Exhibit 16a), Section C, Section D, Section E, Section F and Section H, plus fifteen percent (15%) of the values in Section B, Section G, Section I, Section J and Section K. Refer to Exhibit 16, Schedule of Prices for the DB portion of Work, where Price Items are so identified. Performance and payment bonds may be increased or decreased if there is a change in the Contract amount for the Design-Build component (*see* HAR § 3-122-225).

(3) O&M Component – Performance and payment bonds are required for the O&M component of the Contract commencing with Substantial Completion sign-off by the City of the Design-Build component prior to revenue operations of the first operating segment. The O&M performance and payment bonds are to be calculated using Exhibit 17, Schedule of Prices for Operations and Maintenance (SPOM). For the Intermediate and Full O&M Periods (as described in Exhibit 16) the bond amounts shall be calculated using the total O&M Price without Option (first 5-years of the full operating segment). The bond amounts for Intermediate Periods are 10% of that value. The bond amounts for the Full O&M Period are 15% of that value. For the Optional O&M Period, if applicable, the bond amounts are 15% of the total Optional Period O&M Price. Please note that the cost of the Performance and Payment Bonds associated only with the respective O&M portion of the Work shall be entered in Exhibit 17 for each of the intermediate, full and optional O&M periods.

(4) From the date of its execution Performance and Payment Bonds shall be renewed as necessary so as to prevent a lapse in coverage. Performance and Payment Bonds for the Design-Build component will be released incrementally based on Operations Segment value one year after Substantial Completion of each opening for passenger service and upon written determination by the City that it is in the best interest of the City to do so pursuant to HAR § 3-122-225(a). Incremental release of bond amounts after Substantial Completion of each segment shall be for the release of the said bond amounts; however, the performance and payment bonds' coverage shall continue to include all Work performed during the entire term of the Design-Build component of the Contract. Release of incremental bond amounts shall not be a release for future claims of work later discovered to be incomplete or not meeting the specifications of the

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Contract. This provision shall supersede any previous or future conflicting terms and/or agreements relating to performance and payment bonds.

Performance and payment bonds for the O&M component will be released one year after completion of the Contract or expiration of any applicable guarantees whichever is later.

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**SPECIAL PROVISION
CHAPTER SP-4 - PERFORMANCE**

SP-4.1 TIME IS OF THE ESSENCE

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

(c) Schedule Milestones. The Core Systems Contractor shall use and incorporate the dates provided under the “Required Date” column in Table 4.1 below in its proposed Baseline Schedule, but may propose alternative dates to the Target Dates provided in Table 4.1. The proposed Target Dates, if accepted by the City, shall become part of the accepted Baseline Schedule, which shall be incorporated as part of the Contract requirements of the Core Systems DBOM Contract.

**TABLE 4.1 – SCHEDULE REQUIREMENTS
(BASED ON NTP ON OR BEFORE **APRIL 11, 2011**)**

ITEM	SCHEDULE ACTIVITY / MILESTONE	TARGET DATE	REQUIRED DATE
1	Design Coordination / Initial Input to MSF Contract		June 15, 2011
2	Design Coordination / Final Input to MSF Contract		November 15, 2011
3	Reserved (not used)		
4	Reserved (not used)		
5	Reserved (not used)		
6	MSF Operational (following Integration Tests and Pre-Operational Demonstration)	November 15, 2014	See Note 1 *
7	East Kapolei to Aloha Stadium Intermediate Operations, Ready for Passenger Service (Beginning of Intermediate O&M Period #1)	December 15, 2015	See Note 1 *
8	East Kapolei to Middle Street Intermediate Operations, Ready for Passenger Service (Beginning of Intermediate O&M Period #2)	October 15, 2017	See Note 1 *
9	East Kapolei to Ala Moana Full Operations, Ready for Passenger Service (Beginning of Full O&M Period)		March 15, 2019
	CITY-FURNISHED FACILITIES & MATERIALS		
10	MSF Partially Complete, Ready for CSC's Construction		November 15, 2013
11	MSF Substantially Complete & T.O. to CSC		May 15, 2014
	CSC PARTIAL ACCESS TO FIXED FACILITIES		
12	WOFH Guideway – at Grade		September 1, 2013
13	WOFH Guideway – on Deck		January 15, 2014
14	LCC Station – Equipment Room		September 15, 2013

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**TABLE 4.1 – SCHEDULE REQUIREMENTS
(BASED ON NTP ON OR BEFORE **APRIL 11, 2011**)**

15	LCC Station – Balance of Core Systems Installation		January 15, 2014
16	Waipahu Station – Equipment Room	November 15, 2013	
17	Waipahu Station – Balance of Core Systems Instl	January 15, 2014	
18	West Loch Station – Equipment Room		February 15, 2014
19	West Loch Station – Balance of Core Systems Instl		June 15, 2014
20	Ho’opili Station – Equipment Room		December 15, 2013
21	Ho’opili Station – Balance of Core Systems Instl		April 15, 2014
22	UH / West Oahu Station – Equipment Room	April 15, 2014	
23	UH / West Oahu Station – Balance of Core Sys Instl	June 15, 2014	
24	East Kapolei Station – Equipment Room	May 15, 2014	
25	East Kapolei Station – Balance of Core Systems Instl	July 15, 2014	
26	Kamehameha Highway Guideway – at Grade	August 1, 2014	
27	Kamehameha Highway Guideway – on Deck	September 1, 2014	
28	Pearlridge Station – Equipment Room		September 1, 2014
29	Pearlridge Station – Balance of Core Systems Instl		January 1, 2015
30	Aloha Stadium Station – Equipment Room	September 1, 2014	
31	Aloha Stadium Station – Balance of Core Sys Instl	November 15, 2014	
32	Pearl Highlands Station – Equipment Room	October 1, 2014	
33	Pearl Highlands Station – Balance of Core Sys Instl	December 15, 2014	
34	Airport Guideway – at Grade		December 15, 2015
35	Airport Guideway – on Deck		May 15, 2016
36	Pearl Harbor Station – Equipment Room		January 1, 2016
37	Pearl Harbor Station – Balance of Core Systems Instl		May 1, 2016
38	Honolulu Airport Station – Equipment Room		February 1, 2016
39	Honolulu Airport Station – Balance of Core Sys Instl	March 15, 2016	
40	Lagoon Station – Equipment Room	May 1, 2016	
41	Lagoon Station – Balance of Core Systems Instl	April 15, 2016	
42	Middle Street Station – Equipment Room	June 15, 2016	
43	Middle Street Station – Balance of Core Sys Instl		November 15, 2016
44	City Center Guideway – at Grade		October 15, 2016
45	City Center Guideway – on Deck		February 15, 2017
46	Kalihi Station – Equipment Room		May 1, 2016
47	Kalihi Station – Balance of Core Systems Installation		October 1, 2016
48	Kapalama Station – Equipment Room		June 1, 2016
49	Kapalama Station – Balance of Core Systems Instl		November 15, 2015
50	Iwilei Station – Equipment Room		March 15, 2017
51	Iwilei Station – Balance of Core Systems Installation		July 15, 2017
52	Chinatown Station – Equipment Room		August 15, 2017
53	Chinatown Station – Balance of Core Systems Instl		December 15, 2017
54	Downtown Station – Equipment Room		October 15, 2017
55	Downtown Station – Balance of Core Systems Instl		January 15, 2018
56	Civic Center Station – Equipment Room		June 15, 2017
57	Civic Center Station – Balance of Core Systems Instl		October 15, 2017

Honolulu High-Capacity Transit Corridor Project

**TABLE 4.1 – SCHEDULE REQUIREMENTS
(BASED ON NTP ON OR BEFORE **APRIL 11, 2011**)**

58	Kaka'ako Station – Equipment Room	August 1, 2017	
59	Kaka'ako Station – Balance of Core Systems Instl	October 1, 2017	
60	Ala Moana Station – Equipment Room	October 15, 2017	
61	Ala Moana Station – Balance of Core Systems Instl	January 2, 2018	
Note 1 (*): City will use the Core Systems Contractor's accepted Baseline Schedule Dates as the "Required Dates."			

Passenger Vehicle delivery schedule shall support the Operating dates and fleet size requirements defined in TP-3 and shall not commence before Core Systems Contractor assumes control over the MSF in May 2014 (at Substantial Completion), at which time the Core Systems Contractor may utilize part or all of the facility for Vehicle assembly or storage depending upon the progress of the Core Systems Contractor Work.

For construction and system installation partial access ("Work Site Access") is provided in the above Table. For integrated testing and turnover to Operations, full access ("Work Site Control") is given at the time of Substantial Completion of fixed facility contracts. The list below is the continuation of the Table of Milestones as it relates to full access ("Work Site Control") for each fixed facility contract. Refer to TP-3 for Operating Segment definition.

**TABLE 4-2
CORE SYSTEMS CONTRACTOR FULL ACCESS AT SUBSTANTIAL COMPLETION OF FIXED FACILITY**

RTD CONTR ID	FIXED FACILITY CONTRACT	FULL ACCESS "WORK SITE CONTROL"	OPERATIONS SEGMENT WITH YEAR OF SERVICE
Segment 1 – E. Kapolei to Aloha Stadium Segment			
DB200	Maintenance & Storage Facility	July 15, 2014	1 – Dec 2015
1200DB	WOFH Guideway – E. Kapolei to Pearl Highlands	August 15, 2014	1 – Dec 2015
DBB270	LCC Station	March 15, 2014	1 – Dec 2015
DBB270	Waipahu Transit Center Station	May 15, 2014	1 – Dec 2015
DBB270	West Loch Station	July 15, 2014	1 – Dec 2015
DBB170	Ho'opili Station	August 1, 2014	1 – Dec 2015
DBB170	UH / West Oahu Station	October 1, 2014	1 – Dec 2015
DBB170	East Kapolei Station	December 15, 2014	1 – Dec 2015
1300DB	KH Guideway – Pearl Highlands to Aloha Stadium	May 15, 2014	1 – Dec 2015
DBB275	Pearl Highlands Station	February 1, 2015	1 – Dec 2015
DBB370	Pearlridge Station	March 15, 2015	1 – Dec 2015
DBB370	Aloha Stadium Station	May 1, 2015	1 – Dec 2015
Segment 2 – Airport Segment			
DBB460	Airport Guideway – Aloha Station to Middle St	September 15, 2016	2 – Oct 2017
DBB470	Pearl Harbor Station	July 1, 2016	2 – Oct 2017
DBB470	Airport Station	August 1, 2016	2 – Oct 2017
DBB470	Lagoon Station	November 15, 2016	2 – Oct 2017
DBB570	Middle Street Station	January 15, 2017	2 – Oct 2017
Segment 3 – City Center Segment			

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**TABLE 4-2
CORE SYSTEMS CONTRACTOR FULL ACCESS AT SUBSTANTIAL COMPLETION OF FIXED FACILITY**

RTD CONTR ID	FIXED FACILITY CONTRACT	FULL ACCESS “WORK SITE CONTROL”	OPERATIONS SEGMENT WITH YEAR OF SERVICE
DBB560	City Center Guideway - Middle St to Ala Moana	September 15, 2017	3 – Mar 2019
DBB570	Kalihi Station	March 1, 2017	3 – Mar 2019
DBB570	Kapalama Station	April 1, 2017	3 – Mar 2019
DBB572	Iwilei Station	September 15, 2017	3 – Mar 2019
DBB572	Chinatown Station	January 15, 2018	3 – Mar 2019
DBB572	Downtown Station	March 15, 2018	3 – Mar 2019
DBB575	Civic Center Station	January 15, 2018	3 – Mar 2019
DBB575	Kaka’ako Station	February 15, 2018	3 – Mar 2019
DBB575	Ala Moana Station	May 15, 2018	3 – Mar 2019
TBD	Pearl Highlands Garage & Ramps	June 15, 2018	3 – Mar 2019

SP-4.2 COMMENCEMENT REQUIREMENTS

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

Delete subsection 4.2 (c) in its entirety.

Delete subsection 4.2 (d) in its entirety.

Delete subsection 4.2 (g) in its entirety and substitute in lieu thereof the following:

(g) Core Systems Contractor provided facilities, services and equipment. Core Systems 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 and for accommodating the City staff and/or the City’s agent, the Core Systems Contractor shall provide for:

(A) Locating the Core Systems Contractor’s project management staff and the City’s project management staff in the same building or in close proximity to one another;

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

(C) Locating the City’s Design Compliance Engineer and staff in the same building or in close proximity to the Core Systems Contractor’s design staff; and

(D) Locating a Field Office for City’s Field staff in close proximity to the Project.

(2) Joint Inventory and Inspection of Facilities. Prior to accepting or using any facility or item provided by the Core Systems Contractor, the City in conjunction with the Core Systems Contractor, will conduct a condition survey and inventory of all such items, and the City and Core Systems Contractor will note the condition of each item. The City and Core Systems Contractor will provide written receipts for all facilities and items found to meet Contract requirements. The written receipt will note the condition of all items. The City will not be obliged to accept any facility or item that the City reasonably considers does not meet the requirements of the Contract.

(3) Facilities and Space Requirements. The Core Systems Contractor shall provide the City with the facilities and items specified in this Section for the Project. For office space, including any office trailers, the Core Systems Contractor shall be responsible for providing all Utilities connections and supply, including domestic water, electricity, telephone and gas [natural

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gas or liquefied petroleum gas (LPG)] and sewerage and for paying all costs for providing and supplying such Utilities until at least 30 days after Final Acceptance for the Work included in the Contract or after facilities are no longer needed by the City, whichever is earlier.

(4) General Office Requirements for Facilities Provided by the Core Systems Contractor. For office trailers or spaces provided by the Core Systems Contractor, the Core Systems Contractor shall provide offices in good repair and in a clean and sanitary condition, at least of the same quality as the facilities that Core Systems Contractor provides its counterpart project management, design and field staff, respectively, and be available for occupancy as specified. The Core Systems Contractor shall secure sites, obtain all site permits, install, set up, and provide Utility services, and maintain the facilities as part of the Work. The offices shall have at least two (2) exits from each building/trailer. Entrance to offices shall be secured with a door lock plus a dead bolt lock. All interior spaces shall have overhead lighting meeting OSHA and code requirements for office space. Each office space shall have at least two (2) duplex receptacles. Minimum circuit capacity shall be 20 amps. Each office space shall be wired for phone and computer Local Area Network (LAN). The office space shall include a conference room large enough for 20 people and separate restrooms for male and female. In the event that office spaces or appurtenant facilities are destroyed or damaged during the Contract period, except by fault of the City or its personnel, the Core Systems Contractor shall, at its expense, repair or replace those items which the Core Systems Contractor provided, to their original condition within ten (10) calendar days. For the facilities it provides, the Core Systems Contractor shall:

(A) Be responsible for installing, maintaining, and paying all utilities;

(B) Provide daily janitorial service (except weekends and Holidays) and shall provide, service and maintain trash containers and trash pickup service;

(C) Be responsible for maintenance of the exterior area of office spaces including access to parking areas;

(D) Include desks, chairs, filing cabinets, bookcases and telephones in all offices. Provide copying, computer, printing and fax equipment services;

(E) Provide and maintain all City offices that it provides for at least thirty (30) days after Final Acceptance of the Work included in the Contract or until facilities are no longer needed, whichever is earlier, unless otherwise agreed by the City in writing. Ownership of the field office, equipment, and telephone shall remain with the Core Systems Contractor and shall be removed when instructed by the City;

(F) Be responsible for disposal or removal of all Core Systems Contractor-provided facilities and any site restoration Work required;

(G) Provide, ventilation, and air conditioning/cooling systems capable of maintaining temperature between 70 and 75 degrees Fahrenheit in all spaces throughout the year;

(H) Provide facilities that meet local code requirements for office space; and

(I) Provide telephone service with outside lines for each office space in the field office facility. At least one (1) additional line will be dedicated for FAX service and one (1) additional line will be dedicated to high speed data service. The phone system shall be capable of providing voice mail service to each extension. The City will pay all local and long distance phone charges after installation.

(5) Field Office for City's Field Staff. The Core Systems Contractor shall provide a Field Office for City's field staff co-located with the Core Systems Contractor's construction

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management personnel. Not later than fifteen (15) days prior to the start of construction, the Core Systems Contractor shall provide office space not less than the size indicated below:

**TABLE 4.3:
OFFICE SPACE REQUIREMENTS**

ITEM	NO. REQUIRED	REQUIREMENT
Private Office	1	Min 150 square feet, enclosed with lockable door
Staff offices	10	Min 100 square feet each
Conference room	1	Min 500 square feet, enclosed, with lockable door
Storage/filing space	1	250 square feet, enclosed, with lockable door
Restrooms	1 each	Men's & women's
Paved parking		Min 10 spaces including+ 5 visitor spaces
Break room	1	Min 150 square feet, 8 feet of counter space with sink

The Core Systems Contractor shall provide a well-graded site for the office with access road and parking area. The parking area shall be reasonably level. The parking area, including visitor parking, shall have an all-weather surface.

The field office shall be equipped with the following:

(A) A 24-hour security service or silent watchmen-type security system. The Core Systems Contractor shall install sufficient exterior security lighting that is automatically activated at low light levels to maintain two foot-candles of lighting in the office site area, including parking.

(B) The conference room for the Field Office shall have a large table and 15 chairs.

(C) In addition to the individual office file cabinets, the Core Systems Contractor shall also provide for the Field Office fifteen (15) total Commercial Grade "5" drawer vertical lockable file cabinets for project files.

(6) Computer Hardware and Software. The Core Systems Contractor shall provide computer hardware and software for the City's use in each of the offices and shall provide a server, accessible to its staff, City staff and Stakeholder staff for common deposit and retrieval of letters to and from the City and Core Systems Contractor, drawings, submittals, and other project information needed by all parties. The Core Systems Contractor shall make necessary arrangements for allowing access to the server either through "hardwiring" or remote access. The Core Systems Contractor shall also make arrangements for the City's computers to be linked directly to the City's network.

At a minimum, computer hardware and software shall meet the following specifications:

- (A) Desktop Computers;
- (B) Intel Dual Core Processor (2.25 GHz);
- (C) Microsoft Windows XP Service Pack 3 Operating System; and JRE Sun Java Runtime Engineer: 1.6.0 14
- (D) 2.0 GB RAM;
- (E) 19 inch Flat Panel Monitor;

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- (F) 160 GB Hard drive with 8 MB Cache;
- (G) USB Mouse;
- (H) Leadfree Motherboard;
- (I) 16X DVD+/-RW and 48X CD with Roxio Creator;
- (J) Speakers;
- (K) On-site Setup Services; and
- (L) Three (3) Year Hardware Technical Services, including Hard Drive Support.

(7) Backup of Electronic Files and Protection of Hardcopy Files. The Core Systems Contractor shall provide for daily, weekly and monthly backup of its electronic files, including off-site storage of said files in a secure, fireproof location. The Core Systems Contractor shall also be responsible for protecting its project-critical hardcopy files in secure, fireproof storage and/or filing cabinets. The City will provide backup for the City's electronic files.

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

(9) Communication.

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

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

(C) The Core Systems Contractor shall provide e-mail addresses for its main Site office and all Key Personnel.

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

(10) Work on any City street or in any area adjacent to a City street where traffic is impeded shall be performed in consultation with the City's Department of Transportation Services.

(11) The Core Systems Contractor shall have the primary responsibility for maintaining the safety of motorists, pedestrians, bicyclists, and workers in the vicinity of construction and maintenance areas at all times.

(12) Vehicle load restrictions shall be in accordance with the City and State of Hawai'i Department of Transportation (HDOT) requirements, unless the Core Systems Contractor has obtained an over-legal load permit from the appropriate agency.

(13) The Core Systems Contractor shall conduct operations in a manner that minimizes inconvenience to traffic, and shall have under construction no greater amount of work than he demonstrates that he can handle properly with due regard for the rights of the public.

(14) The Core Systems Contractor shall arrange for and pay for all services required

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by the City and County of Honolulu Police Department during construction operations on all roads.

Chapter 4, Section 4.2 (o), of the GCDB is amended by adding the following as paragraphs (11) through (15):

(11) Work on any City street or in any area adjacent to a City street where traffic is impeded shall be performed in consultation with the City's Department of Transportation Services.

(12) The Core Systems Contractor shall have the primary responsibility for maintaining the safety of motorists, pedestrians, bicyclists, and workers in the vicinity of construction and maintenance areas at all times.

(13) Vehicle load restrictions shall be in accordance with the City and HDOT requirements, unless the Core Systems Contractor has obtained an over-legal load permit from the appropriate agency.

(14) Work on any state facility or in any area adjacent to a state street where traffic is impeded shall be performed in consultation with HDOT.

(A) The Core Systems Contractor shall prepare a plan to include mitigation of flow of traffic in and out of the MSF site, submit to HDOT and the City for review and approval, and obtain a permit for construction within a State Highway.

(B) The Core Systems Contractor is to obtain authorization from HDOT for access from Farrington Highway at the west end of the Project limits.

(15) The Core Systems Contractor is to coordinate with the Leeward Community College for any road closures on Ala Ike Street.

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 contractor might have under the contract. Establishment of the time period of one year as described in section 4.26, "Guarantee" relates only to the specific obligation of the 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 Contractor's liability with response to the 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) The City'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 enable the City to ensure that the quality necessary for safe, secured and

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reliable operation of the transit system provided is achieved.

(2) In conjunction with the QMP, the Core Systems 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 the City 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 (QA/QC) Guidelines (FTA-IT-90-5001-02.1 February 2002 Issue), as described herein.

(b) Quality Plan. The Core Systems 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 Core Systems Contractor's Quality Plan shall be reviewed and accepted by the City prior to use. The Core Systems Contractor shall provide the City with its 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 Core Systems Contractor's management, which supports and takes responsibility for quality, and its personnel who undertake QA/QC activities; and implementing procedures to supplement the Quality Plan.

(2) All work undertaken by the Core Systems Contractor and its Subcontractors prior to approval of the Quality Plan by the City will be at the Core Systems Contractor's sole risk.

(3) Contents of Quality Plan. The Quality Plan shall describe in detail all elements of the QA/QC process the Core Systems 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 Core Systems 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; and 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

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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) Core Systems' Elements and In-Shop Testing. The Quality Plan shall include the process the Core Systems Contractor and their suppliers and manufacturers shall apply to maintain quality in the Core Systems' elements (vehicles, automated train control, traction electrification, fare vending, and communications) and in-shop testing prior to shipment to the Project. Procedures shall include "hold points" for quality inspection and oversight from the City as well as the Core Systems Contractor's quality personnel.

(F) 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.

(G) 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.

(H) 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.

(I) 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.

(J) 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.

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(K) 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 Core Systems Contractors and its subcontractors and suppliers.

(L) 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.

(M) 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.

(N) 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).

(O) Inspection, Test, and Operating Status. The Quality Plan shall include inspection, test and operational readiness 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.

(P) Verification. The Quality Plan shall address include the verification of the design, construction, fabrication, installation and performance of the Core Systems and the interface points of the City-provided Fixed Facilities. This verification process shall validate compliance in all respects with the requirements of the Contract Documents.

(Q) 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.

(R) 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.

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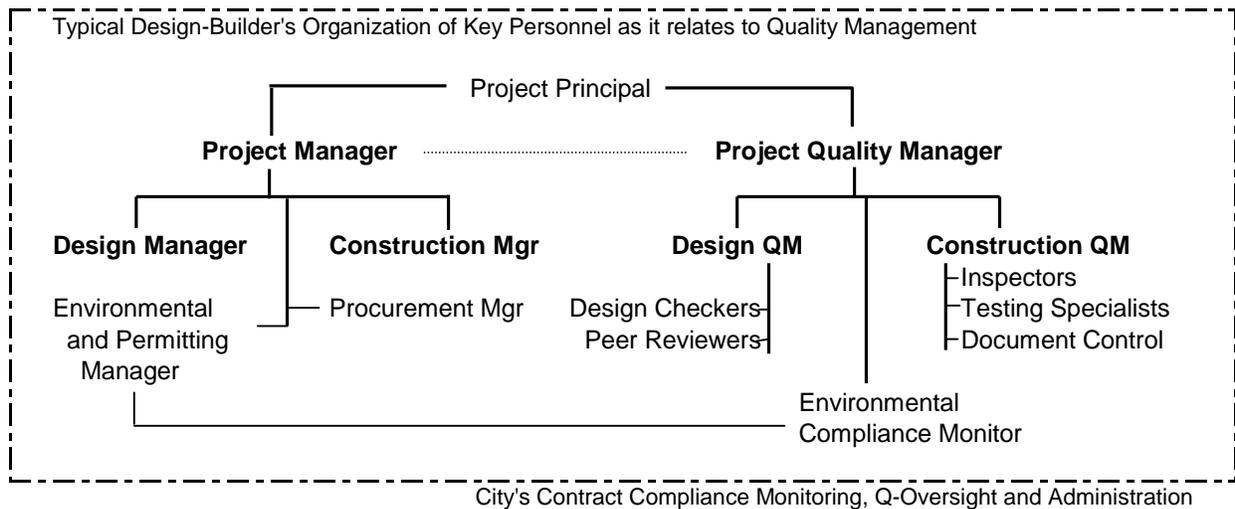
(S) **Quality Records.** The Quality Plan shall include procedures to assure that all Quality related documents and evidences are properly accumulated, maintained, organized and protected; and all documents are properly identified, controlled, and stored in a well defined location.

(T) **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.

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

(c) **Quality Team Organization (Key Personnel).** The Core Systems Contractor shall identify the Project Quality Manager, Design Quality Manager, and the Construction Quality Manager as part of the key personnel. The other key member of the on-site quality team is the Environmental Compliance Manager and the Project Principal. The typical organization of the quality team as it relates to the operation/production team is clearly delineated on the Functional Organization Chart shown below:



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 Core Systems 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, the City’s quality oversight personnel will directly interface with the Project Quality

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Manager, while the City's Project Manager will deal with the Core Systems Contractor's Project Manager.

- (1) Core Systems 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 the City upon request.
 - (3) Core Systems Contractor Design Organization. The Core Systems Contractor shall appoint a suitably qualified and experienced Designers to undertake the design of the temporary and permanent components of the Project.
 - (4) Site Office. The Core Systems Contractor shall establish an office in the Project vicinity and maintain all necessary representation throughout the duration of the Contract to ensure the Designer can meet all its obligations required by the Contract.
 - (5) Responsible Engineers. The Core Systems 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.
 - (6) 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 Core Systems Contractor.
- (1) The Core Systems 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) City'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 the City'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

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- (1) 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 the City no later than thirty (30) days prior to the Work to which the revision applies. The City will have fifteen (15) days to Review and Comment. These revisions and updates may occur in one or more iterations. Core Systems Contractor shall not initiate any Design Work that is impacted by such a change unless and until the City has Reviewed and Commented on the change.
 - (4) The Core Systems Contractor shall not begin construction Work until all City comments on the Final Design are resolved to the satisfaction of the City.
 - (5) The Core Systems 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.
 - (6) The Core Systems Contractor shall be responsible for obtaining appropriate permits and document how permit requirements are met in accordance with the Environmental Compliance Plan.
- (e) Design Development, Coordination, and Interface
- (1) Design Workshop: Within forty-five (45) days of the NTP, Core Systems Contractor shall arrange a design workshop to familiarize the Designers' personnel and the City (and Stakeholders invited by the City) review personnel with the design concepts, issues, status, and review procedures. The City and the Design Builder will jointly develop the Agenda of the workshop and how it will be organized (i.e., By Design Unit and Engineering Discipline). Consensus will be determined during the Design Workshop on the use of Interim Design Reviews for Project elements that pose complex or entail additional conflict resolution effort. The Workshop will also discuss the extent of City review of Working Plans. The Agenda will include developing agreements regarding time allowed for design reviews. The intent of the Workshop is also to make the subsequent Design Reviews more effective and efficient for all parties.
 - (2) Design Review Plan. The Design Review Plan shall be part of the Quality Plan, which shall be submitted to the City 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 Design Quality Manager. The Design Review Plan shall be specific to each stage of design development. The Core Systems 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 Core Systems 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 Core Systems Contractor shall plan submittals to avoid an overload of

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City reviewers at any particular time and incorporate submittal dates with the Baseline Schedule. The City's Review and approval 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 Core Systems Contractors require CADD Files, the Core Systems Contractor shall provide appropriate native files at appropriate time as determined in the Interface Management meetings. The City will have thirty (30) days, or such other time that the parties agree upon, to Review and Comment.

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

(4) Design Review. Design reviews and meetings shall be conducted by the Design Manager. The Design Quality Manager, Design Manager, Responsible Engineer, and any Design Professionals having significant input into the design or review shall be present. The City 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 the City to discuss the Definitive and Final Design submittals. During the review meetings, the City may also invite other stakeholders to attend. The City's participation in design reviews shall not relieve the Core Systems Contractor of its responsibility for the satisfactory completion of the Work in accordance with the Contract requirements.

The Core Systems 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 Core Systems Contractor shall prepare and distribute minutes of the review meetings as part of the design review record. The Design Review documents shall be submitted to City for its review and written approval, and all designs relating to the Core System shall be subject to City's written approval unless otherwise expressly provided in the Contract Documents. At the time of submission, the Core Systems Contractor shall inform City, in writing, of any deviation in the Design Review documents or samples from the requirements of the Contract Documents. The Core System Contractor shall prepare a Design Review Record to document the review questions, discussions, and resolutions. Copies of each Design Review Record shall be forwarded to City for its review and written approval. Any exceptions taken by City to the information contained in the Design Review Record shall be sent to Core System Contractor after receipt. All Design Review Records approved by City shall be deemed as the official record of the Design Review process for the affected component(s) or Core System(s). Any issues that cannot be resolved shall be identified as "critical issues" and shall be carried as open items on the Core System Contractor's Monthly Progress Report along with a date for their ultimate resolution. Design Reviews shall be conducted for the following as planned:

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

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- (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 the City, the Core Systems Contractor shall re-check and re-certify the design as an additional Definitive Design review. Substantial changes to Plans and Specifications initiated by the Core Systems Contractor and already checked by the Design Professional and certified by the Design Quality Manager shall be subjected to the design review process as entirely new design. The Core Systems 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 the City for the reasons other than non-compliance.

The Core Systems 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 Core Systems Contractor should perform Interim Design reviews to remedy conflicts, account for exceptions and incorporate betterments. The Core Systems Contractor shall notify the City if Interim Design reviews are necessary, and shall schedule the design reviews following an independent review by the Design Quality Manager. Workshops, meetings, and "over-the-shoulder" reviews are means to facilitate interim reviews by the city.

The Core Systems 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 Core Systems Contractor shall specifically highlight, check and bring to the attention of the City 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 Core Systems

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Contractor shall specifically highlight, check, and bring to the attention of the City any information differing from or supplemental to that presented previously. Prior to scheduling Final Design Review with the City, The Design Quality Manager's independent review shall have been completed. The Core Systems Contractor shall be responsible for demonstrating that any proposed specification(s) meets or exceeds the Contract and Permits requirements as determined by the City in its sole discretion, and are suitable and appropriate to control the Work.

(5) Work Plans Reviews are the responsibility of the Core Systems Contractor to assure conformance with the Final Design plans and specifications and in accordance with the Contract requirements. The Core Systems Contractor shall verify pertinent dimensions in the field (Field Check) prior to conducting a Work Plan review. The Core Systems 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 Core Systems Contractor and made available to the City, if requested. Discrepancies and changes to the Work Plans shall require reviews, approval and certifications by the Responsible Engineer, Design Manager, and Design Quality Manager. The Design Quality Manager shall notify the City 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 Core Systems 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 Core Systems Contractor has completed their review, the Quality Record Documents shall be submitted to the City for review and approval.

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

(8) Independent Checks. Peer reviews and independent checks of the System components and processes shall be a part of the Quality Plan. The Core Systems Contractor shall carryout independent checks by senior engineers not involved in the production of the design being reviewed that have equal or greater qualifications and experience and experience as a Responsible Engineer for the design being checked.

(A) The Core Systems Contractor shall provide to the City a plan/process and written procedures for this Independent Design Check and shall include, as a minimum, the following components:

- (i) Systems reliability
- (ii) Integration with HHCTCP fixed facilities; and
- (iii) Testing and demonstration requirements for all parties involved with the turnover from fixed facilities and bringing the System to each operating segment substantial completion and passenger service date.

(B) Independent design checks are comprised of design assessment and analytical checks as follows:

- (i) Design Assessment. Review of general compliance with the requirements of the Contract taking in consideration the following areas:

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- Project Design Criteria;
- Applicable Codes and Standards;
- Method of Analysis;
- Computer Software and its verification and Validation
- Interface requirements
- Maintenance requirements;
- Materials and material properties;
- Durability requirements;
- Constructability;
- Context Sensitivity; and
- Environmental Compliance.

(ii) Analytical Check. Perform separate calculations (without reference to original Designers' calculations), to establish the adequacy and integrity of critical system components.

(f) Construction Quality Management The Project construction and its Construction Quality Management shall be the responsibility of the Core Systems Contractor.

(1) The Core Systems 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) The City'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.

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(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 the City no later than thirty (30) days prior to the Work to which the revision applies. The City will have fifteen (15) days to review and comment. These revisions and updates may occur in one or more iterations. Core Systems Contractor shall not initiate any Construction Work that is impacted by such a change unless and until the City has provided Review and Comment on the change.

(g) Construction Coordination and Interface. The Core Systems Contractor designated Construction 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 Core Systems Contractor's and the City'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 Core Systems Contractor Inspectors, or their approved Inspection subcontractors. Inspection shall include the observations, measurements, specified in the Core Systems Contractor Quality Plan, Implementing Procedures and the Contract Documents.

(2) Testing. The Core Systems 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 the City 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 the City in writing. The QA Program 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.

(3) Field-Test Materials. The Core Systems Contractor shall be responsible for providing QC sampling and testing, furnishing materials of the quality specified, and furnishing quality level analysis during production when required by the Quality Plan and ITP and Contract specifications. Any deviation from sampling and testing methods and frequencies specified in the Quality Plan and ITP or the Contract specifications shall require the City's Review and Comment prior to the start of the Work.

(4) Non-Field Tested Materials. The Core Systems Contractor shall provide materials meeting all Contract requirements, along with all conformance and quality compliance documents. Quality compliance documents shall be in the form of Test Results Certifications, quality compliance Certificates, and equipment list and drawings. Non-field tested materials shall be accepted for use according to the Quality Plan and ITP and Contract specifications.

(5) 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.

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(6) City shall have the right to audit and inspect the Core Systems Contractor's quality assurance testing to confirm that such testing are being performed in compliance with the approved QA Program. Such audits may be conducted randomly and may include an audit of the Core Systems Contractor's inspection and test records. Additionally, City shall have the right to witness and attend all quality assurance tests and inspections of the System, and shall have access to all test data, reports, test procedures, test specifications, and test results. City shall have the right to conduct independent tests or inspections of the Core Systems Contractor's work at City's sole cost and expense; provided, however, that in the event such tests or inspections show that any portion of the work fails to meet the standards required under the Contract Documents, then the Core Systems Contractor shall immediately correct such portion of the work at its sole cost and expense and shall reimburse City the costs and expenses for conducting such tests and inspections

(7) Quality Records. The Core Systems 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.

(8) The Core Systems Contractor shall develop a Quality Assurance program for all software required to operate the System (the "Software QA Program"). Such program shall be developed in accordance with the requirements of IEEE 730 – 2002 Standard for Software Quality Assurance Plans. The Core Systems Contractor shall submit to City a draft Software QA Program as part of the QA Plan to be submitted by the Core Systems Contractor. The draft Software QA Program shall be subject to the written approval of City in accordance with Section 6.1 above. After City approves the Software QA Program, the Core Systems Contractor shall be responsible for carrying out procedures and requirements set forth therein. The Software QA Program shall require the Core Systems Contractor to develop and prepare all software design documentation as required by Section 4.4.2 of IEEE 730. Such software documentation shall include, without limitation, software requirements descriptions, software design descriptions, a software verification and validation plan, verification results reports, user documentation, a software configuration management plan and other documents as applicable to the development of the Core Systems Contractor's software.

SP-4.8 CHARACTER OF WORKERS, METHODS AND EQUIPMENT

Chapter 4, Section 4.8, of the GCDB is amended by adding the following paragraphs (b) through (h):

(b) The Core Systems Contractor shall replace any Key Personnel who leave the Project due to circumstances beyond the control of the Core Systems 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 the City.

(c) Key Personnel. Core Systems Contractor shall staff the Project with appropriate personnel to perform all Work, including the design, environmental and permitting services, community outreach, and construction supervision, and inspection to competently and efficiently provide the design-build services in accordance with the Contract Documents, devoting such attention thereto and applying such skills and expertise as may be necessary. Core Systems Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of Construction and shall perform the Work in a workmanlike manner. Core Systems Contractor shall be responsible to see that the completed Construction complies accurately with the Contract Documents and shall keep City advised as to the quality and progress of the Work.

(d) The Core Systems Contractor shall provide personnel that meet the requirements

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specified in this section. Core Systems Contractor commits that the personnel resources listed in the Agreement shall be available to the extent within Core Systems Contractor's control, and Core Systems Contractor commits to undertake all reasonable efforts to provide the Key Personnel identified in the Offeror's Proposal, on a full-time basis for all periods necessary to fulfill Contract obligations. Refer to MP-2, O&M Management and Staffing, for requirements associated with the operations and maintenance portion of the Work.

(e) The Core Systems Contractor's Project Manager, designated in the Priority-Listed Offeror's Proposal shall serve as the Core Systems Contractor's representative and single point of contact with the City. The Core Systems Contractor's Project Quality Manager shall interface and coordinate with the City'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.

The Core Systems 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, the Core Systems Contractor shall submit to the City 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. The Core Systems Contractor shall provide information sufficient for the City 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, the Core Systems Contractor shall inform the City in writing in advance of the person substituting for either of these two key persons.

(1) Substitution of Key Personnel. Core Systems Contractor shall not substitute Key Personnel. Notwithstanding the procedures set out herein, City 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, Core Systems Contractor must submit to City a request at least thirty (30) Calendar Days in advance of any desired replacement. "The City's approval shall not be unreasonably withheld. For conditions that may arise unexpectedly and require immediate personnel replacement the City will work to expedite the review and acceptance process to minimize impacts the Core Systems Contractor's operations and maintenance responsibilities."

(3) Required Information. Core Systems 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 City elects to consider the request, City, in its sole discretion, will determine whether the proposed substitute is appropriately qualified or otherwise acceptable, and will notify Core Systems Contractor of its determination whether or not to allow the substitution within fourteen (14) Calendar Days of the original request. Failure of City to respond within the response period shall indicate City's election to not consider the request.

(4) City Written Consent Required. City's written consent is required to consider or

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authorize the replacement of any Key Personnel, which decision shall be final. Any authorization will be in writing, and Core Systems Contractor shall not change Key Personnel or Major Subcontractors except upon receipt of such written consent from City. City may require additional explanation from Core Systems Contractor as to the reason for the replacement.

(h) Key Personnel Qualifications. In the qualifications section below, the word “shall” indicates a required minimum requirement. The word “should” indicates the City’s preferred qualifications, but such qualifications is not a mandatory requirement.

(1) Project Principal. Shall be a Senior Manager that has overseen projects of similar size and complexities and carries responsible charge authority within the Core Systems Contractor’s organization. The Project Manager and Project Quality Manager report to the Project Principal and as such shall balance all project objectives to deliver the Project to the City’s complete satisfaction.

(2) Project Manager. Shall be the Core Systems 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 systems and on projects with similar size, complexity, and challenges as this Project. Should have Design-Build experience and extensive project management experience.

(3) Project Quality Manager. Shall be a Hawai‘i-registered professional engineer and have demonstrated experience in rail transit design and/or construction on transit systems and vehicles with at least five (5) years of experience in Quality Management, including Quality Assurance/Quality Control activities, preparation and implementation of Quality Plans and procedures for design and/or construction. Should have Design-Build experience and experience with City’s Quality Assurance system.

(4) Systems 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 systems with similar scope and complexity as this Project. Should have experience with the design vehicles, train control, communications, and traction electrification of similar size and type as those involved in this Project and have Design-Build experience.

(5) Construction Manager. Shall have demonstrated experience in construction and management of construction on rail transit systems and on projects with similar size and complexity, and challenges as this Project. Should have Design-Build experience and extensive project management experience.

(6) Design Quality Manager. Shall be a Hawai‘i-registered professional engineer with a minimum of five (5) years of experience in Quality Assurance/Quality Control activities on rail transit systems and design projects with similar scope and complexity as this Project.

(7) Construction Quality Manager. Shall have a minimum of five (5) years of experience in Quality Assurance/Quality Control activities (including the management of construction QC programs) on rail transit systems installation and testing that have incorporated the type of construction proposed for the Project.

(8) Construction Safety and Security Manager. Shall be a Work Zone Safety Supervisor, as certified by the American Traffic Safety Service Association or any certification program, approved by the City. Shall have completed the 30-hour OSHA course on Construction Safety and Health. Shall have a minimum of five (5) years experience implementing OSHA programs for construction projects of similar size and scope as roadway (highway) safety technician or supervisor. Certification as any or all of the following is desired but not required: Certified Safety Professional (CSP), Certified Industrial Hygienist (CIH), and Construction

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Safety and/or Health Technician (CHST).

(9) Safety / Security Certification Manager. Shall manage and oversee the Core Systems Contractor's compliance with the Project Safety and Security Certification Program. Shall ensure the completion of the Core Systems Contractor's activities for achieving safety and security certification for all identified Certified 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.

(10) Passenger Vehicle Lead Engineer. Shall have demonstrated experience in managing the design, fabrication, commissioning and maintenance of fully automated light metro transit vehicles with similar complexity as on this Contract. Should have experience with managing the interfaces between vehicles and train control, communications and traction electrification systems of similar size and type as those involved on this Contract, as well as the interfaces with trackwork and maintenance facilities.

(11) Train Control Lead Engineer. Shall have demonstrated experience in managing the design, fabrication, commissioning and maintenance of automatic train control systems. Experience shall include a fully-automated rail transit or automated people mover systems. Should have experience with managing the interfaces between wayside, vehicular and control center train control equipment and related systems such as rail vehicles, traction electrification, trackwork and communications. Should be conversant with infrastructure-type work typically performed by other contractors, including civil works on trackwork, guideway, station and raceway systems of similar type and complexity as involved on this Contract.

(12) Communications Lead Engineer. Shall have a minimum of five (5) years of progressive responsibility in project management with demonstrated experience in managing the design, fabrication, commissioning and maintenance of complex communication systems. Should have experience with fiber optics, internet protocol networking and configuration management, wireless and wireline systems, telephony, closed-circuit television systems, public address / variable message systems, access control systems and supervisory control and data acquisition systems. Should have experience in large regional or statewide communication system and their interfaces preferably in a mass transit environment.

(13) Traction Electrification Lead Engineer. Shall have demonstrated experience in light-rail or heavy-rail mass transit systems. Should have experience with managing the interfaces between traction power substations and related systems such as vehicles, train control, and communications; and traction power system infrastructure-type work performed by other contractors, such as civil works on traction power sites and raceway systems of similar type and complexity as those involved on this Contract.

(14) Fare Vending Lead Engineer. Shall have demonstrated experience in managing the design, fabrication, commissioning and maintenance of fare vending equipment with similar complexity as on this Contract. Should have experience with managing any interface between communications and station facilities systems of similar size and type, specifically integrating multi-modal transportation systems' fare vending systems.

(15) Interface Manager. Shall have at least ten (10) years of experience successfully coordinating design, construction, testing and operational interfaces with subcontractors, owners, other contractors, utilities, government agencies, and other stakeholders. Should possess the communication and team-building skills to effectively interface with all parties internal to and external to the Core Systems Contract. Testing and turnover to operations of all systems and subsystems within the Core Systems Contract and part of the HHCTCP being constructed by others is a critical part of the System Integration Manager's role.

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(16) Project Controls Manager. Shall have demonstrated experience in project controls for projects with similar scope and complexity as those involved on this Contract.

SP-4.9 COORDINATION

Chapter 4, Section 4.9, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

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

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

The Core Systems Contractor is responsible for weekly coordination meetings with other agencies, City departments, and utilities.

(c) Coordination with Others. In its performance of services authorized and required under the contract, the Core Systems Contractor shall assist the City in coordination activities with governmental, public and private agencies as required by the City. Such coordination assistance shall include attending meetings in connection with the work pursuant to the contract with governmental, public, or private agencies or others interested in the Project as may be authorized and required by the City. The Core Systems Contractor shall prepare and submit to the City meeting minutes of all such meetings attended within ten (10) working days after the meeting. The Core Systems Contractor shall promptly bring to the attention of the City by written notice any significant requests of decision arrived at during coordination with such agencies.

(d) The Core Systems Contractor is advised that other HHCTCP contractors will be performing Work on the same Site as this Contract. The Core Systems Contractor shall coordinate with other HHCTCP contractors performing work on or within the Site. Refer to SP-4.1, Table of Schedule Milestones, for a list of HHCTCP Contracts requiring coordination, collaboration and interface management by the Core Systems Contractor. The table below provides the anticipated schedule of final design activities for each fixed facility contract that Core Systems Contractor shall interface with and review for compatibility.

RTD CONTR ID	TABLE 4.4: FIXED FACILITY CONTRACT	ANTICIPATED START OF FINAL DESIGN	ANTICIPATED FINISH OF FINAL DESIGN
1200DB	WOFH Guideway DB (includes Util)	March 2011	March 2012
DBB240	Farrington Station Group FD (3)	March 2011	April 2012
DBB140	W. Oahu Station Group FD (3)	May 2011	June 2012
DBB245	Pearl Highlands Station FD	January 2012	May 2013
DBB200	Maintenance & Storage Facility DB	March 2011	March 2012
1300DB	KH Guideway DB (includes Utilities)	March 2011	September 2012
DBB340	KH Station Group FD (2)	January 2012	May 2013
1400DBB	Airport Guideway DBB(includes Util)	January 2012	September 2013
DBB440	Airport Station Group FD (4)	July 2012	July 2014

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RTD CONTR ID	TABLE 4.4: FIXED FACILITY CONTRACT	ANTICIPATED START OF FINAL DESIGN	ANTICIPATED FINISH OF FINAL DESIGN
DBB530	City Center Utilities & Guideway FD (includes Ala Moana Station structure)	May 2013	December 2014
DBB540	Dillingham Station Group FD (2)	November 2013	February 2015
DBB542	City Center Station Group FD (3)	January 2014	April 2015
DBB545	Kaka'ako Station Group FD (3)	March 2014	June 2015
MI930	Project-wide Elevators / Escalators	January 2011	June 2011

(e) Other Contractor Advisory (Non-HHCTCP). The Core Systems 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.

(f) Coordination with Adjacent Property Owners. The Core Systems Contractor shall protect private or public property on, or in the vicinity of, the Work site. The Core Systems 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. The Core Systems Contractor shall install protection, acceptable to the City, for property that is subject to damage by the construction process.

(1) The Core Systems 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) The Core Systems Contractor is responsible for obtaining any Temporary Construction Easements (TCE) necessary to complete the work.

(3) The Core Systems Contractor shall advise the City's Director of Public Information whenever property owners are notified and if the Core Systems Contractor obtains any TCEs. Additional coordination items shall include, but not be limited to: underground utility service connections, access or driveway reconstruction, utility disruption, water service, grounding work, demolition, landscape protection, landscape restoration, fencing, mail delivery, and refuse collection.

(4) 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 the Core Systems Contractor and provided to the City. If the Core Systems Contractor proposes to close a driveway or pedestrian access, it is the Core Systems Contractor's responsibility to make the necessary arrangements with the property owner and to inform the City'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 the Core Systems Contractor.

(5) Coordinate the Project schedule and work hours on a daily basis with the needs of local businesses and customers. This may include the Core Systems Contractor and The City'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.

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

(7) The City will provide and install signage and rider alert information at no cost to the Core Systems Contractor. Existing bus shelters, bus stop signage, and related items will remain the property of the City. The Core Systems Contractor may be responsible for removal and installation of these items as determined by the agreement with the City.

SP-4.10 WAGES AND HOURS

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

(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 the City. After execution of the Contract, it shall be the continuing obligation of the Core Systems 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 Core Systems Contractor is required to obtain executed letters of assent from Subcontractors that are tiered solely to perform work specified in Section 3.3 of the RTSAs.

SP-4.13 DISCOVERY OF HAZARDOUS MATERIALS

Chapter 4, Section 4.13, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

(a) Core Systems Contractor will not be financially responsible for any hazardous materials encountered at the Site which was not identified in the Contract Documents to be within the scope of the Work provided that the Core Systems Contractor complies with the method for management of undisclosed hazardous materials as set forth in Sections 4.13(b) and 4.14 below. Core Systems Contractor shall be responsible for Materials creating a hazardous materials condition by any Materials brought to the Site by the Core Systems Contractor, Subcontractors, suppliers, or anyone else for whom Core Systems Contractor is responsible.

(b) If Core Systems Contractor encounters hazardous materials, Core Systems 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 City (and therefore confirm such notice in writing). City shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.

(c) Core Systems Contractor shall not be required to resume construction in connection with such hazardous material or in any such affected area until after City has obtained any required permits related thereto and delivered to the Core Systems 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 City and Core Systems Contractor cannot agree as to entitlement to or the

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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 Core Systems Contractor, the process as set forth in Section 6.10 of the GCDB shall govern.

(d) If, after receipt of such special written notice, Core Systems Contractor does not agree to resume such construction under such special conditions, the City 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 City and Core Systems 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 Core Systems Contractor may make a Claim therefore as provided in SP-5.3. City may have such deleted portion of Work performed by City's own forces or by a third party as determined by the City.

(e) To the fullest extent permitted by law, Core Systems Contractor shall indemnify and hold harmless the City, its elected and appointed officials, agents, employees, volunteers, City's consultant 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 Core Systems Contractor or anyone for whom Core Systems Contractor is responsible.

(f) Safeguards, signs and notices. Core Systems 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 by adding the following paragraphs (g) through (i):

(g) The Core Systems Contractor shall submit 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 Core Systems Contractor shall develop and abide by the Environmental Compliance Plan (SP-17) for specific committed noise mitigation measures required by the FEIS and ROD.

(i) The Core Systems Contractor shall take special care to mitigate noise in the vicinity of the elementary, high school and community college facilities along the alignment.

SP-4.16 RUBBISH

Chapter 4, Section 4.16, of the GCDB is amended by adding the following paragraphs (b) and (c):

(b) Salvage of Materials. All materials such as signs, fencing, lava rock curb, traffic control lights, street lights, and guardrails belonging to public agencies shall be salvaged by the Core Systems Contractor in substantially similar condition and returned to the appropriate agency as directed by the City or disposed of by the Core Systems Contractor if directed by the City.

(c) All other salvage materials are assumed to be the property of the Core Systems Contractor.

SP-4.18 HISTORICAL AND ARCHAEOLOGICAL

Chapter 4, Section 4.18, of the GCDB, is amended by adding the following as paragraphs (b) through (e):

(b) The City shall provide an archaeological monitor who shall be present and be on-site inspecting excavation as stipulated by the State Department of Land and Natural Resources, Historic Preservation Division (SHPD).

(c) Core Systems Contractor shall be responsible for its equipment operators and laborers involved in excavation activities to receive training in identification and response to inadvertent archaeological discovery.

(d) In the event of discovery of burials, the Core Systems Contractor shall immediately stop work and contact the City, Honolulu Police Department and the SHPD.

(e) All work in the immediate vicinity of the site shall cease until the site is cleared by the SHPD. The SHPD will make a determination of appropriate treatment within the required timeframe.

SP-4.26 GUARANTEE

Chapter 4, Section 4.26(e), of the GCDB, is amended by being deleted in its entirety and replaced with the following:

(e) Guarantee period. Unless otherwise specifically stated in the RFP that a longer period is intended, the guarantee shall extend for a period of one year upon final Completion of the work by the City and shall include all labor, materials, equipment and parts. In this Contract, there will be multiple interim “Substantial Completion” events. Such will occur following Substantial Completion of an individual segment and commencement of operations on that segment. Guarantees will commence for components associated with that completed segment upon the Substantial Completion of that segment. Furthermore, this period shall be extended from the time of correction of any defect or failure, corrected under terms of this guarantee, for a like period of one year. The Core Systems Contractor is under contract to maintain the systems during the O & M period and thus these guarantees may only be applicable if the Core Systems Contractor were terminated prior to the expiration date of all guarantees.

Chapter 4, Section 4.26, of the GCDB, is amended by adding the following as subparagraph (j):

(j) The Core Systems Contractor shall assume Work Site Control of the HHCTCP fixed facilities at Substantial Completion of each facility in order to complete installation and perform systems test and demonstrations leading to passenger service. All existing guarantees and manufacturer warranties shall be carried over and managed by the Core Systems Contractor from the Substantial Completion date through the duration of the fixed facility guarantee. The Core Systems Contractor shall remain responsible for the operation and maintenance aspects of the System for the duration of the Contract. City will have maintenance responsibilities for the fixed facilities.

SP-4.28 PROJECT MANAGEMENT / CONSTRUCTION MANAGEMENT

Chapter 4 of the GCDB is amended by adding a new section SP-4.28 to include the following:

(a) The Core Systems Contractor shall provide project and construction management (PM/CM) services for the scope of Work defined in the Contract. Refer to MP-2 for requirements associated with the O&M portion of the Core Systems Contract. The PM/CM services associated with the Design-Build portion of Work shall include, but not be limited to, the following activities:

(1) Project Management Plan – The Core Systems Contractor shall develop and implement a Project Management Plan that reflects the scope of Work and the processes to be

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implemented to manage the delivery of the Project. The plan shall include such items as project organization chart, description of the project management tools and processes, communication protocols and processes, progress reporting requirements, and a project personnel contact listing. As a “living document” this plan may require updates periodically to reflect changes and improvements.

(2) **Weekly Coordination Meetings** – The Core Systems Contractor shall conduct and document weekly coordination meetings that will be held at the jobsite with the City 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 City participation. The Core Systems 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 Core Systems 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 those HHCTCP fixed facility contracts.

(3) **Monthly Progress Reports** – The Core Systems 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 the City, City’s Representative, the Core Systems Contractor, active Subcontractors, and all other such representatives concerned with current progress or involvement in planning, design, coordination, or future critical activities.

(4) **Risk Management Participation / Assistance** – The Core Systems Contractor shall support the City 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.

(5) **Coordination with Other Work** – The Core Systems 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 Section SP-4.9 of the Special Provisions).

(6) **Management of Labor, Material, and Equipment** – The Core Systems 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 Core Systems Contractor will actively engage all affected parties and facilitate resolution.

(7) **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, Core Systems Contractor will arrange a conference attended by Core Systems Contractor, city and others appropriate to review for acceptability of the Schedules submitted. Core Systems Contractor shall have an additional ten (10) days to make corrections

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and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Core Systems Contractor until the schedules are submitted to and accepted by the City.

(b) **Project Controls** – The Core Systems 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 fixed facility contracts associated with the HHCTCP. Prior to the start of Work, the Core Systems Contractor shall submit the Contract’s Baseline Progress Schedule for City approval. Whenever the Baseline Progress Schedule changes materially from the accepted version, the Core Systems 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 Core Systems 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 approval of the City. 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 the City until proper submittal is received by the City.

(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. The City 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 HHCTCP 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 stipulates the other HHCTCP 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 Core Systems Contractor to reflect the management plans and support the Core Systems 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.

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(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 Core Systems Contractor shall use Oracle Primavera P6 Schedule software to create, maintain and report on the contract schedule. Should the client and/or clients' consultant upgrade to a newer version of the Primavera schedule software, the Core Systems Contractor shall also upgrade its Primavera schedule software to the same unless the newer version remains compatible with the Core Systems Contractor's existing version. The Core Systems 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 HHCTCP contracts and any known third party interfaces affecting the performance of the schedule. The Primavera schedule reports shall include at 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-a-rounds shall be provided.

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

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

(B) Should the Core Systems Contractor experience a delay, in excess of sixty (60)-days, in a specific activity or group of activities, and should the Core Systems Contractor not be able to recover the delay, the Core Systems 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 earn value and financial performance. The Core Systems 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 are revised so is the Periodic Payment Schedule. All three schedules are required to be submitted to the City for review and approval 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 Core Systems 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

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corrected by the Core Systems 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 Core Systems Contractor shall provide and maintain a cash disbursement plan that charts actual expenditures (progress payments).

(B) Quarterly WBS Reports – provide cost information in a City-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 Core Systems 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 Core Systems Contractor shall establish appropriate communication links and discussions to maintain project schedules and clarity of information.

(d) Document Management. The Core Systems Contractor shall be responsible for maintaining the Project records system. Develop a listing of all required meetings and reports and provide to the City for Review and Comment. These records will be made available for the City to review and audit periodically throughout the Contract term. All Project records shall be turned over to the City 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 Core Systems Contractor.

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

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required for other contracts, typically during interface and design exchange, as may be necessary.

(f) **As-Built Documentation** - The configuration of all construction, hardware and software of the System shall be documented in detailed drawings, documents, notes and other descriptive material as specified herein. The System configuration, including applicable subsystems and equipment, shall be baselined and change-controlled in accordance with the procedures and process established in the Core System Contractor-prepared *System Configuration Management Plan*.

The *As-Built Record Documents* and the *As-Built Deliverables* shall be signed, and sealed by the Core System Contractor's registered design professional to certify that they show complete and exact as-built conditions, stating dimensions, sizes, kinds of materials and similar matters. The Core System Contractor shall be responsible for all damages arising directly or indirectly out of Core System Contractor's failure to maintain accurate *As-Built Record Documents* and other such information.

(1) **As-Built Record Documents.** As the Work progresses the Core System Contractor shall keep complete and accurate field and manufacturing plant records of all changes or deviations from the Technical Provisions, the Core System Contractor's subsystem and equipment procurement specifications, all design review documentation, the Core System Contractor's accepted construction and equipment assembly drawings, and similar documents indicating the Work as actually constructed, fabricated and installed. All such changes shall be neatly and correctly shown on blackline prints of the drawings affected, or in the Technical Provisions and other documents with appropriate supplemental notes. This set of As-Built Record Documents shall be kept at the Core System Contractor's offices, manufacturing plant and job site during fabrication/construction. The City shall be provided access to the As-Built Record Documents at all times. At the conclusion of the Work, the final As-Built Record Documents shall be consolidated, organized, cataloged and submitted to the City in accordance with the list of submittals.

(2) **Mark-up Procedure.** During progress of the Work, the Core System Contractor shall maintain a blackline set of As-Built Record Documents, with mark-up of actual Work that varies substantially from the Work as originally shown. The Contractor shall mark whatever document is most capable of showing the actual condition, fully and accurately. Where design documents are marked up, the Core System Contractor shall mark cross-references on Contract drawings at the corresponding locations. Marks shall be made with erasable colored pencil, using separate colors where feasible to distinguish between changes for different categories of Work at the same general location. Mark-up shall include important additional information that was either shown schematically or omitted from original drawings. Particular attention shall be given to information on Work concealed, that would be difficult to identify or measure and record at a later date. Alternate numbers, Change Order numbers and similar identification shall be noted.

(3) **As-Built Deliverables.** On completion of the Work, in accordance with the list of submittals, and as a condition of Final Acceptance of the Work, the Core System Contractor shall use the As-Built Record Documents prepared during the course of the Work to prepare the As-Built Deliverables, and shall deliver to the City:

- (A) Two complete hard-copy sets; and
- (B) One-complete electric media set.

The As-Built Deliverables shall not be marked up and shall be complete in every detail so as to correctly reflect as-built conditions. The As-Built Deliverables shall be segregated into three groups:

- (i) Nonproprietary,

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- (ii) Commercially available; and
- (iii) Proprietary.

(4) Certification of As-Built Deliverables. The As-Built Deliverables shall be arranged in accordance with the accepted Work Breakdown Structure and properly indexed. The Core System Contractor shall provide an index and cross-referenced listing of each As-Built Record Document and drawing in the as-built set.

The Core System Contractor shall certify the completeness and accuracy of the As-Built Record Documents and drawings by endorsing each document title sheet and drawing sheet with the following statement:

“To the best of _____’s (Insert name of Core System Contractor) belief and knowledge the as-built conditions shown in this document (or on this drawing) constitute an accurate and complete depiction of the manner in which this portion of the Work was actually installed during performance of Contract No. _____ (Insert Contract No.) _____ (Insert name of Core System Contractor).”

Signature of Core System Contractor’s representative

Date

For a period of four (4) years from the date of Final Acceptance, the Core System Contractor shall be fully responsible for the accuracy and completeness of the *As-Built Deliverables* and shall bear all costs of damages incurred by the City of any nature whatsoever due to inaccuracies or incompleteness of the *As-Built Deliverables*, except to the extent that conditions are disturbed by subsequent construction.

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

SPECIAL PROVISIONS

CHAPTER SP-5 - MODIFICATIONS, CHANGE ORDERS

SP-5.3 CHANGE ORDERS

Chapter 5, Section 5.3(b), of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

(b) Adjustments of price or time for performance. If any change order increases or decreases the Core Systems 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 adjustment." 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 Core Systems Contractor from proceeding with the Contract as changed, provided that the City, within fourteen (14) days after the changed Work commences, makes such provisional adjustments in time as the City deems reasonable. The right of the Core Systems 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, Core Systems Contractor shall submit detailed cost breakdowns in the format attached in the GCDB as Exhibit "F," for material, equipment and labor, including additional or reduction in time, for the City's Review and Comment, within three working days or within such further time as the City may allow, from the time the Core Systems Contractor is informed of the Work to be performed or of any changes. The substantiation shall include the Core Systems Contractor's and subcontractor's cost breakdown to a level of detail acceptable to the City.

Should the Core Systems Contractor delay or refuse to submit detailed cost breakdown for the changed Work, the City may pay the Core Systems Contractor in accordance with Section 6.9, "Price adjustments."

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

(f) Claims Process. This section outlines the exclusive procedure to be followed if the Core Systems 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 7.1.

(1) When the Core Systems Contractor believes it is entitled to be paid more than that provided for in the Contract, the Core Systems Contractor shall notify the City in writing as soon as the Core Systems Contractor becomes aware of the event. Claims must be made within thirty (30) days after giving written notice to the City. The Core Systems 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 the City;

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- (C) Any Contract provision(s) that support the claim; and
- (D) The date upon which the condition occurred or was observed.

(2) When an event occurs that the Core Systems Contractor believes entitles it to more time to complete the Work than Contract Time permits, the Core Systems Contractor shall notify the City in writing as soon as the Core Systems Contractor becomes aware of the event. Claims must be made within thirty (30) days after giving written notice to the City. The Core Systems 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 the City;
- (C) Any Contract provision(s) that support the claim; and
- (D) The date upon which the condition occurred or was observed.

(3) The City may request additional documentation from the Core Systems 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 Core Systems Contractor's Claim to which the additional documentation relates.

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

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

SP-5.4 CLAIMS BASED ON ORAL DIRECTIVES

Chapter 5, Section 5.4, of the GCDB is amended by adding the following as paragraph (c):

(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 Core Systems Contractor's responsibility. A copy of the Core Systems Contractor's notice to Surety shall be delivered simultaneously to the City. 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 deleting the section in its entirety.

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

Chapter 5, Section 5.6(d), of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

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(d) Force majeure events:

(1) Time Extensions. The City 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 Core Systems Contractor to demonstrate to the City 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 Core Systems Contractor, not due to an act or omission of the Core Systems Contractor, any Subcontractors, their employees, agents and officers or any other Person for whom the Core Systems 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 Core Systems Contractor. [HAR § 3-125-18]

(2) Additional Compensation. The City will issue Change Orders to compensate the Core Systems 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 City-caused delay. The term “force majeure” is limited to the following:

(A) Any floods (fifty (50)-year or greater) within one 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 fifty (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 the City;

(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 Core Systems Contractor or any Subcontractor, and could not have been avoided or

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prevented by due diligence and use of reasonable efforts by the Core Systems 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 railroad, 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 Core Systems 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 Core Systems 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) Variations in soil moisture content from that represented in reports, borings, or tests conducted by the City and included in the Contract Documents;

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

(L) All other matters not caused by the City or beyond the control of the City.

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

(5) Notwithstanding other language herein, a force majeure event at a remote

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production facility that affects the critical path delivery of rolling stock may be cause for a claim provided the event would have been considered a force majeure event had it occurred at the project site.

Chapter 5, Section 5.6 (f)(4), of the GCDB is amended by adding the following as subparagraphs (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 Core Systems 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 Core Systems 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 Core Systems Contractor use equipment designated by the City for the Project ("sole source" equipment).

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

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

(2) No additional compensation will be paid to Core Systems 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 Core Systems 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 Core Systems 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 may be paid to the Core Systems Contractor if unreasonable delays caused by City 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 Core Systems Contractor is entitled to additional compensation as stated above, the Core Systems 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 a total of ten percent (10%) added to these amounts for both overhead and profit. Work performed by a first tier Subcontractor shall include no more than a ten percent (10%) mark-up for both overhead and profit, with an additional five percent (5%) mark up for the Core Systems Contractor for both overhead and profit. If the Work is performed by a Subcontractor at the second tier or lower, that Subcontractor is entitled to a total of ten percent (10%) for both overhead and profit and the Core Systems Contractor and any Core Systems Contractors above that tier are entitled to a total of three percent (3%) each 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 deleting the section in its entirety and substituting in lieu thereof 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 per cent 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 per cent or below eighty-five per cent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the City 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 the City the findings justify. Any adjustment in the Contract Price shall be in accordance with section 6.9. [HAR § 3-125-10]

SP-5.8 VALUE ENGINEERING INCENTIVE

Chapter 5, Section 5.8, of the GCDB is amended by deleting the section in its entirety and replacing with the following:

The Contractor may develop and submit value engineering change proposals for drawings, designs, specifications, or other requirements of the Contract in accordance with HAR § 3-132-1 et seq.. The cost reduction proposals submitted by the contractor: (1) must require, a change order thereto; and (2) must result in savings to the City by providing less costly items than those specified in the Contract without impairing any of its essential functions and characteristics such as service life, reliability, substitutability, economy of operation, ease of maintenance, and necessary standardized features; and furthermore, accepted cost reduction proposals shall result in an equitable adjustment of the contract price so that the contractor will share a portion of the realized cost reduction. [HRS § 103D-411.]

SP-5.9 ESCROWED PROPOSAL DOCUMENTS

Chapter 5, of the GCDB is amended by adding a new section SP-5.9 to include the following:

(a) Upon Award of the Contract, designated representatives of the City and Core Systems Contractor shall jointly retrieve the Escrowed Proposal Documents from the designated escrow agent, and shall deliver to the City one copy of all documentary information used in preparation of the Proposal Price, which shall be held in a locked fireproof cabinet supplied by the Core Systems Contractor and located in the City's offices, with the key held only by the Core Systems Contractor. Notwithstanding the foregoing, at the Core Systems Contractor's option and at the Core Systems Contractor's sole expense, the Escrowed Proposal Documents may remain with another depository reasonably acceptable to the City 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:

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- (1) One hundred eighty 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 the City and accepted by the Core Systems Contractor.

(b) Availability for Review. The Escrowed Proposal Documents shall be available during business hours for joint review by the Core Systems Contractor and the City, 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. The City 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. Subject to the written approval of the Core Systems Contractor, the City shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters, provided that the City has executed and delivered to the Core Systems 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 the City'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 Core Systems 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 the City'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 Core Systems Contractor, subject to the City's right to review the Escrowed Proposal Documents as provided herein. The City acknowledges that the Core Systems Contractor may consider that the Escrowed Proposal Documents constitute trade secrets or proprietary information. This acknowledgment is based upon the City's understanding that the information contained in the Escrowed Proposal Documents is not known outside the Core Systems Contractor's business; is known only to a limited extent and by a limited number of Employees of the Core Systems Contractor; is safeguarded while in the Core Systems Contractor's possession; and may be valuable to the Core Systems Contractor's construction strategies, assumptions, and intended means, methods, and techniques of construction. The City further acknowledges that the Core Systems 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. The City acknowledges that the Escrowed Proposal Documents and the information contained therein are being provided to the City 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 Core Systems Contractor's request, confidentiality agreements will be executed and delivered to the Core Systems Contractor by the City's employees or agents who review or have access to the Escrowed Proposal Documents.

(d) Representation. The Core Systems 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 Core Systems 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

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estimate of all costs. Crews, Equipment, quantities, and rates of production shall be detailed. Estimates of costs shall be further divided into the Core Systems 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 Core Systems Contractor's usual format. The Core Systems 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 Core Systems Contractor to arrive at the Proposal Price 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 Core Systems Contractor in preparing its Proposal. It is not intended that the Core Systems Contractor perform any significant extraordinary work in the preparation of these documents prior to the Proposal Due Date. However, the Core Systems 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 Core Systems Contractor and that they meet the requirements of Section (e) above and are adequate to enable a complete understanding and interpretation of how the Core Systems Contractor arrived at its Proposal Price. The Core Systems 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 Core Systems Contractor and that they meet the requirements of Section (e) above and will be adequate to enable a complete understanding and interpretation of how the Core Systems Contractor arrived at its Change Order price.

(g) Review by the City. The City may at any time conduct a review of the Escrowed Proposal Documents to determine whether they are complete. In the event the City determines that any data is missing, the Core Systems Contractor shall provide such data within three business 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 Core Systems Contractor shall have no right to add documents to the Escrowed Proposal Documents except upon the City's request. At the City'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 Core Systems Contractor shall require each Subcontractor and /or supplier to submit to the Core Systems 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 Core Systems Contractor and its successors and assigns (including the City) 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

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

Chapter 6, Sections 6.1 through 6.3, of the GCDB is amended by deleting these sections in its entirety and substituting in lieu thereof the following:

SP-6.1 LUMP SUM PRICING CONCEPT

(a) The Core Systems Contractor is required to break their Price down into a City-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 serves as the basis for price evaluation and selection along with the Quality Proposal and typically defines a summary level of Price items.

(b) Upon selection and prior to first payment, the Core Systems 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 Core Systems Contractor shall provide a Schedule of Milestones that is itemized by Pay Items that corresponds to the Schedule of Prices for comparative analysis purposes. The Core Systems Contractor is paid the agreed upon amount upon satisfactory completion of the Pay Item.

(c) Authorized changes to the firm price Contract are entered as separate line items on the SM and measured as mutually determined between the Core Systems Contractor and the City:

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

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

(A) Non-Construction Requirements:

- (i) Mobilization;
- (ii) Project Management / Construction Management (PM/CM);
- (iii) Quality Management;
- (iv) Maintenance of Traffic;
- (v) Safety & Security;
- (vi) Environmental Compliance; and
- (vii) Public Information / Coordination.

(B) Engineering & Design Coordination– The Core Systems Contractor has a key role in interface coordination and management with fixed facilities contracts where System compatibility is required. This Price Item should contain the price associated with project-wide coordination and integration;

(C) Maintenance of Traffic – The Core Systems Contractor shall itemize this Section into Construction Milestones relating to traffic control associated with the

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installation activities;

(D) Environmental Compliance – The Core Systems Contractor shall itemize this Section into activities associated with environmental and permitting conditions for the DB portion of Work.

(E) Public Information / Coordination – The Core Systems Contractor shall itemize this Section into Milestones relating to Public Information and Coordination activities;

(F) Balance of the Price Items relate to the Core Systems' subsystems (Passenger Vehicles, Fare Vending, Communications, Traction Electrification, Train Control, Operations Control Center and Other systems and special equipment) are broken down into:

- (i) Sub-System Design
- (ii) Sub-System Procurement
- (iii) Sub-System Installation
- (iv) Sub-System Testing

(G) Pre-Operational System Testing (Startup) includes a pay item for startup procedures, component tests and demonstration tests that lead to Passenger Service.

(3) Pay item measurement and payment shall be based on lump sum values assigned to all SM pay items except for management and administration "level-of-effort" activities which are allowed to be by monthly allocation that total to the pay item value, 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 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 (cumulative) of the mobilization amount will be paid; and
- (iii) When twenty percent (20%) of the total contract price is earned, one hundred percent (cumulative) 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) Maintenance of traffic (MOT) shall not exceed a fixed total of two and a

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half percent (2.5%) of construction value, spread out over equal monthly installments.

(E) 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.

(F) Environmental compliance shall not exceed a fixed total of three percent (3%) of construction value, spread out over equal monthly installments.

(G) Public information support and coordination shall not exceed a fixed total of one percent (1%) of construction value, spread out over equal monthly installments.

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

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

(e) City Processing Progress Payment Request. The Core Systems Contractor shall prepare and submit the SM for City review. Upon City approval, 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 Section SP-6.28.

SP-6.2 CONTRACT PERIODIC PAYMENT SCHEDULE

(a) The Core Systems 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 Schedule of Milestones 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) Core Systems Contractor shall develop and submit the PPS-C to the City within forty-five (45) Working Days of "applicable" Notice to Proceed (NTP) for review and written acknowledgement. The PPS-C, upon written approval of the City, will be incorporated into the Contract.

(c) Revisions to the PPS-C shall be allowed only for authorized Change Orders. The Core Systems Contractor shall submit a revised PPS-C should there be significant schedule changes and/or Contract Price modifications to the City 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 ALLOWANCE ITEMS

(a) Payment for allowance items, if incorporated into the Work, shall be included in the Schedule of Milestones and the PPS-C as separate Pay Items. Unless otherwise specified in the RFP, the Core Systems Contractor shall be reimbursed from the allowance items as follows:

(1) For utility-owner allowance, no markup of any kind will be allowed; and

(2) For additional off-duty police officers, the reimbursement shall also include the administrative fees charged by the Honolulu Police Department, plus twenty percent inclusive of any administrative costs, overhead / profit, bond fee, and applicable taxes.

SP-6.4 DELETED

Chapter 6, Section 6.4, of the GCDB is amended by deleting the section in its entirety.

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 Core Systems 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 Core Systems Contractor shall pay all retainage owed to the subcontractor within ten (10) days after payment to the Core Systems Contractor

SP-6.8 CONTRACT PAYMENTS

Chapter 6, Section 6.8, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

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

(1) Scope of Payment. Core Systems 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 the City, or the receipt thereof by the Core Systems 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 the City and in such case must be replaced by the Core Systems Contractor without delay.

(b) Payment will be based on the Schedule of Milestones and the City-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 Core Systems Contractor's Non-Compliance. Payments are subject to compliance with any lawful or proper direction to the Core Systems Contractor by the City or its designee concerning the Work or Material. See also Section SP-6.1(B).

(c) The City'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

Chapter 6, Section 6.9, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

(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

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Provisions. Each Change Order shall be reflected on the Schedule of Milestones 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 Core Systems Contractor shall revise the PPS-C accordingly and any other table or schedule 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; and

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

(c) In the absence of agreement between the parties, where the Contractor and the Officer-in-Charge cannot agree to the price adjustment of any change in work:

(1) For change orders with value not exceeding \$50,000 by documented actual costs of the work ,allowing for twenty per cent (20%) of the actual costs for overhead and profit on work done directly by the Contractor and ten per cent (10%) on any subcontractor's billing to the Contractor for the Contractor's overhead and profit ("Force Account"); or

(2) For change orders exceeding \$50,000 by a unilateral determination by the Officer-in-Charge of the costs attributable to the events or situations under clauses with adjustment of profit or fee, all as computed by the Officer-in-Charge in accordance with applicable sections Chapters 3-123 and 3-126 of the HAR ("Unilateral Determination"). [HRS § 103D-501(b)(5)(A)]

(d) The Core Systems Contractor shall be required to submit cost or pricing data if any adjustment in Contract Price is subject to the provision of HRS § 103D-312, or the City considers that such price is not reasonable. The submission of any cost or pricing data shall be made subject to the provisions of HAR Chapter 3-122, Subchapter 15. 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.

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 Core Systems Contractor and the City cannot agree to the price adjustment of any change in Work, the City may, in accordance with section 6.9, "Price Adjustments," 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 the City 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

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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. Not more than three line item percentages for fee and overhead, not to exceed twenty percent (20%) will be allowed regardless of the number of tier Subcontractors. [HAR § 3-125-13]

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 Core Systems 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 adding a new section SP-6.15 to include the following:

SP-6.15 ELIMINATED ITEMS

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

(b) When the Core Systems 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 Core Systems Contractor resulting directly from such elimination.

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

Chapter 6, of the GCDB is amended by adding a new section SP-6.16 to include the following:

SP-6.16 ACCEPTANCE AND SUBSTANTIAL COMPLETION

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

(1) Within fourteen (14) Calendar Days of receipt of the Core Systems Contractor's written application for a certificate of Substantial Completion, the City, in the company of the Core Systems Contractor, will inspect the Project covered by the notice. During the inspection, the Work will be examined and QC documentation will be reviewed. The City 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 Core Systems 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 the City in writing.

(3) Within seven (7) Calendar Days of the Core Systems Contractor's request for re-

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inspections, the City 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 Core Systems Contractor of the projected completion date of all of the requirements for the Project, the City 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 Core Systems Contractor must complete any specified training for City personnel.

Prepare and submit As-Built Plans of the following types in electronic format on Compact Disc – Read Only Memory (CD-ROM) and one reproducible hard copy set:

- (1) Plan and profile sheets;
- (2) Signing and striping;
- (3) Pavement typical sections;
- (4) All Viaduct and Bridge plans;
- (5) Retaining Structure plans;
- (6) Utility relocation plans;
- (7) Drainage Structure plans;
- (8) Cross sections in areas with retaining structures and/or cuts and/or fills in excess of ten feet high; and
- (9) Plans of consolidated access points.

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

- (1) Submit to the City 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 the City.

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

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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.

Chapter 6, of the GCDB is amended by adding a new section SP-6.17 to include the following:

SP-6.17 O&M BASE COMPENSATION

The City agrees to pay the Core Systems Contractor, and the Core Systems Contractor agrees to accept from the City, in full consideration for the performance by the Core Systems Contractor of its duties and obligations under this Core Systems Contract and the whole thereof, the amounts set forth below subject only to such additions to and deductions from the compensation as may be provided for in other applicable sections of this Core Systems Contract.

The amounts set forth below shall be the Core Systems Contractor's total compensation, subject only to the express provisions of this Core Systems Contract specifically setting forth actual, defined additions to or deductions from such compensation. No charges shall be incurred under this Contract nor shall any payments become due to the Core Systems Contractor until reports, services, or both, required under the Core Systems Contract are received from the Core Systems Contractor and accepted by the City. The Core Systems Contractor shall be fully responsible for paying any amounts due and owing to the O&M Subcontractors of any tier or material suppliers. Payment of any and all taxes levied on this Contract, the transaction, or the services delivered pursuant hereto, shall be the obligation of the Core Systems Contractor.

- (a) Not Used.
- (b) For operating the Baseline Service and maintaining the System for the Intermediate O&M Period, a monthly compensation as set forth in Attachment E to these Special Provisions.
- (c) For operating the Baseline Service and maintaining the System for the Full O&M Period, an annual compensation as set forth in Attachment E to these Special Provisions.
- (d) For operating the Baseline Service and maintaining the System for the Optional O&M Period, an annual compensation as set forth in Attachment E to these Special Provisions.

Chapter 6, of the GCDB is amended by adding a new section SP-6.18 to include the following:

SP-6.18 MONTHLY PAYMENT

(a) The Core Systems Contractor's monthly payment for the Intermediate O&M Periods will be based on the monthly prices set forth in Attachment E to these Special Provisions, as accepted by the City, with appropriate adjustments described herein.

(b) No economic price adjustments will be made to the O&M prices set forth in Attachment E to these Special Provisions for the Intermediate O&M Periods. For these periods, it shall be assumed that the Core Systems Contractor has already included any necessary economic adjustments(s) in its pricing quoted on proposal forms provided in Attachment E to these Special Provisions.

(c) The Core Systems Contractor's monthly payment for the Full and Optional O&M Period will consider all of the items in the following list [(1) through (14)], where applicable. The Core Systems Contractor's monthly payment for the Intermediate O&M Periods will consider all of the items in the following list except adjustment (6).

- (1) The economically-adjusted O&M price for the month of the invoice;
- (2) Service level changes for vehicle miles and operating hours within \pm twenty percent (20%) of the Baseline Service levels;

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- (3) The System Service Availability payment factor;
- (4) The cost for Extra O&M Work;
- (5) The total deduction for loss of fare vending availability;
- (6) The economically-adjusted price for CARP Work completed in the month;
- (7) The economically-adjusted price of increased operating hours;
- (8) Accumulated downtime penalty percentages;
- (9) Utility costs for the month of the invoice;
- (10) Insurance price for the month of the invoice;
- (11) Additional Work pursuant to a City-approved Change Order;
- (12) The Cleaning payment factor;
- (13) The MSF Maintenance payment factor; and
- (14) The Readiness Drill payment factor.

(d) Monthly payments for all O&M Periods, shall be calculated using the following formula, as modified according to the inclusion or exclusion of adjustments described for the particular period above:

$$P = \left((PE_m + (P_{IS_e} \times \Delta_{miles}) + P_{OH_e}) \times F_{A_m} \right) + \Delta W - F_F + P_{CE} - (D_p \times PE_m) + PU_m + PI_m - (FC_p \times PE_m) - (FM_p \times PE_m) - (FRD_p \times PE_m)$$

Where:

P	is the payment for the month;
PE_m	is the escalated O&M price for the month of the invoice, as defined by Section 6.25, or by the nature of the already-escalated price (for the Intermediate O&M Period);
P_{IS_e}	is the escalated value of incremental service in dollars per vehicle mile;
Δ_{miles}	is the number of incremental vehicle miles, if any, operated below or above the baseline vehicle miles based on the applicable Baseline Service levels for such month to be set forth by the Core Systems Contractor in accordance with Tables 7, 8 and 9 of Section 3.4.6. This variable is negative if the increment is below the baseline and positive if the increment is above the baseline;
P_{OH_e}	is the escalated value of increased operating hours, as defined in Section 6.19;
F_{A_m}	is the Availability Payment Factor, as defined in Section 6.20;

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ΔW	is the price for Extra O&M Work, as defined in Section 6.24;
F_F	is the total deduction for loss of fare vending system availability, as defined in Section 6.21;
P_{CE}	is the escalated price for Capital Asset Replacement Program Work completed in the month, as defined in Section 6.25;
D_p	is the accumulated downtime penalty percentages in accordance with Table 8;
PU_m	is the utility cost for the month of invoice, as defined in Section 6.18, and is included only if the City elects to pay for those costs as a pass-through via the Core Systems Contractor;
PI_m	is the insurance price for the month of invoice; and
FC_p	is the Cleaning payment factor, as defined in Section 6.22.
FM_p	is the MSF maintenance payment factor, as defined in Section 6.22.
FRD_p	is the Readiness Drill payment factor, as defined in Section 6.22.

(e) Invoices. The Core Systems Contractor shall submit to the City, within fifteen (15) working days of the last day of each calendar month, an invoice for the O&M Work by the Core Systems Contractor during that Calendar month. The monthly payment will be prorated for any partial month.

(f) The form of the invoice shall be as prescribed by the City, and shall be similar to the sample form in this Section. The invoice shall include any adjustments for the prior month, as described in this Section. A monthly report must be included with each invoice and shall be for the Work performed during the same month of the invoice.

(g) Within thirty (30) calendar days after the City certified the correctness of each invoice, the City will pay to the Core Systems Contractor the amount so certified. No certificate or payment shall, at any time, preclude the City from showing that such certificate or payment was incorrect, or from recovering any money paid in excess of that lawfully due hereunder.

(h) The City may withhold from any invoice payment for the following items:

- (1) The cost of replacing defective parts;
- (2) Core Systems Contractor work done by other parties and paid by the City;
- (3) An amount to cover claims filed by the City or other parties against the Core Systems Contractor;
- (4) An amount to cover reductions by the City in the O&M fee due if the Core Systems Contractor is late or fails to deliver parts/equipment;
- (5) The cost of licenses, fee or permits for which the Core Systems Contractor has failed to obtain and/or pay;
- (6) The cost to repair damages to the City's or a third party's property that the Core

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Systems Contractor has caused and has failed to repair;

(7) Amounts based on disputed deductions in accordance with SP-5 or 7; and

(8) Any amount for any violation of or failure to comply with the Core Systems Contract.

(i) **Accounting Records.** The Core Systems Contractor shall maintain accurate records of all funds received and disbursed in connection with the operation and maintenance of the System. The Core Systems Contractor's records shall be subject to review and audit by the City at all reasonable times.

(j) **Power and Water Utilities.** The City will either reimburse the Core Systems Contractor for electric power and water usage or contract with the utility owners to make payments directly to those companies. If the City chooses to reimburse the Core Systems Contractor for the cost of the monthly utilities, those costs shall be a pass-through by the Core Systems Contractor to the City. At no time shall the Core Systems Contractor charge, nor will the City pay, any markup, fee, or other expense related to the payment of utilities costs in such a manner. The Core Systems Contractor shall not include any utilities demand or consumption costs in its prices provided on forms in Attachment E to these Special Provisions.

(k) The Core Systems Contractor shall estimate utilities demand and consumption using the forms in Attachment E to these Special Provisions. These forms, contain tables of estimated power demand and monthly kWh and water usages for the Shuttle Service, Intermediate, Full, and Optional O&M Periods.

(l) **Assumption of Insurance or Utility Payments.** At the end of the term of any contract for insurance or utilities, the City may assume responsibility for procurement and payment of the renewal or replacement contract, in which case the cost of any such contract shall be deducted from the compensation paid to the Core Systems Contractor hereunder, if applicable.

Chapter 6, of the GCDB is amended by adding a new section SP-6.19 to include the following:

SP-6.19 COMPENSATION FOR SERVICE LEVEL CHANGES

(a) **City's Authority to Change Service Levels.** The City will have the authority to direct the Core Systems Contractor to provide actual service levels above or below the Baseline Service, in which case the monthly payment shall be adjusted in accordance with this Section.

(b) **Payment Adjustment for Service Changes Up to $\pm 20\%$.** For monthly incremental service changes of up to ± 20 percent of the annual baseline vehicle miles as set forth in the annual Baseline Service (prorated for such month), a payment adjustment will be made equal to:

$$\pm(P_{IS_e} \times \Delta_{miles})$$

Where:

P_{IS} is \$ _____ (the rate for incremental service changes in dollars per vehicle mile, per Attachment E to these Special Provisions;

P_{IS_e} is the value of P_{IS} escalated in accordance with Section 6.25;

Δ_{miles} is the number of incremental vehicle miles operated above or below the baseline vehicle miles based on the applicable Baseline Service levels for such month to be set forth by the Core Systems Contractor in accordance with Tables 7, 8, and 9 of Section TP-3.4.6. This variable is negative if the increment is below the baseline and positive if the increment is above the baseline;

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(c) Full Compensation for Service Changes. Such service changes shall not be compensated as Extra O&M Work under Section 6.24, and payment adjustments, as defined above, shall be considered full compensation for all Work associated with such changes.

(d) Payment Adjustment for Service Increases Exceeding 20%. For service increases in excess of 20 percent of the annual Baseline Service vehicle miles prorated for such month, the adjustment in the payment shall be made as set forth in Section 6.24, below.

(e) Payment Adjustment for Service Reductions Exceeding 20%. For service reductions in excess of 20 percent of the annual Baseline Service vehicle miles prorated for such month, the adjustment in the payment shall be made as set forth in Section 6.24, below.

(f) Payment Adjustment for Operating Hours Increases. In the event that the annual baseline vehicle miles as set forth in Tables 7, 8, and 9 of Section TP-3.4.6 are not increased (or are decreased), but the number of operating hours is increased, a payment adjustment shall be made equal to \$_____ (per Attachment E to these Special Provisions) times the number of additional operating hours in the month POH, escalated in accordance with Section 6.25.

Chapter 6, of the GCDB is amended by adding a new section SP-6.20 to include the following:

SP-6.20 SYSTEM AVAILABILITY REQUIREMENTS

(a) Availability Payment Factors. For every calendar month System Service Availability shall be calculated as specified in Section TP-3.3, and an Availability Payment Factor shall be applied to the Core Systems Contractor's monthly payment.

The payment factors for the Intermediate, Full, and Optional O&M Periods shall be as given in Table 7, Availability Payment Factors.

TABLE 7: AVAILABILITY PAYMENT FACTORS

SYSTEM SERVICE AVAILABILITY (A)	AVAILABILITY PAYMENT FACTOR (F _A)
99.9-100	1.020
99.8-99.89	1.010
99.5-99.79	1.000
98.9-99.49	0.991
98.8-98.89	0.981
98.7-98.79	0.971
98.6-98.69	0.961
98.5-98.59	0.949
98.4-98.49	0.937
98.3-98.39	0.916
98.2-98.29	0.892
98.1-98.19	0.870
98.0-98.09	0.850
97.9-97.99	0.832
97.8-97.89	0.816
97.7-97.79	0.802
97.6-97.69	0.786
97.5-97.59	0.773

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TABLE 7: AVAILABILITY PAYMENT FACTORS

SYSTEM SERVICE AVAILABILITY (A)	AVAILABILITY PAYMENT FACTOR (F _A)
97.4-97.49	0.761
95.0-97.39	0.750
90.0-94.99	0.500
Below 90.00	0.000

System Service Availability shall be calculated in accordance with Section TP-3.3 to two (2) decimal place accuracy, and the appropriate payment factor interpolated from Table 7 calculated to three (3) decimal place accuracy.

Additional deductions in the Intermediate, Full, and Optional O&M Periods payments shall be made for exceeding the downtime limits defined in Section TP-3.3.6.2. The total reduction of payment due to exceeding such downtime limits shall be limited to five percent (5%). These downtime limits shall be pro-rated by the ratio of the number of days in the respective month to thirty (30) calendar days. The deductions shown in Table 8 shall be applied per each downtime event in excess of the specified limits in accordance with Section TP-3.3.6.2.

TABLE 8: DOWNTIME DEDUCTIONS

LENGTH OF SERVICE MODE DOWNTIME EVENT	D _p , PERCENT (%) DEDUCTION PER EACH DOWNTIME EVENT EXCEEDING ALLOWANCES OF SECTION TP-3.3.6.2
1 Greater than fifteen (15) seconds and less than or equal to one (1) minute.	0.025
2 Greater than one (1) minute and less than or equal to ten (10) minutes.	0.1667
3 Greater than ten (10) minutes and less than or equal to twenty (20) minutes.	2.5
4 Greater than twenty (20) minutes and less than or equal to forty-five (45) minutes.	5.0
5 Greater than 45 minutes.	5.0

TABLE 9: NOT USED

System Service Availability shall be calculated in accordance with Section TP-3.3 to two (2) decimal place accuracy, and the appropriate payment factor interpolated from Table 9 calculated to two (2) decimal place accuracy.

(b) System Service Availability Below 97.0%. Should the average System Service Availability for the Intermediate, Full, or Optional O&M Periods fall below ninety-seven per cent (97.0%) for a period of six (6) consecutive months, the City may terminate the Core Systems Contract in accordance with terms of this Contract.

(c) Failure Analysis and Correction Report. If in any calendar month of the Intermediate, Full, or Optional O&M Periods any of the following events occur:

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- (1) System Service Availability, A, of ninety-nine and one-half percent (99.5%) is not at least met, or performance records indicate it will not be met;
- (2) System Downtime Events exceed the limits specified in Section TP-3.3.6.2; or
- (3) Fare Vending Equipment does not meet the reliability requirements as specified in the Contract.

The Core Systems Contractor shall, at its own expense, promptly undertake reviews and analyses, including a review of maintenance procedures, and shall propose a plan to the City within thirty (30) days to correct the problem(s). The plan and corrective actions shall be subject to review by City. Corrections necessary to meet these requirements shall be made by the Core Systems Contractor at no additional cost to the City. Immediately after City's review and approval of the corrective action(s), the Core Systems Contractor shall take the corrective action(s). Corrective actions shall be documented in a Failure Analysis and Correction Report. A preliminary Failure Analysis and Correction Report shall be issued by the Core Systems Contractor to the City when the corrective program is initiated, and a final Failure Analysis and Correction Report shall be issued when the success of the corrective action can be substantiated.

Additionally, if as a result of the System Assurance Monitoring activities of Section TP-3.4.8 the Core Systems Contractor determines that modification or replacement of any System components are necessary or desirable, the proposed method of accomplishing such modification or replacement shall be submitted to the City for review and approval prior to initiating such Work, which shall be undertaken at the Core Systems Contractor's sole cost and expense. Replacement shall not interfere with the Core Systems Contractor operating at normal service levels, when reasonably feasible.

Acceptance by the City of any correction actions, modifications or replacements shall not absolve the Core Systems Contractor of any responsibilities with respect to the successful implementation of such corrective actions, modifications, or replacements.

(d) Classification of Failures. In the Failure Analysis and Correction Report, equipment failures shall be classified as either relevant or non-relevant, as follows:

- (1) Relevant failures shall be any failure of part or component, or performance which causes the equipment item characteristics to deviate beyond the nominal ranges of the equipment specifications.
- (2) Non-relevant failures shall be any failure caused by a condition external to the equipment.
- (3) The Failure Analysis and Correction Report shall address the detailed diagnosis of each failure and shall identify corrective actions, failed components and failure modes. All failure analyses shall address the subjects of independent, dependent, intermittent multiple, or pattern failures.
- (4) Dependent failure: A failure caused by the failure of an associated item (dependent failures are not necessarily present when simultaneous failures occur).
- (5) Independent failure: A failure that occurs without being caused by the failure of other parts of the equipment under test, test equipment, instrumentation, or the facility.
- (6) Intermittent failure: The momentary cessation of equipment operation.
- (7) Multiple failures: The simultaneous occurrence of two or more independent failures (when two or more failed parts are found during trouble shooting which cannot be shown to be interdependent, multiple failures are presumed to have occurred).

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(8) Pattern failures: The occurrence of two or more failures of the same part in identical or equivalent application that are caused by the same basic failure mechanism.

(e) Independent System Service Availability Report. If the City believes that the System Service Availability reports do not accurately measure what is occurring, the City may engage a third party to obtain the operating and failure data and prepare an independent System Service Availability report. The report prepared by the third party shall take precedence over the Core Systems Contractor-prepared report and shall be paid for by the Core Systems Contractor if the report finds lower performance in terms of System Service Availability and downtime events than the Core Systems Contractor's report.

(f) Review Team. The Core Systems Contractor and City shall establish a review team that will determine which deductions are to be deducted from the monthly invoices in accordance with Section 6.18. The review team shall consist of one representative from the City and one representative from the Core Systems Contractor. The review team and/or the City may rely on any and all data, reports and/or inspections prepared and/or conducted pursuant to the Core Systems Contract. The review team shall consider all service disruptions and shall determine the amount deducted from the monthly payment. If the review team fails to reach agreement within a period of ten (10) calendar days on the monthly invoice amount or the basis for any withholding amount, the invoice will be paid on the basis of the decision of the City at its sole discretion.

(g) Damages to the City. If the Core Systems Contractor fails to meet the relevant level of System Service Availability, the performance requirements relating to Fare Collection Equipment availability, or the performance requirements relating to MSF Facilities Maintenance, the City will incur substantial losses and damages that are incapable of accurate measurement. Such losses and damages include loss of use, enjoyment, and benefit of the System by the general public, injury to the City's credibility and reputation with the general public who depend on and expect high levels of operation and maintenance services, of which injury to credibility and reputation may directly result in loss of ridership and reduced revenues, and additional costs of administering this Contract (including engineering, legal, accounting, overhead, and other administrative costs). These damages are incapable of accurate measurement because of, among other things, the unique nature of the System and the unavailability of a substitute for the System. The parties have agreed to these liquidated damages in order to fix and limit the Core Systems Contractor's costs and to avoid later disputes over which items are properly chargeable to the Core Systems Contractor.

(h) Sole Monetary Remedy. The reductions in compensation set forth in Section 6.20 resulting from the Contractor's operation of the System at less than 99.5 percent System Service Availability (or less than 97.0 percent System Service Availability during the Shuttle Service O&M Period), in Section 6.21 for inoperable Fare Collection Equipment, and in Section 6.22 for failure to maintain the MSF and related facilities in accordance with the requirements therein, are intended to be the sole monetary remedy for the circumstances therein described. It is understood and agreed by the Core Systems Contractor that any adjustments to compensation imposed in accordance with Sections 6.20, 6.21 or 6.22 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the date of execution and delivery of this Contract.

(i) Rights of the City. The Core Systems Contractor acknowledges and agrees that the adjustments to compensation set forth in Sections 6.20, 6.21 and 6.22 are intended to compensate the City solely for losses and damages resulting from the circumstances described therein, and shall not excuse the Core System Contractor from liability for any other breach of Contract requirements. The fact that the City has agreed to accept a reduction in compensation as full compensation for such losses and damages, does not preclude the City from the right to exercise its other rights and remedies set forth in this section or in Sections SP-5 and SP-7.

Chapter 6, of the GCDB is amended by adding a new section SP-6.21 to include the following:

SP-6.21 DEDUCTIONS FOR INOPERABLE FARE VENDING EQUIPMENT

(a) Fare Vending Equipment. This Section shall be effective at all times after final acceptance of the Fare Vending Equipment.

(b) Reduction in Compensation for Inoperable Fare Vending Equipment. If at any time during the System operating hours a fare vending machine is inoperable beyond the time limits specified in this subsection below, the monthly payment due the Core Systems Contractor shall be reduced by an amount equal to 120 times the basic adult fare for travel to the nearest Station then in effect for each hour or fraction thereof the machine is inoperable. Such reduction shall be cumulative (i.e., the reduction shall apply separately to each inoperable fare vending machine in the event of concurrent failures). Such reductions in compensation applicable to each inoperable machine shall accrue until the machine is returned to operation. If the repair of the equipment is delayed through no fault of the Core Systems Contractor, and the Core Systems Contractor has taken all reasonable steps to complete the repair and has promptly notified the City of the action taken, the accrual of reductions in compensation will be suspended as of the time the Core Systems Contractor has notified the City.

(c) Grace Period. With respect to the first item Fare Vending Equipment of any type (i.e., TVM or SAV) at each Station that becomes inoperable during any period of time, the Core Systems Contractor will be allowed a two-hour grace period prior to the commencement of the accrual of reductions in compensation. With respect to any additional item(s) of Fare Vending Equipment of the same type at the same Station that becomes inoperable during the same time period (i.e., if two or more TVMs, or two or more SAVs become inoperable at the same station), the Core Systems Contractor shall have no grace period prior to the commencement of reductions in compensation with respect to any machine after the first of each type.

(d) Core Systems Contractor's Response to Inoperable Equipment. The Core Systems Contractor shall promptly restore to service any inoperable Fare Vending Equipment.

(e) Service Availability Calculation for Inoperable Fare Vending Arrays. If all TVMs or SAVs at a given station are out of service for a time exceeding the scheduled headway at that time of day, that Station shall be assumed to be inoperable for purposes of calculating Station Availability in accordance with Section TP-3.3.4. The resulting reduction in station availability shall be in addition to the reduction in monthly payment provided in this section.

(f) Reduction in Compensation for Inoperable Fare Vending Control System. With respect to the Fare Vending Control System, the monthly payment due to the Core Systems Contractor shall be reduced by an amount equal to 120 times the highest adult fare between two adjacent Stations then in effect for each hour or fraction thereof the machine is inoperable beyond a two-hour grace period. Such reduction in compensation shall accrue until the machine is returned to operation. If the repair of the equipment is delayed through no fault of the Core Systems Contractor, and the Core Systems Contractor has taken all reasonable steps to complete the repair and has promptly notified the City of the action taken, the accrual of reductions in compensation will be suspended as of the time that the Core Systems Contractor has notified the City.

(g) Failure Type. Chargeable fare vending equipment failures are any failures of fare vending equipment or of fare vending system software that renders fare vending equipment unavailable. For non-chargeable failures, described below, the Core Systems Contractor shall be allowed a two-hour grace period in addition to that stated above prior to commencement of the accrual of reductions in compensation.

(h) Non-Chargeable Fare Vending Equipment Failures – are events not attributable to the fare vending equipment itself and shall not be considered chargeable failures, as described in the list

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below. Data shall be collected during all Service Periods; non-chargeable failures shall be determined subsequently upon review of the data by the Core Systems Contractor and the City. The Core Systems Contractor shall bear the burden of proving non-chargeable failures:

- (1) Passenger-induced failures;
- (2) Failures directly attributable to intrusions of unauthorized persons or of animate or inanimate objects into non-public areas of the station;
- (3) Failures directly attributable to non-Operating-System-induced loss of service, e.g., loss of electrical power, electrical power provided outside the nominal range, or directly attributable to Force Majeure events or to culpable acts or culpable omissions of the City or its agents or its contractors other than the Core Systems Contractor;
- (4) Failures directly attributable to conditions exceeding the specified environmental limits;
- (5) Periods when the station is not available, such as closing of the station or platform due to events not attributable to Operating System problems; and
- (6) Failures directly attributable to Change Orders.
 - (i) Lost Revenue Data – In the event a failure of Fare Vending Equipment causes a loss of data related to revenue accounting, such loss of data shall be reported to the City within 24 hours after discovery.

Chapter 6, of the GCDB is amended by adding a new section SP-6.22 to include the following:

SP-6.22 CLEANING, MSF MAINTENANCE, AND READINESS DRILL PERFORMANCE REQUIREMENTS

For any calendar month of the O&M period that performance of the cleaning and MSF maintenance tasks are not performed to the standards and frequencies specified in Sections TP-3.5.2.5 and TP-3.5.2.8 and Tables 10 and 11 therein, a performance deduction(s) may, at the City’s option, be applied to the Core Systems Contractor’s monthly payment to decrease the amount to be paid for that month. Decreases of the monthly payment shall be as liquidated damages for not providing the required cleaning and MSF maintenance performance. The performance deduction(s) shall be as provided in Tables 10 and 11 of this section.

For any calendar year of the O&M period that the annual Readiness Drill is not conducted as specified in Section TP-3.4.12.5, a performance deduction may, at the City’s option, be applied to the Core Systems Contractor’s monthly payment to decrease the amount to be paid for that month and every month thereafter until the Drill is completed. Decreases of the monthly payment shall be as liquidated damages for not conducting the required Readiness Drill. The performance deduction (*FRD_p*) shall be 1.00%.

TABLE 10: CLEANING PERFORMANCE DEDUCTIONS

	CATEGORY OF CLEANING	PERFORMANCE DEDUCTION (FC _p)
A	Janitorial Services at Station and Parking Facilities	0.40%
B	Station Facilities and Equipment - Interior	0.40%
C	Station Facilities and Equipment - Exterior	0.40%

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TABLE 10: CLEANING PERFORMANCE DEDUCTIONS

	CATEGORY OF CLEANING	PERFORMANCE DEDUCTION (FC _p)
D	System Parking Lots and Related System Parking Facilities	0.40%
E	Vehicles	0.40%
F	Immediate Cleaning - Public Areas of Stations, Parking Facilities, and Vehicles	1.00%
Total		3.00%

TABLE 11: MSF MAINTENANCE PERFORMANCE DEDUCTIONS

	CATEGORY OF FACILITIES MAINTENANCE	PERFORMANCE DEDUCTION (FM _p)
A	Janitorial Services	0.20%
B	Hardscapes and Softscapes	0.10%
C	Heating, Ventilation and Air Conditioning	0.20%
D	Lighting and Facilities Electrical	0.10%
E	Plumbing	0.10%
F	Signage and Boards	0.10%
G	Glass and Glazing	0.10%
H	Pest Control	0.10%
I	Graffiti	0.10%
J	Surface Parking	0.10%
K	Cleaning Non-Light Metro Vehicle Bldg Areas	0.10%
L	Elevator Maintenance	0.20%
M	Control Centers and Administrative Offices	0.10%
N	Traction Power Substations & System Eqpmt Rooms	0.10%
O	Guideways	0.10%
P	Building Exteriors	0.10%
Q	Building Interiors	0.10%
Total		2.00%

Chapter 6, of the GCDB is amended by adding a new section SP-6.23 to include the following:

SP-6.23 COMPENSATION FOR CAPITAL ASSET REPLACEMENT

(a) Schedule and Budget. The City will pay the Core Systems Contractor within thirty (30) days of submission of an invoice for Work actually performed as part of the Capital Asset Replacement Program during the previous month. The cumulative amount of all invoices submitted during the Full O&M Period shall not exceed the escalated Capital Asset Replacement Program Price for the Full O&M Period. Similarly the cumulative amount of all invoices submitted during the Optional O&M Period, if exercised by the City, shall not exceed the escalated Capital Asset Replacement Program Price for the Optional O&M Period.

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(b) Economic Price Adjustments. Labor and materials for capital asset replacement Work will be subject to economic price adjustments as set out in Section 6.25.

(c) Compensation for Program Changes. In the event any changes in the Capital Asset Replacement Program are required as a result of (i) Service Level Adjustments beyond +20 percent of the annual Baseline Service vehicle miles as of the Effective Date of this Contract or (ii) Extra O&M Work directed by the City, such changes shall be compensated as part of the Extra O&M Work Compensation as set forth in Section 6.24.

Chapter 6, of the GCDB is amended by adding a new section SP-6.24 to include the following:

SP-6.24 COMPENSATION FOR EXTRA O&M WORK

(a) Change Order for Extra O&M Work. In addition to its rights to direct incremental changes in service levels under Section 6.19, at any time the City may, by written order, direct the Core Systems Contractor to perform Extra O&M Work. The Core Systems Contractor shall be compensated for Extra O&M Work in accordance with the provisions of Section 6.24(d). The cost of additional Vehicles and related systems shall be governed by the Contract. In pricing any Change Order, the Core Systems Contractor shall include general excise, sales or use taxes, or surcharges only on such portion of the O&M Work under the Change Order that does not qualify for exemption under the Hawai'i Administrative Rules (HAR), Hawai'i Revised Statutes (HRS) or other recent City, County, or State - legislation, as amended.

(b) Repair/Replacement Cost. In determining the amount of Extra O&M Work, there shall not be included any portion of the cost of repairs or replacements that represent ordinary wear and tear that would in any event require repair or replacement as part of the Core Systems Contractor's maintenance and operations obligations.

(c) Access to Records. The City shall have access, on 24 hours' written notice, at the Core Systems Contractor's principal local place of business and during normal business hours, to all records and documents of the Core Systems Contractor directly relating to labor and materials used in the performance of Extra O&M Work for which the Core Systems Contractor has been compensated or is to be compensated on any basis other than an agreed lump sum amount. Such records and documents shall include but not be limited to time tickets, payroll records and related reports provided to unions, vendor's invoices, canceled checks and published price lists of the Core Systems Contractor relating to any amounts for which the Core Systems Contractor has been compensated, or claims it should be compensated, by the City. If certain materials manufactured by the Core Systems Contractor do not appear on a published price list, the Core Systems Contractor may be required to display evidence that the charges to the City are comparable to those that currently are being given to other customers of the Core Systems Contractor. For the purpose of this Contract, the Core Systems Contractor shall not be obligated to retain such records and documents for a period longer than 6 years (or such longer period as may be required by law) following the date of the Core Systems Contractor's invoice to the City for such Work.

(d) Except as may be provided by the City's Board resolutions or executive directives governing emergency conditions, the City and its employees, officers, and agents are not authorized to request the Core Systems Contractor to perform services or to provide materials, equipment and supplies that are outside of the scope of this Contract unless the Contract is amended in writing. The City is not required to reimburse the Core Systems Contractor for services, materials, equipment or supplies that are provided by the Core Systems Contractor that are beyond the scope of the Contract.

(e) Basis of Compensation for Extra O&M Work. The Core Systems Contractor's compensation for Extra O&M Work shall be determined on the basis of the following:

(1) Labor. Labor shall be substantiated and paid at the fixed labor rates per hour derived from the labor classifications quoted in Attachment E to these Special Provisions,

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included in the Core Systems Contractor's O&M Price Proposal, adjusted by application of the indices specified in Section 6.25, with no additional compensation for labor burden, overhead and profit or any other markup. Where the applicable labor is neither classified nor quoted on these forms, it will be compensated on the basis of the actual net direct cost of the Core Systems Contractor's labor plus labor burden, overhead and profit as follows:

(2) Labor Burden shall be the Core Systems Contractor's actual costs for workers compensation and liability insurance, payroll taxes, social security and employees fringe benefits (including employer paid health insurance) substantiated on the basis of payrolls and accounting data.

(3) Overhead and Profit shall be provided as a total of, and shall not exceed, One Hundred and Ten percent of the actual net direct labor cost.

(4) Direct Material Supplies, Installed Equipment. Actual net direct cost of materials, supplies parts and components. In the case of genuine Core Systems Contractor parts, an amount not to exceed the list price of such parts supplied to its most preferred customers.

(5) Equipment. Actual net cost to the Core Systems Contractor of owned and/or rented equipment to be determined as follows:

(A) Owned equipment operating costs shall be determined using accepted local industry standards.

(6) Rental equipment operating costs shall be determined using rates and/or invoices for equipment rental, fuel/maintenance, delivery, removal and other direct expenses, provided the costs can be substantiated as representative of the prevailing rates for the Greater Honolulu Metropolitan Area.

(7) Subcontract Costs. Net cost of Subcontractor Work, provided that the cost of Subcontractor(s) is determined in a manner that limits specific items of cost to those requirements identified in Items (1) through (5) above.

(8) Profit Except for Item (1):

(A) Five percent of the sum of Items (4) and (5) above; and

(B) Five percent of Item (7) above to cover the Core Systems Contractor's overhead and profit for work done by Subcontractors.

The City may agree to a lump sum price as compensation for Extra O&M Work in lieu of the method of determining such payment described above.

(f) Reduction in Scope of O&M Work. The City reserves the right at any time to reduce the scope of O&M Work and direct that any portion of the O&M Work be undertaken by City personnel or other City contractors. In such event, the City will issue a change order to the Core Systems Contractor. When the change order deletes O&M Work from the Core Systems Contractor's scope, the amount of the reduction in the Contract Price shall be based upon an estimate that includes a bill of material, a breakdown of labor and equipment costs, variable overhead, and profit associated with the deleted work. Estimated costs the Core Systems Contractor applied to develop the original Contract Price, as well as markup for variable overhead and profit at the rates the Core Systems Contractor applied to develop the original Contract Price, as reflected in the Escrowed Proposal Documents, shall apply for determining the amount of the price reduction for deleted O&M Work change orders. The amount of risk associated with the deleted O&M Work as of the Contract Date shall be an additional factor in determining the amount of the price reduction for deleted O&M Work change orders. When a deduction is involved, documented cancellation and restocking charges may be included in costs and subtracted from the price deduction.

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Chapter 6, of the GCDB is amended by adding a new section SP-6.25 to include the following:

SP-6.25 ECONOMIC PRICE ADJUSTMENTS

The price for the System operation and maintenance, and the capital replacement program supplied during the Full O&M Period shall be adjusted to account for increases or decreases in the costs of labor and materials from the costs of the "Base Month," defined herein. These adjustments, as well as similar adjustments for the Optional O&M Period, will be made as specified in this Section.

O&M contract prices for each of the O&M periods shall be adjusted for inflation at the beginning of each calendar year of the O&M periods and then shall not be further adjusted throughout the year. The Core Systems Contractor shall submit its request for adjustment, along with supporting documentation and calculations, at least sixty (60) days before the start of each year of the O&M period. The O&M contract prices shall be adjusted upward or downward, as indicated by the calculations specified herein.

The price for the System operation and maintenance supplied during the Intermediate O&M Periods shall not be adjusted to account for any increases or decreases in the costs of labor and materials. For these periods it shall be assumed that the Core Systems Contractor has already included any necessary economic adjustments in its labor and material prices quoted on proposal forms provided in Attachment E to these Special Provisions.

(a) Full O&M Period Adjustment:

(1) Annual Labor and Material Price Adjustment. During the Full O&M Period, the annual price for each year of such Period, excluding insurance, utility prices, and building service maintenance labor, shall be subject to adjustments in accordance with the following indices:

(A) All labor prices shall be quoted in the Core Systems Contractor's price proposal on forms provided in Attachment E to these Special Provisions. These prices shall be adjusted by a factor that shall be defined as the ratio of (i) the latest Average Hourly Earnings of Production Workers in the Trade, Transportation and Utilities Industry for Honolulu, Hawai'i (Series ID: SMU15261804000000008 ("labor index"), not seasonally adjusted) published by the U.S. Bureau of Labor Statistics that is available one month before the beginning of each year of the Full O&M Period to (ii) the same index for the Base Month.

(B) All material prices shall be quoted in the Core Systems Contractor's price proposal on forms provided in Attachment E to these Special Provisions. These prices shall be adjusted by a factor that shall be defined as the ratio of: (i) a composite index, consisting of the simple average of a) the Line-Haul Railroads Product Index (Series ID: PCU482111482111) and b) the Street Subway, Trolley and Rapid Transit Cars, New and Rebuilt Product Index (Series ID: PCU33651033651053) Producer Price Indices (PPI) published by the U.S. Bureau of Labor Statistics that are available one month before the beginning of each year of the Full O&M period to 2) the same composite index for the Base Month.

(2) Calculation of Escalated Monthly Price:

(b) For the Full O&M Period the escalated monthly price shall be calculated according to the following equation:

$$PE_m = \left[PL_m \times \left(\frac{LAB_m}{LAB_{base}} \right) + PM_m \times \left(\frac{PPI_m}{PPI_{base}} \right) \right]$$

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Where:

PE_m	is the escalated O&M price for the month of invoice;
PL_m	is the lump sum labor price for the month of invoice;
LAB_{base}	is the labor index for the Base Month;
LAB_m	is the labor index for the month of invoice;
PM_m	is the lump sum material price for the month of invoice;
PPI_m	is Composite PCU 482111482111 and PCU 33651033651053 for the month of invoice;
PPI_{base}	is Composite PCU 482111482111 and PCU 33651033651053 for the Base Month; and
m	is the month to which the O&M Price is being escalated.

(3) Base Month. The base month for escalation purposes shall be the month of Contract execution.

(4) Labor and Materials Lump Sum Prices. The lump sum prices for labor (PL_m) and materials (PM_m) shall be 1/12th of the annual amounts as set forth in Attachment E of the Special Provisions of this Contract.

(5) Building Service Maintenance Labor Adjustment. Annual labor adjustments to reflect changes in the state prevailing wage rates for workers performing labor classified as building service maintenance work and identified in the Core Systems Contractor's Proposal, shall be negotiated by the Core Systems Contractor and the City as a change order in accordance with Section 6.24.

(c) Reserved

(d) Indices:

(1) Replacement Indices. In the event any of the indices referenced in this Section ceases to be published, or the method of calculating the Index is materially altered, the City and the Core Systems Contractor shall negotiate and agree on another index to be used in place of the discontinued or altered index, or a method of adjusting the altered index. Any new index shall be comparable to the index it replaces. Foreign (non-U.S.) indices and/or any corrections for trading of currency shall be prohibited.

(2) Adjustment of Indices. The Labor Index and Producer Price Indices are published monthly by the U.S. Bureau of Labor Statistics. Any corrections made to an Index are published four months after the Index is first published. Price adjustments shall be readjusted retroactively within two months after any such correction is published as part of the regular invoicing process.

Where an index has not yet been published, such as for a date in the future, the index shall be estimated by use of a linear regression analysis of the most recent five years of index values. When the index for the applicable time period is subsequently published, the inflation adjustment shall be updated on a retroactive basis.

The cumulative amount of Economic Price Adjustment for the above prices (other than with respect to increases in prevailing wages for applicable positions) shall not exceed an average of five percent per year, beginning with the date of the O&M Price Proposal. In the event that such

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Economic Price Adjustment would exceed the five percent ceiling, the City and the Core Systems Contractor shall enter into a negotiation to either revise the ceiling, or reduce the Work, or both, to account for the variance above the ceiling. This five percent ceiling shall be prorated monthly on a linear basis for any partial year.

(e) Optional O&M Period Adjustments:

(1) Negotiated Labor and Material Price Adjustment. The prices for labor and material in the Optional O&M Period may be renegotiated only if the Core Systems Contractor can demonstrate to the reasonable satisfaction of the City that the contractual indices described above understate the actual increases in unit prices for material and labor rates. Such renegotiation will not consider or take into account labor hours or material units in excess of those initially proposed by the Core Systems Contractor.

(2) Contractual Labor and Material Price Adjustment. In the event the City and the Core Systems Contractor cannot agree on the appropriate labor and material adjustments for the Optional O&M Period the adjustments shall be calculated as contained herein.

(3) Calculation of Labor and Material Price Adjustment. If the total of the escalated amounts paid to the Core Systems Contractor for labor and materials used in the Full O&M Period is less than 95 percent of the total actual cost of labor and materials (not including labor hours or material units in excess of those initially proposed by the Core Systems Contractor) used in the Full O&M Period then the labor rates and material prices for each of the years in the Optional O&M Period shall be adjusted. The labor rates in the Optional O&M Period shall be increased to the actual labor rates paid by the Core Systems Contractor in the final Year of the Full O&M Period. The Core Systems Contractor shall provide sufficient records to the City to validate to the reasonable satisfaction of the City, the labor increases and the extraordinary and unpredictable nature of these increases and that the labor rates are otherwise in conformance with industry standards. The material prices in the Optional O&M Period shall be adjusted as follows:

$$MP_O = MPA + \frac{(MPA - MPB)}{2}$$

Where:

MP_O is the adjusted material price for the Optional O&M Period;

MPA is the total material cost actually paid by the Core Systems Contractor in the Full O&M Period; and

MPB is the total material price for the Full O&M Period based on application of the indices in this section.

(4) Base Month. If prices for labor and material in the Optional O&M Period are renegotiated or adjusted as described herein, the base month for subsequent escalation purposes shall become the first month of the Optional O&M Period. Otherwise, the base month shall be as described in Section SP-6.25(a)(3).

(5) Material Prices and Consumption Records. For material prices the Core Systems Contractor will be required to keep detailed records of the actual items consumed in regular preventive and corrective maintenance and the unit costs paid for them.

(6) Assumption of Work Requiring Labor. If the City exercises its option to renew the Contract for the Optional O&M Period, the City may assume direct responsibility for any portion of the O&M Work requiring labor and reduce the Core Systems Contractor's compensation by the cost of such labor in the Core Systems Contractor's O&M Price as a

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reductive change order in accordance with Section 6.24. In such event, the City and the Core Systems Contractor will review this Contract in good faith and modify it if necessary to reflect the new conditions of the remaining Work as mutually agreed.

(f) Capital Asset Replacement Adjustments:

(1) Calculation of Labor and Material Price Adjustment. In each monthly invoice for actual capital asset replacement expenditure, the Core Systems Contractor shall separately identify the material and labor expended for Capital Asset Replacement Program Work, and escalate each according to changes in the indices since the Base Month. The Capital Asset Replacement Program Price shall be subject to an Economic Price Adjustment according to the following equation:

$$P_{CE} = \left[PCL_m \left(\frac{LAB_m}{LAB_{base}} \right) + PCM_m \left(\frac{PPI_m}{PPI_{base}} \right) \right]$$

Where:

P_{CE}	is the escalated price for Capital Asset Replacement Program Work completed in the month, as defined in this Section;
PCL_m	is the price for labor of the capital asset Work completed for the month of invoice;
LAB_{base}	is the labor index for the Base Month;
LAB_m	is the labor index for the month of invoice;
PCM_m	is the price for materials of the capital asset Work completed for the month of invoice;
PPI_m	is Composite PCU 482111482111 and PCU 33651033651053 for month m ;
PPI_{base}	is Composite PCU 48211482111 and PCU 33651033651053 for the Base Month; and
m	is the month to which the Capital Asset Price is being escalated.

(g) Negotiated Labor and Material Price Adjustment. The City will agree to negotiate a change to the capital asset replacement program labor rates and material unit prices if, at the beginning of the Optional O&M Period, the Core Systems Contractor can demonstrate to the reasonable satisfaction of the City, that during the Full O&M Period the contractual indices understate the actual inflation rates. If the City and the Core Systems Contractor cannot reach agreement, the rates and prices shall be adjusted as set forth in this section.

(h) Service Level Adjustments. The incremental price per vehicle mile (PIS_e) and the price for increased operating hours (POH_e) shall be adjusted using the indices and as set forth in this section, each weighted according to the proportions of labor, materials, and other costs in the O&M price for the appropriate period.

Chapter 6, of the GCDB is amended by adding a new section SP-6.26 to include the following:

SP-6.26 NO WAIVER

Delivery of payments of advances for basic O&M Work, Extra O&M Work or Service Level Adjustments shall not be construed as relieving the Core Systems Contractor from the responsibility for materials and

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Work upon which payments have been made or the restoration of damaged Work, or as waiving the right of the City to require the fulfillment of the terms of the Contract.

Chapter 6, of the GCDB is amended by adding a new section SP-6.27 to include the following:

SP-6.27 FINAL O&M PAYMENT

(a) Procedure for Final Payment. At the time of settlement, there shall be deducted from the final payment all damages and all other charges properly chargeable to the Core Systems Contractor under the terms of this O&M SOW. The balance, if any, shall be paid to the Core Systems Contractor, provided that prior to delivery to the Core Systems Contractor of the final payment, the Core Systems Contractor shall furnish the City proof in documentary form acceptable to the City that all claims, liens, or other obligations incurred by the Core Systems Contractor and all its Subcontractors and Suppliers in connection with the performance of the O&M Work have been properly paid and settled.

At the time set for final settlement, if there are outstanding claims against the Core Systems Contractor or its subcontractors and suppliers, or if for any other reason the Core Systems Contractor is unable to give a proper affidavit that liens or other obligations have been properly paid and settled, the City may, at its sole discretion, waive the requirement of the said affidavit, provided the Core Systems Contractor provides the City with a bond or irrevocable letter of credit in form and substance satisfactory to the City, in its sole discretion, providing adequate security with respect to such claims. In any event, when final settlement is made, the Core Systems Contractor understands that the City will withhold from payment any funds it may be required by law, or its own judgment, to withhold. Final payment will not be made until, in the determination of the City, all conditions of final payment have been met. At the time of delivery to the Core Systems Contractor of the final payment, the Core Systems Contractor shall execute and give to the City a Final Receipt.

(b) Conditions for Final Payment. As conditions for the Final Payment, the payments for the last month of the O&M Period, demobilization, training of City-designated personnel, and any other monies due the Core Systems Contractor from the City shall be paid to the Core Systems Contractor upon the Core Systems Contractor's satisfactory completion of the following:

- (1) The inventory of all of the System's equipment and property has been audited by the City and found to be correct.
- (2) The inventory of consumables, parts, and spare equipment has been replenished to the level specified in Core Systems Contractor's Maintenance Plan.
- (3) The inventory of furniture, fixtures, and maintenance tools and equipment provided under the Core Systems Contract is shown to be replenished and in serviceable condition.
- (4) All repairs, scheduled maintenance and scheduled overhauls due prior to the end of the O&M Period, or that are required to meet the specified level of maintenance and operational readiness, have been completed.
- (5) The Operations Plan, Maintenance Plan, Operation and Maintenance Management Plan, Operations Manuals, Maintenance Manuals, Rule Book and any other plans and manuals used in the operation and maintenance of the System have been updated as specified herein and the specified numbers of copies of these documents have been supplied.
- (6) All operations and maintenance records have been provided to the City, and the automated MMIS is current, and all related manuals and source codes have been delivered to the City.
- (7) All documentation of the System's design and configuration used for its

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operation and maintenance are provided to the City, including all updated System Record Documents and training records and exams.

(8) A certificate, acceptable to the City, that all claims for labor arising under this Core Systems Contract have been satisfied and that all bills for materials, equipment, or services have been paid has been delivered to the City.

(9) The Core Systems Contractor has furnished the City a complete release of all liens that might arise out of this Core Systems Contract, or receipts in full in lieu thereof, and a certificate that such releases and receipts include all labor and materials for which a lien could be filed.

(10) An agreement and release of any and all claims and liens, in form and substance satisfactory to the City, has been submitted, except any claims of the Core Systems Contractor specifically identified to the City in the request for Final Payment.

Final Payment shall not be the City's exclusive means to cover the costs of the aforesaid conditions. The City shall retain all rights and remedies provided by the Operation and Maintenance Performance Bond, as provided by this Core Systems Contract, as well as under law and equity to cover any deficiencies in the above.

Chapter 6, of the GCDB is amended by adding a new section SP-6.28 to include the following:

SP-6.28 SCHEDULE OF MILESTONES, SAMPLE

Following SP-6 are samples of the Schedule of Milestones for both the DB portion and O&M portion of Work. These two forms are from ITO Exhibit 22a and 22b and shall be submitted prior to Contract Execution and accepted prior to first pay request by the City.

Chapter 6, of the GCDB is amended by adding a new section SP-6.29 to include the following:

SP-6.29 SAMPLE O&M PRICING FORMS

Attachment E to these Special Provisions is the Book of Pricing Forms for the O&M portion of the Work. The Core Systems Contractor shall use these forms to develop pricing summaries and the Schedule of Milestones required for payment. Included with these pricing forms are the Capital Asset Replacement Program (CARP) estimate form and the Power Usage estimate form.

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SCHEDULE OF MILESTONES (Provided by Core Systems Contractor, 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]
1	a	Mobilization @ 5% Complete	1 LS		See Note 1				
	b	Mobilization @ 10% Complete	1 LS						
	c	Mobilization @ 25% Complete	1 LS						
	d	O&M Mobilization for Intermediate Periods	1 LS				Enter Act ID from the PE		
	e	O&M Mobilization for Full Period	1 LS				Baseline Schedule		
2		Major DB Submittals:							
	a	PM/CM Plan	1 LS						
	b	DB Quality Plan	1 LS						
	c	DB Environmental Compliance Plan	1 LS						
	d	DB Safety & Security Plan	1 LS						
	e	DB Interface Control Plan	1 LS						
3		Major O&M Submittals							
	a	O&M Quality Plan	1 LS						
	b	O&M Safety Plan	1 LS						
	c	O&M Interface Control Plan	1 LS						
4	a	PM / CM	95 Mo		See Note 2	Starting Month			
5	a	Interface Management	95 Mo			Starting Month			
6	a	Quality Management	95 Mo		See Note 3	Starting Month			
7	a	Environmental Compliance	95 Mo		See Note 4	Starting Month			
8	a	Safety & Security	95 Mo		See Note 5	Starting Month			
9	a	PR / CR Support	95 Mo		See Note 6	Starting Month			
10		Passenger Vehicles							
	a	Design - DD Submittal	1 LS						
	b	Design - ID Submittal	1 LS						
	c	Design - FD Submittal	1 LS						
	d	Procurement - Working Plans	1 LS						
	e	Procurement - Factory Assembly & Testing	1 LS						
	f	Procurement - On-Site Assembly	1 LS						
	g	Procurement - On-Site Testing	1 LS						
	h	Vehicle Pre-Op Tests	1 LS						
11		Train Control System							
	a	Design - DD Submittal	1 LS						
	b	Design - ID Submittal	1 LS						
	c	Design - FD Submittal	1 LS						
	d	Procurement - Working Plans	1 LS						
	e	Procurement - Factory Assembly & Testing	1 LS						
	f	Installation / Construction	1 LS						
	g	Component Tests	1 LS						
	h	Pre-Operation Tests	1 LS						
12		Communications System (May be broken down by Sub-system)							
	a	Design - DD Submittal	1 LS						
	b	Design - ID Submittal	1 LS						
	c	Design - FD Submittal	1 LS						
	d	Procurement - Working Plans	1 LS						
	e	Procurement - Factory Assembly & Testing	1 LS						
	f	Installation / Construction	1 LS						
	g	Component Tests	1 LS						
	h	Pre-Operation Tests	1 LS						
13		Traction Electrification System							
	a	Design - DD Submittal	1 LS						
	b	Design - ID Submittal	1 LS						
	c	Design - FD Submittal	1 LS						
	d	Procurement - Working Plans	1 LS						
	e	Procurement - Factory Assembly & Testing	1 LS						
	f	Installation / Construction	1 LS						
	g	Component Tests	1 LS						
	h	Pre-Operation Tests	1 LS						
14		Fare Vending System							
	a	Design - DD Submittal	1 LS						
	b	Design - ID Submittal	1 LS						
	c	Design - FD Submittal	1 LS						
	d	Procurement - Working Plans	1 LS						
	e	Procurement - Factory Assembly & Testing	1 LS						
	f	Installation / Construction	1 LS						
	g	Component Tests	1 LS						
	h	Pre-Operation Tests	1 LS						
15		Other Core Systems (may be individually depicted)							
	a	Design - DD Submittal	1 LS						
	b	Design - ID Submittal	1 LS						
	c	Design - FD Submittal	1 LS						
	d	Procurement - Working Plans	1 LS						
	e	Procurement - Factory Assembly & Testing	1 LS						
	f	Installation / Construction	1 LS						
	g	Component Tests	1 LS						
	h	Pre-Operation Tests	1 LS						
16		Operations Control Center (within OSB)							
	a	Design - DD Submittal	1 LS						
	b	Design - ID Submittal	1 LS						
	c	Design - FD Submittal	1 LS						
	d	Procurement - Working Plans	1 LS						
	e	Procurement - Factory Assembly & Testing	1 LS						
	f	Installation / Construction	1 LS						
	g	Component Tests	1 LS						
	h	Pre-Operation Tests	1 LS						
	i	Pre-Operation Tests	1 LS						
17	a	Demonstration / Pre-Passenger Service Training / Tests	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:

- (A) Items can be further broken down as long as they represent a verifiable portion of completed work.
- (B) Materials delivered to site may be listed as SM Pay Items
- (C) Items listed as SM Pay Items must be included in Design-Builder's Baseline Schedule
- (D) The SM Pay Items and Baseline Schedule shall utilize the Project WBS (provided by City at NTP).

Notes on Restrictions:

- (1) Total Mobilization NTE 6% of Construction Value
- (2) Total Payment NTE 10% of Construction Value
- (3) Total Payment NTE 5.0% of Construction Value
- (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

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SAMPLE "SMOM"

SCHEDULE OF MILESTONES for O&M portion of Work (ITO EXHIBIT 22.b)

Pay Request Number: _____

Pay Request Date: _____

Core Systems Contractor: _____

Contract No.: _____

Project Manager: _____

NTP Date: _____

Core Systems Contractor shall provide a breakdown of the O&M portion of the Work into Pay Items reflecting the conditions of SP-6. Each month the Schedule of Milestones will simply reflect the Schedule of Prices Form (ITO Exhibit 17) submitted with the Proposal divided into 12-equal installments for the Operating Period and current Year. These monthly values will be adjusted by applying the appropriate economic price adjustments, service level performance, system availability factor, Fare Vending availability adjustment, "MSF" facility maintenance payment factor. CARP Work adjustment, System downtime deduction, reimbursement for utilities (if applicable), and any additional work approved by the City, via authorized Change Order, during the Month.

The basis of monthly payment calculation has been detailed in SP-6 for O&M portion of Work.

Year 2019	\$		Divided by 12	=	Base Month	\$	
Month of Completed Operations:			March 2019		(as of last Friday of Month)		
Monthly Adjustments (per SP-6)							Dollars (\$)
A. Economic Price Adjustment							\$
B. Service Level Change							\$
Vehicle miles and Operating hours within 20% of Baseline Service Level							\$
C. Service Availability Factor (SAF)							\$
D. Deduction for Loss of Fare Vending System Availability							\$
E. CARP Work Adjustment							\$
F. Accumulated System Downtime Deduction							\$
G. Utility Costs Pass-through (if applicable)							\$
H. MSF facility maintenance Payment Factor							\$
I. Additional Work by Change Order, This Month							\$
Change Order Number & Description:							\$
PAY REQUEST AMOUNT FOR O&M WORK, THIS MONTH							\$\$
CUMMULATIVE O&M WORK, THIS YEAR							\$\$\$
<p style="font-size: small;">Note: For Shuttle Service and Intermediate O&M Periods there will be NO "Economic Price Adjustments" or "CARP Work Adjustments". This shall commence during the Full O&M Period, in 2019.</p>							

SPECIAL PROVISION

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 Core Systems Contractor, or if the Core Systems Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed due to the insolvency of the Core Systems Contractor, or if the Core Systems 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 the City, or if the Core Systems 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 the City gives notice thereof to the Core Systems Contractor and does not recur or the Core Systems Contractor submits a plan for cure which is approved by the City and the Core Systems Contractor diligently commences implementation of the plan and continues the correction of the same within seven (7) Days after the City gives notice thereof to the Core Systems Contractor if same cannot be corrected within the fifteen (15) day notice period, or the Core Systems Contractor has reached the maximum ceiling for Liquidated Damages under Section 2.15, then the City, 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, the City may use all or part of the Core Systems Contractor's equipment and materials and may finish the Work by whatever method the City may deem expedient. In such event, the Core Systems 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 Core Systems Contractor, the Core Systems Contractor shall pay the difference to the City within a reasonable time not to exceed forty-five (45) Days of receiving an invoice for same. The expenses incurred by the City herein, and the damage incurred through the Core Systems Contractor's default, shall be determined by the City, 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, the City may serve written notice upon Core Systems 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 Core Systems Contractor, with consent of the City, 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 the City for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the City 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 the City the amount of damages in excess of the

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balance of the Contract Price incurred by the City resulting from Core Systems 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 the City and, as soon as practicable after the amount is determined, tender payment therefore to the City, the acceptance of which shall not be deemed an acceptance by the City 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 the City citing reasons therefore:

(A) If the Surety assumes the Contract, all money which may become due Core Systems 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 the City's notice and demand, or fails to continue to comply, the City may remove the Surety from the premises. The City 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 Core Systems Contractor and its Surety and may be deducted from any money due or becoming due from Core Systems Contractor. If the amount unpaid under the Contract is insufficient for completion, Core Systems Contractor or Surety shall pay to the City within a reasonable time not to exceed thirty (30) Days after the completion and an itemized demand for payment from the City, all costs and damages incurred by the City in excess of the amount unpaid under the Contract.

(c) The Core Systems 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 Core Systems Contractor shall transfer and assign to the City, in accordance with the City's instruction, all Work, all subcontracts, all construction records, reports, permits, data and information, other materials (including all City-supplied materials), supplies, Work in progress and other goods for which the Core Systems Contractor is entitled to receive reimbursement hereunder, and any and all plans, drawings, sketches, specifications, and information prepared by the Core Systems Contractor or others in connection with the Work, and shall take such action as may be necessary to secure to the City, at the City's sole election, the rights of the Core Systems 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 the City to assume that contract in the case of Termination for Default.

(e) In the event that the City so directs or authorizes, the Core Systems Contractor shall sell at a price approved by the City, or retain with approval of the City 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, the City 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) The City 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 the City of any one or more rights or remedies under this Section shall not preclude the simultaneous or later exercise by the City 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 deleting the section in its entirety and substituting in lieu thereof the following:

(a) Decision by the Officer-in-Charge. Any question or dispute concerning any provision of the Contract which may arise during the Core Systems 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 the City where the cost is more than ten percent (10%) of the original Contract Price or \$25,000 or more, and payment, shall be made only with the approval of the Contracting Officer.

(b) If the Core Systems Contractor does not agree with the decision of the Officer-in-Charge, the Core Systems Contractor and City 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 the City and Core Systems Contractor.

(c) All controversies between the Officer-in-Charge and the Core Systems 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 Core Systems Contractor for a final decision:

(1) For controversies or for claims not exceeding fifty thousand dollars; ninety calendar days after receipt of the claim.

(2) For claims exceeding fifty thousand dollars: ninety calendar days after receipt of the claim; provided that if a decision is not issued within ninety calendar days, the Contracting Officer shall notify the Core Systems 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 Core Systems Contractor's supporting data and other relevant factors.

(3) If a decision on a controversy or a claim not exceeding fifty thousand dollars is not made within ninety calendar days after receipt, or if a decision is not made within the time promised for a claim in excess of fifty thousand dollars, the Core Systems 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 Core Systems 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 City claims against the Core Systems Contractor. All controversies involving claims asserted by the City against a Core Systems 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 Core Systems Contractor shall pay to the City the amount of the City's costs to enforce the Contract, including but not limited to amounts for attorneys' fees, consultants' fees and expenses.

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(f) Decision. The Contracting Officer shall immediately furnish a copy of the decision to the Core Systems 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 Core Systems Contractor brings an action seeking judicial review of the decision in a circuit court of this State within the six months from the date of receipt of the decision.

(1) The Core Systems 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 the City; provided that in any event the Core Systems 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 a new Section SP-7.5 to include the following:

SP-7.5 [RESERVED]

Chapter 7, of the GCDB is amended by adding a new section SP-7.6 to include the following:

SP-7.6 PROJECT PARTNERING

(a) The City encourages the formation of a cohesive partnership consisting of the Core Systems Contractor, their designers and representatives, and their contractors and major subcontractors with the objective of achieving completion of the Work on time, within budget, and in accordance with its intended purpose. This partnership is intended to draw on the strengths of each organization to help identify and achieve reciprocal goals. A primary consideration of the partnership is the prompt and equitable resolution of issues affecting the conduct of the Work under this Contract and the rights and responsibilities of the respective parties. The parties agree to use the principals of project partnering as identified below.

(b) To implement the partnering initiative, a team-building or partnering workshop will be held within forty-five (45) days of Notice to Proceed or at a time mutually agreed upon. The workshop is expected to last approximately two (2) days and will be held at a mutually agreed upon conference facility. The workshop should be attended by both the Core Systems Contractor's and the City's key staff responsible for the management and administration of the Contract. During the initial workshop, a program for the continuation and maintenance of the partnering initiative will be developed for use through the duration of the Project. The costs of the initial workshop will be paid by the Core Systems Contractor. The Core Systems Contractor will be responsible for the salaries, travel, and subsistence costs of its own attendees.

(c) Costs associated with implementing any follow-on programs will be paid by the Core Systems Contractor. There will be no change in Contract Price for costs associated with the partnering workshop or any subsequent partnering activities.

(d) Partnering Principles:

(1) Preventing Conflict. The parties agree to use the principles of project partnering that include: collaboration and cooperation to identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes, claims, or legal actions. Such measures should extend to all levels of the Work, including lower-tiered subcontractors, and may include the following:

(A) Conducting a workshop to “kick-off” the performance of the Work by

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introducing the concepts of project partnering and holding follow-up workshops at least annually;

(B) Developing and implementing a Partnering Action Plan devoted to developing and maintaining a collaborative atmosphere on the Project at all levels;

(C) Developing and implementing a Dispute Escalation Process;

(D) Conducting facilitated, Executive Partnering Sessions among the senior managers of each party to discuss issues related to potential conflicts and to engage in collaborative problem solving;

(E) Conducting training for all parties in teambuilding, collaborative problem solving and conflict resolution skills; and

(F) Conducting evaluations of the Project's partnering efforts. Inclusion of language from this Section in contracts for subcontractors who become involved in the performance of the Work.