Job No. 27-03
Appendix A
Sample Contract

CONTRACT NO. Click here to enter text.

CONSTRUCTION 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, Līhu'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 Hawaii, whose principle mailing address is Click here to enter text. (hereinafter the "CONTRACTOR").

RECITALS

THIS CONTRACT for construction services has been procured under:

☐ HRS §103D-302 (Competitive Sealed Bidding)
☐ HRS §103D-303 (Competitive Sealed Proposals)
☐ HRS §103D-305 (Small Purchase)
☐ HRS §103D-307 (Emergency Procurement No. Click here to enter text.)

WHEREAS, ; and

WHEREAS, the Contractor is able and qualified to provide such construction services as required in this Contract; and

NOW THEREFORE, in consideration of the payment(s) hereinafter set forth to be made by the Board, the Contractor agrees to furnish and pay for all materials, supplies, tools, equipment, labor, utilities, transportation, services, and any and all other incidentals necessary to construct in place and complete, free of all liens, claims, and any encumbrances whatsoever: **Click here to enter text.** (hereinafter "Project").

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

   ☐Approved construction drawings;
   ☐ Specifications;
   ☐Invitation for Bids Document No. Click here to enter text. and all Addenda thereto;
   ☐Request for Proposals Project No. Click here to enter text. and all Addenda thereto;
   ☐Bid/Proposal/Best and Final Offer;
   ☐ Method of Award;

DRAFT

☐Wage Rate Schedule;
☐Construction Schedules;
☐Special Provisions;
☐General Provisions for Construction Contracts of the Department of Water, dated April 25, 2016;

and those other documents attached or referred to therein, relating to the Project (hereinafter collectively referred to as "Contract Documents"). 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. **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.

3. **Compensation.** 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 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. 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, according to the Contract Documents.

   a. Cost and/or Pricing: If this Contract required 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 the Contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

4. **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.

5. **Bonds.** The Contractor is required to provide the following bonds, in an amount equal to 100% of the amount of the Contract price in the form(s) set forth in **Exhibit A**:

   ☐ Performance Bond (**Exhibit A1**)
   ☐ Labor and Material Payment Bond (**Exhibit A2**)
   ☐ Not Applicable

6. **Insurance.** 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, limits, including endorsements as described in the Solicitation, 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 therein, as well as the Department'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. Unless otherwise approved by the Manager and Chief Engineer, the policy or policies of insurance maintained by the Contractor shall provide the minimum limit(s) and coverage(s) as specified in the Solicitation and be placed with an insurance carrier authorized to do business in this state and rated A-VII by A.M. Best.

7. **Procurement Officer and Contract Administrator.** The Procurement Officer and Contract Administrator are:

   ☐ If checked, the Procurement Officer and the Contract Administrator shall be the same individual.

Procurement Officer:	Contract Administrator:
Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.
Department of Water, County of Kauaʻi	Department of Water, County of Kauaʻi
4398 Pua Loke Street	4398 Pua Loke Street
Līhuʻe, HI 96766	Līhuʻe, HI 96766
Phone: 808-245-Click here to enter text.	Phone: 808-245-Click here to enter text.
Click here to enter text.	Click here to enter text.

8. **Severability.** In the event any term or provision of this Contract is declared to be invalid or illegal for any reason, this Contract will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Contract.

DRAFT

9. **Execution in Counterparts.** This Contract may be executed in counterparts, all of which shall be considered the same as if a single document shall have been executed, but shall become effective when such counterparts have been signed by each of the parties hereto and delivered to each party.

10. **Waiver.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

11. **Board Defined.** As used in this Contract, "Board" means the Board of Water Supply of the County of Kaua'i and the Department of Water, County of Kaua'i, and its officers, agents, and employees.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

DRAFT

IN WITNESS WHEREOF, the parties to this agreement hereby make and duly execute this Agreement to be effective upon the date signed by the Chair of the Board of Water Supply below.

RECOMMENDED FOR APPROVAL	BOARD OF WATER SUPPLY, COUNTY OF KAUA‘I
_____	_____
Joseph E. “Joe” Tait Manager and Chief Engineer	By:_____ Chairperson
APPROVED AS TO FORM AND LEGALITY	CONTRACTOR:
_____	_____
Tyler C. Saito Deputy County Attorney	By:_____ Its:_____

DRAFT

EXHIBIT A1
PERFORMANCE BOND (SURETY)

KNOW ALL BY THESE PRESENTS:

That Click here to enter text., a Click here to enter text. corporation, whose principal mailing address is Click here to enter text., as Principal, (hereinafter referred to as "Principal"), and Click here to enter text., as Surety, (hereinafter referred to as "Surety"), a corporation(s) authorized to transact business as a surety in the State of Hawai'i, are held and firmly bound unto the Board of Water Supply, its successors and assigns, (hereinafter referred to as "Obligee"), in the amount of **Click here to enter text. DOLLARS** ($**Click here to enter text.**) to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has entered into a Contract with Obligee dated _____ for Click here to enter text. (hereinafter referred to as the "Contract"), which Contract is incorporated herein by reference and made a part hereof.

NOW THEREFORE, the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Contract in strict accordance with the terms of the Contract as said Contract may be modified or amended from time to time; then this obligation shall be void; otherwise to remain in full force and effect. Surety to this bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Obligee to the Surety and the Principal, Surety shall either remedy the Default, or take over the work to be performed under the contract and complete such work, subject, however, to the limitation of the penal sum of this bond.

Signed and sealed this _____ day of _____, 20_____.

DRAFT

_____
Principal Seal

By: _____

Its: _____

_____
Surety Seal

By: _____

Its: _____

ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

SURETY PERFORMANCE BOND

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, _____, before me appeared _____ to me personally known, who being by me was duly sworn, did say he/she is the _____ of _____, a _____; that the seal affixed to the foregoing instrument is the _____ seal of said _____; and said officer acknowledged said instrument to be the free act and deed of said _____.

_____
Notary Public, State of _____

Name of Notary: _____

My commission expires: _____

SURETY PLEASE INSERT YOUR APPLICABLE NOTARY SECTION

DRAFT

EXHIBIT A1
PERFORMANCE BOND

KNOW ALL BY THESE PRESENTS:

That we, _____, whose mailing address is _____, as Contractor, (hereinafter called "Contractor"), is held and firmly bound unto the _____, its successors and assigns, as Obligee, (hereinafter called "Obligee"), in the amount of _____ **DOLLARS ($_____)**, lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

☐ Legal tender;

☐ Share Certificate unconditionally assigned to or made payable at sight to _____;

☐ Certificate of Deposit, No. _____, dated _____, issued by _____, drawn on _____, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the Nation Credit Union Administration, payable at sight or unconditionally assigned to _____;

☐ Cashier's Check No. _____, dated _____, issued by _____, drawn on _____, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

☐ Teller's Check No. _____, dated _____, issued by _____, drawn on _____, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

☐ Treasurer's Check No. _____, dated _____, issued by _____, drawn on _____, a bank, savings institution, or credit

DRAFT

union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

☐ Official Check No._____, dated _____, issued by

_____, drawn on _____, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

☐ Certified Check No. _____, dated _____, issued by

_____, drawn on _____, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____.

WHEREAS, the Contractor has by written agreement dated _____ entered into a contract with Obligee for the following PROJECT: Click here to enter text., (hereinafter called the "Contract"), which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE,

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the PROJECT to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further cost, expense, or charge to the Obligee, its officers, agents, successors, or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums

DRAFT

specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed this _____ day of _____, _____.

(Seal)

_____
Name of Contractor

_____
Signature

_____
Title

DRAFT

STATE OF _____)
) ss.
COUNTY OF _____)

On this_____ day of _____, _____, before me appeared _____ to me personally known, who being by me was duly sworn, did say he/she is the _____ of _____, a _____; that the seal affixed to the foregoing instrument is the _____ seal of said _____; and said officer acknowledged said instrument to be the free act and deed of said _____.

_____
Notary Public, State of _____

Name of Notary: _____

My commission expires: _____

ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

DRAFT

EXHIBIT A2
LABOR AND MATERIAL PAYMENT BOND (SURETY)

KNOW ALL BY THESE PRESENTS:

That Click here to enter text. a Click here to enter text. corporation, whose principal mailing address is Click here to enter text. , as principal (hereinafter referred to as "Principal"), and Click here to enter text. as Surety (hereinafter referred to as "Surety"), a corporation(s) authorized to transact business as a surety in the State of Hawai'i, are held and firmly bound unto the Board of Water Supply, its successors and assigns (hereinafter referred to as "Obligee"), in the amount of Click here to enter text. **DOLLARS ($**Click here to enter text.**)**, to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has entered into a Contract with Obligee dated _____ for Click here to enter text. (hereinafter referred to as the "Contract"), which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor and materials supplied to the Principal for use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.

1. Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.
2. A "Claimant" shall be defined herein as any person who has furnished labor or materials to the Principal for the work provided in the Contract.

As provided in Section l03D-324, Hawai'i Revised Statutes, every Claimant who has not been paid in full before the expiration of a period of ninety days after the day on which the last of the labor was done or performed or material was furnished or supplied, for which such a claims made, may institute an action against the Principal or the Principal and its Surety, on this bond and have their rights and claims adjudicated in the action, and judgment rendered thereon;

DRAFT

subject to the Obligee's priority on the bond. If the full amount of the liability of the Surety on the bond is insufficient to pay the full amount of the claims, then after paying the full amount due the Obligee, the remainder shall be distributed pro rata among the claimants.

Signed and sealed this _____ day of _____, 20_____.

_____

Principal Seal

By: _____

Its: _____

_____

Surety Seal

By: _____

Its: _____

ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

DRAFT

SURETY LABOR AND MATERIAL PAYMENT BOND

STATE OF _____)
) ss.
COUNTY OF_____)

On this_____ day of _____, _____, before me appeared _____ to me personally known, who being by me was duly sworn, did say he/she is the _____ of _____, a _____; that the seal affixed to the foregoing instrument is the _____ seal of said _____; and said officer acknowledged said instrument to be the free act and deed of said _____.

_____
Notary Public, State of _____

Name of Notary: _____

My commission expires: _____

SURETY PLEASE INSERT YOUR APPLICABLE NOTARY SECTION

DRAFT

EXHIBIT A2
LABOR AND MATERIAL PAYMENT BOND
(11/17/98)

KNOW ALL BY THESE PRESENTS:

That we, _____, whose mailing address is _____, as Contractor, (hereinafter called "Contractor"), is held and firmly bound unto the _____, its successors and assigns, as Obligee, (hereinafter called "Obligee"), in the amount of _____ **DOLLARS ($_____)**, lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

☐ Legal tender;

☐ Share Certificate unconditionally assigned to or made payable at sight to _____;

☐ Certificate of Deposit, No. _____, dated _____, issued by _____, drawn on _____, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the Nation Credit Union Administration, payable at sight or unconditionally assigned to _____;

☐ Cashier's Check No. _____, dated _____, issued by _____, drawn on _____, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

☐ Teller's Check No. _____, dated _____, issued by _____, drawn on _____, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

☐ Treasurer's Check No. _____, dated _____, issued by

DRAFT

_____, drawn on _____, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

☐ Official Check No._____, dated _____, issued by

_____, drawn on _____, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

☐ Certified Check No. _____, dated _____, issued by

_____, drawn on _____, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____.

WHEREAS:

The Contractor has by written agreement dated Click here to enter a date. entered into a contract with Obligee for the following PROJECT: Click here to enter text., (hereinafter called "Contract"), which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE,

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, and shall promptly pay all persons supplying labor and materials for the performance of the Contract, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be

DRAFT

brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

AND IT IS HEREBY STIPULATED AND AGREED that this bond shall inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in said work so as to give any and all such persons a right of action as contemplated by Sections 103D-324(d) and 103D-324(e), Hawai‘i Revised Statutes.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment of mechanics' liens which may be filed of record against the PROJECT, whether or not claim for the amount of such lien be presented under and against this bond.

Signed this _____ day of _____, _____.

(Seal)

_____
Name of Contractor

_____
Signature

_____
Title

ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

DRAFT

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, _____, before me appeared _____ to me personally known, who being by me was duly sworn, did say he/she is the _____ of _____, a _____; that the seal affixed to the foregoing instrument is the _____ seal of said _____; and said officer acknowledged said instrument to be the free act and deed of said _____.

_____
Notary Public, State of _____

Name of Notary: _____

My commission expires: _____

DRAFT