

MCCORRISTON MILLER MUKAI MACKINNON LLP

DAVID J. MINKIN 3639-0
D. KAENA HOROWITZ 9836-0
JORDAN J. INAFUKU 10392-0
SABRINA N. GOUVEIA 11814-0
Five Waterfront Plaza
500 Ala Moana Boulevard, 4th Floor
Honolulu, HI 96813
Telephone: (808) 529-7300
Facsimile: (808) 524-8293
Email: minkin@m4law.com; dkh@m4law.com;
jinafuku@m4law.com; sng@m4law.com

Electronically Filed
FIRST CIRCUIT
1CCV-24-0001819
20-DEC-2024
10:51 AM
Dkt. 1 CMPS

DLA PIPER LLP (US)

DENNIS J. POWERS (*pro hac vice application to be filed*)
KENNETH SCHMETTERER (*pro hac vice application to be filed*)
444 West Lake Street, Suite 900
Chicago, IL 60606
Telephone: (312) 368-7273/2176
Facsimile: (312) 630-5372/6350
Email: dennis.powers@us.dlapiper.com;
kenneth.schmetterer@us.dlapiper.com

Attorneys for Plaintiff
HITACHI RAIL HONOLULU JV

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HITACHI RAIL HONOLULU JV,	)	CIVIL NO. _____
	)	(Contract)
Plaintiff,	)	
vs.	)	COMPLAINT; DEMAND FOR JURY
	)	TRIAL; SUMMONS
HONOLULU AUTHORITY FOR	)	
RAPID TRANSPORTATION; THE CITY	)	
AND COUNTY OF HONOLULU; JOHN	)	
DOES 1-5; JANE DOES 1-5; DOE	)	
CORPORATIONS 1-5; DOE	)	
PARTNERSHIPS 1-5; DOE	)	
NON-PROFIT ORGANIZATIONS 1-5; and	)	
DOE GOVERNMENTAL AGENCIES 1-5,	)	
	)	
Defendants.	)	

COMPLAINT

Plaintiff, HITACHI RAIL HONOLULU JV (“Plaintiff” or “HRH”), by its undersigned counsel, McCorriston Miller Mukai Mackinnon LLP and DLA Piper LLP (US), sues Honolulu Authority for Rapid Transportation (“HART”) and the City and County of Honolulu (the “City”) for breach of contract and unjust enrichment for an amount of no less than \$324,169,130, plus interest. Defendants’ mismanagement of the Skyline rail project has led to countless delays and other errors resulting in significantly increased costs for HRH in performing its design-build work and operations and maintenance services for the project. Defendants’ mismanagement even included allowing track to be installed by another of HART’s contractors that was incompatible with the approved passenger vehicle wheel specifications that HART provided to HRH, which HART required HRH to resolve without compensation. Additionally, Defendants directed HRH to commence a costly 18-month operations and maintenance workforce mobilization effort at the same time HART knew or should have known that HRH’s mobilized workforce would not be needed for a substantial period. HART’s request that HRH prematurely mobilize cost HRH more than \$92,000,000.

Defendants have delayed any good faith efforts to resolve HRH’s claims, no doubt to delay further public criticism of its Skyline project mismanagement. As a result, HRH has effectively been required to fund a large part of the project itself. HRH has worked tirelessly and at great expense to resolve this dispute short of litigation, but further delay is no longer sustainable.

Stating further for its Complaint against the above-named Defendants, HRH alleges as follows:

INTRODUCTION

1. In 2011, the City, through the semi-autonomous agency it formed, HART, commenced the development of the first fully automated, driverless, fixed-guideway light rail system in the United States (the “Project”). The Project, also known as the “Skyline,” is the largest public works project in the history of the State of Hawaii and is planned to run from East Kapolei to Ala Moana Center, a span of 20.1 miles, with twenty-one stations.

2. Instead of hiring a single design-build contractor to design and build the entire Skyline system, supply the passenger vehicles, and operate and maintain the system as is common in the rail industry, HART elected to distribute the design and construction of the Project among numerous contractors, with each performing discreet design and construction services. As one would expect, a complex project such as the Skyline, with numerous contractors performing independent design and construction services, requires competent and effective owner coordination.

3. HART retained HRH to design and supply the Project’s passenger vehicles, train control systems, track electrification system, communication system, supervisory control and data acquisition (“SCADA”) system, and platform screen gate system, and upon its completion, operate and maintain the Skyline. HART retained other Project contractors to design and build the Project’s elevated guideways and stations and to supply the track and special trackwork for the three segments that comprised the Project (referred to as “Fixed Facilities Contractors”).

4. As a result, for HRH to perform its work, substantial work first needed to be completed by the Fixed Facilities Contractors. HRH’s ability to timely perform its design-build work was and remains dependent on the timely performance of HART’s other contractors.

5. To deal with HRH's need to access completed Project facilities to perform its work, HART contractually agreed to provide HRH with access to specific facilities by specific dates. HART, however, was not up to the task of coordinating the numerous contractors involved – a task vital to the project delivery system HART chose. HART's failures in leadership and coordination resulted in extraordinary delays and cost overruns. By 2019, the Project was *five years behind schedule*.

6. In 2019, due to the extraordinary delays, HRH and HART amended their contract with a change order that extended the dates by which HRH would complete each of the Project's three segments by more than five years. This Change Order 52 also added dozens of new milestone dates by which HART was required to provide HRH access to Project facilities to perform HRH's work and increased HRH's contract price by \$160,000,000 because of the delay¹.

7. Almost immediately after signing Change Order 52, however, HART resumed its practice of failing to provide HRH with access to the Project facilities by the requisite dates, and in fact, did not even come *close* to complying with the new milestone dates.

8. HRH has been at the mercy of HART's failures to coordinate and advance the work required to provide HRH timely (and repeatedly promised) access to the Project facilities. As a result of HART's and its contractors' failures to perform timely and effective work, HRH has been significantly delayed, and the Project is now delayed three years (and counting) beyond even the five-year extension provided by Change Order 52.

9. Project delays require a contractor to, among other things, staff a project for the extended period and incur labor and material inflation. For a Project as large as this, delays

¹ A significant part of the \$160,000,000 has not yet been paid to HRH.

impose a tremendous hardship on the contractors that have mobilized hundreds of design and construction workers, and dozens of subcontractors and suppliers.

10. HART has refused to accept responsibility for its failures to provide HRH access to facilities as promised and has consistently denied HRH's requests for reimbursement for the substantial additional costs incurred, and to be incurred, as a result of HART-caused delays along with the other damages that HRH has suffered.

11. HART also failed to provide meaningful and timely updates on the delays and anticipated revised schedules of the other contractors, regularly kept HRH in the dark about the challenges HART was undoubtedly aware of from its other contractors, and frequently failed to provide meaningful responses to HRH requests for status and field progress updates.

12. HART's breaches extend beyond the Project delays. HART has even gone so far as to take affirmative acts that have caused HRH to incur substantial additional costs. By way of example (but without limitation), in February 2019, HART directed HRH to mobilize its Project operations and maintenance workforce and vendors in anticipation of HRH initiating its operation and maintenance duties for Segment 1. At that time, however, HART knew, or certainly should have known, that Segment 1 was not going to be complete for several years. HRH, which was not privy to HART's master Project schedules and the other contractors' schedules because HART would not share them, complied with HART's direction and spent 18 months hiring and training operations and maintenance personnel and entering into contracts with vendors for the operation and maintenance of Segment 1—all of which could not be utilized for their intended purpose for years because of the delays to Segment 1. Needless to say, this premature mobilization (as directed by HART) caused HRH to incur extraordinary unnecessary costs.

13. As another example, HART has required HRH to provide costly and significant revisions to HRH's original contract obligations – including changes to the system's Wi-Fi infrastructure, and the passenger vehicle wheel design after HRH had supplied the wheels as directed by HART—without compensating HRH for that additional work.

14. HART also has failed to comply with the contract in numerous other respects, such as failing to compensate HRH for force majeure costs incurred by HRH from COVID-19 and the war in Ukraine and continuing to withhold 10% retention from payments made to HRH after HART agreed to not withhold such retention after HRH provided a retention bond.

15. As a result of Project delays and impacts for which HART was and remains responsible and other HART contract breaches, HRH has incurred and continues to incur financial damages that exceed \$300 million.

16. Notwithstanding the many delays for which HART is responsible and HART's many other failures to keep its promises to HRH, HRH has stayed the course and continued its work at great loss to HRH. HRH has completed and now operates Segment 1 of the Project, which is viewed by HART as a resounding success. Segment 1 has achieved an unheard of level of schedule adherence of approximately 99%. Indeed, HART's Executive Director has expressly recognized HRH's achievement by stating that "Hitachi has been phenomenal in maintaining that 99.6% serviceability week after week. It's incredible." HRH has continued its work on Segment 2 of the Project. But HRH has only been able to do so by effectively self-funding the Project, including borrowing significant sums (with substantial interest payments) to pay its staff and subcontractors, in lieu of being paid what it is due by HART. That is now unsustainable.

17. Indeed, Hill International, Inc. ("Hill"), an independent oversight consultant hired by the United States Federal Transportation Agency ("FTA") to monitor and oversee the Project,

contemporaneously identified in its reports to the FTA several of the same HART impacts and issues raised by HRH in this Complaint as causing delays to the completion of Segments 1 and 2.

18. Moreover, in a 2019 report entitled “Audit of the Honolulu Authority for Rapid Transportation [‘HART’]: Report 1,” the Office of the Auditor for the State of Hawaii attributed the Project’s drastic cost increase and significant delay to: (1) the City’s premature entry into contracts under an artificial timeline and a fragile financial plan; and (2) HART’s inaccurate reporting of project costs and completion schedule, which undermined Board oversight and eroded public confidence.

19. The state auditors also concluded that from the beginning, unrealistic deadlines and revenue projections resulted from a desire to demonstrate that the Project was progressing satisfactorily and to minimize public criticism, which could have eroded support for the Project. The auditors themselves reported numerous difficulties in obtaining cooperation and information from HART during the course of their work. The auditors never received some documents they had requested from HART, notwithstanding numerous follow-up requests. HRH has experienced, and has been damaged by, the same transgressions and the lack of transparency and cooperation from HART.

20. HRH had been trying to reach a resolution of these issues with HART for years, to no avail. HRH can no longer continue to cover HART’s missteps and fund the Project without being fairly and reasonably compensated for its work.

21. HRH has submitted numerous claims to HART over the years, regarding the same issues detailed in this Complaint, as those claims arose. HART, either through its CEO, Contracting Officer, and/or the Officer-in-Charge (all the same person for the HRH design-build work) have ignored those claims. In March 2023 and in December 2023, HRH submitted

comprehensive, detailed summaries of its claims to HART. Although HART submitted a reply to HRH's March 2023 submission, and has since requested more information, which HRH has provided, HRH has not received any decisions from the Contracting Officer/Officer-in-Charge as required by the parties' contract for those claims.

22. For many months now, HRH (with the assistance of a claims consultant) has provided additional information and supporting documentation requested by HART to further substantiate and explain HRH's claims—to no avail.

23. As the culmination of that effort, HRH requested and participated in a three-day mediation required by the parties' contract from October 28 – 30, 2024. HRH flew in several of its senior project, legal, engineering, and claims consultant team members from around the world in a concerted and determined (and costly) effort to try to resolve this dispute, and to provide, in real-time, any information that HART may request. That effort also failed.

24. HRH's prolonged and substantial investment and efforts to try to resolve this dispute short of litigation have failed. HART's conduct demonstrates a strategy to avoid paying HRH for as long as possible, while forcing HRH to continue to substantially self-fund the work. Any further attempts at resolution, short of litigation, would be futile. Accordingly, HRH filed this lawsuit seeking compensation for the damages caused by HART's broken promises.

PARTIES

25. HRH is a Hawaii general domestic partnership whose principal place of business is 96-004 Ala 'Ike Street, Pearl City, Hawaii, and whose partners are Hitachi Rail STS USA, Inc. and Hitachi Rail STS S.p.A.

26. HART is a semiautonomous agency of the City and County of Honolulu. HART is responsible for overseeing the Project.

27. The City is a consolidated city-county municipal corporation. In Amendment Two to the contract between HART and HRH, the City, through its Department of Transportation Services, is deemed HART's successor for HRH's operations and maintenance responsibilities.

28. Defendants JOHN DOES 1-5, JANE DOES 1-5, DOE CORPORATIONS 1-5, DOE PARTNERSHIPS 1-5, DOE NON-PROFIT ORGANIZATIONS 1-5, and DOE GOVERNMENTAL AGENCIES 1-5 (collectively "Doe Defendants") are persons, corporations, entities, agents and/or governmental units whose true names, identities, and capacities are presently unknown to HRH; who in some manner presently unknown to HRH are liable to HRH based on the claims and/or causes of action herein alleged and described; who in some manner presently unknown to HRH are responsible for injuries and damages to HRH; and/or who have in some manner presently unknown to HRH affected or attempted to affect HRH's rights. HRH requests leave to insert the true names and identities of said Doe Defendants if and when they become known to HRH. HRH has been unable to ascertain the true names and identities of said Doe Defendants despite a thorough and reasonable examination of information available to HRH at this time.

JURISDICTION AND VENUE

29. This Court has subject matter jurisdiction pursuant to Haw. Rev. Stat. § 603-21.5(a)(3) as a civil action.

30. This Court has personal jurisdiction over HART, which is headquartered and conducts business in this State.

31. Venue is proper in this judicial circuit pursuant to Haw. Rev. Stat. § 603-36(5) because the events and omissions giving rise to HRH's claims occurred in this judicial circuit, and HART is domiciled in this circuit.

FACTUAL BACKGROUND

The Project

32. The Project, called the Skyline, is the first fully automated, elevated, driverless, urban light rail metro transit system in the United States, and is the largest public infrastructure project in the history of Hawaii. The Project is planned to extend from East Kapolei to Ala Moana Center, a span of 20.1 miles, with twenty-one stations. The entire Project as originally conceived, was to have been completed in March 2019.

33. The Project is divided into three segments. Segment 1 spans 10 miles with nine stations, all of which are completed: Kaulaka‘i (East Kapolei) Station, Keone‘ae (UH-West Oahu) Station, Honouliuli (Ho‘opili) Station, Hō‘ae‘ae (West Loch) Station, Pouhala (Waipahu Transit Center) Station, Hālaulani (Leeward Community College) Station, Waiawa (Pearl Highlands) Station, Kalauao (Pearlridge) Station and Hālawā (Aloha Stadium) Station. Segment 1 also includes a 43-acre maintenance and storage facility. Segment 1, originally scheduled to be completed in December 2015, was completed in May 2023 - 869 calendar days after the December 31, 2020 date as adjusted by Change Order 52. Segment 1 opened for service on June 30, 2024.

34. Segment two consists of 5.2 miles of the system that is scheduled to run from Aloha Stadium to the Middle Street Transit Center. The stations currently under construction include Makalapa (Joint Base Pearl Harbor-Hickam) Station, Lelepaua (Daniel K. Inouye International Airport) Station, Āhua (Lagoon Drive) Station, and Kahauiki (Middle Street) Station. Segment 2, originally scheduled to have been completed in October 2017, is currently scheduled to be completed on October 15, 2025, or 1019 calendar days after the December 31, 2022 date as adjusted by Change Order 52.

35. Segment 3 is intended to run from Kahauiki to Ala Moana Center. Six stations are expected to be built at Mokauea (Kalihi) Station, Niuhelewai (Honolulu Community College-Kapālama) Station, Kūwili (Iwilei) Station, Hōlau (Chinatown) Station, Kuloloia (Downtown) Station, and Ka‘ākaukukui (Civic Center) Station. Segment 3 was originally scheduled to have been completed (together with the entire project) in March 2019. This completion date was revised by Change Order 52 to January 1, 2025. This completion date will be extended several years both because of ongoing delays and because Segment 3 has been suspended by HART.

The Parties’ Contract

36. On November 28, 2011, HART and HRH entered into an Agreement For Design-Build-Operate-Maintain Services Contract No. CT-DTS-1100194 (the “Contract”).

37. The Contract incorporates a series of contract documents, including General Conditions, Special Provisions that amend the General Conditions, Technical Provisions, Management Provisions, Design and Engineering Criteria, Standard Specifications, Design Criteria, Engineering Data, Request for Proposal drawings as modified, Standard and Directive Drawings, Plans Standards, and HRH’s Request For Proposal Part 2, as modified and amended. These documents, with the Contract, are collectively referred to in this Complaint as the “Contract” or “Contract Documents.”

38. The Contract requires HRH to design and supply the Project’s passenger vehicles, train control systems, track electrification system, communication system, SCADA system, and platform screen gate system for all three Segments, and, upon each Segment’s completion, to operate and maintain that Segment. Under the Contract, HRH is to be paid a fixed price that was agreed to at the time the Contract was signed in 2011. The Contract’s fixed price was premised on the Project duration set forth in the Contract Documents, including a Project completion in

March 2019. The Contract has been amended several times by the parties through change orders and amendments.

39. Section 5.3(b) of the Special Provisions (a Contract Document) entitles HRH to additional compensation for additional costs incurred as a result of changes or change orders requested by HART.

40. Section 5.6(g)(4) of the Special Provisions expressly entitles HRH to compensation for additional costs incurred during the period of any project completion delay caused by HART: “Such reimbursement shall include direct costs, if any, incurred as a result of the delay”

41. Sections 5.6(d)(1) and (2) of the Special Provisions require HART to extend completion deadlines and compensate HRH for “reasonable, verifiable additional direct costs incurred arising from force majeure events.” The Special Provisions’ definition of force majeure events includes epidemics and war.

42. Section 4.1 of the Special Provisions sets forth a schedule of milestone dates (“Access Milestones”) by which HART agreed to provide HRH access to the Project facilities that were being designed and built by other contractors so HRH could perform its design-build work consistent with the Project schedule. HRH’s fixed price for the Project was based on these Section 4.1 Access Milestones, the Segment 1 and 2 completion dates, and a Project completion in March 2019.

Change Order 52

43. By 2019, the Project was several years behind schedule and HART had failed to comply with any of the required Access Milestones. For this reason, an amendment to the Agreement was necessary to reset the dates and increase HRH’s contract sum to compensate

HRH for the extended project duration and the inflationary effects of work being performed years after originally planned.

44. On May 14, 2019, HART and HRH executed Change Order 52, which served several purposes. It moved the Segment 1 completion date from December 15, 2015 to December 31, 2020; the Segment 2 completion date from October 15, 2017 to December 31, 2022; and the Segment 3 completion date from March 15, 2019 to January 1, 2025. It also reset the Access Milestones to correspond with the updated completion dates and increased the number of the Access Milestones from 47 to 107.

45. Change Order 52 also increased HRH's contract price by \$160,000,000 to compensate HRH for the Project delays, the extended duration of the Project, and the higher costs that HRH would incur due to inflation, as HRH was performing its work several years after the original period, which the Contract price was based on. Change Order 52 expressly states that it is "based on the [Access Milestone] dates listed in the Attachment #1 to this CCO and incorporated in the next revised schedule."

46. In Change Order 52, HART also allowed HRH to post a retention bond in lieu of HART withholding 10% retention from payments made to HRH. HRH provided HART with such a retention bond that satisfied the requirements of Change Order 52 including, without limitation, HART's acceptance of the bond.

47. As explained below, almost immediately following the execution of Change Order 52, HART continued its practice of failing to provide HRH access to the Project facilities by the required Access Milestones. It also continued to withhold 10% retention from its payments to HRH.

HART’S Agreements with other Contractors and STG’s lawsuit against HART

48. Instead of hiring a single design-build contractor to provide a turnkey design and build the entire Project, which is a common practice in the industry, HART elected to divide the design and construction of the Project among numerous contractors and vendors, with each designing and building a discrete portion of the Project. Accordingly, in addition to HRH, HART hired contractors to perform site work, build the stations, platforms, and guideways, and supply and install the track.

49. Some of the contractors that separately contracted with HART include Shimmick/Traylor/Granite JV (“STG”) for the design and construction of some of the airport guideways and stations; Kiewit Kobayashi JV for the design and construction of the maintenance and storage facility and the supply of trackwork; Kiewit Pacific Co. for the design and construction of the West O’ahu to Farrington Highway guideway; Kiewit Infrastructure West for the design and construction of the Kamehameha Highway guideway; and Nan Inc. for the design and construction of the West O’ahu stations, Kamehameha Highway stations, and airport utilities construction.

50. An example of the delays caused by HART’s other contractors that, in turn, delayed HRH is described in the lawsuit filed by STG. In July 2023, SRG sued HART seeking recovery for over 650 days of delay due to the failure to relocate utility lines— a task that STG alleged HART knew of and should have prepared for but did not. Just five months after STG filed its lawsuit, HART settled the STG delay claim with an agreement to pay STG nearly \$60 million to compensate it for its Project delay losses.

HRH's Work Depended on the Timely Completion of Work by HART's Other Contractors

51. The dates by which HRH was required to complete its Segments 1 and 2 work were contingent on HART providing HRH access to Project facilities in accordance with the Change Order 52 Access Milestones.

52. The Contract and HRH's baseline schedule for the Project recognized the importance of access for HRH and that the integrated testing that HRH was required to perform to open a Segment to the public could not occur until HART's Fixed Facilities Contractors' work was complete and HRH had full access to a facility. Section 4.1 of the Special Provisions of the Agreement provides "[f]or 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 the fixed facility contracts. The list below [as amended by Change Order 52] is the continuation of the Table of Access Milestones as it relates to full access ('Work Site Control') for each fixed facility contract."

HRH's Delay Notifications to HART

53. HRH repeatedly and contemporaneously wrote to HART, identifying in detail the many access delays and the likely impacts that these delays had on HRH's ability to perform its work. In its communications, HRH offered to take steps to try to mitigate the additional costs that would accrue, while advising that such additional costs would be HART's responsibility.

54. In addition, HRH repeatedly requested from HART schedules and updates for the estimated completion of the Facilities Contractors' work. For example, on November 21, 2023, HRH stated that its "request derives from the numerous changes of the [Access Milestone] dates. It is critical for HRH to receive [the] schedule to plan its commissioning/construction activities

and be in sync with HART's projected schedule." HART's response insisted that HART had no further obligations under the Agreement to advise HRH of the then-currently anticipated schedules, on the grounds that HART – several years earlier – had provided HRH with what were then the “proposed” schedules, even though those schedules were already years out of date with deadlines that had long since been missed. Yet HART insisted that its initial out-of-date schedule fully satisfied HART's contractual obligations.

55. In that same response, HART stated that HRH should work directly with HART's other contractors to coordinate the work with any changes to the actual schedule – even though only HART, not HRH, had visibility into the progress of HART's Fixed Facility Contractors, and only HART had the ability to integrate those schedules with HRH's corresponding schedule.

56. As another example, on July 20, 2023, HRH requested that HART provide it with STG's schedule. In response, HART stated that “we are currently in the process of delay claim mediation with AGS Contractor. In addition, AGS schedule has not been up to date to provide a realistic forecast on the remaining station work. Therefore, we do not want to share any of [sic] document related to AGS contract at this time. Please continue your coordination with AGS Contractor through weekly HRH/STG Coordination meetings to schedule your work.” Again, however, only HART, not HRH, had visibility into the progress of HART's Fixed Facility Contractors, and only HART had the ability to integrate those schedules with HRH's corresponding schedule.

57. Because HART refused to provide HRH with the Fixed Facilities Contractors' schedules, HRH could only rely on HART's representations, which, as revealed by independent audits, were chronically optimistic almost to the point of being deceptive.

Segment 1 Delays Canopy Access at Aloha Stadium

58. In 2019, HRH informed HART that delays in the installation of canopies at Aloha Stadium were impacting HRH's ability to conduct train testing. HRH requested HART to direct the canopy Fixed Facility Contractor to coordinate with HRH for canopy installation work and added that HRH would be bringing in more resources to try to maintain the work schedule. Also, Hill, the independent oversight consultant hired by the Federal Transportation Authority (which is providing funding for the Project), described in its May 2020 monthly report how construction delays and defects identified in June 2019 with the station canopies prevented HRH from access necessary to complete Segment 1. Hill also reported that HRH "needs full access by May 2020"—but the defects were not resolved until August 2020.

HART's Design Changes

59. Project design changes, implemented by HART, created additional substantial delays. For example, in 2019, HART decided to add four backup generators to the Project that would permit trains to proceed to a station in the event of a power failure. The generator installation needed to be complete before HRH could commission and test Segment 1 prior to opening it to the public.

60. HART was to procure the generators and contract with the electric power company, Hawaiian Electric Power Company ("HECO"), to supply and install the generator metering equipment. In a change order issued by HART, HRH was directed to design, procure, install, and test the transfer switch that transfers power from HECO power to the generators in the event of a power failure. A Fixed Facility Contractor was required to install the transfer switch concrete pads and conduit. The transfer switch pads installed by HART's Fixed Facility Contractor, however, were incompatible with the generator transfer switch system and needed to

be replaced prior to the installation of the transfer switch system. Also, HECO, from whom HART was procuring the generator metering equipment, took 21 months longer than planned to supply the metering equipment.

61. HRH's October 2020 project schedule anticipated that HECO's installation would be complete by February 22, 2021; however, HECO did not supply equipment until November 2022. Installation of that equipment was still required before HRH's testing of the equipment could begin.

62. HRH endeavored to mitigate the delay and its impact. In September 2022, HRH asked HECO to expedite delivery to prevent even further Project delay. In January 2023, also to mitigate HECO's delays, HRH requested that HECO work on weekends, taking on the extra overtime costs. Nevertheless, HECO's generator metering equipment installation and testing were not completed until February 17, 2023, 23 months later than scheduled.

63. HRH proceeded immediately thereafter with the commissioning and testing of Segment 1. HRH completed the Segment 1 testing on February 22, 2023, five days after the completion of HECO's testing of its equipment.

Track Crossover/Passenger Vehicle Wheel Conflict Delay and Costs

64. Crossovers are sections of the Project track that permit a passenger vehicle to cross from one track to another. Crossovers are considered "special trackwork" in the industry (as opposed to straight track upon which the passenger vehicles run).

65. Section 34 11 98 of the Standard Specifications, which are part of the Contract Documents, required a Fixed Facilities Contractor—not HRH but Kiewit/Kobayashi Joint Venture ("KKJV")—to design the special trackwork, which includes the crossovers, to accommodate the HRH passenger vehicle wheel contour, diameter, and gauge. This Standard

Specifications provision also required this Fixed Facility Contractor to coordinate the crossovers to accommodate the HRH passenger vehicle wheel.

66. Specifically, the Standard Specifications state that the Fixed Facilities Contractor shall:

B. Develop all required details not otherwise delineated on the Design Plans in accordance with these Specifications and good practice. The Guideway contractor is responsible for coordinating the special trackwork design and fabrication with the wheel gauge, contour, diameter and axle spacing parameters of the Passenger Vehicles to be provided by [HRH].

1. Design all special trackwork to accommodate the proposed wheel contour, wheel diameter, wheel gauge, and axle spacing that are shown as reference information on the Design Plans.

Standard Specifications, Sec 34 11 98.

67. The Technical Provisions of the Contract Documents, which identified the design criteria for the wheel profile and wheel gauge for the passenger vehicle wheels, required HRH to provide passenger vehicles with wheels with a width of either 4.75 inches or 5.1564 inches.

68. In October 2011, KKJV, which had the duty to design the crossovers and coordinate the crossover design with HRH's wheel design, requested from HRH all wheel data for the passenger vehicle that HRH would be supplying, including the specific dimensions regarding the wheel profile, for the express purpose of allowing KKJV "to progress with the rail design and verify that rail materials will be compatible with the rail car." HRH provided KKJV with a wheel profile drawing specifying, among other things, that the width of the wheel would be 4.75 inches—consistent with one of the two options provided to HRH by HART in the Contract Documents.

69. HRH also submitted its wheel drawing showing the wheel width as 4.75 inches to HART. HART returned these drawings to HRH "Accepted as Noted." HRH subsequently

submitted several other passenger vehicle wheel drawings to HART, all of which showed a passenger vehicle wheel width of 4.75 inches. HART also accepted these drawings.

70. Nearly six years later, HART discovered an incompatibility between the crossovers supplied by KKJV and HRH's wheel width. HART engaged Transportation Technology Center, Inc. ("TTCI") to investigate this incompatibility. TTCI is part of the United States Department of Transportation Federal Railroad Administration and provides rail infrastructure consulting. TTCI concluded that the dimensions of the crossovers were such that the only range of wheel widths compatible with these crossovers was between 5.28 to 5.44 inches. Thus, due to the design of the crossovers, neither of the two wheel size alternatives that the HART design required would have worked at the crossover sections of the track.

71. Stated another way, HART's technical expert concluded that the wheel design specifications HART provided to HRH, and which HRH was required to utilize, were fundamentally incompatible with the crossovers HART allowed to be installed in the field. After an extended period of time, HART concluded that the crossovers needed to be modified to accommodate the HRH passenger vehicle 4.75-inch wheel. More than two years after the incompatibility was discovered, HART engaged a contractor to add welds to the crossovers to accommodate the HRH wheels, and required HRH to incur the cost to supervise this work.

72. The crossover/wheel incompatibility had a devastating impact on the Segment 1 schedule. The incompatibility prevented HRH from conducting final testing of Segment 1 because the passenger vehicles could not be operated faster than 5 miles per hour over the crossovers until a suitable fix was in place. This, in turn, pushed the Segment 1 opening back 13-months.

73. Further, while HART had other options available to it to address the crossover incompatibility (such as replacing the crossovers), HART instead chose to place the full burden

for remedying the problem on HRH. HART eventually required HRH to replace the existing passenger vehicle wheels with a 5.34 inch wheel to accommodate the crossovers. This new wheel width was not the original HART design, which TCCI said would not work, but was an entirely new width. Because the passenger vehicles had already been delivered, replacement of the wheels had to be done on site in Hawaii rather than in the factory, which added significantly to the complexity and cost of doing so. HART has refused to compensate HRH for these costs, which will exceed \$10,000,000.

Delays Caused by Cracked Guideway Piers

74. In June 2022, HART and one of its Fixed Facilities Contractors (Kiewit) identified significant cracking in the concrete piers (built by a Fixed Facilities Contractor) supporting seven of the nine stations built for Segment 1. The cracks needed to be investigated and repaired before passenger service could begin, as also confirmed by Hill. HRH successfully completed the necessary Segment 1 system testing on February 22, 2023, followed by successfully completing System Demonstration on April 2, 2023, which would have permitted Segment 1 to open shortly thereafter. However, Segment 1 service could not begin until the piers were repaired and the structural integrity of the piers was verified. That did not occur until May 31, 2023.

Summary of Segment 1 Delays

75. Change Order 52, which amended the Access Milestones due to extraordinary delays experienced to that point, required that Segment 1 be turned over to HRH in March 2020. HRH, however, did not receive full access to Segment 1 as required by Change Order 52, until January 2022, 22 months later than planned.

76. As a result of HART's failures to comply with its Contract obligations, HRH's work on Segment 1 was delayed and extended for a total of 869 days.

77. These Segment 1 delays caused by HART have had a profound financial impact on HRH. Because of the delays, the extended Segment 1 duration, and HRH's need to perform its work years after originally scheduled, HRH has incurred, and will continue to incur, extended staff and overhead costs, subcontractor claims, additional bond premiums, and higher staff and material costs due to inflation.

HART Required HRH to Mobilize for Segment 1 Operation and Maintenance at Least Thirty Months Earlier Than Necessary

78. In addition to HRH's design build services, HRH is also responsible for the operation and maintenance ("O&M") of each Segment as it opens.

79. In a February 16, 2019 letter, HRH advised HART of its O&M mobilization plans, which included an 18-month mobilization period to recruit and hire personnel and negotiate and sign vendor agreements. HRH warned that "[o]nce Mobilization begins, it becomes increasingly difficult to suspend or slow it, without incurring additional costs."

80. On March 12, 2019, HART directed HRH to commence its 18-month O&M mobilization effort. HART stated in its letter that it "has forwarded the notification to the Department of Transportation Services, City and County of Honolulu ("DTS"), to which they have recently responded. DTS indicates that they support [HRH's] efforts to begin mobilization as soon as possible. Until further notice, [HRH] should proceed with all of its mobilization efforts, including hiring."

81. In reliance on HART's direction and the HART schedule, by January 2021, HRH had hired 167 additional personnel to operate and maintain Segment 1 and had entered into contracts with suppliers and vendors to maintain Segment 1.

82. During 2019 and 2020, while HRH was expending substantial mobilization resources, HART knew, or certainly should have known, that Segment 1 was not going to be complete for several years. HRH, which was not privy to master Project schedules and the Fixed Facilities Contractors' schedules because HART would not share them, complied with HART's direction and spent 18 months hiring and training operations and maintenance personnel, and entering into contracts with vendors for the operation and maintenance of Segment 1. These services, however, would not be needed until after Segment 1 opened in June 2023.

Segment 2 Delays

83. The delays for which HART is responsible continued unabated throughout Segment 2. HART failed to provide HRH with access as required by Change Order 52 to: (1) the Segment 2 guideways; (2) the facilities necessary for HART to install its communications equipment; (3) Pearl Harbor Station; (4) Middle Street Station; and (4) several other facilities.

84. In addition, after mobilizing at the Middle Street Station, HRH discovered that the conduit installed by one of HART's Fixed Facilities Contractors was incomplete and failed to comply with the Project specifications. This required HRH to perform additional surveys of the conduits and replace the conduit, prolonging the duration of the work at the station. HART acknowledged the additional work that HRH was required to perform and the corresponding delay.

85. In January 2024, HART reported that the geometry of the track installed by STG, one of HART's Facilities Contractors, did not meet the Project specifications and that STG would be required to provide adjustments to the track. It was not until July 2024 that STG completed its corrective work, allowing HRH to perform inspections and testing.

86. As a result of HART's failures to comply with its Contract obligations, HRH's work on Segment 2 has been delayed and extended for a total of at least 1019 days.

87. These Segment 2 delays, caused by HART, have had a profound financial impact on HRH. Because of the delays, the extended Segment 2 duration, and HRH performing its work years after originally scheduled, HRH has incurred, and will continue to incur, extended staff and overhead costs, subcontractor claims, additional bond premiums, and higher staff and material costs due to inflation.

HRH's Other Damages Due to Delays for Which HART is Responsible

88. As a result of HART's breaches of the Contract as alleged above and HART's refusal to compensate HRH for the losses it has suffered on the Project, HRH has been forced to borrow funds from Hitachi Rail STS S.p.A. to pay suppliers, subcontractors, and salaries. HRH has made substantial interest payments to Hitachi Rail STS S.p.A during the period June 2019 (shortly after Change Order 52 was executed) through July 31, 2024, and HRH will continue to be required to borrow operating funds from Hitachi Rail STS S.p.A.

89. As a result of HART's breaches of the Contract as alleged above and HART's refusal to resolve HRH's claims in good faith, HRH's subcontractors and suppliers have made claims against HRH. These claims include escalation costs due to the delay, inefficiencies due to the disrupted workflow, and the cost incurred to demobilize and remobilize due to the interruption of workflow from Segment 1 to Segment 2.

HRH'S Force Majeure Claims

90. Section 5.6(d) of the Special Provisions requires HART to issue Change Orders to compensate HRH for reasonable, verifiable additional direct costs incurred arising from force majeure events. The Section 5.6(d) definition of force majeure events includes "any event

beyond the control of” HRH, including specifically “[a]ny epidemic” and “war.” (Special Provisions Section 5.6(d)(1, 2(B)).

91. As a result of the COVID pandemic, HRH incurred reasonable, verifiable, additional direct costs. These costs include COVID-related sanitation services and products, medical testing and treatment for Project staff, additional lodging and transportation costs, and additional passenger vehicle transportation costs because HRH was required to relocate vehicle assembly work to another facility. HRH has requested payment of these costs from HART, but HART has refused to compensate HRH for these recoverable costs.

92. As a result of the war in Ukraine, HRH has incurred reasonable, verifiable, additional direct costs. These costs include material and equipment price escalations due to the war. HRH has requested payment of these costs from HART, but HART has refused to compensate HRH for these recoverable costs.

HART’s Other Breaches

93. In Change Order 52, HART agreed that if HRH procured a retention bond, HART would cease withholding 10% of its payments to HRH. HRH procured the retention bond, but HART nevertheless refused to honor its commitment and continued to withhold 10% retention through February 2023. HRH seeks interest on the retention monies that HART wrongfully withheld from HRH for 36 months.

94. In Change Order 69, HART requested that HRH replace the then-existing Wi-Fi system. This work included the supply of installation hardware, the installation of Wi-Fi equipment in all the passenger vehicles, and testing of the installed equipment. In accordance with the Contract requirements, HRH submitted a change order request seeking payment of \$2,506,788 for this work performed by HRH. This amount is comprised of HRH’s documented

costs of \$2,129,452 plus overhead and profit of \$377,168 as permitted by the Contract. HART rejected HRH's pricing and unilaterally issued a change order valuing this work at \$750,000, which is substantially less than the costs incurred by HRH to perform this work. As a result, HRH has been underpaid and is due \$1,756,620.

95. HRH's scope of services required HRH to supply and install a video surveillance system for the Project. HRH's solution was based upon an industry standard Genetec system that complied with the Project's Technical Specifications. Among other requirements, HRH had to grant the integration of this service with the City's end user. To this end, HRH finalized and presented their system solution to HART during a demonstration session that occurred on November 23, 2022. Based on the applicable technical specifications, the product solution was fully compliant with the contractual requirements. However, after the November 23, 2022 meeting, HART rejected HRH's solution without any support. Because of HART's unsubstantiated rejection of HRH's design solution for the video surveillance system, HRH was forced to re-work the system, and incurred significant additional costs and delay to the Project. Notably, HRH's proposed video surveillance system could have been deployed in January 2023, but due to HART's unwarranted request for change, the completion of the CCTV system was achieved in May 2023. HRH incurred damages of at least \$600,787 attributable to this matter for which HART has failed to pay HRH.

96. Section 3.1(r) of the Contract's Special Provisions require the City to provide the insurance set forth in Section 3.1(e) "[d]uring the full [operations and maintenance] Periods" for "Work performed under the Agreement at the Project site." Under Special Provisions Section 3.1(g), the City has the right to terminate or modify the insurance it is required to provide at any time, and "[HRH] will promptly obtain appropriate replacement insurance coverage acceptable

to the City.” Special Provisions Section 3.1(g) further provides that in such a situation, “[t]he reasonable cost of such replacement insurance will be reimbursed by the City to [HRH].” The City has not provided the insurance required by Section 3.1(e) for the operations and maintenance work being performed by HRH at the Project site. As a result, HRH obtained replacement insurance coverage acceptable to the City in accordance with Section 3.1(g). As provided in Section 3.1(g), HRH has requested reimbursement for the \$1,761,913 in insurance premiums incurred by it to date for that insurance. HRH will continue to incur insurance premium costs for the balance of the operations and maintenance period. Contrary to the Contract requirements, however, DTS has refused to reimburse HRH for the insurance premiums incurred to date and has advised HRH that it will not do so for the balance of the 10-year operations and maintenance period. These premiums will exceed \$1.76 million.

97. Further, because HRH is responsible for the operation and maintenance for the Project, it has responsibility for the Project’s maintenance and storage facility (“MSF”) that was designed and built for the Project by a Fixed Facility Contractor. HRH’s scope of responsibility did not include design of the security systems for the MSF, but does include ongoing security for the MSF. In a threat vulnerability assessment performed at the direction and on behalf of HART, it was discovered that the Fixed Facility Contractor’s design of the MSF omitted several necessary security systems that exposed the MSF to potential theft, vandalism, and injury claims by unauthorized personnel. To prevent security breaches and vandalism due to these security design deficiencies of which HRH was unaware, HRH was required to remedy these design deficiencies by adding security systems that were HART’s responsibility and not in HRH’s scope of work. To date, HRH has incurred more than \$300,000 in additional costs for work

outside its contractual scope of services to protect HART's and the City's assets. HART and the City have refused HRH's requests for reimbursement for these additional costs.

The Contract's Dispute Resolution Provisions

98. Special Provisions Section 7.4(a) requires the Officer in Charge to decide any questions or disputes concerning any provision of the Contract that may arise during HRH's performance, provided that decisions on questions or disputes relating to additional cost to the City that exceeds ten percent (10%) of the original Contract price or \$25,000 or more shall be made only with the approval of the Contracting Officer.

99. Special Provisions Section 7.4(b) provides that if "[HRH] does not agree with the decision of the Officer-in-Charge, [HRH] and [HART] agree that the matter will be submitted to mediation."

100. Special Provisions, Section 7.4(c) then provides that "[a]ll controversies between the Officer-in-Charge and [HART] that cannot be resolved by mediation shall be decided by the Contracting Officer in writing,"

101. Section 7.4(f) permits HRH to file an action in the circuit court seeking review of the Contracting Officer's decision.

102. HART has sought to delay resolution of these claims that have been pending for years, expecting HRH to continue to work on the Project without full compensation, leaving HRH with no choice but to self-fund the Project. Because HRH's claims had been pending for years with no decisions by the Contracting Officer/Officer-in-Charge (they are the same person) as required by Section 7.4 of the Special Provisions, HRH agreed to participate in a mediation of its Segment 1 and 2 claims on October 28, 29, and 30, 2024 in an attempt to obtain some relief. In anticipation of the mediation, HRH worked tirelessly and in good faith to respond to the litany

of HART's inquiries regarding the HRH claims and to provide additional documentation requested by HART. HRH also retained claims consultants to assist in documenting its claims and invested substantial time and effort flying a large team from around the world to Honolulu for several days in an attempt to avoid this lawsuit. The mediation was unsuccessful, and no resolution of HRH's claims was reached.

103. Further efforts to seek a decision from the Contracting Officer at this stage will only lead to further expense and unwarranted delay. HRH's claims have been pending for years with no decisions from the Officer-in-Charge/Contracting Officer. The Contracting Officer and Officer-in-Charge for HRH's design-build work are the same person—HART's Executive Director. HART's Executive Director was also the decision maker at the mediation that failed. Thus, seeking further decisions from the same person who has ignored HRH's claims for years and rejected HRH's settlement efforts, while expecting HRH to fund the Project and cover for HART's many errors at HRH's expense, would be futile and inequitable.

104. Additional examples of Defendants' failure to provide Officer-in-Charge/Contracting Officer decisions required by the Contract further illustrate the futility of Defendants' insistence on requiring still more contractual administrative processes. For example (but without limitation), HRH first attempted to resolve the insurance issue alleged in paragraph 96 above through correspondence in August of 2023, and then requested an Officer-in-Charge decision on December 22, 2023. On March 21, 2024, the City stated that the Officer-in-Charge would only make a decision after inspecting documents held in escrow, which the City did not do until July 2024. In anticipation of a mediation to be held on October 10, 2024 with the City on other HRH claims, HRH requested that the insurance issue be included. The City refused, relying

on the “no Officer-in-Charge decision had been issued” delay tactic.² The City’s strategy of refusing to issue Officer in Charge decisions has simply been one of its methods to avoid facing the music. As a result, HRH has been left incapable of resolving this dispute through the contractual administrative process. As another example (also without limitation), HRH requested an Officer-in-Charge decision on the HRH claims for the security systems installed by HRH at the MSF. Both HART and DTS initially refused to issue an Officer-in Charge decision and in fact, both HART and DTS have disclaimed any authority to resolve the dispute, including at an October 10, 2024 mediation. HART and the City have a demonstrated history of refusing to comply with the Agreement’s dispute resolution requirements.

Damages

105. HRH incurred substantial additional costs due to delays caused by HART and its contractors, force majeure events, and additional work required by HART.

106. For example, HRH was required to pay for staff for the extended Project duration and wages and materials have increased in cost due to HRH’s work being performed years after originally contemplated. HRH also incurred substantial additional labor and vendor costs due to the early mobilization of O&M personnel for Segment 1 required by HART. Subcontractors are seeking compensation from HRH due to HART’s delays and for being required to demobilize and then remobilize between the work on Segment 1 and Segment 2. HRH also incurred interest costs to finance the additional costs it has incurred due to the delays for which HART is responsible. Additional costs were also incurred from the COVID-19 pandemic impacts and the Russia-Ukraine war, both of which are *force majeure* events under the Contract, for which HRH is entitled to reimbursement. HRH also incurred other costs due to the additional work required

²On November 27, 2024 – 16 months after the claim was made – HART’s Officer-in-Charge issued a denial of the HRH claim.

by HART, such as the redesigned wheel configuration, the new Wi-Fi system, additional MSF security protections, and operations and maintenance insurance premiums.

107. HRH has been damaged in at least the following amounts:

SUMMARY OF HRH CLAIMS	
Description	Amount
Early Mobilization (Labor, Materials, and Services) for Operations and Maintenance Services	\$ 92,450,845
Escalation of Costs for the Operations and Maintenance Work Being Performed Years Later than Scheduled	53,547,415
Higher Staffing and Running Costs Due to the Extended Duration of the Project	45,887,423
Subcontractor Claims Due to the Extended Duration of the Project	38,331,943
Interest on HRH Loans to Finance the Additional HRH Costs Incurred Due to the Extended Duration of the Project and the HART Refusal to Pay for Certain HRH Work	28,975,086
Additional Intermediate Operations and Maintenance Costs due to the Segment 2 Delays	17,323,588
Costs Incurred by HRH Due to the Passenger Vehicle Wheel Incompatibility with Track Crossovers	10,183,215
Operations and Maintenance Insurance Premiums	at least 17,619,130
COVID-19 Additional Costs	9,283,256
Additional Bond Premium for the Extended Segments 1 & 2 Durations	2,632,221
Capital Asset Replacement Program Losses for the Operations and Maintenance Work	2,003,149
Wi-Fi Change Order Underpayment	1,756,620
Increased Material Cost due to COVID-19 & Russia-Ukraine War	1,450,548
Ongoing Costs Resulting from the Passenger Vehicle Wheel Incompatibility with Track Crossovers	882,550
Interest on Improperly Withheld Retention	645,915
Additional Costs Due to the Camera's Integration Issue	600,787
Security Upgrades to Maintenance Facility	300,000
Additional Operations and Maintenance Costs Due to the Guardrail Grinding and Welding of Crossovers	295,438
Total:	at least \$324,169,130

COUNT I (Breach of Contract)

108. HRH repeats and incorporates by reference herein the allegations contained in paragraphs 1 through 107 of this Complaint, as if the same were set forth in full herein.

109. The Contract between HRH and Defendants is a valid and enforceable contract.

110. During all time periods relevant to this Complaint, HRH performed its work in accordance with the Contract and all, or substantially all, of the obligations that the Contract required of HRH.

111. Defendants breached the Contract by failing to comply with the Access Milestones set forth in Change Order 52.

112. Defendants breached the Contract by failing to compensate HRH for delay damages and other damages suffered as a result of the delays, for work performed by HRH beyond the scope of the Contract, for additional force majeure costs, and for other matters alleged in this Complaint.

113. Specifically, Defendants breached the contract with HRH by failing to pay amounts due pursuant to Section 5.3(b), Section 5.6(g)(4), and Sections 5.6(d)(1) and (2) of the Special Provisions of the Contract Documents.

114. In addition, Defendants breached their respective duties of good faith and fair dealing by refusing to timely and reasonably address and respond to HRH's claims, and by intentionally and in bad faith prolonging any resolution of this dispute in an effort to force HRH to continue its work without compensation.

115. Breaches of contract by Defendants have caused HRH to suffer damages in an aggregate amount to be determined at trial, plus interest on the unpaid sums in accordance with Hawaii's prompt payment law and reasonable costs and attorney's fees, in an amount to be determined.

116. The nature and extent of HRH's damages were reasonably foreseeable by Defendants at the time the Contract was entered into.

COUNT II (Unjust Enrichment)

117. HRH repeats and incorporates by reference herein the allegations contained in paragraphs 1-107 of this Complaint, as if fully set forth herein.

118. HRH pleads this Count II in the alternative to Count I.

119. HRH conferred significant benefits upon Defendants by effectively financing delays of HART's own making, due to Defendants' unwillingness to pay amounts properly due and owing to HRH for compensable delays.

120. Defendants accepted and have retained the benefits conferred upon them by HRH, and Defendants have been unjustly enriched thereby.

121. Under the circumstances, it would be unreasonable and unjust to allow Defendants to retain the benefits conferred upon it by HRH without making restitution. Equity and good conscience require restitution to HRH in an amount to be determined at trial, and/or other equitable relief, which is necessary to avoid injustice.

COUNT III (Unfair and Deceptive Acts and Practices / HRS § 480)

122. HRH repeats and incorporates by reference herein the allegations contained in the foregoing paragraphs, as if the same were set forth in full herein.

123. HRH is a "consumer," as defined by HRS § 480-1.

124. HRH's claims relate to Defendants' actions that are trade or commerce.

125. Defendants' above-discussed acts, omissions, and misrepresentations to HRH – resulting in breach of contract and/or unjust enrichment, misrepresentations – constitute unlawful unfair and deceptive acts and/or practices, pursuant to HRS § 480-2.

126. Said unfair and deceptive acts and practices injured HRH, in the manner, type, and amounts discussed in greater detail above.

127. Pursuant to HRS § 480-13, HRH is, therefore, entitled to treble damages, plus attorneys' fees and costs.

WHEREFORE, Plaintiff Hitachi Rail Honolulu JV requests the following relief:

A. For Judgment on Counts I and III against Defendants in an aggregate amount to be determined at trial, and currently estimated to be at least \$324,169,130.

B. Alternatively, for Judgment on Count II against Defendants in an amount to be proven at trial, and currently estimated to be at least \$324,169,130.

C. For prejudgment interest pursuant to the Hawaii prompt payment act.

D. For post-judgment interest at the legal rate.

E. For an award of Plaintiff HRH's costs and reasonable attorneys' fees.

F. For an award of treble damages to Plaintiff HRH and against Defendants; and

G. For such other and further relief as the Court may deem just and proper.

DATED: Honolulu, Hawai'i, December 20, 2024.

/s/ David J. Minkin
DAVID J. MINKIN
D. KAENA HOROWITZ
JORDAN J. INAFUKU
SABRINA N. GOUVEIA
DENNIS J. POWERS (*pro hac vice application to be filed*)
KENNETH SCHMETTERER (*pro hac vice application to be filed*)
Attorneys for Plaintiff
HITACHI RAIL HONOLULU JV

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HITACHI RAIL HONOLULU JV,	)	CIVIL NO. _____
	)	(Contract) _____
Plaintiff,	)	
vs.	)	DEMAND FOR JURY TRIAL
	)	
HONOLULU AUTHORITY FOR	)	
RAPID TRANSPORTATION; THE CITY	)	
AND COUNTY OF HONOLULU; JOHN	)	
DOES 1-5; JANE DOES 1-5; DOE	)	
CORPORATIONS 1-5; DOE	)	
PARTNERSHIPS 1-5; DOE	)	
NON-PROFIT ORGANIZATIONS 1-5; and	)	
DOE GOVERNMENTAL AGENCIES 1-5,	)	
	)	
Defendants.	)	
	)	
_____	)	

DEMAND FOR JURY TRIAL

HRH demands a trial by jury for all claims triable to a jury.

DATED: Honolulu, Hawai'i, December 20, 2024.

/s/ David J. Minkin
DAVID J. MINKIN
D. KAENA HOROWITZ
JORDAN J. INAFUKU
SABRINA N. GOUVEIA
DENNIS J. POWERS (*pro hac vice application to be filed*)
KENNETH SCHMETTERER (*pro hac vice application to be filed*)
Attorneys for Plaintiff
HITACHI RAIL HONOLULU JV

STATE OF HAWAII CIRCUIT COURT OF THE FIRST CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT /	
CASE NUMBER		
PLAINTIFF'S NAME & ADDRESS, TEL. NO. DAVID J. MINKIN 3639-0 D. KAENA HOROWITZ 9836-0 JORDAN J. INAFUKU 10392-0 SABRINA N. GOUVEIA 11814-0 c/o McCorriston Miller Mukai MacKinnon LLP Five Waterfront Plaza, 4th Floor; 500 Ala Moana Blvd., Honolulu, HI 96813 Telephone No.: (808) 529-7300		
PLAINTIFF HITACHI RAIL HONOLULU JV	VS.	DEFENDANT(S) HONOLULU AUTHORITY FOR RAPID TRANSPORTATION; THE CITY AND COUNTY OF HONOLULU; JOHN DOES 1-5; JANE DOES 1-5; DOE CORPORATIONS 1-5; DOE PARTNERSHIPS 1-5; DOE NON-PROFIT ORGANIZATIONS 1-5; and DOE GOVERNMENTAL AGENCIES 1-5
TO THE ABOVE-NAMED DEFENDANT(S) You are hereby summoned and required to filed with the court and serve upon: DAVID J. MINKIN, ESQ., D. KAENA HOROWITZ, ESQ., JORDAN K. INFUKU, ESQ., SABRINA N. GOUVEIA, ESQ. McCorriston Miller Mukai MacKinnon LLP Five Waterfront Plaza, 4th Floor, 500 Ala Moana Blvd., Honolulu, HI 96813 plaintiff, as indicated above/whose address is stated above, an Answer to the Complaint / , which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS. A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.		
The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: http://www.courts.state.hi.us	Effective Date of 1-DEC-2021 Signed by: /s/ Patsy Nakamoto Clerk, 1st Circuit, State of Hawai'i	
 If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator of the XX Circuit as soon as possible to allow the court time to provide an accommodation. Phone No. 808-539-4400, TTY 808-539-4853, FAX 808-539-4402 or Send an e-mail to: adarequest@courts.hawaii.gov. The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.		

