

NOTICE FOR PROFESSIONAL SERVICES
DOW-2026-PROF-1

Pursuant to the provisions of HRS 103D Procurement of Professional Services, the Department of Water, County of Kaua'i (DOW) hereby provides public notice to invite persons engaged in the professional services listed below to submit current statements of qualifications and expressions of interest for the fiscal year July 1, 2025 to June 30, 2026:

Administration: Administration Services such as:

- A. Grant Writing and External Funding Preparation Services: Provide services through all phases of grant and external funding process. Assist in finding Federal, State of Hawai'i or other grant opportunities, applying for grants pre-award, grant award, post-award phase and documentation for closeout.
- B. Utility Management Planning: Provide services through all phases related to the effective utility management and strategic planning processes.
- C. Capital Improvement Planning and Prioritization and Development of a Capital and Operating Expenditures Budget

Fiscal: Fiscal Services such as:

- A. As Needed Consultation Services such as new accounting and GASB pronouncements and implementation.
- B. Consulting Services on Internal Controls and Other Operating Business Procedures.
- C. Consulting Services to assist the DOW to develop Financial Policies on Financial Planning, Debt Issuance.

Information Technology: Consultation and Information Technology Services such as:

- A. IT system audit and strategic planning
- B. IT Software System Analysis
- C. Firewall Optimization and Support
- D. Financial Information System (Dynamics365) Optimization and Support
- E. Oracle Cloud Services Optimization and Support
- F. Oracle Customer Care and Billing Optimization and Support
- G. Virtual Server (Hyper-V/VMware) Optimization and Support
- H. Network Administration, Switch Maintenance, WIFI, Configuration, Optimization and Support
- I. Windows Server 2019 Active Directory Architecture Optimization and Support
- J. Microsoft SharePoint Online Configuration and Support
- K. Database (SQL and Oracle) Configuration and Support
- L. GIS Optimization and Support
- M. Physical Security and Surveillance System, Design, Configuration, Maintenance and Support
- N. Cybersecurity System Optimization, Maintenance and Support
- O. Supervisory Control and Data Acquisition (SCADA) Systems Configuration, Maintenance and Support.
- P. Website hosting: configuration, security, and support.
- Q. Enterprise Software needs assessment.

- R. Computer system anti-malware, antivirus Optimization and Support.
- S. Cloud backup and data recovery service and support
- T. Cloud hosted Telcom and Service and Support

Special Medical Practitioner Services:

- A. Qualified medical practitioners licensed in the State of Hawai‘i who can provide initial verification as to the suitability of an employee to either return to work or be temporarily excused from work.

Engineering (In accordance with HRS, Ch. 464): Civil, architectural, mechanical, electrical, and industrial engineering for waterworks facilities and other work relating to:

- A. Engineering project management and construction inspectional services.
- B. Planning and design for the drilling and testing of water wells.
- C. Planning and design for the construction of water tanks and connecting pipelines.
- D. Planning and design for the construction of water transmission and distribution mains.
- E. Planning and design for surface water treatment facilities, vehicle and foot access bridges, land and site acquisition, drainage, and water quality.
- F. Planning and design, and/or outfitting of water facilities with new or renovated deep well production-pumps, booster pumps, water tank electrical controls, Supervisory Control And Data Acquisition (SCADA), Motor Control Center (MCC), instrumentation and piping, and power savings (power generation).
- G. Planning, design and construction management for waterworks facilities (which includes the Administrative Building and Operations Baseyard) including, but not limited to: site improvements, building modifications, structures, landscaping, fencing and pavement, standby power systems, generator shelters, access roads, retaining walls.
- H. Preliminary Engineering Report (as needed) for inspection, repair, recoating, renovating and replacement of buildings, waterworks facilities (deep well sites, tunnel sources, tanks, pump stations, pipelines and controls), and development of maintenance management programs for fixed facilities (valves, fire hydrants, pump station etc.) and mobile equipment.
- I. Design, installation, inspection, and repair of corrosion control-systems.
- J. General surveying services.
- K. Structural Engineering Inspection for construction of water facilities.
- L. As-Needed Engineering Services for Indefinite Quantity Indefinite Delivery. The primary intent of this solicitation is to provide professional engineering services to:
 - 1. Augment the DOW’s engineering staff
 - 2. Re-certify previously completed construction drawings
 - 3. Provide professional engineering services during construction to respond to change orders, requests for information, construction bidding, specialty inspections, etc.
 - 4. Provide civil, electrical, and mechanical engineering services
 - 5. Provide training for DOW’s engineering staff
 - 6. Assist the DOW with design-related services, including plan reviews, report reviews, specification reviews, environmental reviews, material submittal reviews, and other reviews as needed.
 - 7. Prepare construction drawings and specifications for water facilities and

appurtenances, including but not limited to water lines, storage tanks, wells and pumps, motor control centers, generator shelters, disinfection facilities, roadways, drainage facilities and detention facilities, drainage studies, preparation of environmental assessments, environmental impact statements, preparation of and obtaining permits.

8. Provide geographic information system (GIS) and hydraulic modeling services
9. Provide grant writing and preparation services.
10. Assist in the procurement of construction contracts.

M. Federal projects: In the event of a Presidential declaration of a natural disaster or other declared event which would permit the DOW to seek reimbursement from a federal agency, the DOW anticipates using the SOQs received in this annual solicitation for awarding a contract for services under such declared event. All SOQs submitted for this section "Engineering" will be considered a submission for potential federal project contracts unless the SOQ specifically excludes work on federal projects. Offerors are advised that should they be awarded a contract for projects that will receive Federal funds:

1. The contract shall comply with 2 CFR 200.317-327.
2. The contract shall include all the applicable terms and conditions and current federal provisions of 2 C.F.R. § Pt. 200, App. II, found in the attached Exhibit - Federal Provisions, 2 CFR PART 200, Appendix II.
3. The contract shall include the DOW's General Terms and Conditions for Professional Services Contracts, dated January 2019.
4. The preparation of construction solicitation documents shall comply with federal procurement guidelines and regulations and all the applicable terms and current federal provisions and conditions of 2 C.F.R. § Pt. 200, App. II, found in the attached [Exhibit - Federal Provisions, 2 CFR PART 200, Appendix II](#).
5. The contract may be paid for entirely or partially with Federal funds.

INSTRUCTIONS

Format:

- A. Expression of interest shall include:
1. Category number and title; (for example: Fiscal-A - As Needed Consultation Services.)
 2. Name of the contact to which the resume(s) is/are to be directed.
 3. Signature of an authorized representative.
- B. The following requirements pertain to all Statement of Qualifications (SOQ's) 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 Form DPW 120 with supplemental information, where appropriate, is encouraged. SOQ's should include, but not be limited to, the following information:
1. The name of the firm or person, the principal place of business, and location of all of its offices;
 2. The age of the firm and its average number of employees for the past five years;
 3. The education, training, and qualifications of key members of the firm;
 4. The education, training, and qualifications of key members of the associate firms for subcontracted work;
 5. 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;
 6. Any promotional or descriptive literature which the firm desires to submit, and
 7. Submit Quality Assurance Procedures (this item is important and submittals will be rejected without it).
- C. **For ENGINEERING category:** The **entire SOQ package** ((A)Expression of interest **plus** (B)SOQ) **shall not exceed a total of 15 pages**, using a minimum size of 12 font. Examples of projects, performed by the firm, which best illustrate the firm's ability to complete contracts within the category of interest. A minimum of 2 example projects must have been done within the past 10 years.

Multiple Awards: Multiple awards under this solicitation may occur, based on the needs of the DOW, according to the relevant matter for which an offer is sought. The use of multiple awards based on this solicitation is voluntary.

Cooperative Purchase Agreement: For each SOQ, based on the needs of the DOW, a cooperative purchase agreement may be used. If a cooperative purchase agreement is used, the agencies shall enter

into a cooperative purchase agreement pursuant to relevant law.

General Terms and Conditions: The furnishing of professional 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 Requirements: **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 for the [respective service](#). 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: Submittals must be received by the DOW addressed to the Manager and Chief Engineer, Department of Water, County of Kaua'i, in **ELECTRONIC FORM ONLY** via www.publicpurchase.com (Select Agency "Department of Water, County of Kaua'i") **no later than 11:59 p.m. (HST), Monday, June 30, 2025.** Awards shall be electronically posted on the DOW website within seven (7) days of the contract award.

Questions may be directed to Ms. Christine Erorita via www.publicpurchase.com or (808) 245-5409.

(POSTED via www.kauaiwater.org, www.publicpurchase.com, www.hands.ehawaii.gov , 06/02/25)

MINIMUM INSURANCE REQUIREMENTS

Insurance requirements for Administration Services

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 Board'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 Board 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 Board. 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 **Board of Water Supply, 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 Board. At the discretion of the Board, the Board may require Contractor to reduce or eliminate any such deductibles or self-insured retentions as respects the Board, or require Contractor to provide a financial guarantee (audited financial statement or bond) satisfactory to the Board 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 Board 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 Board 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 Board 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 Board 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 Board shall be non-contributory.

Certificate of Insurance. Concurrent with the execution of the contract, Contractor shall provide the Board 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 Board by providing written notice.

The Certificate Holder address shall read:

Board of Water Supply, County of Kaua'i
4398 Pua Loke Street
Līhu'e, HI 96766
Attention: _____
Contract No. _____
Project Title: _____

Concurrent with the execution the contract the Contractor shall furnish the Board with original certificates and endorsements effecting required coverage(s). The Board 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 Board be forced to expend funds that would have been covered under the specified insurance, Contractor shall reimburse Board for such funds. In the event the Board 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 Board for the expenditure of such funds.

Right to Revise or Reject. Board 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 Board 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 Board 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: <ul style="list-style-type: none"> ▪ \$2,000,000 per occurrence ▪ \$2,000,000 annual aggregate 	OR	Personal Injury: <ul style="list-style-type: none"> ▪ \$1,000,000 per occurrence ▪ \$2,000,000 annual aggregate AND Products and Completed Operations: <ul style="list-style-type: none"> ▪ \$1,000,000 per occurrence ▪ \$2,000,000 annual aggregate
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Contractor must provide evidence that the Board 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 Board 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 and 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 Board, Contractor, sub- contractors, 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 Board 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 Board. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the Board's interest in the building ceases, or the building is accepted or insured by the Board.

The Contractor shall name the Board of Water Supply, County of Kaua'i 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 Board, Contractor, sub- contractor(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 Board 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 Board. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the Board's interest in the building ceases, or the building is accepted or insured by the Board.

The Contractor shall name the Board of Water Supply, County of Kaua'i 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 Board. 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 Board of Water Supply, 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."

Insurance requirements for Fiscal Services

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 Board'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 Board 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 Board. 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 **Board of Water Supply, 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 Board. At the discretion of the Board, the Board may require Contractor to reduce or eliminate any such deductibles or self-insured retentions as respects the Board, or require Contractor to provide a financial guarantee (audited financial statement or bond) satisfactory to the Board 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 Board 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 Board 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 Board 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 Board 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 Board shall be non-contributory.

Certificate of Insurance. Concurrent with the execution of the contract, Contractor shall provide the Board 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 Board by providing written notice.

The Certificate Holder address shall read:

Board of Water Supply, County of Kaua'i
4398 Pua Loke Street
Līhu'e, HI 96766

Attention: _____

Contract No. _____

Project Title: _____

Concurrent with the execution the contract the Contractor shall furnish the Board with original certificates and endorsements effecting required coverage(s). The Board 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 Board be forced to expend funds that would have been covered under the specified insurance, Contractor shall reimburse Board for such funds. In the event the Board 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 Board for the expenditure of such funds.

Right to Revise or Reject. Board 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 Board 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 Board 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 Board 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 Board 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 and 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 Board, Contractor, sub- contractors, 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 Board 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 Board. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the Board's interest in the building ceases, or the building is accepted or insured by the Board.

The Contractor shall name the Board of Water Supply, County of Kaua'i 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 Board, Contractor, sub-contractor(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 Board 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 Board. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the Board's interest in the building ceases, or the building is accepted or insured by the Board.

The Contractor shall name the Board of Water Supply, County of Kaua'i 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 Board. 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 Board of Water Supply, 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."

Insurance requirements for Information Technology Services

INSURANCE REQUIREMENTS

County of Kaua'i

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 Board'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 Board 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 Board. 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 **Board of Water Supply, 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 Board. At the discretion of the Board, the Board may require Contractor to reduce or eliminate any such deductibles or self-insured retentions as respects the Board, or require Contractor to provide a financial guarantee (audited financial statement or bond) satisfactory to the Board 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 Board 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 Board 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 Board 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 Board 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 Board shall be non-contributory.

Certificate of Insurance. Concurrent with the execution of the contract, Contractor shall provide the Board 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 Board by providing written notice.

The Certificate Holder address shall read:

Board of Water Supply, County of Kaua'i

4398 Pua Loke Street

Līhu'e, HI 96766

Attention: _____

Contract No. _____

Project Title: _____

Concurrent with the execution the contract the Contractor shall furnish the Board with original certificates and endorsements effecting required coverage(s). The Board 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 Board be forced to expend funds that would have been covered under the specified insurance, Contractor shall reimburse Board for such funds. In the event the Board 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 Board for the expenditure of such funds.

Right to Revise or Reject. Board 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 Board 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 Board 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: <ul style="list-style-type: none"> ▪ \$2,000,000 per occurrence ▪ \$2,000,000 annual aggregate 	OR	Personal Injury: <ul style="list-style-type: none"> ▪ \$1,000,000 per occurrence ▪ \$2,000,000 annual aggregate AND Products and Completed Operations: <ul style="list-style-type: none"> ▪ \$1,000,000 per occurrence ▪ \$2,000,000 annual aggregate
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Contractor must provide evidence that the Board 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 Board 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 and 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 Board, Contractor, sub-contractors, 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 Board 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 Board. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the Board's interest in the building ceases, or the building is accepted or insured by the Board.

The Contractor shall name the Board of Water Supply, County of Kaua'i 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 Board, Contractor, sub-contractor(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 Board 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 Board. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the Board's interest in the building ceases, or the building is accepted or insured by the Board.

The Contractor shall name the Board of Water Supply, County of Kaua'i 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 Board. 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 Board of Water Supply, 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."

Insurance requirements for Special Medical Practitioner Services

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 Board'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 Board 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 Board. 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 **Board of Water Supply, 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 Board. At the discretion of the Board, the Board may require Contractor to reduce or eliminate any such deductibles or self-insured retentions as respects the Board, or require Contractor to provide a financial guarantee (audited financial statement or bond) satisfactory to the Board 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 Board 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 Board 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 Board 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 Board 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 Board shall be non-contributory.

Certificate of Insurance. Concurrent with the execution of the contract, Contractor shall provide the Board 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 Board by providing written notice.

The Certificate Holder address shall read:

Board of Water Supply, County of Kaua'i
4398 Pua Loke Street
Līhu'e, HI 96766

Attention: _____

Contract No. _____

Project Title: _____

Concurrent with the execution the contract the Contractor shall furnish the Board with original certificates and endorsements effecting required coverage(s). The Board 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 Board be forced to expend funds that would have been covered under the specified insurance, Contractor shall reimburse Board for such funds. In the event the Board 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 Board for the expenditure of such funds.

Right to Revise or Reject. Board 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 Board 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 Board 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: <ul style="list-style-type: none"> ▪ \$2,000,000 per occurrence ▪ \$2,000,000 annual aggregate 	OR	Personal Injury: <ul style="list-style-type: none"> ▪ \$1,000,000 per occurrence ▪ \$2,000,000 annual aggregate AND Products and Completed Operations: <ul style="list-style-type: none"> ▪ \$1,000,000 per occurrence ▪ \$2,000,000 annual aggregate
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Contractor must provide evidence that the Board 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 Board 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 and 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 Board, Contractor, sub-contractors, 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 Board 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, lightning, 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 Board. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the Board's interest in the building ceases, or the building is accepted or insured by the Board.

The Contractor shall name the Board of Water Supply, County of Kaua'i 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 Board, Contractor, sub-contractor(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

Board 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 Board. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the Board's interest in the building ceases, or the building is accepted or insured by the Board.

The Contractor shall name the Board of Water Supply, County of Kaua'i 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 Board. 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 Board of Water Supply, 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."

Insurance requirements for Engineering Services

INSURANCE REQUIREMENTS

County of Kaua'i

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 Board'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 Board 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 Board. 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 **Board of Water Supply, 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 Board. At the discretion of the Board, the Board may require Contractor to reduce or eliminate any such deductibles or self-insured retentions as respects the Board, or require Contractor to provide a financial guarantee (audited financial statement or bond) satisfactory to the Board 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 Board 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 Board 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 Board 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 Board 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 Board shall be non-contributory.

Certificate of Insurance. Concurrent with the execution of the contract, Contractor shall provide the Board 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 Board by providing written notice.

The Certificate Holder address shall read:

Board of Water Supply, County of Kaua'i
4398 Pua Loke Street
Līhu'e, HI 96766
Attention: _____
Contract No. _____
Project Title: _____

Concurrent with the execution the contract the Contractor shall furnish the Board with original certificates and endorsements effecting required coverage(s). The Board 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 Board be forced to expend funds that would have been covered under the specified insurance, Contractor shall reimburse Board for such funds. In the event the Board 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 Board for the expenditure of such funds.

Right to Revise or Reject. Board 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 Board 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 Board 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: <ul style="list-style-type: none"> ▪ \$2,000,000 per occurrence ▪ \$2,000,000 annual aggregate 	OR	Personal Injury: <ul style="list-style-type: none"> ▪ \$1,000,000 per occurrence ▪ \$2,000,000 annual aggregate AND Products and Completed Operations: <ul style="list-style-type: none"> ▪ \$1,000,000 per occurrence ▪ \$2,000,000 annual aggregate
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Contractor must provide evidence that the Board 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 Board 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 and 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 Board, Contractor, sub-contractors, 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 Board 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 Board. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the Board's interest in the building ceases, or the building is accepted or insured by the Board.

The Contractor shall name the Board of Water Supply, County of Kaua'i 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 Board, Contractor, sub-contractor(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 Board 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.

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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 Board. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the Board's interest in the building ceases, or the building is accepted or insured by the Board.

The Contractor shall name the Board of Water Supply, County of Kaua'i 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 Board. 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 Board of Water Supply, 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."

SAMPLE CONTRACT

Sample Contract for Professional Services (other than Design Professional Services Licensed Under Hawai'i Revised Statute §464)

CONTRACT NO. [Click here to enter text.](#)
PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT, effective as of the date below, is made and entered into by and between the Board of Water Supply, County of Kaua'i, whose mailing address is 4398 Pua Loke Street, Lihu'e, Hawai'i 96766 (hereinafter the "Board") and [Click here to enter text.](#), a [Click here to enter text.](#) under the laws of the State of [Choose an item.](#), whose principle mailing address is [Click here to enter text.](#) (hereinafter the "Contractor").

RECITALS

THIS CONTRACT for professional services has been procured under:

- ☐ Hawai'i Revised Statutes ("HRS") §103D-304 (Professional Services, Notice No. [Click here to enter text.](#))
- ☐ HRS §103D-302 (Competitive Sealed Bidding, Invitation For Bid No. [Click here to enter text.](#))
- ☐ HRS §103D-303 (Competitive Sealed Proposals, Request For Proposal No. [Click here to enter text.](#))
- ☐ HRS §103D-305 (Small Purchase [Choose an item.](#) No. [Click here to enter text.](#))
- ☐ HRS §103D-306; HAR 3-122-81(c) (approved for Sole Source procurement [Click here to enter text.](#), Sole Source Procurement No. [Click here to enter text.](#))
- ☐ HRS §103D-307 (Emergency Procurement No. [Click here to enter text.](#))

WHEREAS, ; and

WHEREAS, Contractor is able and qualified to provide such professional services as required for: [Click here to enter text.](#) (hereinafter the "Project").

NOW THEREFORE, the Board and Contractor, in consideration of the mutual promises, consideration, and understandings hereinafter set forth, hereby agree as follows:

1. **Scope of Work.** Contract Documents: Contractor agrees to provide the Services, as more specifically described in Exhibit A, in accordance and in strict compliance with this Contract and the following documents:
 - a. ☐ Exhibit A (Scope of Work), attached and incorporated herein;
 - b. ☐ Exhibit B (Budget Breakdown or Rate Schedule), attached and incorporated herein;
 - c. ☐ General Terms and Conditions for Professional Services Contracts, Department of Water, County of Kaua'i, dated January 1, 2019, incorporated by reference, (hereinafter "General Terms");
 - d. ☐ Other [Click here to enter text.](#),

and those other documents attached or referred to therein, relating to the Project (hereinafter collectively referred to as the "Contract Documents"). In addition, the Contractor shall perform all

work which in its and the Board's opinion is necessary to obtain the objectives of this Contract. The Contractor 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. The Contractor 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.

2. **Changes in Scope of Work.** The Board may, from time-to-time, make changes in the Scope of Work. Any increase or decrease in the amount of the Contractor's compensation which are mutually agreed to between the Board and the Contractor shall be incorporated through written amendments to this Contract. Unless incorporated by way of written amendments to this Contract, any such increases or decreases in compensation shall be void and of no force and effect.
3. **Time of Performance.** The Contractor agrees to complete the Project within [Click here to enter text.](#) **CALENDAR DAYS** from and including the date as specified in the written Notice to Proceed, exclusive of the time required for Board review of Contractor's work product. In any event, all work shall be completed as expeditiously as possible. This Contract may be extended, by mutual written agreement of the parties, as needed, to complete the scope of the Project.
4. **Compensation.**
 - a. For and in consideration of Contractor's full and faithful performance of this Contract required to be performed under the Contract Documents, the Board hereby agrees to pay Contractor 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, in accordance with the rate schedule and allowable out-of-pocket expenses (hereinafter "Expenses") as listed in Exhibit B. Contractor 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.
 - b. **Cost and/or Pricing:** If this Contract required Cost and/or Pricing data, Contractor understands and agrees that the price to the Board, including profit or fee, shall be adjusted to exclude any significant sums by which the Board finds that the price was increased because Contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the parties.
5. **Liquidated Damages.** The Contractor understands and agrees that time is an essential factor of this Contract, and that the Board will suffer material loss by reason of delays that may occur in the Contractor's performance of the work or any portions of the work within the time or times fixed in the Contract or any extensions thereto. When the Contractor is given notice of delay or nonperformance, as specified in the Termination for Default clause of this Contract, and fails to cure in the time specified, the Contractor shall pay to the Board, as liquidated damages for any such delays or nonperformance, the sum of [Click here to enter text.](#) **DOLLARS (\$[Click here to enter text.](#))**, for each and every calendar day of delay or nonperformance from the day set for cure until either the Board reasonably obtains similar services if the Contract is terminated for default, or until the Contractor provides the services if the Contractor is not terminated for default. The sums of each and every calendar day of delay or nonperformance shall be deducted from the Contract price. It is expressly stipulated by and between

the Contractor and the Board that any such sums shall be deemed and taken to be liquidated damages for the Contractor's failure to perform within the specified time and not be in the nature of a penalty. To the extent that the Contractor's delay or nonperformance is excused under "excuse for nonperformance or delayed performance" of the Termination for Default clause of this Contract, liquidated damages shall not be due the Board. The Contractor remains liable for damages caused other than by delay.

6. **Insurance.** Contractor 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 described in the Solicitation, 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 the Contractor or the Contractor's agents, representatives, employees, or subcontractors. The requirements contained herein, as well as the Board'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.
7. **Bonds.** The Contractor [Choose an item.](#) required to provide the following bonds in an amount equal to [Click here to enter text.](#) % of the amount of the contract price in the form(s) set forth in the respective Exhibit D.
8. **Procurement Officer.** The Procurement Officer of this Project is:

[Click here to enter text.](#)

[Click here to enter text.](#)

4398 Pua Loke Street, Līhu'e, Hawai'i 96766

[Click here to enter text.](#)

[Click here to enter text.](#)

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Sample Contract for Professional Engineering Services (Design Professional Services Licensed Under Hawai'i Revised Statute §464)

CONTRACT NO. [Click here to enter text.](#)

PROFESSIONAL SERVICES CONTRACT

(Design Professional Services Licensed Under Hawai'i Revised Statute §464)

THIS CONTRACT, effective as of the date below, is made and entered into by and between the Board of Water Supply, County of Kaua'i, whose mailing address is 4398 Pua Loke Street, Lihu'e, Hawai'i 96766 (hereinafter the "Board") and [Click here to enter text.](#), a [Click here to enter text.](#) under the laws of the State of [Choose an item.](#), whose principle mailing address is [Click here to enter text.](#) (hereinafter the "Contractor").

RECITALS

THIS CONTRACT for professional services has been procured under:

- ☐ Hawai'i Revised Statutes (HRS) §103D-304 (Professional Services)
- ☐ HRS §103D-307 (Emergency Procurement No. [Click here to enter text.](#))
- ☐ HRS §103D-306; HAR 3-122-81(c) (approved for Sole Source procurement [Click here to enter text.](#), Sole Source Procurement No. [Click here to enter text.](#))

WHEREAS, ; and

WHEREAS, the Contractor is able and qualified to provide such professional services as required for: [Click here to enter text.](#) (hereinafter the "Project").

NOW THEREFORE, the Board and Contractor, in consideration of the mutual promises, consideration, and understandings hereinafter set forth, hereby agree as follows:

1. **Scope of Work.** Contract Documents: The Contractor agrees to complete the Project in accordance with this Contract and the following documents:

- ☐ Exhibit A (Scope of Work), attached and incorporated herein;
- ☐ Exhibit B (Budget Breakdown), attached and incorporated herein;
- ☐ General Terms and Conditions for Professional Services Contracts, Department of Water, County of Kaua'i, dated January 1, 2019, incorporated by reference, (hereinafter "General Terms");
- ☐ Other [Click here to enter text.](#),

and those other documents attached or referred to therein, relating to the Project (hereinafter collectively referred to as the "Contract Documents"). In addition, the Contractor shall perform all work which in its and the Board's opinion is necessary to obtain the objectives of this Contract. The Contractor 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. The Contractor 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.

2. **Changes in Scope of Work.** The Board may, from time-to-time, make changes in the Scope of Work. Any increase or decrease in the amount of the Contractor's compensation which are mutually agreed to between the Board and the Contractor shall be incorporated through written amendments to this Contract. Unless incorporated by way of written amendments to this Contract, any such increases or decreases in compensation shall be void and of no force and effect.

3. **Time of Performance.**

- a. ☐ The Contractor agrees to complete the Project within [Click here to enter text.](#) **CALENDAR DAYS** from and including the date as specified in the written Notice to Proceed, exclusive of the time required for Board review of Contractor's work product. In any event, all work shall be completed as expeditiously as possible. This Contract may be extended, by mutual written agreement of the parties, as needed, to complete the scope of the Project.
- b. ☐ For design professional services where services will be provided during construction:
 - i. Performance of the planning, design, and permitting services required under this Contract ([Click here to enter text.](#) inclusive) shall commence upon written notification to proceed by the Officer-in-Charge and shall be completed within [Click here to enter text.](#) **CALENDAR DAYS**, exclusive of the time required for Board review of Contractor's work product. In any event, all work shall be completed as expeditiously as possible. The Board will issue to the Contractor a letter to suspend the Contract performance time during periods when the Board reviews the Contractor's work product, provided that work is not being performed in other Phase(s) or Task(s). At the end of a review period, if the Contract performance time is suspended, the Board will issue a letter to resume the Contract performance time. Any work performed or funds expended prior to receipt of the Notice to Proceed shall be at the Contractor's expense and risk.
 - ii. In addition to the above time allocated for planning and design services ([Click here to enter text.](#) inclusive), the engineering services during solicitation and construction ([Click here to enter text.](#)) shall be completed concurrently with the solicitation schedule established by the Board and the construction schedule established by the Board's construction contract. Contractor shall provide an engineer's estimate consisting of cost and/or pricing data for material, labor, equipment, overhead, and profit for each proposal line item, or as requested by the Board, in order to permit the Board to review the reasonableness of construction offers as required by law.
 - iii. After acceptance of the final construction plans and specifications, the Contractor shall be available for consultation and review of material submittals, shop drawings, record drawings, and provide other consultative services during solicitation and construction of the Project ([Click here to enter text.](#)) in accordance with the schedule set by the Board and up to [Click here to enter text.](#) **CALENDAR DAYS** after completion of construction as defined by issuance of Final Acceptance of the Project by the Board.
 - iv. Contractor shall respond to all requests for information during solicitation, construction, and after completion of construction within [Click here to enter text.](#) **CALENDAR DAYS**. Contractor acknowledges and agrees that any delay on the Contractor's part to respond to requests for information will impact the solicitation, construction, and completion of construction.

4. Compensation.

- a. For and in consideration of the Contractor's full and faithful performance of all services required to be performed under the Contract Documents, the Board hereby agrees to pay the Contractor the total maximum sum [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, in accordance with Exhibit B. The Contractor 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.
- b. Cost and/or Pricing: If the Contract requires Cost and/or Pricing data, the Contractor understands and agrees that the price to the Board, including profit or fee, shall be adjusted to exclude any significant sums by which the Board finds that the price was increased because Contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

5. Liquidated Damages. The Contractor understands and agrees that time is an essential factor of this

Contract, and that the Board will suffer material loss by reason of delays that may occur in the Contractor’s performance of the work or any portions of the work within the time or times fixed in the Contract or any extensions thereto. When the Contractor is given notice of delay or nonperformance, as specified in the Termination for Default clause of this Contract, and fails to cure in the time specified, the Contractor shall pay to the Board, as liquidated damages for any such delays or nonperformance, the sum of [Click here to enter text.](#) **DOLLARS** (\$[Click here to enter text.](#)), for each and every calendar day of delay or nonperformance from the day set for cure until either the Board reasonably obtains similar services if the Contract is terminated for default, or until the Contractor provides the services if the Contractor is not terminated for default. The sums of each and every calendar day of delay or nonperformance shall be deducted from the Contract price. It is expressly stipulated by and between the Contractor and the Board that any such sums shall be deemed and taken to be liquidated damages for the Contractor’s failure to perform within the specified time and not be in the nature of a penalty. To the extent that the Contractor’s delay or nonperformance is excused under “excuse for nonperformance or delayed performance” of the Termination for Default clause of this Contract, liquidated damages shall not be due the Board. The Contractor remains liable for damages caused other than by delay.

- 6. **Insurance.** Contractor 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 described in the Solicitation, 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 the Contractor or the Contractor’s agents, representatives, employees, or subcontractors. The requirements contained herein, as well as the Board’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.
- 7. **Bonds.** The Contractor [Choose an item.](#) to provide the following bonds in an amount equal to [Click here to enter text.](#) % of the amount of the contract price in the form(s) set forth in Exhibit [Click here to enter text.](#).
- 8. **Procurement Officer.** The Procurement Officer of this Project is:

[Click here to enter text.](#)
[Click here to enter text.](#)
4398 Pua Loke Street, Līhu‘e, Hawai‘i 96766
[Click here to enter text.](#)
[Click here to enter text.](#)

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EXHIBIT TBD- FEDERAL PROVISIONS, 2 CFR PART 200, APPENDIX II

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain the current federal provisions covering the following, as applicable.

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

- i. As a political subdivision of the State of Hawai'i, the County is required to follow the stricter standard and has determined the small purchase procurement threshold under HRS 103D-305 is stricter. Thus, all contracts for more than the threshold in 103D-305(a) must meet the remedies clause (A).

All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

- ii. The Department's General Terms and Conditions for Professional Services Contracts will govern termination for cause and convenience and resolution of disputes.

Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- iii. If applicable the following Equal Employment Opportunity provision shall be a part of the contract.
- iv. The design consultant shall include in each construction solicitation it prepares on behalf of the Department which will be included in the contract, the following Equal Employment Opportunity provision:

"Equal Employment Opportunity. During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings."

Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by

Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- v. The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.
- vi. If applicable, the design consultant must place a copy of the current prevailing wage determination issued by the Department of Labor in each construction solicitation it prepares on behalf of the Department. Each construction solicitation shall include the decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The design consultant must report all suspected or reported violations to the Department and the federal awarding agency.
- vii. If applicable, the design consultant shall include in each construction solicitation it prepares on behalf of the Department which will be included in the contract, the following Compliance with the Davis-Bacon Act provision:

“Compliance with the Davis-Bacon Act.

- (1) All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- (2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, contractors are required to pay wages not less than once a week.”
- viii. Copeland “Anti-Kickback” Act applies to all contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon Act also applies. It DOES NOT apply to the Public Assistance Program.
- ix. If applicable, the design consultant shall include in each construction solicitation it prepares on behalf of the Department which will be included in the contract, the following Compliance with the Copeland “Anti-Kickback” Act provision:

“Compliance with the Copeland “Anti-Kickback” Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA or the federal awarding agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12 and/or HRS 103D-702.”

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- x. This requirement applies to all FEMA contracts awarded by the non-federal entity in excess of \$100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- xi. If applicable, the design consultant shall include in each construction solicitation it prepares on behalf of the Department which will be included in the contract, the following Compliance with the Contract Work Hours and Safety Standards Act provision:

“Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in Overtime requirements clause, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in Overtime requirements clause, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the Overtime requirements clause.
- (3) Withholding for unpaid wages and liquidated damages. The Department or the federal awarding agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the Violation; liability for unpaid wages; liquidated damages clause.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this Compliance with the Contract Work Hours and Safety Standards Act provision and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with

the clauses set forth in this Compliance with the Contract Work Hours and Safety Standards Act provision.”

Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

- xii. This requirement applies to “funding agreements,” but it DOES NOT apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- xiii. If applicable the following Rights to Inventions Made Under a Contract or Agreement provision shall be a part of the contract.
- xiv. If applicable the design consultant shall include in each construction solicitation it prepares on behalf of the Department which will be included in the contract, the following Rights to Inventions Made Under a Contract or Agreement provision:

“Rights to Inventions Made Under a Contract or Agreement. The Department and the contractor shall comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the federal awarding agency.”

Clean Air Act and the Federal Water Pollution Control Act, as amended — Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- xv. If applicable the following Clean Air Act and Federal Water Pollution Control Act provision shall be a part of the contract.
- xvi. If applicable the design consultant shall include in each construction solicitation it prepares on behalf of the Department which will be included in the contract, the following Clean Air Act and Federal Water Pollution Control Act provision:

“Clean Air Act and Federal Water Pollution Control Act.

- (1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the federal awarding agency.”

Debarment and Suspension (Executive Orders 12549 and 12689) — A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- xvii. The following Debarment and Suspension provision shall be a part of the contract.
- xviii. The design consultant shall include in each construction solicitation it prepares on behalf of the Department which will be included in the contract, the following Debarment and Suspension provision:

“Debarment and Suspension.

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the Department. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Department, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) — Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

- xix. The following Byrd Anti-Lobbying Amendment provision shall be a part of the contract.
- xx. The design consultant shall include in each construction solicitation it prepares on behalf of the Department which will be included in the contract, the following Byrd Anti-Lobbying Amendment provision:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).

- (1) Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Department who in turn will forward the certification(s) to the awarding agency.
- (2) Required Certification. If applicable, contractors must sign and submit to the Department the attached [Certification Regarding Lobbying](#).”

2 CFR § 200.323. Procurement of Recovered Materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste

management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Information about this requirement, along with the list of EPA- designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

- xxi. If applicable the following Recovered Materials provision shall be a part of the contract.
- xxii. If applicable the design consultant shall include in each construction solicitation it prepares on behalf of the Department which will be included in the contract, the following Recovered Materials provision:

“Recovered Materials.

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
- (2) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. The Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (2 CFR § 200.216) shall be a part of the contract. The design consultant shall include in each construction solicitation it prepares on behalf of the Department which will be included in the contract, the Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment provision.

Domestic Preferences for Procurements. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of 2 CFR § 200.322 Domestic Preferences for Procurements must be included in all subawards including all contracts and purchase orders for work or products under this award. The Domestic Preferences for Procurements provision shall be a part of the contract. The design consultant shall include in each construction solicitation it prepares on behalf of the Department which will be included in the contract, the Domestic Preferences for Procurements provision.

Access to Records. The following access to records requirements shall be a part of the contract and will not be limited by 10(c) of the Department’s General Terms and Conditions for Professional Services Contracts. The design consultant shall include in each construction solicitation it prepares on behalf of the Department which will be included in the contract, the following Access to Records provision:

“Access to Records.

- (3) The Contractor agrees to provide the Department, the director of the federal awarding agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (4) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (5) The Contractor agrees to provide the Department, director of the federal awarding agency, or authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (6) In compliance with the Disaster Recovery Act of 2018, the Department and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the federal awarding agency or the Comptroller General of the United States.”

Federal Seal, Logo, and Flags. The contractor shall not use the federal awarding agency's seal(s), logos, crests, or reproductions of flags or likenesses of agency officials without specific pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, the federal awarding agency's policies, procedures, and directives.

No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the Department, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract as well as Haw. Rev. Stat. Ann. § 661-21.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of the undersigned’s knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by [section 1352, title 31, U.S. Code](#). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor’s Authorized Official

Name and Title of Contractor’s Authorized Official

Date