

**Honolulu High-Capacity Transit Corridor Project**

**AGREEMENT FOR DESIGN-BUILD-OPERATE-MAINTAIN SERVICES  
CONTRACT NO. CT-DTS-1100194**

THIS CONTRACT FOR THE CORE SYSTEMS DESIGN-BUILD-OPERATE-MAINTAIN SERVICES dated November 28, 2011 (the "Contract"), is entered into by and between the HONOLULU AUTHORITY FOR RAPID TRANSPORTATION, a semi-autonomous agency of the City and County of Honolulu, whose principal place of business and mailing address is Ali'i Place, 17<sup>th</sup> Floor, 1099 Alakea Street, Honolulu, Hawai'i 96813 ("HART"), and ANSALDO HONOLULU JV, a Hawaii General Partnership, whose principal place of business and mailing address is 737 Bishop Street, Suite 2900, Honolulu, Hawai'i 96813 (the "CORE SYSTEMS CONTRACTOR").

**WITNESSETH:**

WHEREAS, HART desires the CORE SYSTEMS CONTRACTOR to undertake the design, construction, operation and maintenance of the Core Systems for the Honolulu High-Capacity Transit Corridor Project in Honolulu, Hawai'i, from the East Kapolei Station to the Ala Moana Station (the "PROJECT" as defined in the Special Provisions);

WHEREAS, HART desires the CORE SYSTEMS CONTRACTOR to operate and maintain the PROJECT commencing with a series of intermediate operating periods as defined in Part 2, Technical Provisions ("TP") TP-3.1.5, and for full Operations and Maintenance ("O&M") of the Core Systems for a period of five (5) years as defined in TP-3.1.6 and for an Optional additional period of five (5) years as defined in TP-3.1.7, unless terminated by HART as provided below;

WHEREAS, HART personnel are not able to provide the services entered hereunder; and

WHEREAS, the CORE SYSTEMS CONTRACTOR was selected pursuant to Section 103D-303 of the Hawai'i Revised Statutes ("HRS") and applicable Hawai'i Administrative Rules ("HAR"), relating to competitive sealed proposals;

NOW, THEREFORE, HART and the CORE SYSTEMS CONTRACTOR, in consideration of the foregoing and of the mutual promises hereinafter set forth, and intending to be legally bound, hereby mutually agree as follows:

1. The CORE SYSTEMS CONTRACTOR shall perform and complete all of the services required for the PROJECT in accordance with and as set forth in the Contract Documents as hereinafter described and shall furnish all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of the PROJECT (collectively, the "Work"), and the CORE SYSTEMS CONTRACTOR shall receive and accept as full compensation for all of the Work the price for the various items of the Work as hereinafter set forth.

2. The CORE SYSTEMS CONTRACTOR shall perform and complete the Work in accordance with:

- a. Part 1 – This Agreement;
- b. Part 2 – The Special Provisions, Management Provisions, Technical Provisions, in that order, and any attachments and exhibits thereto (collectively, "Special Provisions");



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- c. Part 3 – The General Conditions of Design-Build Contracts City and County of Honolulu, dated February 2009 (“GCDB”);
- d. Part 4 – The Design Criteria;
- e. Part 5 – The Engineering Data;
- f. Part 6 – The Request For Proposal Drawings as modified by the CORE SYSTEMS CONTRACTOR’s proposal information, dated June 7, 2010 (“RFP Part 2 Proposal”), as modified (if applicable) by the first Best and Final Offer, dated January 18, 2011 (“BAFO 1”), and as modified (if applicable) by the second Best and Final Offer, dated February 24, 2011 (“BAFO 2”); modifications in BAFO 2 control over modifications in BAFO 1; modifications in BAFO 1 control over modifications in the RFP Part 2 Proposal;
- g. Part 7 – The Standard Specifications;
- h. Part 8 – The Standard and Directive Drawings; the Plans Standards; and
- i. Part 9 – The CORE SYSTEMS CONTRACTOR’s RFP Part 2 Proposal, as modified (if applicable) by BAFO 1, as modified (if applicable) by BAFO 2; modifications in BAFO 2 control over modifications in BAFO 1; modifications in BAFO 1 control over modifications in the RFP Part 2 Proposal;

all of which are collectively referred to as the “Contract Documents,” as defined in the Special Provisions, are attached hereto and incorporated herein, and are listed in order of controlling precedence should there be any conflict in the terms of the Contract Documents, and any modifications, changes or amendments in connection therewith being specifically referred to and incorporated herein by reference and made a part hereof as though fully set forth herein. Provided, those portions of Part 9 that exceed the requirements of the other Contract Documents become the new minimum Contract requirements. The acronym “HART” shall be substituted for the “City and County of Honolulu”, “CITY”, “Rapid Transit Division”, and “RTD” wherever those terms appears in the Contract Documents, unless the context clearly indicates otherwise.

3. The CORE SYSTEMS CONTRACTOR shall complete the Work required under the Contract Documents as provided for in the Special Provisions and other Contract Documents attached hereto.

4. There will be several separate and distinct written notices to proceed under the Contract. Work shall not begin until HART has issued the respective Notice to Proceed (“NTP”). Any Work undertaken by the CORE SYSTEMS CONTRACTOR prior to issuance of a required written NTP will be the sole responsibility of and will be undertaken at the sole risk of the CORE SYSTEMS CONTRACTOR, without any obligation on the part of HART.

The first NTP (“NTP #1”) is anticipated for Work required to support the design efforts of fixed facilities by providing interface management and coordination and advance design of the Core Systems.

The second NTP (“NTP #2”) is anticipated to be issued to procure, fabricate and furnish Core Systems material, equipment and passenger vehicles according to the final design.

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The third NTP ("NTP #3") is anticipated to be issued to construct, install, test and demonstrate the Core Systems operations leading to multiple segment openings for Passenger Service, as is defined in Part 2, Special Provisions ("SP") SP-4.1.

Subsequent NTPs may be issued for commencement of operations and maintenance and for Work identified in Contract amendments. All NTPs shall be issued in support of the accepted Baseline Schedule (as Proposed) in compliance with the schedule required dates defined in SP-4.1 and attached to this Contract in Part 9.

5. This is a firm fixed-price contract, and subject to the provisions of this paragraph and in accordance with Chapter 6 of the GCDB, as amended by Chapter 6 of the Special Provisions, HART agrees to pay the CORE SYSTEMS CONTRACTOR, for the satisfactory performance and completion of the Work, the payments in accordance with the Schedule of Milestones. The aggregate amount of these lump sum payments shall not exceed ONE BILLION THREE HUNDRED NINETY-SEVEN MILLION THREE HUNDRED EIGHTY-SEVEN THOUSAND NINETY-THREE AND 00/100 DOLLARS (\$1,397,387,093.00). The lump sum payments for services and the Work performed under the Contract are all inclusive of direct labor, overhead, general and administrative expenses, other direct costs, subcontractor costs, fixed fees, and all applicable taxes, State general excise and use tax (GET) and county one-half percent (0.5%) GET Surcharge.

The total lump sum payments consist of the following:

\$573,782,793 for the Design-Build lump sum;  
\$166,974,503 for Intermediate O&M periods;  
\$339,056,303 for the first full five-year O&M period;  
\$317,573,494 for the optional five-year O&M period unless terminated by HART.

At the end of the first full five-year O&M period, the CORE SYSTEMS CONTRACTOR's O&M performance on the O&M portion of the Work will be evaluated by HART. HART may terminate the Agreement at the end of the first full five-year O&M period without any further obligations to HART if HART, in its sole discretion, determines that the CORE SYSTEMS CONTRACTOR's O&M performance is unsatisfactory. Such termination of the Agreement shall be in writing from HART to the CORE SYSTEMS CONTRACTOR. Any funds remaining at the end of this Agreement shall revert back to HART.

In accordance with the paragraphs above, the total aggregate amount of ONE BILLION THREE HUNDRED NINETY-SEVEN MILLION THREE HUNDRED EIGHTY-SEVEN THOUSAND NINETY-THREE AND 00/100 DOLLARS (\$1,397,387,093.00) is established as the maximum payable under this Contract and is subject to the Special Provisions and the GCDB, including the provisions thereof relating to reducing or increasing the compensation of the CORE SYSTEMS CONTRACTOR.

6. By signing below, the CORE SYSTEMS CONTRACTOR hereby certifies that, to the best of its knowledge and belief, cost or pricing data, as defined in Section 3-122-122, HAR, and submitted pursuant to Section 3-122-125, HAR, is accurate, complete, and current as of the date of this Contract.

7. Unless otherwise agreed in writing when notice is to be given to HART, it shall be mailed or delivered to:

HART-12 (11/11)

## Certificate

The attached contract for designing, building, operating and maintaining the Core System Components for the Honolulu High-Capacity Transit Corridor Project (also known as the Honolulu Rail Transit Project).

(\$1,397,387,093)\*

is hereby approved as to availability and designation of funds, and certification is hereby made that there is a valid appropriation from which expenditures to be made under said contract may be made and that sufficient unencumbered funds are available in the Treasury of the City and County of Honolulu to the credit of such appropriation to pay the amounts of such expenditures when the same become due and payable.

CONTRACT NO. CT-HRT-1200106 formally CT-DTS-1100194

HONOLULU, HAWAII

FUNDS:

Transit Capital Fund (#690)

Capital Improvement Bond Fund (#695)

Date: **NOV 28 2011**

ACCOUNT NO.

\$58,275,000 = 690/7790-12 (4263)

\$21,925,000 = 695/7790-12 (4263)

\$ 7,500,000 = 690/7790-10 (4263)

\$10,485,000 = 695/7790-10 (4263)

\$98,185,000

  
Interim Executive Director and CEO  
Honolulu Authority for Rapid Transportation

\* SUBJECT TO AVAILABILITY OF FUTURE YEARS'  
FUNDING IN THE AMOUNT OF \$1,299,202,093

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Honolulu Authority for Rapid Transportation  
Ali'i Place, 17<sup>th</sup> Floor  
1099 Alakea Street  
Honolulu, Hawai'i 96813  
Attention: Interim Executive Director

8. Unless otherwise agreed in writing when notice is to be given to the CORE SYSTEMS CONTRACTOR, it shall be mailed or delivered to:

Ansaldo Honolulu JV, a General Partnership  
737 Bishop Street, Suite 2900  
Honolulu, HI 96813  
Attention: Piero Marotta


9. This Contract, its integrated attachments, and the Contract Documents constitute the agreement of the parties that reflect a complete statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof unless the parties specifically display a mutual intent to amend a particular part of this Contract. Unless otherwise expressly authorized by the terms of this Contract or the other Contract Documents, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

IN WITNESS WHEREOF, HART and the CORE SYSTEMS CONTRACTOR have executed this Contract by their duly authorized officers or agents on the day and year first above written.

HONOLULU AUTHORITY FOR RAPID  
TRANSPORTATION

By:   
ITS: Interim Executive Director

CORE SYSTEMS CONTRACTOR  
ANSALDO HONOLULU JV

By:   
ITS: Attorney-In-Fact

APPROVED AS TO FORM AND  
LEGALITY:

  
Deputy Corporation Counsel

STATE OF HAWAII )  
 ) S.S.  
CITY & COUNTY OF HONOLULU )



(Notary Stamp or Seal)

(Notary Stamp or Seal)