

NOTICE FOR PROFESSIONAL SERVICES
Solicitation #2026-PROF-SCS-1

Pursuant to the provisions of HRS 103D Procurement of Professional Services, the Board of Water Supply, County of Kaua'i hereby provides public notice to invite persons engaged in the professional services listed below to submit current statements of qualifications and expressions of interest:

Special Counsel Services: Qualified attorneys licensed in the State of Hawai'i who can provide advice, counsel, and/or representation in civil litigation and related matters involving manufacturers and distributors of per- and polyfluoroalkyl substances ("PFAS") commonly known as "forever chemicals." Services may include participation in multi-district litigation and the filing and management of settlement claims.

The expression of interest shall include:

1. Project title.
2. Name of the person to which the resume(s) is/are to be directed.
3. Signature of an authorized representative.

The following requirements pertain to all Statement of Qualifications (SOQs) submitted. SOQ's should identify the area(s) of professional services provided by the proposer, and include a description of the proposer's firm, the qualifications and related experiences of the principals and staff members, and supporting data and information as they relate to the proposed subject matter areas. Use of Federal Form SF 330 or State DPW 120 with supplemental information, where appropriate, is encouraged. SOQ's should include, but not be limited to, the following information:

- A. The name of the firm or person, the principal place of business, and location of all of its offices;
- B. The age of the firm and its average number of employees for the past five years;
- C. The education, training, and qualifications of key members of the firm;
- D. The education, training, and qualifications of key members of the associate firms for subcontracted work;
- E. The names and phone numbers of up to five clients who may be contacted, including at least two for whom services have been rendered during the preceding year;
- F. Any promotional or descriptive literature which the firm desires to submit.
- G. Submit Quality Assurance Procedures (this item is important and submittals will be rejected without it).

General Terms and Conditions: The furnishing of consultant services shall comply with the General Terms and Conditions for Professional Services Contracts, dated January 1, 2019. A copy of the document can be found at www.kauaiwater.org. **THE SUBMISSION OF TERMS AND CONDITIONS THAT CONFLICT OR REPLACE THE DOW'S WILL BE REJECTED PURSUANT TO HAR 3-122-6.**

Minimum Insurance: **OFFERS THAT INCLUDE INSURANCE REQUIREMENTS THAT CONFLICT OR REPLACE THE DOW'S WILL BE REJECTED.** Exceptions to the Deductibles and Self-Insured Retentions must follow the process outlined in the Minimum Insurance Requirements or such exceptions will be rejected. If awarded the contract, the Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of the Contract, the insurance coverages, limits, including endorsements described in the minimum insurance requirements of this solicitation. The DOW reserves the right to modify the automobile liability policy requirements based on the services to be provided.

Contract Form Not Subject to Negotiation: A contract awarded under this Solicitation will be substantially similar to the sample contract form attached hereto. Except as specifically provided for in this Solicitation, no exception to the contract form will be permitted.

Deadline: Expressions of interest, SOQs, and accompanying information must be received by the DOW addressed to the Manager & Chief Engineer, Department of Water, County of Kaua'i. All submittals must be received in **ELECTRONIC FORM ONLY** via www.publicpurchase.com no later than 4:30 p.m. (HST), **Tuesday, November 4, 2025**, and shall include the following reference: 2026-PROF-SCS-1 Company's name.

Awards shall be electronically posted on the Department of Water website within seven (7) days of the contract award.

Questions may be directed to Ms. Christine Erorita via PublicPurchase.

(POSTED 10/20/25 via www.kauaiwater.org , www.publicpurchase.com , www.hands.ehawaii.gov)

INSURANCE REQUIREMENTS

County of Kauaʻi

Contractor shall procure and maintain, on a primary basis and at its sole expense, at all times during the life of the contract insurance coverages and limits, including endorsements, described herein against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Contractor or the Contractor's agents, representatives, employees, or subcontractors. The requirements contained herein, as well as the County's review or acceptance of insurance maintained by the Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the Contractor.

To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions and coverage(s) of Insurance Service Office (ISO) policies, forms, and endorsements.

A. General Conditions

Waiver of Subrogation. Contractor shall agree by entering into a contract with the County to provide a Waiver of Subrogation for the Commercial General Liability, Automobile Liability, and Workers Compensation policies. When required by the insurer, or should a policy condition not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, the Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Subrogation in favor of the County. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

Additional Insured. Contractor shall agree to endorse the County of Kauaʻi as an Additional Insured with a CG026 Additional Insured – Designated Person or Organization endorsement, a copy of the applicable policy language, or similar endorsement to all required insurance policy(ies), except for Workers Compensation and Professional Liability.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County. At the discretion of the County, the County may require Contractor to reduce or eliminate any such deductibles or self-insured retentions as respects the County, or require Contractor to provide a financial guarantee (audited financial statement or bond) satisfactory to the County guaranteeing payment of any losses and related investigations, claim administration, or defense expenses. Any deductibles or self-insured retentions are the sole responsibility of Contractor and its subcontractor(s) if any. The County reserves the right to deduct from the final payment to Contractor any unsatisfied deductibles or self-insured retentions which would result in a lien against the project.

When any deductibles or self-insured retention exceeds \$50,000, the County reserves the right, but not the obligation, to request and review a copy of Contractor's most recent annual report or audited financial statement.

Contractor must declare any exception to the requirements of this provision as a question to the solicitation prior to submission of their offer, and must declare their ability to provide a bond or other satisfactory guarantee in lieu of any deductibles or self-insured retention. The County will make a determination as to any exception(s) via an addendum to the solicitation prior to final submission of offers.

Contractor's Responsibility. The Contractor is responsible for paying any portion of any loss not covered because of the operation of any deductible, co- insurance clause or self-insured retention applicable to the insurance required herein. If the County is damaged by the failure of the Contractor to maintain insurance as required in this paragraph, then the Contractor shall bear all reasonable costs properly attributable to that failure.

Primary and Non-contributory. All policies required of the Contractor will be endorsed as primary and any insurance or self-insurance program maintained by the County shall be non-contributory.

Certificate of Insurance. Concurrent with the execution of the contract, Contractor shall provide the County a certificate of insurance completed by a duly authorized representative of their insurer certifying that the liability coverage(s) is written on an occurrence form. Immediately upon becoming aware that its insurance will be cancelled, non-renewed, or materially changed, Contractor will notify County by providing written notice.

The Certificate Holder address shall read:

County of Kauaʻi, Office of the County Attorney
4444 Rice Street, Suite 220
Līhuʻe, HI 96766
Attention: _____
Contract No. _____
Project Title: _____

Concurrent with the execution the contract the Contractor shall furnish the County with original certificates and endorsements effecting required coverage(s). The County reserves the right to require complete copies of all required insurance policies, including the policy declarations and endorsements affecting the coverage at any time.

Failure to secure and maintain the required insurance shall be considered as a material breach of the contract. Should the County be forced to expend funds that would have been covered under the specified insurance, Contractor shall reimburse County for such funds. In the event the County determines, in its sole and absolute discretion, that it is necessary to purchase the coverages herein required of the Contractor, and which the Contractor has failed to secure, the Contractor shall reimburse the County for the expenditure of such funds.

Right to Revise or Reject. County reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work or specifications affecting the applicability of coverage. Additionally, the County reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due to its poor financial condition or failure to operate legally.

B. Minimum Insurance Coverage Requirements

Unless otherwise approved by the Director of Finance, the policy or policies of insurance maintained by the Contractor shall provide the following minimum limit(s) and coverage(s) as specified herein and be placed with an insurance carrier authorized to do business in the State of Hawai'i and rated A-VII by A.M. Best:

☐ **Commercial General Liability.** The Contractor shall procure and maintain Commercial General Liability (CGL), with dedicated required limits, as set forth herein, written on occurrence form providing:

☐ Designated premises basis **OR** ☐ Per Project basis

(Per Project Basis. The Commercial General Liability policy aggregate limits shall apply to both the general and products/completed operations limits. The term “project basis” should not be construed to mean the County is requiring the Contractor to purchase a separate project specific general liability and products completed operations policy for the project.)

The coverages shall include the following:

- Premises Operations
- Independent Contractors
- ☐ Products and Completed Operations
 - Broad Form Property Damage including completed operations
 - Blanket Contractual Liability
 - Personal Injury
 - Employees named as Additional Insured
 - Severability of Interest
- ☐ Explosion, Collapse and Underground Property Damage

The minimum limits of liability may be satisfied by providing either:

Bodily Injury and Property Damage Combined Single Limit: ▪ \$2,000,000 per occurrence	OR	Personal Injury: ▪ \$1,000,000 per occurrence ▪ \$2,000,000 annual aggregate
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▪ \$2,000,000 annual aggregate		AND Products and Completed Operations: ▪ \$1,000,000 per occurrence ▪ \$2,000,000 annual aggregate
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Contractor must provide evidence that the County is an Additional Insured for Products/Completed Operations coverage for both ongoing operations and after substantial completion of the work. ISO Form CG 20 10 04 13 and ISO Form CG 20 39 12 19, or equivalent forms are required from the Contractor. Coverage provided by a non-equivalent CGL form shall be specifically endorsed providing both the course of construction and products/completed operations. ISO Form CG 20 10 04 13 and ISO Form CG 20 39 12 19, or equivalent forms are required from the Contractor. The Contractor and subcontractor(s), if any, shall provide evidence to the County on an annual basis the products/completed operation coverage is in effect for **two (2)** years after substantial completion of the project.

☐ **Business Automobile Liability.** The Contractor shall procure and maintain Business Automobile Liability written on occurrence form for all Owned, Non-owned, and Hired automobiles. If the Contractor does not own automobiles, Contractor shall agree to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Automobile Liability. Coverage shall be for automobile contractual liability, uninsured and underinsured motorist coverage, basic no-fault, and personal injury protection, as required by Hawai'i law with the following limits:

- Bodily Injury**

\$1,000,000 per person

\$1,000,000 per occurrence
- Property Damage**

\$1,000,000 per accident

☐ **Workers' Compensation and Employer's Liability.** The Contractor shall procure and maintain at all times during the term of the contract the following insurance liability coverage: Workers' Compensation, Temporary Disability Insurance (TDI), and similar insurance that is required by the State of Hawai'i or federal laws. Self-insurance is permitted subject to submission of a copy of the appropriate governmental authorization and qualification by the Contractor and subcontractor(s).

The minimum limits of liability to be maintained are as follows:

- Coverage A: State of Hawai'i Workers' Compensation Law:**

Statutory Limits.
- Coverage B: Employer's Liability:**

Bodily Injury from each accident

\$1,000,000

Bodily Injury from disease

\$1,000,000

Bodily Injury from disease aggregate

\$1,000,000

☐ **Builder's Risk.** The Contractor shall procure and maintain an Inland Marine Builder's Risk policy providing coverage to protect the interests of the County, Contractor, subcontractors, architects, and engineers, including property in transit and property on or off-premises, which shall become part of the building, or Project. Coverage shall be written on an **All Risk, Replacement Cost, and Completed Value Form** basis in an amount at least equal to 100% of the projected completed value of the Project as well as subsequent modifications of that sum, unless an agreed amount is otherwise stated between the County and the Contractor. The policy shall insure all work, labor, and materials furnished by the Contractor and the Contractor's subcontractors against loss occasioned by fire, lighting, windstorm, theft, vandalism, malicious mischief, flood, earthquake, and collapse.

The amount of coverage for the perils of flood and earthquake may be subject to a sub-limit. The sub-limit shall provide coverage of at least 25% of the full replacement cost. The policy shall also include coverage for debris removal and reasonable compensation for architect's and engineer's services and expenses required as a result of an insured loss. The Contractor shall endorse the policy with a manuscript endorsement eliminating the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by the County. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the County's interest in the



building ceases, or the building is accepted or insured by the County. The Contractor shall name the County of Kauaʻi as a loss payee on the Builder’s Risk policy.

☐ **Installation Floater.** The Contractor shall procure and maintain an Installation Floater policy providing coverage to protect the interests of the County, Contractor, subcontractor(s), architects, and engineers, including property in transit and property on or off-premises, which shall become part of the project. Coverage shall be written on an All Risk, Replacement Cost, and Completed Value Form basis in an amount at least equal to 100% of the projected completed value of the Project as well as subsequent modifications of that sum, unless an agreed amount is otherwise stated between the County and the Contractor. The policy shall insure all work, labor, and materials furnished by the Contractor and the Contractor’s subcontractors against loss occasioned by fire, lighting, windstorm, theft, vandalism, malicious mischief, flood, earthquake, and collapse.

The amount of coverage for the perils of flood and earthquake may be subject to a sublimit. The sub-limit shall provide coverage of at least 25% of the full replacement cost.

The policy shall also include coverage for debris removal and reasonable compensation for architect’s and engineer’s services and expenses required as a result of an insured loss. The Contractor shall endorse the policy with a manuscript endorsement eliminating the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by the County. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the County’s interest in the building ceases, or the building is accepted or insured by the County.

The Contractor shall name the County of Kauaʻi as a loss payee on the Installation Floater policy.

☒ **Professional Liability (Errors and Omissions).** The Contractor and its subcontractors shall procure and maintain Professional Liability Insurance (Errors and Omissions Insurance) that covers all such activities under the contract. Such insurance shall have these minimum limits and coverage(s):

\$1,000,000 per occurrence
\$2,000,000 annual aggregate

For policies written on a “Claims-Made” basis, Contractor warrants the retroactive date equals or precedes the effective date of the contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced; or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of the contract, Contractor shall agree to purchase Supplement Extended Reporting Period (SERP) with a minimum reporting period not less than **two (2)** years. The requirement to purchase a SERP shall not relieve Contractor of the obligation to provide replacement coverage.

☐ **Pollution Legal Liability.** The Contractor shall procure and maintain Pollution Liability or similar Environmental Impairment Liability at a minimum limit not less than:

\$1,000,000 per occurrence
\$2,000,000 annual aggregate

The policy shall provide coverage for damages against, but not limited to, third-party liability, clean-up, corrective action including assessment, remediation and defense costs.

☐ **Contractor’s Pollution Liability.** Contractor shall procure and maintain pollution liability insurance when the Scope of Work involves removal, abatement, encapsulation or other treatment, disposal or remediation of asbestos or other hazardous materials or an exposure to pollutants or impairment of the environment. The policy shall provide coverage for third party liability, clean-up, and corrective action including assessment remediation and defense costs. The policy may be written on either an occurrence form or claims made. The minimum limits of liability shall be:

\$1,000,000 per occurrence
\$2,000,000 annual aggregate

☐ **Crime Insurance or Commercial Fidelity Bond.** Contractor shall procure and maintain Commercial Crime Insurance or Fidelity Bond providing Employee Dishonesty on a blanket basis covering all of the Contractor’s employees with a minimum amount of insurance at least equal to the amount of the contract. The policy shall be endorsed to cover “Third-Party Liability” including a third-party beneficiary clause in favor of the County. The policy shall include a minimum twelve (12) month “Discovery Period” when written on a Loss Sustained basis.

- ☐ **Property.** The Tenant or Lessee, shall agree to maintain property insurance including flood and windstorm written on a replacement cost basis in an amount not less than 100% of the replacement cost of the building(s) and contents, including betterments and improvements made by the Tenant or Lessee, located on the premises. Contractor shall agree to be fully responsible for any deductible or self-insured retention, and to provide this coverage on primary basis.
- ☐ **Umbrella or Excess Liability.** Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy with \$1,000,000 per occurrence and \$2,000,000 aggregate. If Contractor is using its Umbrella or Excess Liability Insurance policy to satisfy the minimum requirements, Contractor shall agree to endorse the County of Kaua‘i as “Additional Insured” on the Umbrella or Excess Liability policy, or shall confirm in writing that its Umbrella or Excess Liability policy “follows form.”

CONTRACT NO. TBD
PROFESSIONAL SERVICES CONTRACT
(LEGAL SERVICES)

THIS CONTRACT, is made and entered into by and between the **BOARD OF WATER SUPPLY, COUNTY OF KAUAI**, through its Office of the County Attorney, whose mailing address is 4444 Rice Street, Suite 220, Lihu'e, Hawai'i 96766 (hereinafter the "County") and [Click or tap here to enter text.](#), a [Click here to enter text.](#) under the laws of the State of Hawai'i, whose principle place of business is [Click here to enter text.](#) (hereinafter "Special Counsel").

RECITALS

WHEREAS, the County desires to engage Special Counsel to represent the County in [Click or tap here to enter text.](#) (herein the "Matter") and related matters; and

WHEREAS, this contract for professional services has been procured pursuant to HRS 103D-304 and advertised for fiscal year FY2025-2026, Professional Service Publication Number Special Counsel Services 2026-PROF-SCS-1; and

WHEREAS, a committee of three members was formed by the Office of the County Attorney to review and rate all qualified proposals of legal professional services; and

WHEREAS, Special Counsel was ranked highest and selected by the committee; and

NOW THEREFORE, the County and Special Counsel, in consideration of the mutual promises, consideration, and understandings hereinafter set forth, hereby agree as follows:

1. Scope of Work. Contract Documents: Special Counsel agrees to represent and provide all such professional legal services as may be necessary to represent the County in the Matter in accordance and in strict compliance with this Contract and the following documents:

- ☒ General Terms and Conditions for Professional Services Contracts, (January 1, 2019), incorporated by reference, (hereinafter "General Terms");
- ☒ Exhibit A, Insurance;
- ☒ Other 2026-PROF-SCS-1,

and those other documents attached or referred to therein, relating to the Matter (hereinafter collectively referred to as "Contract Documents"). Special Counsel understands and agrees that the Contract Documents including, but not limited to, those referenced in but not attached to this Contract and those referenced in but not attached to the Contract Documents, are hereby incorporated by reference into this Contract. Special Counsel acknowledges and admits receipt of all Contract Documents, and acknowledges that it has reviewed, understands, and agrees with all terms and conditions in the Contract Documents and those other documents, terms, and conditions referenced therein. Special Counsel shall

perform all work which in the County's opinion is necessary to fully and adequately provide sound legal representation in the Matter.

2. **Special Counsel's Responsibilities and Related Special Counsel Services.** Special Counsel shall perform the services under this Contract with that degree of care, skill, and diligence generally accepted as typical of the industry in the performance of such services as contemplated by the Contract at the time such services are rendered. Special Counsel shall consult with the County to ascertain the objectives of the Matter and shall confirm such requirements with the County.
3. **Time of Performance.** Special Counsel shall begin to provide the described services upon written Notice to Proceed issued by the Officer in Charge and continue as directed by the County. Such services will continue until such time as Special Counsel's services are no longer necessary, as determined by the County, or this Contract is terminated.
4. **Compensation.** For and in consideration of Special Counsel's full and faithful performance of this Contract required to be performed under the Contract Documents, the County hereby agrees to pay Special Counsel the total maximum sum of [Click here to enter text.](#) **DOLLARS (\$[Click here to enter text.](#))**, federal, state, and local taxes included, in lawful money of the United States of America. Special Counsel understands and agrees that payment shall be made in the manner and at the times specified in the Contract Documents, and shall also be subject to and conditioned upon such additions to or deductions from the preceding sum as may herein be made by written amendment and according to the Contract Documents.
 - a. **Cost and/or Pricing:** If this Contract required Cost and/or Pricing data, Special Counsel understands and agrees that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that the price was increased because Special Counsel furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the parties.
 - b. **Allowable Expenses:**
 - i. As a condition of reimbursement, Special Counsel shall present copies of all invoices and/or receipts for the following Allowable Expenses:
 1. Postage
 2. Telephone and Facsimile costs (excluding incoming facsimile costs)
 3. Courier/ messenger services
 4. Copying/Printing Costs at ten cents (\$00.10) per page
 5. Air travel, economy or coach class ONLY
 6. Meals during travel
 7. Accommodations
 8. Car Rental

- ii. Billing During Travel. The County requires pre-approval of any travel for more than one person from Special Counsel's law firm. Expenses or costs related to any unapproved travel will not be reimbursed.

1. Inter-Island Travel:

- a. Special Counsel shall not bill more than three (3) hours for interisland travel time, for any round trip from their respective office to Līhu'e, Hawai'i. Special Counsel shall not bill more than one hour and thirty minutes for one-way interisland travel. Travel time shall include any time spent by air and /or automobile or any other manner of transportation.
 - b. The County will only reimburse the cost of an "economy" or "coach" class airline ticket.
2. Meals at a maximum of \$20.00 per day (excluding alcoholic beverages).
3. Accommodations are limited to the rate for one single-occupancy, non-smoking room. Expenses associated with any individual other than Special Counsel are excluded.
4. Car Rental Expenses are limited to one compact, four-door, automatic transmission car at the lowest available price. Special Counsel shall verify that any car rental costs meet this requirement. Any rental car shall only be used and driven by Special Counsel approved for travel by the County.
5. Per Diem. The County will not pay any "per diem" expenses.

iii. Payments and Billing.

1. Any and all payments shall be made to Special Counsel. Special Counsel shall include in all billing a breakdown of each Matter by category of all costs. Billing breakdowns are to be provided to the County in Microsoft Excel format.
2. The County shall not pay and Special Counsel shall not request any interest on any late or overdue payment of fees for legal services.
3. Special Counsel will keep an accurate account of all time devoted to and spent in connection with the Matter, individually, and will submit the same on the last day of each month hereafter, together with Special

Counsel's bill for such services rendered, with certification of the services and charge, until such time as the Special Counsel's services are no longer necessary, as determined by the County, or this Contract is terminated. County may require Special Counsel to verify by notarized statement that all expenses, charges, and hours listed are a true and an accurate reflection of time and resources spent in representing the County.

4. Special Counsel shall not bill or charge the County any fees or costs associated with any discussion, update, briefing, and/or consultation except as any such discussion, update, briefing, and/or consultation is (i) necessary to effectively perform the services required under this Contract or (ii) is requested by the County.

- c. Excluded Expenses: Special Counsel understands and agrees that Special Counsel is personally responsible for any fines, sanctions, violation of law, court rules, or orders incurred during the performance of, and in furtherance of, this Contract.

5. **Insurance.**

- a. Minimum Qualification Requirements: Special Counsel shall procure and maintain, on primary basis and at its sole expense, at all times during the life of the Contract insurance coverages, limits, including endorsements as described in Exhibit A, incorporated herein, against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work by Special Counsel or Special Counsel's agents, representatives, employees, or experts. The insurance requirements as well as the County's review or acceptance of insurance maintained by Special Counsel is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Special Counsel. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions, and coverage(s) of Insurance Service Office (ISO) policies, forms, and endorsements.

- b. Contractor to Mean Special Counsel: For the purposes of Exhibit A, the use of the work "Contractor" shall be read to mean "Special Counsel" as defined herein.

6. **Officer in Charge.** The County Attorney shall be the Officer-in-Charge of this Contract, shall represent the County on all matters relating to this Contract, and shall have the authority and responsibility to act on behalf of the County to resolve any disputes with Special Counsel relating to this Contract.

7. **Amendments.** Subject to Chapter 103D Haw. Rev. Stat., as amended, and its implementing rules, the County and Special Counsel may from time to time, make changes in the scope of services to be performed by Special Counsel. Such changes, including any increase or decrease in the amount of compensation which is agreed upon between the County and

Special Counsel, shall be effected by written amendments to this Contract. Increases in compensation and increases in the maximum contract amount shall be subject to availability and appropriation of funds.

8. **Notices.** Any notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid (or by a recognized courier service, such as Federal Express or UPS), or (c) sent by email. Notice to the County shall be sent to the Officer in Charge's mailing address or email address (preferred) indicated in the Contract. Notice to Special Counsel shall be sent to Special Counsel's mailing address or email address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. Either party may change its mailing address or email address by giving written notification of the change to the other party.
9. **Order of Precedence.** In the event of a conflict between the Contract Documents the order of precedence shall be: 1) this Agreement; 2) the Exhibit(s); 3) Special Provisions; and 4) the General Terms.
10. **Execution in Counterparts.** This Contract may be executed in counterparts, all of which shall be considered the same as if a single document shall have been executed but shall become effective when such counterparts have been signed by each of the parties hereto and delivered to each party. Further, facsimile signatures and notarizations are permissible provided original signatures and notarizations bearing the notary's seal are later provided to the party in receipt of the facsimile signature and notarizations.

IN WITNESS WHEREOF, the parties to this Contract do hereby make and duly execute this Contract to be effective upon the date signed by the Chairperson of the Board below.

[Company]

By: Click or tap here to enter text.

Date

Its: Click here to enter text.

RECOMMENDED FOR APPROVAL

Matthew M. Bracken
County Attorney

Date

APPROVED AS TO FORM
AND LEGALITY

Deputy County Attorney

Date

BOARD OF WATER SUPPLY, COUNTY OF KAUAI

Chairperson

Date

EXHIBIT A - INSURANCE

Consultant shall procure and maintain, on primary basis and at its sole expense, at all times during the life of the Contract insurance coverages, limits, including endorsements as described here, against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work by Consultant or Consultant's agents, representatives, employees, or contractors.

The insurance requirements as well as the County's review or acceptance of insurance maintained by Consultant is not intended to and shall not in any manner limit or qualify the Consultant's liabilities, obligations, or indemnification in this Contract.

To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions, and coverage(s) of Insurance Service Office (ISO) policies, forms, and endorsements.

A. General Conditions

Waiver of Subrogation. Contractor shall agree by entering into a contract with the County to provide a Waiver of Subrogation for the Commercial General Liability, Automobile Liability, and Workers Compensation policies. When required by the insurer, or should a policy condition not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, the Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Subrogation in favor of the County. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

Additional Insured. Contractor shall agree to endorse the County of Kaua'i as an Additional Insured with a CG026 Additional Insured – Designated Person or Organization endorsement, a copy of the applicable policy language, or similar endorsement to all required insurance policy(ies), except for Workers Compensation and Professional Liability.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County. At the discretion of the County, the County may require Contractor to reduce or eliminate any such deductibles or self-insured retentions as respects the County, or require Contractor to provide a financial guarantee (audited financial statement or bond) satisfactory to the County guaranteeing payment of any losses and related investigations, claim administration, or defense expenses. Any deductibles or self-insured retentions are the sole responsibility of Contractor and its subcontractor(s) if any. The County reserves the right to deduct from the final payment to Contractor any unsatisfied deductibles or self-insured retentions which would result in a lien against the project.

When any deductibles or self-insured retention exceeds \$50,000, the County reserves the right, but not the obligation, to request and review a copy of Contractor's most recent annual

report or audited financial statement.

Contractor must declare any exception to the requirements of this provision as a question to the solicitation prior to submission of their offer, and must declare their ability to provide a bond or other satisfactory guarantee in lieu of any deductibles or self-insured retention. The County will make a determination as to any exception(s) via an addendum to the solicitation prior to final submission of offers.

Contractor's Responsibility. The Contractor is responsible for paying any portion of any loss not covered because of the operation of any deductible, co-insurance clause or self-insured retention applicable to the insurance required herein. If the County is damaged by the failure of the Contractor to maintain insurance as required in this paragraph, then the Contractor shall bear all reasonable costs properly attributable to that failure.

Primary and Non-contributory. All policies required of the Contractor will be endorsed as primary and any insurance or self-insurance program maintained by the County shall be non-contributory.

Certificate of Insurance. Concurrent with the execution of the contract, Contractor shall provide the County a certificate of insurance completed by a duly authorized representative of their insurer certifying that the liability coverage(s) is written on an occurrence form. Immediately upon becoming aware that its insurance will be cancelled, non-renewed, or materially changed, Contractor will notify County by providing written notice.

The Certificate Holder address shall read:

County of Kaua'i
Office of the County Attorney
4444 Rice Street, Suite 220
Līhu'e, HI 96766
Attention: County Attorney
Contract No. *TBD* for special counsel services
Matter: [Click or tap here to enter text.](#)

Concurrent with the execution the contract the Contractor shall furnish the County with original certificates and endorsements effecting required coverage(s). The County reserves the right to require complete copies of all required insurance policies, including the policy declarations and endorsements affecting the coverage at any time.

Failure to secure and maintain the required insurance shall be considered as a material breach of the contract. Should the County be forced to expend funds that would have been covered under the specified insurance, Contractor shall reimburse County for such funds. In the event the County determines, in its sole and absolute discretion, that it is necessary to purchase the coverages herein required of the Contractor, and which the Contractor has

failed to secure, the Contractor shall reimburse the County for the expenditure of such funds.

Right to Revise or Reject. County reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work or specifications affecting the applicability of coverage. Additionally, the County reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due to its poor financial condition or failure to operate legally.

B. Minimum Insurance Coverage Requirements

Unless otherwise approved by the Director of Finance, the policy or policies of insurance maintained by the Contractor shall provide the following minimum limit(s) and coverage(s) as specified herein and be placed with an insurance carrier authorized to do business in the State of Hawai'i and rated A-VII by A.M. Best:

☐ **Commercial General Liability.** The Contractor shall procure and maintain Commercial General Liability (CGL), with dedicated required limits, as set forth herein, written on occurrence form providing:

☐ Designated premises basis **OR** ☐ Per Project basis

(Per Project Basis. The Commercial General Liability policy aggregate limits shall apply to both the general and products and completed operations limits. The term "project basis" should not be construed to mean the County is requiring the Contractor to purchase a separate project specific general liability and products completed operations policy for the project.)

The coverages shall include the following:

- ☐ Premises Operations
- ☐ Independent Contractors
- ☐ Products and Completed Operations
- ☐ Broad Form Property Damage including completed operations
- ☐ Blanket Contractual Liability
- ☐ Personal Injury
- ☐ Employees named as Additional Insured
- ☐ Severability of Interest
- ☐ Explosion, Collapse and Underground Property Damage

The minimum limits of liability may be satisfied by providing either:

Bodily Injury and Property Damage Combined Single Limit: ▪ \$2,000,000 per occurrence ▪ \$2,000,000 annual aggregate	OR	Personal Injury: ▪ \$1,000,000 per occurrence ▪ \$2,000,000 annual aggregate AND Products and Completed Operations: ▪ \$1,000,000 per occurrence ▪ \$2,000,000 annual aggregate
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Contractor must provide evidence that the County is an Additional Insured for Products and Completed Operations coverage for both ongoing operations and after substantial completion of the work. ISO Form CG 20 10 04 13 and ISO Form CG 20 39 12 19, or equivalent forms are required from the Contractor. Coverage provided by a non-equivalent CGL form shall be specifically endorsed providing both the course of construction and products and completed operations. ISO Form CG 20 10 04 13 and ISO Form CG 20 39 12 19, or equivalent forms are required from the Contractor. The Contractor and subcontractor(s), if any, shall provide evidence to the County on an annual basis the products and completed operation coverage is in effect for **two (2)** years after substantial completion of the project.

☐ **Business Automobile Liability.** The Contractor shall procure and maintain Business Automobile Liability written on occurrence form for all Owned, Non-owned, and Hired automobiles. If the Contractor does not own automobiles, Contractor shall agree to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Automobile Liability. Coverage shall be for automobile contractual liability, uninsured and underinsured motorist coverage, basic no-fault, and personal injury protection, as required by Hawai'i law with the following limits:

Bodily Injury

\$1,000,000 per person

\$1,000,000 per occurrence

Property Damage

\$1,000,000 per accident

☐ **Workers' Compensation and Employer's Liability.** The Contractor shall procure and maintain at all times during the term of the contract the following insurance liability coverage: Workers' Compensation, Temporary Disability Insurance (TDI), and similar insurance that is required by the State of Hawai'i or federal laws. Self-insurance is permitted subject to submission of a copy of the appropriate governmental authorization and qualification by the Contractor and subcontractor(s).

The minimum limits of liability to be maintained are as follows:

Coverage A: State of Hawai'i Workers' Compensation Law:
Statutory Limits

Coverage B: Employer's Liability:

Bodily Injury from each accident	\$1,000,000
Bodily Injury from disease	\$1,000,000
Bodily Injury from disease aggregate	\$1,000,000

☒ **Professional Liability (Errors and Omissions).** The Contractor and its subcontractors shall procure and maintain Professional Liability Insurance (Errors and Omissions Insurance) that covers all such activities under the contract. Such insurance shall have these minimum limits and coverage(s):

\$1,000,000 per occurrence
\$2,000,000 annual aggregate

For policies written on a "Claims-Made" basis, Contractor warrants the retroactive date equals or precedes the effective date of the contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced; or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of the contract, Contractor shall agree to purchase Supplement Extended Reporting Period (SERP) with a minimum reporting period not less than **two (2)** years.

The requirement to purchase a SERP shall not relieve Contractor of the obligation to provide replacement coverage.

☐ **Umbrella or Excess Liability.** Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy with \$1,000,000 per occurrence and \$2,000,000 aggregate. If Contractor is using its Umbrella or Excess Liability Insurance policy to satisfy the minimum requirements, Contractor shall agree to endorse the County of Kaua'i as "Additional Insured" on the Umbrella or Excess Liability policy, or shall confirm in writing that its Umbrella or Excess Liability policy "follows form."