Job No. 27-03
Appendix B
GPCC

GENERAL PROVISIONS

FOR

CONSTRUCTION CONTRACTS

OF THE

DEPARTMENT OF WATER

COUNTY OF KAUA‘I
STATE OF HAWAI‘I

April 25, 2016

GENERAL PROVISIONS
OF
CONSTRUCTION CONTRACTS
OF THE
DEPARTMENT OF WATER
COUNTY OF KAUA'I

April 25, 2016

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DEPARTMENT OF WATER
COUNTY OF KAUA‘I
STATE OF HAWAI‘I

GENERAL PROVISIONS OF CONSTRUCTION CONTRACTS
OF THE DEPARTMENT OF WATER, COUNTY OF KAUA‘I

SECTION 1 - DEFINITIONS

When used in these provisions or elsewhere in the contract, the following terms, or pronouns used in place of them, shall have the meaning ascribed to them in this section, unless it is apparent from the context that a different meaning is intended:

1.1 **ADDENDUM/ADDENDA** means a written document issued during the solicitation period involving changes to the solicitation documents which shall be considered and made a part of the solicitation documents and resulting contract [HAR 3-122-16.06].

1.2 **BOARD** means the Board of Water Supply, County of Kaua‘i and the Department of Water County of Kaua‘i, its officers and employees.

1.3 **BID** is as described in Hawai‘i Revised Statutes 103D-302.

1.4 **BIDDER** means person or entity that has submitted a bid in response to the Department of Water, County of Kaua‘i’s Invitation for Bids.

1.5 **BID SECURITY** means security provided at the time an offer is submitted.

1.6 **CALENDAR DAY** means days shown on the calendar beginning at midnight and ending at midnight of the following day. If no designation of calendar or working day is made, “Day” shall mean calendar day.

1.7 **CHANGE ORDER** means an amendment or modification of the work within the scope of the Contract, by the Contracting Officer or his/her authorized designee, directing the Contractor to make changes with or without the consent of the Contractor. [HRS 103D-104] [HAR 3-125-2][HAR 3-125-4]

1.8 **CHIEF PROCUREMENT OFFICER** means the Manager and Chief Engineer of the Department.

1.9 **CONTRACT** means the written agreement covering the construction of the project by the contractor, including the furnishing of labor, materials and equipment in connection therewith. It shall include these provisions, the contract and/or agreement, the notice to the bidders or proposers, the offer, the award, the special provisions, the plans, the specifications, the bond, any addendum and any written order. It shall also include all amendments to the contract by supplemental agreement thereto in writing.

1.10 CONTRACT TIME means the number of calendar days provided in the contract for completion of the contract, exclusive of authorized time extensions. The contract time will be indicated in the bid or proposal document and contract.

If the contract requires completion by a certain date, the contractor shall complete the work by that date.

1.11 CONTRACTING OFFICER means the Procurement Officer or Contract Administrator, or Construction Project Management Officer of the Department of Water, County of Kaua‘i or his or her duly authorized representative.

1.12 CONTRACTOR means the person who has entered into the contract with the Department and further defined by Section 444-1(2), HRS, as amended.

1.13 COST ANALYSIS means the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed. [HAR 3-120-2]

1.14 COST DATA means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements which have been actually incurred or which are expected to be incurred by the contractor in performing the contract. [HAR 3-120-2]

1.15 DAYS means consecutive calendar days unless otherwise specified. [HAR 3-120-2]

1.16 DEPARTMENT means the Department of Water, County of Kaua‘i, its officers and employees.

1.17 EXTENDED OVERHEAD includes project field office rental, salaries of field office and management staff, field office staff vehicles, field office utilities and telephone, and field office consumables, project fees, project bonding, project insurances and all taxes including general excise tax.

1.18 FINAL PROPOSAL means the final mutually-agreed terms of the proposal submitted by the awarded Offeror in response to the County’s RFP or the Best and Final Offer accepted by the County in accordance with HAR §3-122-53 and 3-122-54**.**

1.19 GUARANTEE means a formal assurance of the quality or of the length of use to be expected from a product offered or constructed.

1.20 HAR means the Hawai‘i Administrative Rules of the State of Hawai‘i, as amended.

1.21 HAZARDOUS MATERIALS mean and include any and all radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, hazardous wastes, toxic substances, and any and all other substances or materials defined as “hazardous materials,” “extremely hazardous materials,” “hazardous wastes” or “toxic substances” under or for the purposes of hazardous materials laws.

1.22 HAZARDOUS MATERIALS LAWS mean and include all federal, state or local laws, ordinances, rules, regulations or codes, now or hereafter in effect, relating to environmental conditions, human health or industrial hygiene, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601, et seq., the Resource Conservation and Recovery Act, 42, U.S.C. section 6901, et seq., the Hazardous Materials Transportation Act, 42 U.S.C. section 1801, et seq., the Clean Water Act, 33 U.S.C. section 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. section 2601 - 2629, the Safe Drinking Water Act, 42, U.S.C. sections 300f - 300j, HRS Chapter 128D, Environmental Response Law, HRS Chapter 342B, Air Pollution Control, HRS Chapter 342D, Water Pollution, HRS Chapter 342H, Solid Waste Pollution, HRS Chapter 342J, Hazardous Waste, HRS Chapter 342L, Underground Storage Tanks, Chapter 342P, Asbestos, and any similar state or local laws or ordinances and the regulations now in effect or hereafter adopted, published or promulgated thereto.

1.23 HRS means the Hawai‘i Revised Statutes of the State of Hawai‘i, as amended.

1.24 INVITATION FOR BIDS or IFB means all documents, whether attached or incorporated by reference, utilized for soliciting bids under the competitive sealed bidding source selection method. [HAR 3-120-2]

1.25 MANAGER means the Manager and Chief Engineer of the Department or his or her duly authorized representative.

1.26 NOTICE TO PROCEED or NTP means the document issued to the Contractor designating the official commencement date of the performance under the Contract.

1.27 OFFER refers to bidders and/or proposers.

1.28 OFFEROR refers to bidders and/or proposers.

1.29 OVERHEAD includes office expense, staff salaries, travel expenses, legal expenses, fees, insurances, bonding and all taxes including general excise tax.

1.30 PERSON means an individual, a partnership, joint venture, a corporation, whichever is applicable.

1.31 PRICE ANALYSIS means the evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed. [HAR 3-120-2]

1.32 PRICE DATA means factual information concerning prices, including profit, for goods, services, or construction substantially similar to those being procured. In this definition, “prices” refers to offered or proposed selling prices, historical selling prices, and current selling prices of such items. This definition refers to data relevant to both the general contractor and subcontract prices. [HAR-3-120-2]

1.33 PROPOSAL means the executed document submitted by an Offeror in response to a Request for Proposals. [HAR 3-120-2].

1.34 PROPOSER means person or entity that has submitted an offer in response to the Department of Water, County of Kaua‘i’s Invitation for Bids or Request for Proposal.

1.35 REFERENCE SPECIFICATIONS means the most recently adopted and published edition of such specifications referred to on the date of the notice to bidders or proposers is contemplated, unless otherwise specified.

References are on file at the Department of Water for review by prospective bidders or proposers. Upon request, copies of a section or sections of the references will be made available pursuant to the Kaua‘i County Code on reproducible charges for public records.

1.36 REQUEST FOR PROPOSALS or RFP means all documents, whether attached or incorporated by reference, utilized for soliciting proposals under the competitive sealed proposal source selection method. [HAR 3-120-2]

1.37 RESPONSIBLE OFFEROR means a person who has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability which will assure good faith performance. [HRS 103D-104]

1.38 RESPONSIVE BIDDER or OFFEROR means a person who has submitted an offer which conforms in all material respects to the IFB or RFP. [HAR 3-120-2]

1.39 SOLICITATION means an invitation for bids, request for proposals, or a request for quotations, or any other document issued by the County for the purpose of soliciting bids or proposals to perform a County contract. [HAR 3-120-2]

1.40 STATE means the State of Hawai‘i.

1.41 WARRANTY means a written statement that promises the good condition of a product and states that the maker is responsible for repairing or replacing the product for a certain period of time after its purchase.

1.42 WORKING DAY means a calendar day, exclusive of: (1) Saturdays, Sundays and State recognized legal holidays, (2) days during which the Contractors required to suspend construction operations, and (3) days on which weather and other conditions not under the control of the contractor will not permit construction operations to proceed for at least 5 hours of the day. The contractor shall perform the controlling item or items of work.

1.43 OTHER REFERENCES

A. **Abbreviations**.

The following abbreviations shall refer to the technical society, organization, body, code, rules or standard, listed opposite each abbreviation:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ASCE	American Society of Civil Engineers
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
AWRA	American Water Resources Association
HRS	Hawai‘i Revised Statutes
HAR	Hawai‘i Administrative Rules
IANPO	International Association of Plumbing & Mechanical Officials
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electric Code
NEMA	National Electric Manufacturers Association
NSF	National Sanitation Foundation
UL	Underwriter’s Laboratory
USGS	U.S. Geological Survey

B. **Standard Detail Drawings, Water Standards, Specifications and Special Provisions.**

When reference is made to standard detail drawings, Water Standards, specifications or special provisions, such referral shall be to the standard detail drawings, Water Standards, specifications or special provisions of the Department of Water, as amended.

Water Standards shall mean the "Water System Standards, State of Hawai‘i, 2002", as amended, as adopted by Department of Water, County of Kaua‘i; Board of Water Supply, City and County of Honolūlū; Department of Water Supply, County of Maui; and Department of Water Supply, County of Hawai‘i.

SECTION 2 – BIDDING/PROPOSAL INSTRUCTIONS

2.1 DEPOSIT FOR PLANS, SPECIFICATIONS AND SPECIAL PROVISIONS

Plans, Specifications and Special Provisions of the contract may be obtained from the Department of Water, Līhuʻe, Kauaʻi, upon deposit of the amount specified in the Notice to Bidders or Notice of the Request for Proposals.

Unless otherwise stated in the Notice to Bidders or the Notice of the Request for Proposals, the deposit for the plans, specifications and special provisions will be refunded upon their return in good condition to the Department of Water within thirty (30) calendar days after the day on which bids or proposals have been opened.

Deposits shall be forfeited if the plans, specifications and special provisions are not returned within the specified time or in good condition. The plans and specifications shall not, under any circumstances be disassembled. Should the Department discover any evidence of disassembling upon the return of the plans and specifications, the deposit on said plans and specifications shall be forfeited to the Department.

The sample form of the bid or proposal shall not be detached from the Special Provisions.

2.2 QUALIFICATIONS OF OFFERORS

All offerors shall be contractors licensed in accordance with Chapter 444, Hawaiʻi Revised Statutes, as amended, to perform the work under the contract.

No contract will be awarded to any person who has been suspended under and as provided in, the provisions of Chapter 104, Hawaiʻi Revised Statutes, Chapter 126, Subtitle 11, Title 3, Hawaiʻi Administrative Rules and HRS 103D-702, or to any firm in which such suspended person has an interest.

Qualifications of Offerors. Prospective offerors must be capable of performing the work for which solicitations are being called. Each prospective offeror must file a written notice of intention to bid or propose which shall be received not less than ten (10) calendar days prior to the day designated for opening of bids or proposals. If the tenth calendar day prior to the day designated for opening of bids or proposals is a Saturday, Sunday, or legal State holiday, the written notice must be received by the Manager no later than 4:30 p.m. on the working day immediately before said Saturday, Sunday, or legal State holiday.

Prospective offerors shall, upon request, prove to the Manager his or her responsibility by showing, among other things, his or her experience in handling the class of service, article, material or machinery to be furnished and delivered, and that he or she possesses or is in a position financially and otherwise to secure and pay for said service, article, machinery or material by submitting answers under oath to all questions contained in the "Standard Qualification Questionnaire for Prospective Offerors on Department of Water Contracts" as

required by Section l03D-3l0, Hawai‘i Revised Statutes, as amended, to the Department not less than ten (10) calendar days prior to the day fixed for the opening of the bids or proposals.

All information contained in answers to the questionnaire shall be and remain confidential. Questionnaires so submitted shall be returned to such offerors after having served their purpose. (Auth: 3-122-108 HAR)

2.3 CERTIFICATION OF HEALTH AND SAFETY

a) The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The cost of Safety and Health shall not be paid for directly but shall be considered incidental and included in the prices bid for the various items of work.

b) Safety and Health Certificate of Compliance. A certificate of compliance shall be submitted with each offer certifying that, if awarded the contract, the offeror will comply with Section 396-18, HRS, relating to safety and health programs for County construction projects, where the offer amount is in excess of $100,000. The certificate of compliance shall be submitted with the offer. Failure to submit the required certification shall be grounds for disqualification of the offer.

2.4 DETERMINATION OF RESPONSIBILITY

The Contracting Officer shall determine, on the basis of available information collected, the responsibility or nonresponsibility of a prospective offeror.

If the Contracting Officer requires additional information, the prospective offeror shall promptly supply such information within two (2) working days from the date requested. Failure to supply the requested information within the above stated time may be considered unreasonable and may be grounds for a determination of nonresponsibility.

Notwithstanding the paragraph immediately above, the Contracting Officer shall not be precluded from requesting additional information.

Upon determination that a prospective offeror is not fully qualified to perform the work, the shall afford the prospective offeror an opportunity to be heard. Upon conclusion of the hearing and if still of the opinion that the offeror is not fully qualified to perform the work, the Contracting Officer shall refuse to receive or consider any offer offered by the prospective offeror.

A written determination of nonresponsibility of an offeror shall be made by the Contracting Officer. The prospective offeror shall be immediately notified of the determination. The decision of the Contracting Officer shall be final unless the offeror applies for administrative review pursuant to Chapter 126, Subtitle 11, Title 3, HAR. (Auth: HRS: l03D-3l0) (Imp: HRS l03D-3l0) (Auth: 3-l22-108, HAR)

2.5 OFFER FORM

Offers must be on an offer form provided for such purpose by the Department. Offers must be signed in ink by the person or persons duly authorized to sign offers in the space provided for signature on the offer forms. In the case of a domestic corporation, the title or titles of the person or persons signing must be stated . Where the offeror is an association or group, the title or titles of the person or persons signing must be stated and an affidavit of the association or group must be attached which acknowledges the authority of the signer or signers to sign offers and all other necessary documents in connection therewith for the association or group.

Offers shall be sealed and enclosed in envelopes showing the name of the project. Unless otherwise specified, offerors shall submit offers on all items shown on the offer form. Offers shall be typewritten or printed in ink. Errors may be erased or crossed out, and corrections typewritten or printed in ink must be initialed in ink by the persons or persons signing the bids.

The offers shall be deposited at the Department, not later than the time specified for such opening. Offers received after the specified time for opening in the notice, as evidenced by the time stamp of the Department, shall be considered late and rejected; however, a late offer shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the Department. A late offer that will not be considered for award shall be returned to the offeror unopened as soon as practicable and accompanied by a letter from the Contracting Officer stating the reason for its return. (Auth: 3-122-16.08(a)(b) HAR)

Offers transmitted via facsimile are unacceptable and will be rejected and returned to the offeror.

2.6 OFFER FORM, INTERPRETATION OF

The offer form does not necessarily outline all of the work involved in the performance of the contract, but is merely a list of items upon which the computation of compensation is to be based. The offer form contains all items to be used in such computation, and the compensation computed therefrom shall be full compensation for the performance of the contract.

If it should appear to a prospective offeror that the performance of the work under the contract or any of the matters relative thereto, is not sufficiently described or explained in the offer form, or that any discrepancy exists between different parts thereof, or that the full intent of the form is not clear, then the offeror shall submit a written request for clarification to the Contracting Officer no later than ten (10) calendar days before the day fixed for the opening of offers, as evidenced by the time-stamp of the Department. The offeror submitting the inquiry shall be responsible for its delivery.

If additional information is deemed necessary, such information will be issued in an

addendum by the Contracting Officer. The addendum will be mailed, facsimile, or delivered to all persons who have obtained the special provisions, plans, and specifications of the contract. All addenda issued shall be a part of the contract. (Auth: 3-122-16.06 HAR)

If during discussions during the RFP process, there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate the clarification or change. Addenda to the RFP shall be distributed only to priority-listed Offerors and shall be a part of the contract.

No oral interpretation, instruction or information concerning the contract given by any officer, employee or agent of the Department shall be binding on the Department. (HAR 3-122-16.06)

2.7 PRICES TO COVER ENTIRE CONTRACT

Offerors shall include in their offered prices the entire cost of the performance of the contract, and it is understood and agreed that there is included in each lump sum or unit price, the entire cost of all items incidental to the performance of the contract, covered by such lump sum or unit price offer. Offerors in figuring the offer price shall take into consideration the cost of all freight and delivery charges, marine insurance and taxes; and shall include the cost of furnishing and installing all equipment as called for in the specifications including warranty repairs of the complete unit. Whenever installation is specified, installation shall include all necessary labor, materials and other incidentals required to make a complete operative unit. When an offeror is in doubt as to the proper item to which the anticipated cost of any incidental item is to be allocated, he or she shall include such cost in the lump sum or unit price for the items that he or she deems most appropriate.

It is understood and agreed that whenever unit price(s) is/are called for on the provided page(s), all offerors must indicate their unit price(s) on the blank space(s) provided thereon. Failure to comply will be grounds for rejection. (Auth: 3-122-97 HAR).

Prices shall remain valid for ninety (90) calendar days after the established bid submission deadline.

2.8 COST AND PRICING DATA- PROPOSALS/Sole Source

a) A contractor, except as provided in subsection c herein, shall submit cost or pricing data and shall certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted is accurate, complete and current as of a mutually determined specified date prior to the date of:

1) The pricing of any contract awarded by competitive sealed proposals or pursuant to the sole source procurement authority, where the total contract amount is expected to exceed an amount established in HAR; or

b) If this provision is applicable then the price to the Department, including profit or fee, shall be adjusted to exclude any significant sums by which the Department 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.

c) This section shall not apply to contracts where:

1) The contract price is based on adequate price competition

2) The contract price is based on established catalog prices or market prices;

3) The contract prices are set by law or rule;

4) It is determined in writing that the requirements of this section may be waived. (HRS 103D-312)

2.9 BID SECURITY

Bid security shall be required for construction contracts procured by way of invitation for bid or request for proposals, of $25,000 or more or for construction contracts for less than $25,000 when required by the Contracting Officer. Bid security shall be in an amount equal to at least five percent (5%) of the amount of the base bid and additive alternates or in an amount required by the terms of the federal funding.

Acceptable bid security, shall be limited to:

1. Surety bond underwritten by a company licensed to issue bonds in the State of Hawai‘i;

2. Legal tender of the United States of America; or

3. A certificate of deposit; share certificate; or cashier’s, treasurer’s, teller’s, or official check drawn by, or a certified check accepted by a bank, savings institution, or credit union insured by the United States Federal Deposit Insurance Corporation or the National Credit Union Administration and payable at sight or unconditionally assigned to the Department.

    a. These instruments may be utilized only to a maximum of $100,000.

    b. If the required security or bond amount totals over $100,000, more than one instrument not exceeding $100,000 each and issued by different financial institutions which meet the requirements of this subsection shall be accepted. (HAR 3-122-222)

All documentation provided to the Department agency shall contain the original signatures signed in ink. (HAR 2-122-222, 3-122-223). Unless it is determined that a failure to provide bid security is non-substantial, all bids required to be accompanied by bid security that fail to have the appropriate bid security shall be rejected. Bid deposit form is attached hereto as Exhibit A. (Auth. 3-122-222; 3-122-223 HAR).

2.10 PUBLIC OPENING OF BIDS

Bids shall be opened and read publicly, at the time and place indicated in the Notice to Bidders. Bidders or their authorized agents may be present.

Bidders may request for nondisclosure of trade secrets and other proprietary data in writing. Confidential material shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid: The Contracting Officer shall determine the validity of the request for nondisclosure. (Auth: 3-122-30, HAR)

2.11 RECEIPT AND REGISTRATION OF PROPOSALS

Proposals and modifications shall be time-stamped upon receipt and held in a secure place by the procurement officer until the established due date. Proposals and modifications shall not be opened publicly, but shall be opened in the presence of two (2) or more County officials. Proposals and modifications shall be shown only to members of the evaluation committee and Department personnel or their designees having legitimate interest in them. (Auth: 3-122-51, HAR).

2.12 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS AND SITE

Offerors shall examine the site of the proposed work and the provisions of the contract, including but not limited to the proposal, addenda, bond forms, bid form, special provisions, plans and specifications before submitting a bid or proposal. The submission of a bid or proposal shall be considered conclusive evidence that the offeror has made such examination; knows the surface and subsurface conditions of the site, the character, quality and quantities of labor, materials and equipment and other requirements necessary under the contract; and agrees to all and every item, covenant, condition and provision of the contract.

Where investigation of subsurface conditions has been made by the Department, in respect to foundation or other design, offerors may inspect the records of the Department as to such investigation and examine any sample that may be available.

Investigations of subsurface conditions are made for the purpose of design, and the Department assumes no responsibility whatsoever as to the sufficiency or accuracy of borings or of the log of test borings or reports or other investigations, or of the interpretation thereof, and there is no guaranty, either expressed or implied, that the conditions indicated are representative of those to be encountered during the performance of the contract, or any part thereof, or that the bidder or proposer may not encounter unforeseen subsurface conditions.

Making information concerning subsurface conditions available to bidders or proposers is not to be construed in any way as a waiver of the provisions of the first paragraph of this subsection and bidders or proposers must satisfy themselves through their own investigation as to conditions to be encountered.

Records of such investigations as may have been made by the Department may be inspected at the Department of Water.

2.13 TRADE NAMES AND ALTERNATIVES

Before Bid or Proposal Opening. When the plans or specifications specify one (1) or more manufacturers' brand names or makes of materials, devices or equipment or system indicating a quality style, appearance or performance, such specifications shall be deemed to be used for the purpose of establishing a standard of quality and to facilitate the description of the material or process desired and shall be deemed to be followed by the words "or equal". The offeror shall base his or her offer on either one of the specified brands or an alternate brand which the Contracting Officer has approved to be equal or better by way of addendum to such specification and/or plans. If an offeror intends to base his or her offer on an alternate brand, unless otherwise specified, he or she shall submit a written request to do so, to the Contracting Officer at the earliest date possible, but no later than ten (l0) calendar days as evidenced by the time-stamp of the Department, before the day fixed for the opening of offers.

The burden of proof as to the comparative quality and suitability of alternative equipment, articles or materials shall be upon the offeror and he or she shall furnish, at his or her own expense, such information relating thereto as may be required by the Contracting Officer. The Offeror shall issue a statement of variances that lists all features of the proposed substitution which differ from the plans, specifications and/or product(s) specified and must certify that the substitution has no other variant features. Should an unlisted variance be discovered after installation of the product, the remedy shall be immediate replacement with a specified product at no cost to the Department. The Contracting Officer shall be the sole judge as to the comparative quality and suitability of alternative equipment; articles or materials and his or her decisions shall be final.

Any offeror, who bases his or her offer on an alternate brand which has been approved by the Contracting Officer, shall include in his or her offer the additional cost required for all modifications in the contract and the cost of all additional diagrams and drawings required to accommodate the alternate equipment. The modifications referred to include the changes in design that may be required for such work as, but not limited to, electrical, plumbing and other waterworks facilities.

2.14 PREFERENCES

A. All offers shall comply with the preferences, as applicable, outlined in HAR 3-124, including but not limited to Hawai‘i Products Preference and Recycled Products Preference, and the Apprenticeship Program Preference laid out in Section 103-55.6, Hawai‘i Revised Statutes, as enacted by S.B. 19, Act 17, SLH 2009, and the State of Hawai‘i Comptroller's Memorandum 2011-25 as amended, which provides for a Hawai‘i Apprenticeship Preference for public works construction projects with estimated values of $250,000 or greater.

B. This subsection shall not apply whenever its application will disqualify the Department from receiving Federal funds or aid.

2.15 MODIFICATION OR WITHDRAWAL OF OFFERS

A. **Pre-opening Modification or Withdrawal of Offers**.

Offers may be modified or withdrawn at any time prior to the time fixed in the notice to offerors for opening of offers, or if applicable, prior to the date at which the Best and Final Offer is due.

An offeror may withdraw his or her offer by: (1) a written notice received by the Department, or (2) a notice sent by facsimile machine to the Department.

A offeror may modify his or her offer by: (1) a written notice accompanying the actual modification received by the Department, stating that a modification to the offer is submitted, or (2) a written notice accompanying the actual modification by facsimile to the Department, provided the offeror submits the actual written notice and modification within two (2) working days of receipt of the facsimile. (Auth: 3-122-16.07, HAR)

B. **Late Offers, Late Withdrawals and Late Modifications**.
Any notice of withdrawal or notice of modification of any offer with the actual modification received by the Department after the time and date set for receipt and opening is late and shall not be considered for award except when received before contract award and would have been timely but for the action or inaction of personnel within the Department. (Auth: 3-122-16.08, HAR)

C. After the established due date for offers, an offer may be withdrawn only if the Department fails to award the contract within ninety (90) calendar days after the established due date for offers.

2.16 LISTING OF JOINT CONTRACTORS AND SUBCONTRACTORS

Pursuant to Section l03D-302, HRS, as amended, all offerors shall state in their bids the name of each person or firm that will be engaged as a joint venture, partner, or subcontractor and the nature and scope of the work to be performed by each such joint venture, partner, or subcontractor. All bids which do not comply with this requirement shall be rejected pursuant to Sec. 103D-302(b), H.R.S.

MANDATORY LICENSING REQUIREMENT:
"A" general engineering contractors and "B" general building contractors are reminded that due to the Hawai'i Supreme Court's January 28, 2002 decision in Okada Trucking Co., Ltd. v. Board of Water Supply, et al., 97 Haw. 450 (2002), they are prohibited from undertaking any work, solely or as part of a larger project, which would require the general contractor to act as a specialty contractor in any area in which the general contractor has no license. Although the "A" and "B" contractor may still bid on and act as the "prime" contractor on an "A" or "B" project (See, HRS § 444-7 for the definitions of an "A" or "B" project.), respectively, the "A" and "B" contractor may only perform work in the areas in which they have the appropriate contractor's license (An "A" or "B" contractor obtains "C" specialty contractor's license either on its own, or automatically under HAR § 16-77-32.). The remaining work must be subcontracted out to appropriately licensed entities. **It is the sole responsibility of the contractor to review the requirements of this project and determine the appropriate licenses that are required to complete the project**.

Although the bid documents may provide a list of the contractor licenses that the County anticipates are required to complete this particular project, this list is not all inclusive and additional licenses may be required. If a specialty license/class is required to complete the scope of work and the contractor does not list said license(s), the contractor may have their bid rejected as non-responsive. Examples of specialty license/classes that should be listed are licensed surveyor, licensed geotechnical engineer, licensed structural engineer, licensed civil engineer, specialty inspectors, archaeologist, and cultural monitor.

The contractor shall be responsible under the contract for acts and omissions of his or her subcontractors, suppliers and persons either directly or indirectly employed by them, as fully as he or she is for acts and omissions of his or her own employees. Nothing in the contract shall create any contractual relation between any subcontractor, partner, joint venture or supplier and the Department or any obligation on the part of the Department to pay or cause to be paid any money to any subcontractor or supplier.

2.17 BIDS, DISQUALIFICATION OF

A. Bids which are conditional or not in compliance with the bidding instructions may be rejected.

Multiple or alternate offers. Unless specifically provided for in the solicitation, multiple or alternate offers shall not be accepted and all such offers shall be rejected (HAR 3-122-4)

B. Bids may be rejected for the following reasons including, but not limited to:

1. Bidder determined to be "nonresponsible," pursuant to Subchapter l3, HAR. (Auth: 3-122-97, HAR); or

2. The bid is "not responsive". Bid does not conform in all material respects to the invitation for bids by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the invitation for bid pursuant to section 3-122-33 HAR .(Auth: 3-122-97, HAR); or

3. The good, service, or construction item offered in the bid is unacceptable because of its failure to meet the requirements of the specifications or permissible alternatives or other acceptability criteria set forth in the invitation for bids under the provisions of Sec. 3-l22-33, HAR. (Auth: 3-122-97, HAR)

4. Bid submitted by any person submitting more than one (1) bid under the same or different names, under his or her own name, or through his or her agents, or through joint ventures, partnerships or corporations in which he has more than twenty-five percent (25%) interest in each of them, or through any contractor thereof.

   If there is any evidence indicating that two (2) or more bidders are in collusion to restrict competitive bidding, the bids of all such bidders shall be

rejected and such evidence may be a cause for the disqualification of the participants in any future proposal involving any contract with the Department.

5. Any offer which is conditioned upon receiving award of both the particular contract being solicited and another Department contract. (Auth: 3-l22-6, HAR)

2.18 PROPOSAL, DISQUALIFICATION OF

A. A proposal may be accepted with modification or correction unless the solicitation states otherwise.

1. This allowance must be considered in determining whether reasons exist for rejecting all or any part of a proposal.

2. A proposal may be rejected for reasons including but not limited to:

a. The offeror is nonresponsible pursuant to Subchapter 13, HAR. (Auth.: 3-122-97)

b. The proposal, after any opportunity has passed for modification or clarification, fails to meet the announced requirements of the agency in some material respect; or

c. The proposed price is clearly unreasonable.

2.19 OFFEROR LIMITED ACCEPTANCE

A. An offeror may not limit acceptance to the entire bid or proposal offering, unless allowed by the solicitation:

1. If the acceptance of an offer is so limited by the offeror but not allowed, the offer will be determined to be not acceptable and rejected.

2. If the acceptance of an offer is so limited by the offeror and allowed, the purchasing agency shall not reject part of the offer and award on the remainder. (3-122-97 HAR)

2.20 MISTAKES IN BIDS

A. A bidder may correct, waive or withdraw an obvious mistake in his or her bid to the extent it is not contrary to the best interest of the Department or to the fair treatment of other bidders.

B. Before Bid Opening. A bidder may remedy a mistake in a bid discovered before the time fixed in the notice to bidders for opening of bids by withdrawing or correcting the bid as provided in subsection 2.15 of these General Provisions.

C. After Bid Opening But Prior to Award.

1. A mistake in a bid discovered after bid opening but prior to award may be corrected or waived if:

   a. The mistake is attributable to an arithmetical error, the Contracting Officer shall so correct the mistake. In case of error in extension of bid price, unit price shall govern.

   b. The mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions, the Contracting Officer may waive such informalities or allow the bidder to request correction by submitting proof of evidentiary value which demonstrates that a mistake was made. The Contracting Officer shall prepare a written approval or denial in response to this request. Examples of such mistakes include:

      (1) Typographical errors;

      (2) Failure to return the number of signed bids required by the invitation for bids;

      (3) Failure to acknowledge receipt of an amendment to the Invitation for Bids, but only if:

         (a) It is clear from the bid that the bidder received the amendment and intended to be bound by its terms; or

         (b) The amendment involved had a negligible effect on price, quantity, quality or delivery;

      (4) Arithmetical errors;

      (5) Transposition errors;

      (6) Failure of a bidder to sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound.

2. A mistake in a bid discovered after bid opening but prior to award may be withdrawn if the mistake is attributable to an obvious error which shall affect price, quantity, quality, delivery, or contractual conditions, provided:

   a. The bidder requests withdrawal by submitting proof of evidentiary value which demonstrates that a mistake was made; and

   b. The Contracting Officer prepares a written approval or denial in response to this request. (Auth: 3-122-31 HAR).

D. After Award.

A mistake in a bid discovered after award is not permissible except when the Manager makes a written determination that it would be unreasonable not to allow the mistake to be remedied. (Auth: 103D-302, HRS, 3-122-31, HAR)

2.21 DISCUSSIONS WITH OFFERORS-REQUEST FOR PROPOSALS

A. The Department may hold discussions with priority listed offerors in order to promote understanding of the Department's requirements and priority-listed offeror's proposals; and

B. To facilitate arriving at a contract that will provide the best value to the Department, taking into consideration the evaluation factors set forth in the request for proposals.

C. Proposals may be accepted on evaluation without discussion.

D. Any substantial oral clarification of a proposal shall be reduced to writing by the priority-listed offeror;

E. If during discussions there is a need for any substantial clarification or change in the request for proposals, the request for proposals shall be amended by an addendum to incorporate the clarification or change

F. Addenda to the request for proposals shall be distributed only to priority-listed offerors.

1. The priority-listed offerors shall be permitted to submit new proposals or to amend those submitted;

2. If in the opinion of the procurement officer or the evaluation committee, a contemplated amendment will significantly change the nature of the procurement, the request for proposals shall be canceled and a new request for proposals issued.

SECTION 3 - AWARD AND EXECUTION OF CONTRACT

3.1 AWARD OF CONTRACT

No contract shall be awarded to any person suspended under, and as provided in, the provisions of Chapters 104 and 444, HRS, as amended and any federal law if federal funds are used in the contract, or to any firm in which such suspended person as an interest.

A. **Bids.**
Award of contract, if made, shall be made to the lowest responsive, responsible bidder, whose bid meets the requirements and criteria set forth in the invitation for bids. (Auth: 3-122-33, HAR)

B. **Proposals.**
Award of contract, if made, shall be made to the responsible offeror whose proposal is determined in writing to provide the best value to the Department taking into consideration price and the evaluation criteria in the request for proposals. (Auth: 3-122-57, HAR)

3.2 CANCELLATION OF SOLICITATION OR AWARD

The Contracting Officer reserves the right to reject any and all offers and to waive any defect as, in his or her judgment may be in the best interest of the Department.

The Manager reserves the right to cancel the award of a contract at any time before a contract is executed by the Department and the contractor.

3.3 FUNDS, AVAILABILITY OF

A. **Department of Water Funds.**
No contract award shall be binding or of any force and effect without an endorsement by the Waterworks Controller certifying that there is an appropriation sufficient to cover the amount of the contract; provided that if the contract is a multi-term contract, the Waterworks Controller shall only be required to certify that there is an appropriation or balance of an appropriation sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract.

This section shall not apply to any contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded. (Auth.: 103D-309 HRS).

B. **State and/or Federal Funds.**
A contract which is supplemented by state and/or federal funds, Section 3.3(A) above shall be applicable only to that portion of the contract price as is payable out of Board funds. As to the portion of the contract price as is expressed in the contract to be payable out of federal funds, the contract shall be construed to be an agreement to pay the portion to the contractor, only out of state and/or federal funds to be received from the state and/or federal government when the state and/or federal

funds are so received by the Board and shall not be construed as a general agreement by the Department to pay said portion out of any funds other than those which are received from the estate and/or federal government. This subsection shall be liberally construed so as not to hinder or impede the County in contracting for any project involving financial aid from the federal government. (3-122-109, HAR)

C. <u>Contracts Utilizing One-Hundred Percent (100%) Federal Funds</u>.
A contract which is funded one-hundred percent (100%) by federal funds shall be construed as an agreement to pay the contract price only out of federal funds to be received by the Department from the federal government when the federal funds are so received by the Department and shall not be construed as a general agreement to pay such amount at all events out of any funds other than those which are received from the federal government. (HRS 103D-309(b))

3.4 ENTERING INTO CONTRACT

Upon award of the contract to an offeror, such offeror shall enter into the contract by signing the contract and by furnishing bonds for faithful performance and payment as prescribed in the invitation for bid or proposal, copies of certificates of insurance and endorsements demonstrating compliance with the insurance policies required to be procured by the contractor and subcontractor and tax clearances prescribed in subsection 3.5 within fifteen (l5) calendar days after the date the contract has been mailed to the contractor or within such further time as the Manager may allow after the offeror has received the contract for execution.

If the offeror to whom the contract is awarded fails or neglects to enter into the contract and furnish bonds, as prescribed in subsection 3.6, and the copies of certificates of insurance as required by contract, the bid security which accompanied the offer pursuant to subsection 2.9 shall be forfeited or in the case where such bid security was in the form of a surety bond, the proceeds representing the bid security shall be collected under the surety bond and the amount so forfeited or collected shall be paid to the Department. Upon such failure or neglect, the Contracting Officer may award the contract to the next lowest responsible bidder or the next responsible proposer whose proposal is determined to provide the best value to the Department, or publish another call for bids or proposals as, in his or her judgment, may be in the best interests of the Department.

3.5 RESPONSIBILITY OF OFFERORS AND TAX CLEARANCE

Upon award of the contract, HRS 103D-310 specifies that all Offerors shall comply with all laws governing entities doing business in the State, including, but not limited to HRS Chapters 237, 383, 386, 392, and 393.

In addition, pursuant to HRS 103D-328 and HRS 103-53, no contract shall be binding or effective until the purchasing agency confirms tax clearance from the director of taxation and the Internal Revenue Service. The Offeror shall provide updated tax clearances as required by the Director of Finance to comply with HRS Section 103-53, as amended.

The offeror, as proof of compliance with the requirements of section 103D-310(c), HRS, upon award of a contract shall submit, with the contract signed by the offeror, to the

Department verification using Hawai‘i Compliance Express for the following requirements:

A. A tax clearance from the director of taxation and the Internal Revenue Service, current within six (6) months of issuance date, to the effect that all tax returns due have been filed, and all taxes, interest, penalties levied or accrued under the provisions of Title 14 that are administered by the Department of Taxation and under the Internal Revenue Code against the contractor have been paid; and

B. A certificate of compliance for chapters 383 (Hawai‘i Employment Security Law), 386 (Worker’s Compensation Law), 392 (Temporary Disability Insurance Law), and 393 (Prepaid Healthcare Act), HRS from the department of labor and industrial relations, current within six months of issuance date; and

C. A certificate of good standing from the business registration division of the department of commerce and consumer affairs, current within six months of issuance date.

The offeror shall provide updated tax clearances as required by the Contracting Officer to comply with Section 103-53, HRS, as amended.

3.6 PERFORMANCE AND PAYMENT BONDS

A. Performance and payment bonds shall be required for construction contracts procured through the IFB or RFP process:

1. When the contract price is $25,000 or more (Act 173, SLH 2012); and

2. When the contract price is less than $25,000 and is required by the Manager.

3. Federally funded contracts wherein the conditions of the funding requires a performance or payment bond or both.

B. Performance and payment bonds shall be required for construction contracts procured through the Small Purchase Method (HRS 103D-305):

1. When the contract price is $50,000.00 or over.

C. The amount of the performance and payment bonds, when required, shall be in an amount equal to one-hundred percent (l00%) of the contract price.

D. Performance and payment bonds, shall be delivered by the contractor to the Department when the contract is executed. If the contractor fails to deliver the required performance and payment bonds, the contractor’s award shall be canceled, the contractor shall be subject to a claim by the Board for all resulting damages its bid security enforced, and award of the contract shall be made to the next lowest offeror pursuant to Subchapter 11, HAR. (Auth: 3-122-224, HAR)

Acceptable forms of performance and payment bonds. Acceptable performance and payment bonds shall be limited to:

1. Surety bond underwritten by a company licensed to issue bonds in the State of Hawai‘i;

2. Legal tender of the United States of America; or

3. A certificate of deposit; share certificate; or cashier’s, treasurer’s, teller’s, or official check drawn by, or a certified check accepted by a bank, savings institution, or credit union insured by the United States Federal Deposit Insurance Corporation or the National Credit Union Administration and payable at sight or unconditionally assigned to the Department.

   a. These instruments may be utilized only to a maximum of $l00,000.

   b. If the required security or bond amount totals over $l00,000, more than one instrument not exceeding $l00,000 each and issued by different financial institutions which meet the requirements of this subsection shall be accepted. (Auth: 3-l22-222, HAR)

E. The Department shall not pay interest on any security provided.

F. All alterations, extensions of time, extra and additional work and other changes authorized in the specifications or in any part of the contract may be made without securing the consent of the surety or sureties on the performance and payment bonds.

G. Surety shall be subject to the approval of the Contracting Officer and shall be required to justify, as prescribed by law, provided that the Contracting Officer in his or her discretion may require each surety to justify in the prescribed amount at any time. If the surety is found to be insufficient, the contractor shall furnish a new bond with sufficient surety within ten (l0) calendar days after the day it is notified of the insufficiency or within such further time as the Manager may allow in writing.

H. Performance and payment bond forms are attached hereto as Exhibits.

I. Every person who has furnished labor or material to the Contractor for the work provided in the contract for which a payment bond or a performance and payment bond is furnished under this section, and who has not been paid amounts due before the expiration of a period of ninety days after the day on which the last of the labor was performed or material was furnished or supplied, for which a claim is made, may institute an action for the amount, or balance thereof, unpaid at the time of the institution of the action against the Contractor or Contractor and its sureties, on the payment bond and have their rights and claims adjudicated in the action, and judgment rendered thereon; subject to the City's priority on the bond. As a condition precedent to any such suit, written notice shall be given by registered or certified mail to Contractor and surety, within ninety days from the date on which the person did or performed the last labor or furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the

labor was done or performed.

J. Every suit instituted upon a payment bond shall be brought in the circuit court of the circuit in which the project is located, but no suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied for the work provided in the contract. The oblige named in the bond need not be joined as a party in any suit.

K. If the full amount of the liability of the Contractor or the Contractor and its sureties on the security is insufficient to pay the full amount of the claims, then, after paying the full amount due the City, the remainder shall be distributed pro rata among the claimants. [HAR 3-122-227]

L. Certified copies of bonds may be requested and obtained by any person upon payment of the costs of reproduction and certification of the bonds, and postage. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original. [HAR 3-122-228]

M. Contracts with Federal funds. In addition to the requirements of this section, whenever a contract is partially or fully funded with Federal funds, the surety companies shall be those listed in the latest issue of the U. S.Treasury Circular 570.

3.7 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

If awarded a contract in response to this solicitation, offeror agrees to comply with HRS §11-355, which states that campaign contributions are prohibited from a State and county government contractor during the term of the contract if the contractor is paid with funds appropriated by the legislative body between the execution of the contract through the completion of the contract. Questions regarding this statute should be directed to State of Hawai‘i Campaign Spending Commission.

3.8 EMPLOYMENT OF STATE RESIDENTS ON CONSTRUCTION PROCUREMENT CONTRACTS

Bidders are advised of the applicability of Act 68, SB 2840, HRS Section 103B, Employment of State Residents on Construction Procurement Contracts, (2010) (“Act 68”). Act 68 requires the awarded contractor to ensure that Hawai‘i Residents (as defined in the Act) compose not less that eighty percent of the workforce employed to perform the contract. This requirement shall also apply to subcontracts of $50,000 or more in connection with any construction contract procured under HRS Chapter 103D, HRS § 103D-305 (small purchases), or if there is a conflict with any federal law as further detailed herein under “Conflict with Federal Law.” See Exhibit O.

3.9 HAWAII PROCUREMENT LAW

If any provision in this General Provisions is in conflict with any provision in the Hawai‘i Administrative Rules, Chapter 103D and 103, HRS, the provisions of the Hawai‘i Administrative Rules, Chapter 103D and 103, HRS shall control and supersede the provisions in this General Provisions.

SECTION 4 - LEGAL RELATIONS AND RESPONSIBILITY

4.1 AUTHORITY OF THE CONTRACTING OFFICER

The Contracting Officer shall decide all questions which may arise relating to the quality and acceptability of the materials furnished and work performed, the manner of performance and rate of progress of the work, the interpretation of the plans and specifications, the acceptable fulfillment of the contract on the part of the Contractor, the compensation under the contract and the mutual rights of the parties to the contract.

The Contracting Officer shall have the authority to enforce and make effective such decisions and orders which the Contractor fails to carry out promptly and diligently.

The Contracting Officer shall have the authority to suspend the work wholly or in part due to the failure of the Contractor to correct conditions unsafe for the workers or the general public; for failure to carry out provisions of the contract; for failure to carry out orders; for such periods as he may deem necessary due to unsuitable weather; for conditions considered unsuitable for the prosecution of the work or for any other condition or reason deemed to be in the public interest.

4.2 INDEPENDENT CONTRACTOR

A. The contractor shall perform the contract as an independent contractor and shall defend, indemnify and hold harmless the Department, Board, its officer, agents, and employees from and against all claims, damages, losses, liability, and expenses, including but not limited to attorney's fees, court costs, or other alternative dispute resolution costs arising out of, resulting from, or otherwise but for the performance or furnishing of work or services under the contract for any injury, death or damages to persons or property arising out of the performance of the contract; but only to the extent caused in whole or in part by the actual or alleged acts, errors, or omissions of the Contractor, Contractor's subcontractor(s), or anyone directly or indirectly employed or hired by the Contractor or anyone for whose acts Contractor may be liable.

B. The obligations of the contractor under Subparagraph A above shall not extend to the liability of the Department, Board, and its officers and employees because of negligence in (l) the preparation of maps, plans, drawings, land surveys, designs or specifications, or (2) the giving of directions or instructions with respect to the requirements of the contract by written order; provided that such giving of directions or instructions is the primary cause of the injury or damage.

C. The contractor shall defend, indemnify and save the Department, Board, its officers, agents, and employees harmless from any and all claims for infringement by reason of the use of any patented design, device, process or material, in connection with work to be performed under the contract.

All royalties due or becoming due for the use of any patented design, devices, process or material used in connection with the work performed under the contract shall be paid by the contractor, and shall be held to be included in the contract price.

D. The contractor shall agree to defend, indemnify and save harmless the Department against any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, costs, liabilities, suits, judgments, actions or proceedings of every name, character and description which may be suffered or incurred by or brought against the Department to the extent arising from contractor's negligent performance of his or her duties and responsibilities pursuant to this contract except where said liability, loss or damage results solely from the negligence or misconduct of Department, Board, its employees or representatives.

4.3 LAWS, REGULATIONS

The contractor shall at all times keep himself fully informed, of all future and present Federal, State, County, and Department laws, ordinances, policies, rules and regulations which affect the contract and the performance thereof, including but not limited to:

A. Chapter l03, HRS, relating to expenditure of Public Money and Public Contracts.

B. Chapter l03D, HRS, relating to the Hawai'i Public Procurement Code.

C. Chapter l04, HRS, relating to Wages and Hours of Employees on Public Works.

D. Chapter 32l, HRS, relating to Health Department.

E. Chapter 377, HRS, relating to Hawai'i Employment Relations Act.

F. Chapter 378, HRS, relating to Employment Practices.

G. Chapter 383, HRS, relating to Hawai'i Employment Security Law.

H. Chapter 386, HRS, relating to Worker's Compensation Law.

I. Chapter 387, HRS, relating to Wage and Hour Law.

J. Chapter 388, HRS, relating to Payment of Wages and Other Compensation.

K. Chapter 390, HRS, relating to Child Labor Law.

L. Chapter 396, HRS, relating to Occupational Safety and Health.

M. Chapter 444, HRS, as amended, relating to licensing of contractors.

The contractor shall comply with all such present and future laws, regulations, and ordinances, including the giving of all notices necessary and incident to the performance of the contract. If any discrepancy or inconsistency is discovered between the contract and any such law, regulation or ordinance, the contractor shall forthwith report the same in writing to the Contracting Officer.

4.4 PERMITS, LICENSES

The contractor shall obtain all permits, licenses and approvals required by the Department, County, State, or Federal Government, for the execution of the contract, and pay all charges and fees therefore including, but not limited to overtime inspection, cost of preparation of documents, and any and all other costs associated with attaining required permit approvals.

4.5 NO PERSONAL LIABILITY

Neither the Contracting Officer nor the Board nor any other officer or employee of the Department, in the performance of their duties, shall incur personal liability to the contractor for any action taken in good faith.

4.6 COORDINATION OF SPECIAL PROVISIONS, PLANS, SPECIFICATIONS, GENERAL PROVISIONS, WATER STANDARDS, AND OTHER PARTS OF THE CONTRACT DOCUMENTS

The special provisions, plans, specifications, general provisions, Water Standards, contract documents and all supplemental documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for the complete work. In case of conflict or discrepancy within any part of the contract, the stricter requirements, including Hawai‘i State Statutory requirements, shall govern. Unless it is apparent that a different order of precedence is intended, the following is the precedence list with 1 taking precedence over two, two taking precedence over three, etc.:

1. Special Provisions
2. Plans
3. Specifications/Request for Proposals
4. Agreement Documents
5. General Provisions
6. Water Standards
7. Other Agency Standards

Instructions to offerors, addendas and the pre-bid or pre-proposal meeting minutes are hereby incorporated by reference and made a part of the Special Provisions.

Hawaii Standard Specifications for Road, Bridge and Public Works Construction, 2005.

Unless otherwise specified, the means and methods of Hawai‘i Standard Specifications for Road, Bridge and Public Works Construction, 2005, as amended, shall govern the requirements for construction within all State and County roadway rights-of-way.

SECTION 5 - SCOPE OF CONTRACT

5.1 SCOPE OF CONTRACT

The scope of the contract encompasses the contractor's furnishing of, and payment for, all labor, supervision, skills, materials, tools, transportation, equipment and apparatus, and all incidentals necessary to perform all the work and do all the things necessary in accordance with the provisions of the contract documents by the contractor. See Sample Contract attached hereto as Exhibit J.

5.2 REQUESTS FOR INFORMATION

A. **Request for Information (RFI)** - An RFI is a written request, using attached Form Exhibit P from the contractor to the Contracting Officer, seeking an interpretation or a clarification of some requirement of the contract documents. The contractor shall clearly and concisely set forth the issue for which they seek clarification or interpretation and why a response is needed from the Department. The Contractor shall, in the RFI, set forth their interpretation or understanding of the requirement including reasons why they have reached such an understanding. Responses from the Department will not change any requirement of the contract documents unless so noted in the RFI Response by the Department.

1. The following is a non-exhaustive list of what shall NOT be accepted as an RFI:

    a. Submittals for clearly identifiable items that should have been addressed pre-bid.

    b. Numerous and excessive RFIs that are meant to overwhelm the Department.

    c. Proposal for alternative construction methods or substitute items.

    d. RFIs that are meant to address construction means and methods or site safety.

2. RFIs can only be submitted by the Contractor. Submittals by subcontractors shall be rejected outright.

3. Each RFI shall be limited to a single subject of inquiry.

4. All RFIs shall be accompanied by a lowest-cost suggested solution from the Contractor.

5. All RFIs shall include the necessary attachments and exact references. When applicable, references to design drawing numbers and specification sections and a graphic depiction of the resolution shall accompany the RFI.

6. RFIs that fail to conform to these requirements will be rejected at no fault to the Department.

B. **Response to RFI**

Response to an RFI shall be issued within ten (10) working days of receipt of the request from the contractor unless the Contracting Officer determines that a longer period of time is necessary to provide an adequate response. If a longer period of time is determined necessary by the Contracting Officer, the Contracting Officer will, within ten (10) working days of receipt of the RFI, notify the contractor of the anticipated response time.

1. The ten (10) working days referred to herein will start on the date stamped "Received" by the Department and ends on the date stamped "Sent" by the Department.

2. If the contractor submits a RFI on a schedule activity within ten (10) working days or less of float on a current project schedule, the contractor shall not be entitled to any time extension due to the time it takes the Department to respond to the request provided that the owner responds within ten (10) working days set forth above.

3. Responses to RFIs that require revisions to drawings and specifications should be incorporated into the design drawings concurrent with the processing of the RFI.

C. Responses from the Department will not change any requirement of the contract documents unless so noted by the Department in the response to the RFI. In the event the Contractor believes that a response to a RFI will cause a change to the requirements of the contract document, the contractor shall provide written notice to the owner in accordance with the requirements of Section 5.3 of this Document. Failure to provide such written notice shall waive the contractor's right to seek additional time or cost as laid out in Section 5.3 of this Document.

5.3 MODIFICATIONS TO THE WORK

A. **Oral Directive.**

Any directive, direction, instruction, interpretation or determination through oral order, or email ("oral directive") from the Contracting Officer, which, in the opinion of the contractor, causes any change, can be considered as a change only if the contractor gives the Contracting Officer written notice of its intent to treat the oral directive as a change directive. The written notice must be delivered to the Contracting Officer before the contractor acts in conformity with the oral order, direction, instruction, interpretation or determination, but not more than five days after delivery of the oral order to the contractor. The written notice shall state the date, circumstances, whether a time extension will be requested, and source of the order that the contractor regards as a change. The written notice may not be waived and shall be a condition precedent to the filing of a claim by the contractor. Unless the contractor acts in accordance with this procedure, any oral directive shall not be treated as a change and the contractor waives any claim for an increase in the

contract time or contract price related to the work.

B. **Change Order.**

The Contracting Officer, at any time, and without notice to any surety, in a signed writing designated or indicated to be a change order, may unilaterally make changes in the work within the scope of the contract as may be found to be necessary or desirable and may unilaterally make changes in the time of performance of the contract that does not alter the scope of the contract work. Such changes shall not invalidate the contract or release the sureties, and the contractor will perform the work as changed, as though it had been part of the original contract. Minor changes in the work may be directed by the Contracting Officer at no change in contract price or time. Change Order form is attached hereto as Exhibit K.

1. Adjustment of price or time for performance. If any change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract or as negotiated.

2. Failure of the parties to agree to an adjustment shall not excuse a contractor from proceeding with the contract as changed, provided that the Contracting Officer, within fourteen (14) calendar days after the changed work commences, makes such provisional adjustments in time for the direct costs of the work as the Contracting Officer deems reasonable.

3. Quotations for modification of work shall be submitted expeditiously and in any case no later than ten (10) working days after receipt of the Department of Water's request. All quotations shall be accompanied by a detailed written statement setting forth all charges the Contractor proposes for the change, properly itemized, and supported by sufficient substantiating data to permit evaluation of charges. All quotations shall be accompanied by a statement as to the proposed change's effect on the project's completion date. If no condition is stipulated, the Department of Water will assume that the acceptance of the quotation will have no adverse effect on the project's completion date.

4. The Contracting Officer has up to twenty (20) days to make a final decision as to whether to accept the entire cost proposal or any discrete cost item contained within the cost proposal or the proposed adjustment to contract time by a contract change order.

5. The right of the contractor to dispute the contract price or time or both shall not be waived by the contractor performing the work, provided however, that the contractor follows the notice requirements for disputes and claims established by the contract or these provisions. Contract Modification Form is attached hereto as Exhibit L.

6. Time period for claim. Within thirty (30) calendar days after receipt of a written change order under subsection, unless such period is extended by the Contracting Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. The requirement for timely written notice cannot be waived and shall be a condition precedent to the assertion of a claim.

7. Claim barred after final payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

8. No payment shall be allowed to the Contractor for pricing or negotiating proposed or actual changes. No time extension will be granted for delay caused by late Contractor pricing of changes or proposed changes.

9. Additional performance bond or payment bond may be required by the procurement officer for a contract change order or modification where the contract amount increases. (HAR 3-122-225)

10. Other Claims Not Barred. In the absence of such a change order, nothing in this clause shall restrict the contractor's right to pursue a claim arising under the contract or for breach of contract. (HAR 3-125-4)

5.4 PRICE ADJUSTMENT

A. Any adjustment in contract price shall be made in one or more of the following ways:

1. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as reasonably practicable;

2. By unit prices specified in the contract or subsequently agreed upon;

3. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon before commencement of the pertinent performance;

4. In such other manner as the parties may mutually agree; or

5. In the absence of agreement between the parties, the provisions of HRS 103D-501(b)(5) shall apply.

B. Submission of cost or pricing data. The contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 103D-312, HRS. The submission of any cost or pricing data shall be made subject to the provisions of subchapter 15, chapter 3-122, HAR. A fully executed change order or other document permitting billing for the adjustment in price under any method listed shall be issued within ten (10) days after agreement on the method

of adjustment.

C. Determining Adjustments in Price. In determining the adjustment in price to the Department resulting from a change, the allowances for all overhead and extended overhead resulting from adjustments to contract and profit combined, shall not exceed the percentages set forth below per Chapter 3-125, HAR:

1. For the contractor, for any work performed by its own labor forces, twenty percent (20%) of the cost;

2. For each subcontractor involved, for any work performed by its own forces, twenty percent (20%) of the cost;

3. For the contractor or any subcontractor, for work performed by their subcontractors, ten percent (10%) of the amount due the performing subcontractor.

Not more than three (3) line item percentages for fee and overhead, not to exceed the maximum percentages shown above, will be allowed regardless of the number of tier subcontractors.

D. The Department, in determining an adjustment in price using any of the methods listed in 5.4 A (1-4) above may not mandate that the contractor submit its proposal for a price adjustment at a specified percentage that it unilaterally considers to be acceptable.

E. Paragraphs C. and D., herein, shall not be construed to impair the right of the Contractor and the Department from mutually agreeing to a price adjustment under any method listed in 5.4 A (1-4).

5.5 DIFFERING SITE CONDITIONS

Differing Site Conditions - Contractor's Responsibility. Unless otherwise noted, the contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the contract can and will be performed under such conditions, and that all materials, equipment, labor, and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the contractor's own cost and expense, anything in this contract to the contrary notwithstanding. (H.A.R. 3-125-11)

5.6 ASSIGNMENT, CHANGE OF NAME, NOVATION

A. **No Assignment**.
No Department contract is transferable, or otherwise assignable, without the written consent of the Manager; provided that a contractor may assign moneys receivable under a contract after due notice to the Department.

B. **Recognition of a successor in interest; assignment**.
When in the best interest of the Department, a successor in interest may be recognized in an assignment agreement in which the transferor and the transferee

and the Department shall agree that:

1. The transferee assumes all of the transferor's obligations;

2. The transferor remains liable for all obligations under the contract but waives all rights under the contract as against the Department; and

3. The transferor shall continue to furnish, and the transferee, shall also furnish all required bonds.

C. **Change of Name.**
When a contractor requests to change the name in which he or she holds a contract with the Department, the Manager shall, upon receipt of a document indicating such change of name (for example, an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed. (Auth: 3-125-14, HAR)

5.7 VALUE ENGINEERING INCENTIVE

A. **Definitions** as used in this section:
"Net savings" means those savings in project costs realized by the Department as the result of a value engineering change proposal after deducting the contractor's share of the cost savings.

"Single contract" means the single construction for which the cost savings is proposed.

"Value engineering" means an analysis of the requirements for the systems, equipment, and supplies of the single contract for the purpose of achieving a net savings by providing less costly items than those specified without impairing any essential functions and characteristics as service life, reliability, substitutability, economy of operations, ease of maintenance, and necessary standing functions.

"Value engineering change proposal" means a cost reduction proposal based on value engineering submitted by the contractor pursuant to this chapter and particularly identified as such. (HAR §3-132-1)

B. **Applicability**.

1. The provisions of this chapter shall apply to all construction contracts in excess of $100,000. The application of value engineering incentives to contracts shall not be construed to have an effect on the solicitation or the selection of the contractor.

2. The contractor may develop and submit value engineering change proposals for drawings, designs, specifications, or other requirements of the contract. If any proposal is accepted and approved, in whole or in part, by the

procurement officer, the contract shall be modified and shall include an equitable adjustment of the contract price in accordance with this section.

3. This section shall not apply to any cost reduction proposal that is not identified as a value engineering change proposal by the contractor at the time of its submission to the procurement officer. (HAR §3-132-2)

C. **Section provisions**.

1. The processing of a value engineering change proposal shall be similar to that for any proposed contract change order and shall be considered only after the construction contract is awarded.

2. Nothing herein shall be construed to mean that the Department must accept or approve any or all value engineering change proposals submitted in accordance with this section. The OIC's interpretation and findings relative to the impairment of the functions or characteristics of the item or items covered by the value engineering change proposal shall be final.

3. Adjustment in contract prices and allowances for implementation costs shall be in accordance with this section and shall only be considered if and when the value engineering change proposal is approved by the contract officer. The receipt of the value engineering change proposal by the Department or a verbal acceptance of a value engineering change proposal by any employee of the Department shall not obligate the Department to accept the value engineering change proposal.

4. The contract officer may impose, as a condition of acceptance of any value engineering change proposal, a requirement that the contractor warrant the statements, claims, and other information contained in the value engineering change proposal. In addition, the contractor's responsibility under any such warranty shall be in addition to the liability imposed by the "guarantee of work" requirement as included in the contract.

5. The contractor shall be responsible for the new design of the facility or a portion of the facility submitted as a value engineering change proposal, including errors and omissions and, if the value engineering change proposal is for a portion of the facility, for any adverse impacts the new design may have on the unchanged portions of the facility.

D. **Conditions for a value engineering change proposal**.

1. A value engineering change proposal to a contract shall:

   a. Result in an estimated net savings to the Department in the project cost of at least four thousand dollars ($4,000.00) by providing less costly items than or using different construction methods from those specified in the contract without impairing any essential functions and characteristics as service life, reliability, substitutability, economy of operation, ease of maintenance, and necessary standardized features of the completed work;

b. Require, in order to be applied to the contract, a change order to the contract; and

c. Not adversely impact on the performance schedule or the contract completion date.

2. As a minimum, the following information shall be submitted by the contractor with each value engineering change proposal:

a. A description of the difference between the existing contract requirements and the value engineering change proposal and the comparative advantages and disadvantages of each including durability, service life, reliability, substitutability, economy of operation, ease of maintenance, desired appearance, design, safety standards, impacts due to construction, and other essential or desirable functions and characteristics as appropriate;

b. An itemization of the requirements of the contract which must be changed if the value engineering change proposal is adopted and are commendation as to how to make each change;

c. An itemized estimate of the reduction in performance costs that will result from adoption of the value engineering change proposal or parts thereof taking into account the costs of implementation by the contractor, including any amounts attributable to subcontractors, and the basis for the estimate;

d. A prediction of any effects and impacts the value engineering change proposal would have on: other costs to the Department as the costs of Department-furnished property, related items, and maintenance and operation over the anticipated life of the material, equipment, or facilities as appropriate; the construction schedule, sequence and time; and bid item totals used for evaluation and payment purposes;

e. A statement of the time by which a change order adopting the value engineering change proposal must be issued so as to obtain the maximum cost reduction during the remainder of the contract, noting any effect on the contract time; and

f. If previously submitted, the date(s) of any previous submission(s), the contract number(s) of those contract(s) for which it was submitted and the previous action(s) by the Department, if known;

3. When, in the judgment of the Contracting Officer, a value engineering change proposal alters the design prepared by a registered professional architect or engineer, the contractor shall ensure the changes to be prepared are by or under the supervision of a registered professional architect or engineer, and stamped and so certified.

4. A value engineering change proposal will be processed expeditiously and in the same manner as prescribed for any other proposal which would likewise necessitate issuance of a contract change order. Unless and until a change order applies a value engineering proposal to a contract, the contractor shall remain obligated to perform in accordance with the terms of the contract and the Department shall not be liable for delays incurred by the contractor resulting from the time required for the Department's determination of the acceptability of the value engineering change proposal. The determination of the procurement officer as to the acceptance of any value engineering change proposal under a contract shall be final.

5. The Contracting Officer may accept in whole or in part any value engineering change proposal submitted pursuant to this section by issuing a change order to the contract. Prior to issuance of the change order, the contractor shall submit complete final contract documents similar to those of the original contract showing the accepted changes and the new design and features as well as the following:

   a. Design calculations;

   b. The design criteria used; and

   c. A detailed breakdown of costs and expenses to construct or implement such revisions. The change order will identify the final value engineering change proposal on which it is based.

6. When a value engineering change proposal submitted pursuant to this section is accepted under a contract, an equitable adjustment in the contract price and in any other affected provisions of the contract shall be made in accordance with this section and the "change order" clause of the contract. The equitable adjustment shall first be established by determining the effect on the contractor's cost of implementing the change, including any amount attributable to subcontractors and to the Department's charges to the contractor for architectural, engineering, or other consultant services and the staff time required to examine and review the proposal. The contract price shall then be reduced by fifty per cent (50%) of the net estimated decrease in the cost of performance.

7. The contractor may restrict the Department's right to use the data or information or both on any sheet of a value engineering change proposal or of the supporting data, submitted pursuant to this section, if it is stated on that sheet as follows:

   "This data or information or both shall not be disclosed outside the Department, or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this value engineering change proposal. This restriction does not limit the Department's right to use this data or information or both if obtained from another source, or is otherwise

available, without limitations. If this proposal is accepted by the Department by issuance of a change order to the contract after the use of this data or information or both in such an evaluation, the Department shall have the right to duplicate, use and disclose any data or information or both pertinent to the proposal as accepted, in any manner and for any purpose whatsoever, and have others so do".

8. In the event of acceptance of a value engineering proposal, the Department shall have all rights to use, duplicate, or disclose in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so, any data or information or both reasonably necessary to fully utilize such proposal.

9. Notwithstanding the provisions of this section, for any construction contract, the contractor shall not be precluded from making substitution requests in accordance with applicable rules and policies of the Department. The OIC shall be the sole judge of whether a proposal is a value engineering change proposal or a substitution request. (HAR §3-132-4)

E. **Value engineering sharing method**. The method by which the contractor will share a portion of the cost savings from an accepted value engineering change proposal shall be in accordance with section 3-132-4 and the following:

1. The contractor's share in cost savings shall be for the single contract only, and no consideration shall be made for future acquisition, royalty type payment, or collateral savings.

2. The Department may accept the proposed value engineering change proposal, in whole or in part. The engineer shall issue a contract change order or modify the contract to identify and describe the accepted value engineering change proposal. (HAR §3-132-6)

5.8 SUBSTITUTIONS

A. **After Bid Opening.** Substitution of material or equipment may be allowed after the bid opening date only if:

1. The specified or prequalified item is delayed by a lengthy strike in the factory or other unforeseeable contingency beyond the control of the Contractor which would cause an abnormal delay in the project completion; or

2. All specified or prequalified items are found to be unusable or unavailable due to change or other circumstances; or

3. The Contractor is willing to provide a more recently developed or manufactured model of material or equipment of the same name manufacturer which the Contracting Officer determines to be equal or better than the one specified or prequalified.

A substitution request, regardless of reason, shall be fully explained in writing, by the Contractor including his justification for said request, quantities and unit prices involved, quotations and such other documents as are deemed necessary to support the request.

Any savings in cost will be rebated to the Department and any additional cost for the substituted items will be paid for by the Contractor.

The above shall not be construed to mean that substitutions for brand name specified materials and equipment will be allowed; the Contracting Officer reserves the right to reject and deny any request deemed irregular or not in the best interest of the Department and a request for substitution shall not in any way constitute a justification for an extension of contract time.

5.9 EXTRA WORK

No work of any kind in connection with the work covered by the specifications and plans shall be considered as entitling the Contractor to extra compensation except when the work is ordered in writing, as a change order, by the Contracting Officer.

5.10 PAYMENT FOR DELETED MATERIALS

A. Canceled Orders – If acceptable material was ordered by the Contractor for any item deleted by an ordered change in the work prior to the date of notification of such deletion by the Contracting Officer, the Contractor shall use every reasonable effort to cancel the order. The Department shall pay reasonable cancellation charges required by the supplier excluding any markup for overhead and profit to the Contractor.

B. Returned Materials – If acceptable deleted material is in the possession of the Contractor or is ultimately received by the Contractor, if such material is returnable to the supplier and the Contracting Officer so directs, the material shall be returned and the Contractor will be paid for the reasonable charges made by the supplier for the return of the material, excluded any markup for overhead and profit to the Contractor. The cost to the Contractor for handling the returned material will be paid for as provided in Subsection 5.4 “Price Adjustment.”

C. Uncancelled Materials – If orders for acceptable deleted material cannot be canceled at a reasonable cost, it will be paid for at the actual cost to the Contractor including an appropriate markup for overhead and profit as set forth in Subsection 5.4 “Price Adjustment” In such case, the material paid for shall become the property of the Department of Water and the contractor shall deliver to the Department of Water Baseyard.

SECTION 6 - PERFORMANCE OF CONTRACT

6.1 TIME

Time is of the essence of the contract. Performance of the contract shall be commenced on the commencement date designated in the notice to proceed and shall be completed within the contract time specified in the contract or as computed or extended in accordance with the provisions of subsection 8.3.

A. After the contract is completely executed, the Contracting Officer will issue the contractor a written "Notice to Proceed" designating the official date for the commencement of the work. The contractor shall submit all materials for approval. Once all materials for use on the project have been approved, the contractor shall arrange a preconstruction conference with the Contracting Officer, along with other affected agencies, firms and individuals at least ten (l0) calendar days prior to the starting date for construction.

At the preconstruction conference, the contractor shall submit to the Department, the name, local address and telephone number(s) of his or her authorized superintendent of the job.

No construction work shall commence until the contractor has notified the Contracting Officer, in writing, at least one (1) week in advance of the actual date he or she will start the work to be done under the contract after the notice to proceed, and shall diligently prosecute the same to completion within the time limit provided in the contract. The contractor shall be entirely responsible for any delay in the work caused by his or her failure to give such notice to the Contracting Officer.

B. When the contract time is on a working day basis, the Contracting Officer will furnish the contractor a weekly statement showing the number of days charged to the contract for the preceding week and the number of days specified for completion of the contract. The contractor will be allowed seven (7) days in which to file a written protest setting forth in what respect said weekly statement is incorrect; otherwise the statement shall be deemed to have been accepted by the contractor as correct.

C. When the contract time is on a calendar-day basis, it shall consist of the number of calendar days stated in the contract beginning with the effective date of the NOTICE TO PROCEED, including all Sundays, holidays and non-working days. All calendar days elapsing between the effective dates of any orders of the Contracting Officer to suspend work and to resume work for suspensions not the fault of the contractor shall be excluded.

6.2 PERFORMANCE SCHEDULE

Within seven (7) calendar days after the commencement of the contract, or such further time as may be allowed by the Contracting Officer, the contractor shall submit for the approval of

the Contracting Officer, a practicable schedule utilizing the critical path method (CPM) for the performance of the contract. The date on which parts of the project, including the procurement of materials, plant and equipment, have been or will be started, and the contemplated dates for completion of parts of the project. If the schedule is not approved, it shall be revised as directed by the Contracting Officer. After approval, no changes in the schedule shall be made without the approval of the Contracting Officer. The approved schedule shall be updated with a three-week (3-week) schedule breakdown and two (2) copies submitted to the Department weekly, and a full schedule breakdown submitted to the Department monthly with payment request for approval. The updated schedule shall show the actual progress of work compared to the approved schedule or the latest amended schedule. The updated schedule shall be used as a basis for establishing major construction and as a check on the progress of the work performed under the contract. All schedules shall be provided via hard copy and as a Microsoft Project file/PDF file.

* The full schedule shall include a written narrative explaining CPM network.
* The full schedule shall account for dealing with predictable "planned (normal) adverse weather based on historical averages and be reflected appropriately.
* The Contracting Officer does not dictate means, methods, or schedule as that is the contractors responsibility and discretion.
* The Contracting Officer will review the CPM network for reasonableness and conformance with the plans, specifications and contract time at the baseline review and with each update.
*Any acceleration to schedule pursuant to a directive by the owner shall be in writing.
* Project float is a shared resource for use by contractor and owner in good faith.

6.3 OWNER-CONTRACTOR MEETING, FIELD OFFICE AND FIELD TELEPHONE

A. **Owner-Contractor Meeting.**

A weekly meeting is required at the jobsite field office. The meeting attendees at minimum shall be the contractor project manager and foreman, DOW project manager and inspector, and other construction related staff. The contractor shall prepare the meeting minutes and provide to the DOW construction team one day prior to next weekly meeting.

B. **Field Office.**

The contractor shall provide a field office for the Manager at a location designated by the Manager within the project site. It shall be available within seven (7) calendar days after issuance of Notice to Proceed for the work under the contract. The field office shall be weather-proof and not less than l20 square feet in gross floor area. The aggregate window areas of the office shall not be less than l0 percent (10%) of the floor area, and one (1) exterior door shall be provided with a keyed cylinder-type lock. The office shall be furnished with one (1) drafting-type table having a dimension of not less than 3' x 6' and a stool, adequate plan racks and hangers, one (1) desk, two (2) chairs, shelves, a broom, telephone service, air conditioning, electric lighting, paper towels, paper cups, soap, toilet paper and potable water, and shall be maintained in good repair and in a clean and sanitary condition by the contractor. If the office is not equipped with a water closet and lavatory, the contractor shall make other arrangements to provide such facilities for the Manager.

C. **Field Telephone.**

If required in the special provisions, the contractor shall provide a field telephone for the Manager. Such field telephone shall be placed at a convenient and accessible location.

6.4 DOCUMENTS TO BE KEPT ON SITE

The contractor shall keep a copy of the request for proposals, special provisions, current water system standards current standard specifications for Road and Bridge construction, approved construction drawings, approved submittals, RFI responses, approved permits, and specifications of the contract on the site of the project readily accessible for reference.

6.5 ADDITIONAL PLANS AND SPECIFICATIONS TO BE FURNISHED BY THE CONTRACTING OFFICER

If deemed necessary by the Contracting Officer, the Contracting Officer may furnish, by written order, such additional plans and specifications, during the performance of the contract as may be necessary to clarify the contract or define it in greater detail, and the contractor shall comply with such additional plans and specifications. Such additional plans and specifications shall become a part of the contract.

6.6 DRAWINGS TO BE FURNISHED BY CONTRACTOR

Shop drawings means drawings, submitted to the Department by the Contractor which shows in detail 1) the proposed fabrication and assembly of structural elements, and 2) the installation (i.e., form, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract.

The Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with approved construction drawings, specifications and other applicable contract requirements and shall indicate its approval thereon as evidence of such coordination and review. The Contractor shall make and supply such working or shop drawings as may be required by the Contracting Officer during the performance of the contract. The drawings shall be finished plans, and shall be neat, legible and drawn to scale. Drawings submitted without evidence of the Contractor's approval may be returned for resubmission.

The contractor shall submit three (3) prints of working or shop drawings to the Contracting Officer for approval prior to the commencement of the work under the contract or the delivery to the project site of any equipment or material covered by the drawings, whichever is later. The Contracting Officer, has twenty (20) days to approve or disapprove and will indicate such approval or disapproval of the shop drawings. If not approved as submitted the Contracting Officer shall indicate the reasons therefor. The Contracting Officer may require the drawings to be resubmitted as often as necessary to render them complete, legible and free of extensive corrections. If a resubmittal is required, the Contracting Officer shall return one (l) print to the contractor who shall make all the corrections or drawings for

approval. Any work done before such approval shall be at the Contractor's risk.

After approval, no working or shop drawings shall be changed without the written approval of the Contracting Officer; and the contractor may proceed with the parts of the project called for in such drawings.

It shall be expressly understood that review and approval of working or shop drawings and other submittals by the Contracting Officer shall not be construed to relieve the contractor of responsibility for any errors and omissions in such drawings, or the accuracy of dimensions and details and duty to perform the contract in accordance with the approved construction drawings, specifications, terms, covenants, conditions, provisions and intent thereof. It is further understood that the review and approval by the Contracting Officer of the Contractor's shop drawings, whether general or detailed, is a general review relating only to their sufficiency and compliance with the intention of the contract. The Contractor shall clearly identify and inform the Contracting Officer in writing on the shop drawing transmittal cover sheet of any deviations from the contract documents at the time of submission and shall obtain the Contracting Officer's written approval to the specified deviation prior to proceeding with any work. The contractor, at his own risk and expense, may elect to proceed with the work affected by the drawings prior to final review.

Catalog cuts or similar reproductions may be substituted for working or shop drawings in the case of assembled electrical, mechanical units and other waterworks materials to be installed, when they show information which the Contracting Officer determines to be sufficient for review and approval. The contractor shall provide all additional information that is requested by the Contracting Officer during the review and approval process.

6.7 OMISSION IN CONTRACT

Unless specified, work which is otherwise incidental to the contract although not specifically referred to in the contract shall be furnished and performed by the contractor. Labor, materials, equipment, overhead, and extended overhead directly or indirectly necessary to complete the construction of the project, whether or not the same may have been expressly provided for in the contract, shall be furnished and performed by the contractor.

6.8 CONTRACTOR TO REPORT ERRORS OR DISCREPANCIES

The contractor shall notify the Contracting Officer in writing immediately upon discovery of any error or omission in the layout given by stakes, points or instructions furnished by the Manager, or any discrepancy within the contract, or any part thereof or between the plans and the conditions of the site.

After such discovery, the contractor shall proceed with the performance of the contract only after receiving written approval from the Contracting Officer.

6.9 CONTROL OF THE CONTRACT

A. **Workmanship.**

The contract shall be performed in an orderly and workmanlike manner in

accordance with the latest acceptable practice and shall be of the best quality, except as clearly specified otherwise. Whenever there is a doubt as to what is permissible or the contract fails to note the quality of any work, the interpretation which calls for the best quality of work is to be followed.

B. **Access to the Project.**

During the performance of the contract, the contractor shall provide the Department with proper and safe facilities for access to the site of the project and the shops of the contractor and the subcontractor.

Other contractors of the Department shall be permitted access to the site of the project when it is required for performance of their respective contractors.

C. **Inspection.**

The performance of the contract shall be subject to the inspection of the Department, and the contractor shall supply such information and assistance as may be required to make a complete and detailed inspection. The Department may inspect each and every subdivision of the work or any part or parts or process thereof. The Department's staff shall have free access to all parts of the work at all times and shall be given every facility, information, and means of thoroughly inspecting the work done and the materials used or to be used. No work or material which may be defective in construction or quality or deficient in any of the requirements of the plans, specifications, special provisions or other contract documents will be accepted. The Department's presence or inspection on the site will not relieve the contractor of his or her deficiencies.

If the contractor wishes to work at such time of the day which is during the period other than the regular business hours of the Department of Water, County of Kaua'i or on a Saturday, Sunday or legal State holiday, he or she shall make a written request for inspectional services during such period. If such a request is made and granted, the contractor shall notify the Contracting Officer not less than twenty-four (24) hours in advance of the time when the inspectional services are required. The contractor shall pay the Department at the rate per hour designated by the Department for each employee provided pursuant to this paragraph.

D. **Inspection of Plant or Site, Access to Plant or Place of Business.**

1. Inspection of plant or site. Circumstances under which the Department may perform inspections include, but are not limited to, inspections of the Contractor's plant or site in order to determine: Whether the standards set forth in section 3-122-108, Hawai'i Administrative Rules, have been met or are capable of being met; and if the contract is being performed in accordance with its terms. (HAR 3-122-166)

2. Access to plant or place of business. The Department may enter a Contractor's or subcontractor's plant or place of business to:

   a. Inspect goods or services for acceptance by the Department pursuant to the terms of a contract;

b. Audit cost or pricing data or audit the books and records of any Contractor or subcontractor pursuant to section 3-122-175, Hawai‘i Administrative Rules; and

c. Investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to sections 3.126-11 through 3-126-18, Hawai‘i Administrative Rules. (3-122-167,8)

E. **Samples and Test Specimens.**

When required by the Contracting Officer, test specimens or samples of materials, equipment, instruments, pipes and fittings and other Waterworks appurtenances to be used or offered for use in the performance of the contract shall be prepared and furnished by the contractor in such quantities and sizes as may be required for proper examination and tests, with information as to their sources.

The contractor shall furnish additional test specimens and samples as directed.

Test specimens and samples shall be submitted in ample time to enable the Department to make such tests or examinations as may be necessary. Laboratory tests and examinations made in a laboratory other than that of the Department shall be at the expense of the contractor.

F. **Tests.**

Tests specified by the contract, statute, regulation, Water Standards, or ordinance shall be made; and the cost thereof shall be borne by the contractor unless otherwise provided for in such contract, statute, regulation or ordinance. Such tests shall be conducted under the direction of the Contracting Officer, and the contractor shall repair any damage resulting there from.

In addition, the Contracting Officer may require such tests as he or she deems necessary to carry out his or her duties during the performance of the work under the contract. When a test is required by the Contracting Officer, the contractor under the direction of the Contracting Officer shall conduct such test and shall bear all of the costs, including the cost of tools, labor and materials necessary therefor.

G. **Site Access.**

The contractor shall provide access to the work at all times to representatives of the Department of Federal Environmental Protection agency, the State of Hawai‘i Water Pollution Control, State Department of Health, and any other authorized Federal, State or County Agencies whenever the work is in preparation or in the process, and shall provide proper facilities for such access and inspection. In addition, authorized representatives of the Department and the County shall have access to any books, documents, papers and records of the contractor which are pertinent to the project for the purpose of making audit, examinations, excerpts, and transactions thereof.

H. **Removal of Defective and Unauthorized Work.**

All work which has been rejected as not conforming to the requirements of the contract shall be remedied or removed and replaced by the Contractor in an

acceptable manner at no cost to the Board. Any work done beyond the work limits shown on the plans and specifications or established by the Contracting Officer, as authorized under the terms of the Contract, or any additional work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered removed at the Contractor's expense. Upon failure on the part of the Contractor to comply promptly with any order of the Contracting Officer made under the provisions of this subsection, the Contracting Officer shall have authority to cause defective work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs from any monies due or to become due the Contractor.

6.10 PERSONAL SUPERVISION

The contractor shall be present on site in person, or by a responsible agent with authority to act for the contractor in connection with the contract during the performance of the contract.

The contractor shall file with the Contracting Officer a written statement signed by the contractor giving the names of the designated competent person(s) for trench excavation and confined space entry, any and all supervisors, foreman and employees who are authorized to act in place of the contractor, and any communication signed in behalf of the contractor by such agents immediately and in writing of any change in the name or names so submitted.

6.11 CHARACTER OF WORKMEN, METHODS AND EQUIPMENT

The Contractor shall at all times provide adequate supervision and sufficient labor and equipment for prosecuting the several classes of work to full completion of the project in the manner and within the time required by the contract.

A. Character and Proficiency of Workers. All workers must have sufficient skill and experience to perform properly the work assigned to them. All workmen engaged in special work or skilled work such as bituminous courses of mixtures, concrete pavement or structures, electrical installation, plumbing installation, or in any trade shall have sufficient experience in such work and in the operation of the equipment required to properly and satisfactorily perform all work. All workers shall make due and proper effort to execute the work in the manner prescribed by the Contract; otherwise, the Contracting Officer may take action as prescribed herein. Any worker employed on the project by the Contractor or by any subcontractor who, in the opinion of the Contracting Officer, is not careful and competent, does not perform his work in a proper and skillful manner or is disrespectful, intemperate, disorderly or neglects or refuses to comply with directions given, or is otherwise objectionable shall at the written request of the Contracting Officer, be removed forthwith by the Contractor or subcontractor employing such worker and shall not be employed again in any portion of the work without the written consent of the Contracting Officer. Should the Contractor or subcontractor continue to employ, or again employ such person or persons on the project, the Contracting Officer may withhold all monthly payments which are or may become due, or the Contracting Officer may suspend the work until such orders are complied with, with no adjustment in contract end date being made.

B. Insufficient Workers. In the event that the Contracting Officer, in his judgment, finds the condition whereby insufficient workers are present to accomplish the work and no corrective action is taken by the Contractor after being informed, the Contracting Officer reserves the right to terminate the contract as provided for under Section 8 REMEDIES.

C. Equipment Requirements. All equipment furnished by the Contractor and used on the work shall be of such size and of such mechanical condition that the work can be prosecuted in an acceptable manner at a satisfactory rate of progress and the quality of work produced will be satisfactory.

Equipment used on any portion of the project shall be such that no injury to the work, adjacent property or other objects will result from its use. If the Contractor fails to provide adequate equipment for the work, the contract may be terminated as provided under Section 8 REMEDIES.

In the event that the Contractor is paid for furnishing and operating equipment on a force account basis, it shall be operated as directed by the Contracting Officer in order to obtain maximum production under the prevailing conditions.

6.12 WAGES AND HOURS

Contractors shall observe and comply with all the provisions of Chapter 104, HRS, relating to wages and hours of employees on public works. The contractor shall pay all employees on any contract with the Department, the minimum basic wage rate in conformance with applicable Federal and State laws.

The minimum wages shall be periodically increased during the performance of a contract in an amount equal to the increase in the prevailing wages for those kinds of work as periodically determined by the State Director of Labor and Industrial Relations. Notwithstanding the provisions of the original contract entered into, if the Director of Labor and Industrial Relations determines that the prevailing wage has increased, the rate of pay of laborers and mechanics on the contract shall be raised accordingly. Offerors shall take into consideration increases which may occur during the period of the contract in computing their bid or proposal prices. No additional compensation shall be made for failure to do so.

The current State Wage Rate Schedule and any addenda is incorporated in this document by reference only. Copies are available the State Department of Labor and Industrial Relations, 830 Punchbowl Street, Honolulu, HI 96813, or at the State website:

http://hawaii.gov/labor/rshttp://labor.hawaii.gov/wsd/files/2013/02/104-2FAQ-Rev-3-09.pdf

No labor or mechanic employed on the job site shall be permitted or required to work on Saturday, Sunday, or a legal holiday of the State of Hawai‘i in excess of eight (8) hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on Saturday, Sunday, and a legal holiday of the State or in excess of eight (8) hours on any other day. For purposes of determining overtime compensation under this subsection, the basic hourly rate of any laborer or mechanic shall not be less than the basic

hourly rate determined by the Director of Labor and Industrial Relations to be the prevailing basic hourly rate for corresponding classes of laborer and mechanics on projects of similar character in the State.

A certified copy of all payrolls shall be submitted weekly to the Manager. The contractor shall be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the Director of Labor and Industrial Relations attached to the contract, and that the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed.

If the Contracting Officer finds that any laborer or mechanic employed on the job site by the contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the contract or the specifications, or has not received the laborer's or mechanic's full overtime compensation, the Contracting Officer may take appropriate action in accordance with Section 104-4, HRS, or the Contracting Officer may, upon recommendation of the Contracting Officer, by written notice to the contractor, terminate the contractor's right, or the right of any subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such or part by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the Department for any excess costs occasioned thereby.

The contractor is required to post the applicable wage schedule in a prominent and easily accessible place at the job site. The contractor shall give to each laborer and mechanic employed under the contract a copy of the rates of wages required to be posted.

On federally funded or federally assisted projects, the current federal wage rate determination in effect at the time of advertising for bids or proposals is incorporated as part of the invitation for bids or proposals, and both State and federal wage rates shall apply. Where rates for any class of laborers and mechanics differ, the higher rates shall prevail. The minimum federal wage rates shall be those in the U.S. Department of Labor Wage Determination Decision and Modifications in effect five (5) calendar days prior to the bid or proposal opening date.

6.13 CONTRACTOR'S ADDRESS

The contractor shall provide and maintain a post office address within the State of Hawai‘i and file the same with the Contracting Officer. Any written order or notice which may be required or desirable under the contract may be served on the contractor personally, or delivered to his or her representative on the project site, or left with a member of his or her family of suitable age and discretion at his or her residence, or with any employee of the contractor at his or her place of business and/or mailed to the aforesaid local post office address. All orders or notices shall become effective when mailed or at the time of service or delivery as aforesaid.

6.14 OBSTRUCTIONS

The Contractor shall remove all obstructions, the removal of which shall be necessary for the proper reception, performance, construction, installation, and completion of all work under this contract, as called for or implied in the plans and specifications, and is considered incidental work.

6.15 SURVEYS AND CONSTRUCTION STAKES, LINES AND GRADES

All lines, levels and elevations are to be laid out and checked by a surveyor or civil engineer licensed in the State of Hawai‘i at the contractor’s expense. The contractor shall furnish a certificate or document signed by the surveyor or civil engineer certifying that the completed lines, levels and elevations are in conformity with the contract. The contractor shall verify all lines, levels and elevations indicated in the contract before any excavation or construction begins. Any discrepancy shall be immediately brought to the attention of the Manager and any change shall be made in accordance with his or her instruction. The contractor shall not be entitled to any additional payment if he or she fails to report the discrepancies before proceeding with work within the area affected by the discrepancies.

6.16 SUBCONTRACTING

The contractor shall not subcontract any part of the contract except to those subcontractors specifically listed in the bid or proposal submitted by the contractor; provided, however, the contractor may for good cause and upon written approval of the Contracting Officer engage other subcontractors. Engaging subcontractors to perform the work under the contract shall not relieve the contractor of his or her duty to perform the contract in accordance with the terms, covenants, conditions, provisions and intent thereof. The contractor shall replace a subcontractor when required by the Contracting Officer for not performing the contract in accordance with the terms, covenants, conditions, provisions and intent thereof.

6.17 OTHER CONTRACTS

The contractor shall coordinate his or her operations with those of other contractors who may be employed on adjacent or related projects of the State, County, Department or private development, shall avoid interference therewith, and shall cooperate with the other contractors so as to avoid unnecessary delay or hindrance in the performance of their respective contracts. Any difference or conflicts which may arise between the contractor and other contractors of the State, County, Department or private development in regard to their projects shall be adjusted and determined by the Department’s staff, whose decision and order shall be final and binding.

6.18 WATER REMOVAL

The contractor shall examine the site of the project and make all necessary arrangements with affected property owners for the removal of water from the site. The contractor shall provide a bridge or other facilities to prevent water flowing into adjacent properties and adjacent streets as a result of his or her activities, from interfering with the traffic on such streets.

6.19 ELECTRICAL, TELECOMMUNICATION AND WATER SERVICE

The contractor shall make his or her own arrangements for electrical, telecommunication and water services required for the performance of the contract at his or her expense. The Contractor shall be responsible for scheduling and coordinating the work with the utility companies and applicable governmental agencies for temporary and permanent service connections. The Contractor will pay the utility companies and applicable governmental agencies directly for such connections upon receipt of the state of charges.

The contractor or subcontractor will not be charged for the final filling of any new or refurbished tank if a temporary hydrant meter is used. For example, a new or refurbished 0.5 MG Tank will be credited 500,000 gallons. All other usage of the temporary hydrant meter such as, but not limited to, testing of new waterlines, irrigation, and dust control will be charged to the contractor.

6.20 UTILITIES UNDERGROUND

Prior to offer: All underground waterlines and appurtenances, gas, oil, telephone, television, electric, storm drain, fiber optic, sewer and other pipes or conduits, if shown on the plans, are only approximate in their locations. Prior to bid or proposal, the contractor shall make a personal investigation and inspection of the records of the owners of the utilities, supplemented by actual digging in the field, if necessary, to determine the actual locations of such utilities with all their branch and service lines whether indicated on the plans or not. Consequences resulting from the Contractor's failure to do so will be the sole cost and responsibility of the Contractor.

Prior to installation of new facilities: The contractor shall make satisfactory arrangements with the owners of the utilities for the relocation, maintenance and protection of existing utilities and shall furnish the Department's staff with evidence in writing that satisfactory arrangements have been made not less than ten (l0) days before the commencement of the parts of the project under the contract affecting such utilities. Further, the Contractor shall probe the project area to verify existing utilities shown or not shown on the approved construction drawings and indicate potential conflicts with new facility installation. If required, the Department will consider redesign of the new facilities to deal with the potential conflicts. Consequences resulting from the Contractor's failure to do so will be the sole cost and responsibility of the Contractor.

6.21 QUALITY OF MATERIALS AND EQUIPMENT

Unless otherwise specifically stated in the specifications, all workmanship, equipment, materials and articles incorporated in the work covered by this contract are to be of the best available grade of their respective kinds. Whenever specifications for any material, article, device, product, fixture, form, type of construction or process is indicated or specified by patent or proprietary name, by name of the manufacturer or by catalog number, such specifications shall be deemed to be used for the purpose of establishing a standard of quality and to facilitate the description of the material or process desired and shall be deemed to be followed by the words "or equal."

All materials and equipment furnished and installed under this contract shall be new and must be of standard quality of their respective kinds, free from all defects which may render them unfit for use. The contract contemplates the use of first-class materials and equipment

throughout the performance of the contract, and it is agreed that any material and equipment for which no particular specification is given shall be of the highest quality of its class or kind. The Manager will not accept materials and equipment that do not conform to the contract.

Rejected materials and equipment shall be removed immediately from the work and replaced with materials and equipment of the required quality. Should the contractor fail to remove such rejected materials and equipment within twenty-four (24) hours after notice by the Contracting Officer, the latter may remove such rejected materials and equipment and deduct the expense therefor from any sum due or to become due the contractor. Failure to reject any material and equipment or to remove any rejected material and equipment shall not relieve the contractor from responsibility as to the quality and character of materials and equipment used or as to any other obligation imposed upon him by the contract.

6.22 NATIONAL SANITATION FOUNDATION (NSF) APPROVALS

All materials used in Waterworks construction (pipe, pipe lubricants, paints, sealants, form oil, concrete admixtures, etc.) in direct contact with the potable water shall be approved by the National Sanitation Foundation (NSF). The contractor shall submit these approvals to the Contracting Officer for review and approval prior to its application.

6.23 SAMPLES

Whenever requested by the Contracting Officer, the contractor shall furnish samples of materials to be used in the performance of the contract. Said samples if approved, will be retained by the Contracting Officer and, subject to his or her order, shall be used as the standard with which all like materials furnished under the contract must conform. The approval of any sample tested by the Contracting Officer or his or her failure to require the furnishing of samples shall not relieve the contractor from performing the work in accordance with the contract.

6.24 PROTECTION OF PEDESTRIANS AND VEHICULAR TRAFFIC

During the progress of the work, the contractor shall use all proper precautions and methods of procedure and construction by means of good and sufficient barriers, guards, temporary bridges, notices, lights, warning and other safeguards for the prevention of accidents and for the protection of persons and property, and from sunset until sunrise he or she shall keep suitable lights burning wherever the public has access near or at the work in progress to define the line of safe passage. The Contractor shall defend, indemnify and save harmless the Department and Board against any and all suits, actions and claims for cost, compensation, damages or otherwise to which the said Department may be put on account of injury to person or property of another, resulting from negligence of the contractor in the performance of the work or the guarding of the same; and he or she shall include in his or her bond such terms as will protect the Department and Board against any loss, charge or expense by reason of any such claims, suits or actions.

A. **Public Convenience**.
The contractor shall so conduct his or her operations as to offer the least possible obstruction and inconvenience to the public and he or she shall have under

construction no greater length or amount of work than he or she can prosecute properly with due regard to the rights of the public.

Unless otherwise provided in the special provisions, all public traffic shall be permitted to pass through the work with as little inconvenience and delay as possible.

Spillage resulting from hauling operations along or across any public travel way shall be removed immediately by the contractor at his or her expense.

Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

Convenient access to driveways, houses, mail boxes and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition.

Water or dust palliative shall be applied if ordered by the Manager for the alleviation or prevention of dust nuisance at all times, regardless of whether or not work is being performed on the site.

B. **Public Safety**

The contractor shall comply with all requirements and provisions of the Federal, State and County safety laws, including Hawai‘i Occupational Safety and Health (OSHA) Laws, and all building and construction codes, and shall take all necessary precautions for the safety of all employees on the project.

Wherever the contractor’s operations create a condition hazardous to traffic or to the public, he or she shall furnish, erect and maintain, at his or her expense and without cost to the Department, such fences, barricades, lights, signs and other devices as are necessary to prevent accidents or damage or injury to the public.

Should the contractor appear to be neglectful or negligent in furnishing warning and protective measures as above provided, the Contracting Officer may direct attention to the existence of a hazard and the necessary warning and protective measures shall be furnished and installed by the contractor at his or her expense.

Should the Contracting Officer point out the inadequacy of warning and protective measures, such action on the part of the Contracting Officer shall not relieve the contractor from responsibility for public safety or abrogate his or her obligation to furnish and pay for these devices.

The installation of general roadway illumination shall not relieve the contractor of his or her responsibility for furnishing and maintaining any of the protective facilities hereinbefore specified.

C. **Accidents**.

The contractor must promptly report in writing to the Manager all accidents whatsoever arising out of or in connection with the performance of the work,

whether on or adjacent to the site which caused death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damage is caused, the accident shall be reported immediately by telephone or by messenger to the Manager.

If any claim is made by anyone against the contractor or any subcontractor on account of any accident, the contractor shall promptly report the facts in writing to the Manager, giving full details of the claim. It is understood and agreed that the written report of any accident shall not relieve the contractor of the responsibility, and the Department and Board shall not be held responsible.

D. **Non-compliance**.

The Manager will notify the contractor of any non-compliance with the foregoing provisions and the action to be taken. If the contractor fails or refuses to comply promptly, the Contracting Officer, with the approval of the Contracting Officer, may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No extension of time or payment for excess costs or damage shall be made for the time lost due to such stop action.

If no corrective action is taken by the contractor within twenty-four (24) hours after a suspension is ordered by the Contracting Officer, the Department reserves the right to take whatever action is necessary to correct the situation and to deduct all costs incurred by the Department in taking such action from moneys due the contractor.

The Contracting Officer may also suspend any operations which he or she feels are creating safety problems. The Department's failure to act pursuant to this section shall not be considered a liability and failure on the Department's part to act shall not be considered a waiver to any rights and remedies to which the Department is entitled.

6.25 ACCESS TO PROPERTY

The contractor shall provide safe access to the property abutting the site of the project when the usual means of access are obstructed by the performance of the contact.

6.26 PROJECT SIGN

The contractor shall provide signs to identify the project. The signs shall be erected at locations designated by the Contracting Officer at the site of the project upon commencement of the work under the contract. Signs shall be properly erected and kept clean and legible. After completion of the work under the contract and final acceptance thereof, the contractor shall remove the signs.

The Contractor shall assume all responsibilities in maintaining the sign in good legible condition and free from any damage during the entire construction period, and shall make good all such repairs at no cost to the Department.

6.27 PROJECT MAY BE PLACED IN SERVICE

The Department may place parts of the project in service as completed and the contractor shall give proper access to such portions for this purpose. Use of the portions so placed in service by the public shall constitute an acceptance by the Department of such portions of the project involved but shall not constitute total completion nor shall it constitute final acceptance . The Department does not recognize the concept of substantial completion to avoid liquidated damages.

6.28 PRECAUTIONS AND RESTORATION

The contractor shall protect property adjacent to the site of the project from damage and shall restore property damaged by him to the condition it was in prior to the damage. Prior to starting any work, the contractor shall photograph and video the existing conditions of structures, landscaping, etc. that are to remain within the project and any staging areas. Any existing defects, damages, etc. shall be noted and forwarded in writing to the Department of Water. Any damage to existing items noted during or after completion of the project that were not specifically reported in writing prior to starting any work shall be repaired and replaced by the contractor at no cost to the Department.

A. **Existing Utilities and Structures.**

The existence and location of underground utilities and structures as shown on the plans are from the latest available data but are not guaranteed as to their actual existence or location. Other obstacles not shown on the plans may be encountered in the course of the work.

The contractor shall make a personal investigation and inspection of the records of the owners of the utilities, supplemented by actual digging in the field if necessary to determine the actual locations of such utilities with all their branch and service lines whether indicated on the plans or not. The contractor shall furnish the Manager with written evidence that the contractor has contacted all the utility companies.

The contractor shall be held responsible for any damage to and for the maintenance and protection of existing utilities and structures whether shown on the plans or not.

The contractor shall also completely protect all buildings, pavements, gutters, curbs, sidewalks, driveways, walls, fences, pipes, drains, conduits, or other structures of all classes, nature or types from settlement or other damage by installing proper underpinning, sheet piling and bracing and by taking all proper precautions during the period of construction. The contractor shall be responsible for the settlement of any pavement, building or any other structure of any class, nature or type caused by the dewatering of trenches or from any other cause relative to the work of the contractor and he or she shall in all cases be held liable for any damage to any building, structure or property along the line of the work.

Should it become necessary to remove, replace, obstruct, alter or use any existing pipe, hydrant, conduit, pole or other equipment or structure of any kind, the contractor shall make all necessary arrangements with the Department, State, County, corporation, company or any other organization owning or controlling the same relative to the removal, replacement, obstruction, alteration, use, damage and the payment therefor and shall furnish the Contracting Officer with evidence in

writing that satisfactory arrangements have been made, not less than ten (l0) calendar days before removing, replacing, altering, using or obstructing the equipment or structure concerned.

B. **De-watering.**

De-watering shall be accomplished by suitable means; this includes the Contractor obtaining the required NPDES permits for de-watering. The contractor shall repair any and all damages resulting to improvements from such de-watering operation to the satisfaction of the owners of such improvements.

C. **Grass.**

When grassed areas are disturbed, the area shall be carefully graded and replanted with similar grass placed not over 6"x 6" center to center, leaving the area substantially similar to the condition it was in prior to the excavation.

D. **Trees, Plants and Shrubbery.**

All trees shall be carefully protected and kept from contact with excavation or other materials. Where it is necessary to trim trees, plants or shrubs, the contractor shall employ licensed tree trimmers. Branches shall be carefully trimmed so that the trees, plants or shrubs are not damaged. All cut sections of branches shall be painted with tree seal compound. All grass, plants, trees or shrubs removed or destroyed shall be replaced by the contractor to the satisfaction of the Department, corporation, company or any other organization owning or controlling the area where this work is to be done. All costs thereof shall be considered incidental.

E. **Property Marks.**

The contractor shall reference and replace marks, stakes, pipes, monuments of the property line and similar objects which may be disturbed by the contractor while performing the contract.

F. **Environmental Pollution Control.**

The contractor shall comply with the following requirements for pollution control in performing all construction activities. The contractor shall be responsible for conformance to all federal, state and county laws regarding environmental pollution control, including Chapters 37 and 37-A the Public Health Regulations, Department of Health, State of Hawai‘i, as amended, during construction.

1. Erosion and Sediment Control.

   a. Soil protection facilities shall be completed as early as practicable. Sections of bare earth and the length of their exposure to erosion shall be minimized by proper scheduling and limiting the work areas. Temporary berms, cut-off ditches, and other provisions which may be required because of the contractor’s method of operation shall be installed at no cost to the Department. Also, the contractor shall continue such measures until establishing the protective ground cover sufficiently to be an effective erosion deterrent. If material begins to erode into a river, stream or impoundment, the contractor shall act immediately to bring the situation under control.

Surface drainage from cuts and fills within the construction limits and from borrow and waste disposal areas shall, if turbidity producing materials are present, be held in suitable sedimentation ponds or shall be graded to control erosion within acceptable limits.

The contractor shall restrict construction operations in rivers, streams, lakes and reservoirs where channel changes are shown in the contract. Also, the contractor shall restrict construction operations to those areas that are entered for the construction of temporary or permanent structures. The contractor shall clear rivers, streams, lakes and reservoirs promptly of water pipes, fittings, false work, piling, drill cuttings, debris, or other obstructions.

The contractor shall not deposit excavated material in or near rivers, streams, lakes and reservoirs and shall at all times comply with the Federal Clean Water Act, 33 U.S.C. §1251 et seq. and any other applicable laws.

The contractor shall not permit fording of streams with construction equipment. The contractor shall use temporary bridges or other structures wherever stream crossings are necessary. The contractor shall not operate mechanized equipment in streams except to construct channel changes and temporary or permanent structures. The contractor shall avoid or minimize interferences with the movement of migratory fish.

2. Landscape Preservation, Forest and Well Source and Water Facilities Protection.

The contractor shall conform to Federal, State and County laws, statutes, ordinances, rules and regulations, including the Department of Water and Fire Department, State Department of Land & Natural Resources governing the protection of forests, well sources and water sheds, and the performance of work in these areas.

The contractor shall keep the project area in an orderly condition, dispose refuse, and obtain permits for the construction and maintenance of Department's water facilities and appurtenances according to the State Forester requirements.

The contractor shall take precaution and assist in preventing and suppressing forest fires. The contractor shall notify a Forest official of the location and amount of fire.

The contractor shall avoid or minimize disturbance to game preserves, water sheds and operations of the State Forester and Department of Water.

3. Waste Disposal.

a. Care shall be exercised to insure that disposal of waste from construction operations do not create pollution problems.

b. Disposal of any materials, waste, effluent, trash, garbage, oil, grease, chemicals, etc., in areas adjacent to streams shall be subject to the approval of the Manager.

c. No burning of debris and/or waste materials shall be permitted on the project site.

d. No burying of debris and waste materials except for materials which are specifically indicated elsewhere in the bid or proposal document as suitable for backfill shall be permitted on the project site.

e. All unusable debris and waste materials shall be hauled away to an appropriate off-site dump area. During loading operations, debris and waste materials shall be watered down to allay dust.

f. Frequency of cleanup shall coincide with rubbish producing events.

4. Dust Control.
Dust, which could damage crops, orchards, cultivated fields, Department's water facilities, public and private facilities, business establishments and dwellings or cause nuisance to persons, shall be abated and control measures shall be performed at all times, including non-working hours, weekends and holidays. The cost for all dust control sprinkling shall be paid for by the contractor and shall extend for the entire period of construction. The contractor shall be held liable for any damage resulting from dust originating from his or her operations.

5. Waste Water.
Construction operations shall be conducted so as to prevent discharge or accidental spillage of construction water, pollutants, solid waste, debris and other objectionable wastes in surface waters and underground water sources.

6. National Pollutant Discharge Elimination System (NPDES) Permit and other Water Discharge Permits.
The contractor shall review and become familiar with the latest requirements of the NPDES Permit as issued by the State Health Department and all other necessary permits to discharge water into the waterways prior to bidding or proposing on this project. All inquiries for this permit shall be coordinated with the State Health Department.

Immediately after the award of the construction contract, the contractor shall meet with the Contracting Officer to complete the applications for a Department of Health NPDES Permit and for all other permits that may be required to discharge water into waterways. The Contractor shall be the duly authorized representative of the Department of Water as it relates to NPDES requirements.

Notice to proceed will not be delayed due to the contractor's inability to

meet NPDES Permit requirements in a timely manner.

See Exhibit N for Best Management Practices (BMP) inspection report to be used during construction as NPDES permit compliance verification. The BMP report shall be submitted on a weekly basis to the Contracting Officer.

7. Noise Control.

The Department of Health's Chapter ll-46, Hawai'i Administrative Rules, Community Noise Control, establishes statewide noise rules on community noise.

This statewide noise rule complies with Chapter 342F, Hawai'i Revised Statutes, which states that the Director of Health shall present, control and abate noise pollution in the state.

In reference to construction activities, community noise permit applications are required for construction operations which exceed, or are anticipated to exceed noise standards established in the rules. The significance of the community noise permit is to allow for construction operations to exceed the noise standards, while allowing the Department of Health to monitor such activities to assure adequate protection of public health and welfare from adverse noise impacts.

The following activities related to construction operations are exempt from the provisions of the rules:

a. Activities related to the emergency maintenance and repair of state and county highways, parks, and public utilities including but not limited to water, sewer, electric, gas, and telephone systems, provided the noise is confined to only the equipment in use.

b. Backup alarm devices on any vehicle, where such device is required by federal or state occupational safety and health regulations.

c. Construction and remedial activities related to the emergency repair of damages caused by natural disasters, including but not limited to tsunamis and hurricanes.

The contractor shall be responsible to obtain all permits and provide the Manager with a copy. The contractor shall pay for all applicable permit fees.

8. Others

a. Whenever trucks and/or vehicles leave the site and enter surrounding paved streets, the contractor shall prevent any materials from being carried onto the pavements.

b. Trucks hauling debris shall be covered as required by PUC regulations. Truck hauling fine materials shall be covered.

c. No dumping of waste concrete will be permitted at the job site unless otherwise permitted in the Special Provisions.

d. Except for rinsing of the hopper and deliver chute, and for wheel washing where required, concrete trucks shall not be cleaned on the job site.

e. Except in an emergency, such as mechanical breakdown, all vehicle fueling and maintenance shall be done in designated areas. A temporary berm shall be constructed around the area when runoff can cause problems.

f. Spray painting will not be allowed unless done by the "airless spray" process.

9. Payment

The cost of environmental pollution control shall not be considered incidental and shall be included in the price of offer for the various items of work.

G. **Archaeological, Historical, and Burial Site Findings**

Whenever the contractor encounters possible archaeological, historical or burial site findings, the contractor shall immediately suspend the operation and inform the Contracting Officer verbally and follow up with a written letter. The Contracting Officer will notify the proper authorities to evaluate such findings and decide the course of action.

The contractor shall not resume suspended operations without the prior written acceptance of the Manager. Delays resulting from the discovery, investigation, and handling of such findings shall extend the completion date. The Contracting Officer will govern suspensions of work according to subsection 8.3 of these General Provisions. Also, the contractor shall conform to Chapter 6E, H.R.S. relating to Historic Preservation, as amended.

Construction work and equipment shall remain within the right-of-way limits of this project.

The Archaeologist will decide the limits of the site. Also, the Archaeologist will decide, with the Manager, the best means for protecting the site from further disturbances which requires further investigation or salvage as determined by the State Historic Preservation Officer. Protection may include barricades, roping off, temporary fencing or other means.

H. **Protection of Fish and Wildlife**

The contractor shall at all times perform all work and take such steps to prevent any interference or disturbance to fish and wildlife. The Contractor shall be solely liable for any fees or costs associated with failure to take the proper and necessary steps to prevent such interference and agrees to defend, indemnify, and hold harmless the

Department from any actions arising out of the failure to take the proper and necessary steps to prevent such interference to fish and wildlife.

I. **Subcontractors**

Compliance with the provisions of this subsection by the subcontractors will be the responsibility of the contractor.

J. **Health and Safety Compliance**

1. Safety Program. The Contractor shall comply with chapter 396, HRS, relating to the standards of occupational safety and health and all applicable Federal, State and County laws and regulations, including but not limited to section 396-18, HRS, relating to safety and health programs for contractors for Department construction projects where the proposal amount is in excess of $100,000.

2. Responsibility. The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Contracting Officer.

3. Safeguards, Signs. The Contractor shall erect and maintain, as required by existing conditions and performance of the contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

4. No Loading. The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

5. Emergency. In an emergency affecting safety of persons or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. The Contractor shall notify the Contracting Officer in writing of such emergency and remedial steps taken as soon as reasonably feasible. Additional compensation or extension of time claimed by the Contractor on account of an emergency may be considered by the Department.

K. **Non-compliance**

The Contracting Officer will notify the contractor of any non-compliance with the foregoing provisions and the action to be taken. If the contractor fails or refuses to comply promptly, the Contracting Officer, with the approval of the Contracting Officer, may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No extension of time or payment for excess costs or damage shall be made for the time lost due to such stop action.

If no corrective action is taken by the contractor within forty-eight (48) hours after a suspension is ordered by the Contracting Officer, the Department reserves the right to take whatever action is necessary to correct the situation and to deduct all costs incurred by the Department in taking such action from moneys due the contractor.

The Contracting Officer may also suspend any operations which he or she feels are creating pollution problems although they may not be in violation of the above-mentioned requirements. In this instance, the work shall be done by Force Account as described in Modification and Force Account provisions herein. The count of

elapsed working days to be charged against the contract in this situation shall be determined by the Contracting Officer upon recommendation of the Manager.

6.29 MAINTENANCE OF SITE, CONTROL OF DUST, AND FINAL CLEANUP

The contractor shall maintain the site of the project in an orderly and clean condition, and shall at suitable intervals and/or at the direction of the Manager, remove accumulations of rubbish or refuse materials, surplus Waterworks materials, concrete mortar, excavated materials and drill cuttings not required or suitable for backfill. Chlorinated water shall not be deposited in the drainage or sewer system of the County of Kaua‘i. The contractor shall keep the site, inclusive of vehicular and pedestrian traffic routes through the site, free of dirt, and dust by periodic blading, power brooming, watering or other approve means to the satisfaction of the Manager.

Upon completion and before final acceptance of the work performed under the contract, the contractor shall remove excavated materials, drill cuttings, rubbish, surplus or discarded Waterworks materials, false work, forms, temporary structures, field offices, project signs, signs not a part of the project, and his or her equipment and machinery, and shall leave the site and ground occupied by him in connection with the performance of the contract in an orderly and clean condition. Waterworks facilities constructed, altered, or worked in by the contractor in the performance of the contract shall be left “broom clean,” and stains and other blemishes resulting from his or her operations, such as dropped or splattered concrete or mortar and paints, grease or oil, shall be removed from floors, walls, ceiling, windows, Waterworks equipment, pipes, instruments and all other exposed surfaces. All applicable items in section 6.28 shall be completed during final cleanup within the project area. Failure to do so will be grounds for denying final acceptance of the project work and withholding final payment.

6.30 RESPONSIBILITY OF THE CONTRACTOR PRIOR TO ACCEPTANCE

The contractor shall repair, reconstruct, restore and replace the work or any part thereof which is injured or damaged, whatever cause, prior to acceptance of the work by the Manager.

Use by the public without permission of the Department shall not in any way be construed as an acceptance of the work under the contract and shall not in any way relieve the contractor from his or her obligation under the contract. Use of parts of the project completed under the contract by the public with the approval of the Department shall constitute acceptance of such portion of such work by the Department but shall in no way be construed to relieve the Contractor from his or her remaining obligations under the contract and shall in no way be construed as final acceptance of the project as a whole. Use of parts of the project shall not prevent accrual of liquidated damages as laid out in the contract.

Final inspection will be given when all items laid out in the plans, specifications, addendum, punch list and any and all other contract documents are completed. If the Department provides the Contractor with a pre-final punch list of items, final inspection approval will not be given until those items are completed to the satisfaction of the Department. If applicable, failure to attain final approval and/or final acceptance of the

project will result in the accrual of liquidated damages.

All completed facilities that are damaged by the contractor or by his or her negligence to safeguard the facilities from construction activities shall be repaired by the contractor to the satisfaction of the Department or applicable agencies.

In case of suspension in the performance of the work under the contract from any cause whatsoever, the contractor in addition to being responsible for performing the work under the contract shall:

A. Defend indemnify and save the Department and its officers and employees harmless from liability for any injury or damage occurring during the period that the performance of the contract is suspended.

B. Be responsible for all materials and equipment delivered to the site of the project, including materials and equipment for which he or she has received partial payment.

C. Properly store the materials and equipment which have been partially paid for by the Department or which have been furnished by the Department.

D. Remove immediately as directed by the Contracting Officer all surplus materials, equipment and rubbish.

E. Neatly and compactly store, only with the approval of the Contracting Officer, all materials and equipment on the site of projects that are not within public highways or streets.

F. Provide suitable drainage and erect such temporary structures as are necessary to protect the project or parts of the project from damage, and damages to the Department personnel and public.

6.31 FINAL INSPECTION

The Contracting Officer shall make final inspection with representatives of other County or State agencies interested in the contract within seven (7) calendar days after the work performed under the contract is completed and the site of such work has been cleaned as provided in subsections 6.29 and 6.30. The completed project as-built plans shall contain items required in Exhibit M and shall be submitted to the Contracting Officer at the time of final inspection.

6.32 FINAL COMPLETION AND FINAL ACCEPTANCE

Final Completion is defined as when the work is fully completed and in accordance with the Contract Documents, including, without limitation, satisfaction of all punch list items.

In order to obtain a determination of Final Completion, Contractor shall notify the Contracting Officer in writing when the project is complete with no deficiencies and ready for Final Inspection.

Final inspection will be given when all items laid out in the plans, specifications, addendum, punch list and any and all other contract documents are completed. If the Contracting Officer provides the Contractor with a pre-final punch list(s) of items, Final Inspection will not be given until those items are completed to the satisfaction of the Contracting Officer. Final Inspection will be completed in accordance with section 6.31 above.

Final Acceptance is defined as obtaining a designation of Final Completion of the Work and submittal of all necessary documents, including where applicable, but not limited to the following:

1. All written warranties required by the contract.

2. All required "As-Built" drawings.

3. Complete weekly payrolls for both the General and Subcontractors.

4. Certificate of all applicable building permit inspections.

5. Final Report for Specialty Inspections.

6. Certificate of building occupancy as required.

7. Certificate of Soil and Wood Treatments.

8. Certificate of Water System Chlorination.

9. Certificate of Elevator Inspection, Boiler and Pressure Pipe installation.

10. Maintenance Service Contract and two (2) copies of a list of all equipment installed.

11. All operating and maintenance manuals for installed equipment and all associate training to be complete.

12. All other documents required by the Contract.

The Final Acceptance Date shall determine:

1. End of Contract time.

2. Commencement of all warranty periods.

3. Commencement of all maintenance services required in per the Contract.

Failure to attain Final Acceptance of the project will result in the accrual of liquidated damages in accordance with the Contract Documents.

Upon determination of Final Completion, the Contracting Officer will send written notification to the Contractor of the Final Acceptance Date via a Final Inspection of Water Facilities approval letter.

6.33 GUARANTEE OF WORK

A. All work shall be guaranteed by the Contractor against defects resulting from the use of defective or inferior materials, equipment or workmanship for one year or as otherwise noted in the technical specifications from the date of Final Acceptance of the contract.

B. If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, which in the opinion of the OIC is rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contract, the Contractor shall within five (5) consecutive working days and without expense to the County commence to:

1. Place in satisfactory condition in every instance all of such guarantee work and correct all defects therein; and

2. Make good all damages to the building or work or equipment or contents thereof.

C. Whenever a warranty on any product hereinafter specified exceeds one (1) year, this warranty shall become part of this contract thereof. The Contractor shall complete the warranty forms in the name of the County and submit such forms to the manufacturer within such time required to validate the warranty.

6.34 CLOSING CONTRACTS

In order to close a contract, the Contractor shall submit the final payment request and the applicable closing documents by the specified time. In the event that the Contractor should fail to comply with this request, the Contracting Officer may terminate the Contract. The pertinent provisions of **Section 8 REMEDIES** shall be applicable.

SECTION 7 - PAYMENT

7.1 PAYMENT

The contractor shall receive and accept the compensation provided in the contract as full payment for the performance of the contract.

For lump sum contracts, the contract price shall be the result obtained by first reducing the amount designated as the total sum bid or proposal in the award by the amount included therein for allowances and contingencies and adding thereto or deducting therefrom any extra cost or any reduction in cost, respectively, to the Department as a result of supplemental agreements in writing and written orders of the Contracting Officer pursuant to subsection 5.3.

For unit price contracts, the contract price shall be the sum results obtained by multiplying the number of units of such item(s) incorporated in the work under the contract by the unit price therefor. The unit price of an item shall be the amount therefor specified in the bid or proposal, provided that if the number of units of any item needed to perform the required work exceeds or is less than the number specified in the bid or proposal as the Department's estimate of quantity of units required by more than fifteen percent (15%), then a price adjustment shall be made in the unit price for the item by supplemental agreement or, at the option of the Contracting Officer, by first determining the cost of the item on the basis of a Force Account pursuant to subsection 7.4 and dividing the cost by the number of units of the item needed to perform the required work. (Auth: 3-125-10, HAR)

7.2 VARIATIONS IN ESTIMATED QUANTITIES

The quantities of the items in the offer form are approximate only, and the Department reserves the right to increase or decrease any of the quantities as the Contracting Officer shall deem necessary or advisable.

A. **Variations Requiring Adjustments**.
Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than fifteen percent (l5%) above or below the estimated quantity stated in this contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one-hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contracting Officer shall, upon receipt of a timely written request for an extension of time, prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Contracting Officer the findings justify.

B. **Adjustment in Price**.
Any adjustment in contract price made pursuant to the paragraph immediately above shall be determined according to the price adjustment clause of this contract. (Auth: 3-l25-l0, HAR)

7.3 QUANTITIES AND MEASUREMENTS

All quantities of work to be completed under the contract shall be measured by the Contracting Officer. The contractor shall inform the Contracting Officer when measurements are required. These measurements shall be considered correct and final unless the contractor files a written protest demonstrating the existence of an error within ten (10) calendar days after receipt of such measurement data.

Quantities or measurements indicated in the bid or proposal, if any are given for the convenience of the contractor. It will be assumed that the lump sum bid or proposal and unit prices made by the contractor and the price agreed upon by him are based on a thorough knowledge of the existing conditions and the amount and kind of work to be performed. It is expressly understood and agreed by the contractor that quantities and measurements of the work to be done and the materials to be furnished under this contract which have been estimated, as given are approximate. The contractor further agrees and hereby understands that neither the Manager, Contracting Officer, the Department nor any of their representatives is to be held responsible if such estimated quantities and measurements shall not be found to be the same or even close to the actual quantities and measurements required for the work under the contract. The contractor will make no claim for anticipated profits, or for loss of profits because of a difference between the quantities or measurements of the work actually done, or of materials actually delivered, and the estimated quantities or measurements stated in the bid or proposal. If an error, omission or mis-statement shall be discovered in the quantities or measurements stated in the bid or proposal, the same shall not vitiate the contract, or release the contractor or his or her surety or sureties from performing the contract, or affect the price agreed to under the contract, or excuse the contractor from any of the obligations or liabilities under the contract, or entitle him to damages or compensation, except as provided herein.

7.4 FORCE ACCOUNT

In Force Account, the Department will pay for work done according to the following items:

A. **Labor.**

The contractor will receive the wage rate including fringe benefits for actual work engaged by the worker. Fringe benefits are the required amounts by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed. The contractor shall submit the fringe benefits for each class in writing to the Manager for acceptance before the Force Account work begins. The contractor may include foremen when authorized by the Manager.

The Department will pay the contractor an amount equal to thirty-five percent (35%) of the actual labor cost to cover the contractor's and subcontractor's operating expense, indirect and direct overhead and profit.

The Manager will not allow for overtime compensation without the written acceptance of the Manager before performance of that work. For authorized overtime, the Manager will pay one and a half (l-l/2) times the hourly wage rate plus the actual hours of overtime for fringe benefits, and/or as required by collective bargaining agreement.

B. **Insurance and Tax.**

The contractor will receive the projected average rate for the required insurance and taxes including property damage, liability, worker's compensation insurance premiums, State unemployment contributions, Federal unemployment taxes and social security taxes, average tax rate and Medicare taxes. The Manager will add six percent (6%) to the insurance and tax.

The contractor shall submit the projected average rate for taxes and insurance premium for the applicable current year for acceptance by the Manager.

C. **Material.**

The contractor shall receive the actual cost of that material including transportation charges accepted by the Manager, delivered, and incorporated into the work. The Manager will add fifteen percent (15%) to the material cost to cover operating expense, direct overhead, and profit.

D. **Equipment.**

1. Machinery and equipment shall be in good working condition and suitable for the purpose for which the contractor plans to use the machinery and equipment. The Manager may reject any machinery which he or she deems unnecessary, inefficient or inadequate for the work to be performed under Force Account.

2. Individual pieces of equipment or tools having replacement value of two hundred dollars ($200.00) or less are small tools. The Department will not make payments for small tools.

3. Rental Rate.

   a. The Department will pay the rental rates at the per-hour rates by dividing the monthly rate for that machinery or equipment by one hundred seventy-six (176). These rental rates are in the "Rental Rate Blue Book for Construction Equipment Volume I" (Rental Blue Book). The Manager will use the edition for the period doing work. The rental rate includes the estimated operating cost per hour and the regional correction factor. The Manager shall review and accept the equipment for use.

   b. If the Rental Blue Book does not have the particular type of equipment, the Manager and the contractor shall agree on the rates in writing before its use. This includes rental rates for contractor-owned trucks.

   c. For trucks not owned by the contractor, the Hawai'i State Public Utilities Commission shall establish the rental rate. The Department will pay for these as a material item according to Sub-section 7.4.c.

   d. The Department may allow rental rates that are higher than the "Rental Blue Book." The contractor will submit a request for such

higher rates in writing for acceptance before using such equipment.

e. Rental rates include the cost of fuel, oil, lubricant, supplies, attachments, repairs, maintenance, tire wear, depreciation, and storage.

f. Rental rates for idle time.

i. Idle time is the time period in which the machinery and/or equipment designated for a specific Force Account work is not in use for the work. The time period shall be for a working day (8 hours).

ii. The Manager will pay for fifty percent (50%) of the monthly hourly rate excluding the estimated operational cost per hour per working day.

g. Rental rates for stand-by time.

i. Stand-by time is the time period in which the machinery and equipment are standing by for the specific Force Account work day. A work day shall not exceed eight (8) hours (stand-by time plus the operating time) unless the Manager authorizes the overtime.

ii. The Manager will pay at the monthly hourly rate including the estimated operational cost per hour per working day.

h. The Manager will pay for authorized overtime for each hour over the normal eight (8) hours shift work day, legal holidays, Saturdays, and Sundays.

4. The Department will only pay for hours worked. The Department will not pay for equipment due to breakdowns.

5. Less than thirty (30) minutes of operation is half (1/2) hour of operation.

6. The cost of transporting the equipment shall not exceed the rates established by PUC. If such rates are non-existent, the Manager will resolve the rates based on the rates charged by established haulers within the State.

7. Payment.

a. Equipment on the Project Site.

i. The rental time shall be the time the equipment is in operation on the Force Account work. Also, the rental time includes the time required to move the equipment to the location of the Force Account and to return the equipment to the original location or to another location requiring no more

time than to return the equipment to its original location. If the contractor uses the equipment at the site of the Force Account work on other than such Force Account work, the Manager will not pay for moving time. Moving time will be paid at the monthly hourly rate including the estimated operational rate and the applicable regional correctional factor.

ii. When moving the equipment by other than its own power, the Manager will allow loading and transporting costs instead of moving time. If the contractor uses the equipment at the site of the Force Account work on other than such Force Account work, the Manager will not pay for moving time.

Payment for the transporter, if owned by the contractor shall be on the monthly hourly rate including the estimated operational rate and the applicable regional correction factor. Payment for the transporter, if not owned by the contractor, shall be by invoice cost and paid under "material."

The Manager will pay for the equipment at the rate of "idle time."

b. Equipment Not on the Project Site.

i. The Manager shall confirm the location from which the equipment is to move or transport.

ii. If the contractor transports the equipment to the site for the exclusive use of the Force Account work, the Department will pay the cost of mobilizing and transporting the equipment from its original location to the site of the Force Account work. This includes loading and unloading. Also, the Manager will pay the cost of demobilizing and transporting the equipment back to its original location or to another location, whichever cost is less.

iii. For self-propelled equipment, the Department will pay the cost of moving the equipment by its own power from its original location to the site of the Force Account work. Also, the Department will pay the cost of moving the equipment back to its original location or to another location, whichever cost is less.

The Manager will pay for the equipment at the monthly hourly rate including the estimated operational rate and the applicable regional correction factor.

The Manager will pay for the contractor-owned escort for the

self-propelled equipment at the monthly hourly rate including the estimated operational rate and the applicable regional correction factor. The Manager will pay for escort not owned by the contractor under material with an invoice.

iv. If the contractor desires the return of the equipment to another location, the Department will pay the cost of transportation according to the above provisions, provided such payment does not exceed the cost of moving the equipment to the project site.

v. If the contractor uses the equipment on the project site in ways other than on Force Account work, the Department will pay the cost of transporting the equipment to the job site. The contractor shall bear the cost of returning the equipment.

vi. The Manager will begin the rental period at the time the equipment is unloaded at the site of work or at the time specified, whichever is later. The Manager will include each day that the machinery or equipment is at the site of the Force Account work. The rental period will terminate when the Manager orders the contractor to discontinue the use of the machinery or equipment.

vii. If the equipment goes on stand-by because of delays in design, traffic, or other related problems uncontrollable by the contractor, the rental rate and rental period will be at the monthly hourly rate of not more than eight (8) hours per day.

viii. If the equipment goes "idle" from the event of the previous work day, the Manager will make the rental rate and rental period under "idle time" excluding Saturdays, Sundays, and legal holidays until the Manager orders the contractor to discontinue or demobilize the machinery or equipment.

E. **Subcontracting.**
The contractor shall receive an additional amount equal to five percent (5%) of the total cost of that work computed as set forth above when the accepted subcontractors work on a Force Account basis.

F. **Bond.**
The Manager will add a bond allowance of one percent (1%) to the total sum determined in (A) through (E).

G. **State Excise Tax.**
The Manager will add a State Excise Tax (4.166%) to the total sum determined in (A) through (F) as stated in HRS 237.

The contractor shall consider the compensation as determined in (A), (B), (C), (D),

(E), (F), and (G) above to be payment in full for work done on a Force Account basis, including superintendence, overhead, use of non-rental tools and equipment, profit, taxes and subcontracting.

H. **Records.**

The authorized representative of the contractor and the authorized representative of the Manager shall verify and sign the Force Account worksheet each day for work done on a Force Account basis. These records shall be the basis for payment of the Force Account work.

I. **Statements.**

The Manager will not make payment for work done on a Force Account basis until the contractor submits duplicate, itemized statements of the cost of that Force Account work, as authorized by the Manager, and:

1. Title. Contract number, its name or with the subcontractor's name, date, project title, contract change order number, project number, item number and item description.

2. Labor. Name of worker, classification, quantity of workers, daily hours, unit, rate of pay, extension of each worker, the fringe benefits amount payable if there are fringe benefits, and the extension for its operating expense, overhead and profit.

3. Insurance Rate - Average Tax. Cost for property damage, liability, workmen's compensation insurance premiums, average tax rate of State unemployment contributions, Federal unemployment taxes and social security taxes.

4. Materials. Description of the material, quantity of material, prices, extensions, cost of transporting materials, wholesale tax, and the extension for its operating expense, overhead, and profit. Include the cost of transporting materials only if the prices of the materials do not reflect that cost.

5. Equipment. Equipment classification, quantity of equipment, daily hours, unit, rental rate, extension for each unit of machinery and equipment.

6. The contractor shall type or write the description of work done for the day. The contractor shall have an authorized representative sign the two (2) copies. The authorized representative will initial the copies if the signatures are from a copy machine.

   The contractor shall accompany and support the statements by invoices for transportation charges and materials used. If materials used on the Force Account work are not specifically purchased for such work but the contractor took the material from its stock, the Manager may request verification of material payment instead of invoices. The contractor shall submit an affidavit certifying that:

a. The contractor took such materials from his or her stock,

b. The contractor used the quantity claimed used, and

c. The price and transportation claimed represent the actual cost.

7. The Manager may make payments of the Force Account work individually by labor, materials and equipment with the compliance of each item.

7.5 PAYMENTS DURING PERFORMANCE OF WORK

The Contracting Officer, prior to the commencement of work under the contract will submit to the Contractor a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the contract, made out in such form as the Contracting Officer and the contractor may agree upon, and, if required, supported by such evidence as to its correctness as the Contracting Officer, may direct. The schedule, as approved by the Contracting Officer, shall be used as a basis for payment under the contract.

The Contractor shall, not later than the last day of each month during the performance of the contract, make an estimate of the amount of work done in accordance with the contract during that month, deducting sufficient allowance for incomplete or unprotected work or to provide for any contingency for known defects or known damage to said work or for the necessity of performing any part of the work over again to cure such defects or damage.

The Department will retain five percent (5%) of the amount due under the contract to the contractor to insure the proper performance of the contract. After fifty percent (50%) of the contract is completed and progress of work is satisfactory, no additional sums for retainage shall be withheld. However, if progress of work is not satisfactory, the Department may continue to withhold as retainage, sums not exceeding five percent (5%) of the amount due the contractor. The Department will hold the retainage amount until completion, in an acceptable manner of all the work as indicated in the Plans and Specifications. The monthly estimate as ascertained hereinabove, less the retainage and previous payments, will be certified and paid to the contractor. The monthly estimates must be accompanied by an updated full performance schedule per section 6.2 and Hawai‘i Residency Act 103B Compliance Form.

7.6 PAYMENT FOR DELIVERED MATERIALS

Unless the contractor submits a paid invoice for the materials, the Department will not make payment for materials under this subsection.

The Department may pay the contractor:

A. The cost of accepted material to be incorporated in the work, and

B. When the contractor delivers such materials to the project and stored in acceptable storage places near the project.

Also, the Department may pay the contractor:

A. For cost of accepted materials furnished and acceptably stored in a fabricator's yard provided such storage yard is on Kaua‘i and

B. If the contractor furnishes evidence that the materials are for use on the project. The contractor shall not use that material elsewhere.

The Department will not exceed the bid or proposal price of that item for payments authorized in this subsection. The contractor shall not consider payment of the material as final acceptance. The contractor shall be responsible for those materials.

Payment for material does not relieve the contractor of his or her obligations to furnish material acceptable to the Manager and to incorporate properly the material into the project according to the contract.

The Department will not make material payment on living or perishable plant material.

7.7 FINAL INSPECTION - FINAL PAYMENT

After completion of all the work required under the contract and Final Acceptance, as defined in Section 6.32 thereof by the Contracting Officer, the contractor will be paid the balance due in accordance with the Manager’s final estimate of the construction actually performed, provided that final payment will be made only with the approval of the Contracting Officer, and the written consent to the surety or sureties on the contractor’s bond after receipt of a Tax Clearance certificate from the Director of Taxation of the State of Hawai‘i and Internal Revenue Service as provided in Section 103-53, HRS, as amended, and certification from the Department that any and all outstanding bills of the Contractor and subcontractors due and owing to the Department are paid.

7.8 PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS

A. Prompt Payment Clause

1. **Generally**. Any money paid to a contractor shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the procurement agency has withheld payment.

2. **Final payment**. Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

3. **Penalty**. The Contracting Officer or the contractor, as applicable, will be subject to a penalty of one and one-half percent (1.5%) per month upon outstanding amounts due that were not timely paid by the responsible

party under the following conditions. Where a subcontractor has provided evidence to the contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in paragraph (4) herein, and:

a. Has provided to the contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or

b. The following has occurred:

i. A period of ninety (90) days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to contractor and the surety, as provided for in section 103D-324, HRS; and

ii. The subcontractor has provided to the contractor, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two (2) times the amount being retained or withheld by the contractor; any other bond acceptable to the contractor; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the Contracting Officer to the contractor and subsequently, upon receipt from the Contracting Officer, by the contractor to the subcontractor within the applicable time periods specified in paragraph (2) herein and section 103-10, HRS. The penalty may be withheld from future payment due to the contractor, if the contractor was the responsible party. If a contractor has violated paragraph (2) herein three (3) or more times within two (2) years of the first violation, the contractor shall be referred by the Contracting Officer to the contractors license board for action under section 444-17(14), HRS.

4. A properly documented final payment request from a subcontractor, as required by paragraph (3)herein, shall include:

a. Substantiation of the amounts requested;

b. A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:

i. The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

ii. The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

iii. The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

c. The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The Contracting Officer shall return any final payment request that is defective to the contractor within seven (7) days after receipt, with a statement identifying the defect.

5. In the case of a construction contract, a payment request made by a contractor to the Contracting Officer that includes a request for sums that were withheld or retained from a subcontractor and are due to a subcontractor may not be approved under paragraph (3) herein unless the payment request includes :

a. Substantiation of the amounts requested; and

b. A certification by the contractor, to the best of the contractor's knowledge and belief, that:

i. The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

ii. The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

iii. The payment request does not include any amounts that the contractor intends to withhold or retain from a

subcontractor or supplier in accordance with the terms and conditions of their subcontract.

The Contracting Officer shall return any final payment request that is defective to the contractor within seven (7) days after receipt, with a statement identifying the defect.

6. This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under paragraph (3)herein; provided that any such payments withheld shall be withheld by the Contracting Officer. (HAR 3-125-23)

SECTION 8 - REMEDIES

8.1 DISPUTES

A. The resolution of controversies or claims, by mutual agreement, in excess of $50,000 shall be subject to prior written approval of the Manager. (HAR 3-126-27)

B. All controversies between the Department and the contractor not exceeding $50,000 which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Manager in writing, within ninety (90) calendar days after a written request by the contractor for a final decision concerning the controversy. For claims exceeding $50,000, a decision will be issued ninety (90) calendar days after receipt of a written claim; provided that if a decision is not issued within ninety (90) calendar days, the Manager will notify the Contractor of the time within which such decision will be made. This additional time period will depend on the size and complexity of the claim and the adequacy of the Contractor's supporting data and other relevant factors. If the Manager does not issue a written decision within the specified time period, then the contractor may proceed as if an adverse decision has been received.

C. All controversies involving claims asserted by the Department against the contractor which cannot be resolved by mutual agreement shall be the subject of a decision by the Manager.

The Manager shall immediately furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

D. Any such decision shall be final and conclusive, unless fraudulent, or unless the contractor brings an action seeking judicial review of the decision in the Fifth Circuit Court of the State of Hawai‘i within six (6) months from the date of receipt of the decision.

E. The contractor shall comply with any decision of the Manager and proceed diligently with performance of this contract pending final resolution by the Fifth Circuit Court of the State of Hawai‘i of any controversy arising under, or by virtue of, this contract, except where there has been a material breach of contract by the Department; provided that in any event the contractor shall proceed diligently with the performance of the contract where the Manager has made a written determination that continuation of work under the contract is essential to the public health and safety. (Auth: 3-l26-3l, HAR)

F. If a reduction in cost or extra cost to the Department is the result of a written order of the Manager pursuant to subsection 5.3 and/or 5.4 cannot be agreed, the amount of such cost shall be determined on the basis of a Force Account pursuant to subsection 7.4.

8.2 CLAIMS BASED ON ORAL DIRECTIVES

Not more than five (5) days after receipt of the written notice from the contractor that the contractor intends to treat an oral directive as a change order (in accordance with Section 5.3 herein), the Contracting Officer shall issue a change order for the subject work if the Contracting Officer agrees that it constitutes a change. If no change order is issued in the time established, it shall be deemed a rejection of contractor's claim for a change. If the contractor objects to the Contracting Officer refusal to issue a change order, it shall file a written protest with the Manager within thirty days after delivery to the Manager of the contractor's written notice of its intention to treat the oral order as a change. In all cases, the contractor shall proceed with the work. The protest shall be determined as provided in the disputes and claims section of the contract. (Auth: 3-125-16, HAR)

8.3 DEFAULT, DELAY AND TIME EXTENSIONS

A. **Default**.

If the contractor refuses or fails to perform the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof, fails to complete the work within such time, or commits any other substantial breach of this contract, and further fails within seven (7) days after receipt of written notice from the Contracting Officer to commence and continue correction of the refusal or failure with diligence and promptness, the Contracting Officer may, by written notice to the contractor, declare the contractor in breach and terminate the contractor's right to proceed with the work or the part of the work as to which there has been delay or other breach of contract. In the event, the Department may take over the work and perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plants as may be on the site of the work and necessary therefore. Whether or not the contractor's right to proceed with the work is terminated, the contractor and the contractor's sureties shall be liable for any damage to the Department resulting from the contractor's refusal or failure to complete the work within the specified time.

B. **Liquidated damages upon termination**.

If fixed and agreed liquidated damages are provided in the contract, and if the Department so terminates the contractor's right to proceed, the resulting damage will consist of the liquidated damages for the time as may be required for final completion of the work.

C. **Liquidated damages in absence of termination**.

If fixed and agreed, liquidated damages are provided in the contract, and if the Department does not terminate the contractor's right to proceed, the resulting damage will consist of such liquidated damages until the contractor's work is completed and final acceptance given by the Department per section 6.32.

D. **Time extension.**

The contractor's right to proceed shall not be so terminated nor the contractor charged with resulting damage if:

1. The delay in the completion of the work arises from causes beyond the Contractor's control such as: acts of God; acts of the public enemy; acts of the Department, County, State and any other governmental entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the Department; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by the failure on the part of the contractor and/or subcontractor to diligently perform his or her duties as it relates to any governmental agency in a timely manner; provided further, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnishes to the Manager proof that the contractor has diligently made every effort to obtain such materials from all known sources, and further proof that the inability to obtain the materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and

2. The contractor, within ten (10) calendar days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of the Contracting Officer, the findings of fact justify such an extension.

   The following is required in writing when notifying the Contracting Officer of any such delay:

   A. Justification/narrative
   B. Supporting documentation
      i. RFI's, change orders, letters/notices
   C. Desription of impact (list of affected activities)
   D. Time analysis impact to be included.

   The Contracting Officer shall have twenty (20) working days to approve or deny such request.

3. Rainout days are not covered by items 1 and 2 above. All rainout days shall be requested by the contractor to the Contracting Officer on the <u>same</u> calendar day of the rainout. Failure by the contractor to make the request within the day of the rainout shall be grounds for denial of the rainout for that particular calendar day.

The following is required in writing when notifying the Contracting Officer of any such delay:

A. Justification/narrative
B. Desription of impact (list of affected activities)
C. Time analysis impact to be included.

The Contracting Officer shall have twenty (20) working days to approve or deny such request.

E. **Any additional rights and remedies.** The rights and remedies of the Department provided in this claim are in addition to any other rights and remedies provided by law or under this contract.

8.4 SUSPENSION OF WORK

A. The Contracting Officer may by written order, suspend the performance of the work, either in whole or in part for such periods as the Manager may deem necessary for any cause, including but not limited to:

1. Weather or soil conditions considered unsuitable for prosecution of the work;

2. Failure on the part of the contractor to:
   a. Correct conditions unsafe for the general public or for the workers;
   b. Carry out orders given by the Manager;
   c. Perform the work in strict compliance with the provisions of the contract; or
   d. Provide adequate supervision on the jobsite.

3. Whenever a redesign that may affect the work is deemed necessary by the Contracting Officer;

4. Unacceptable noise or dust arising from the construction even if it does not violate any law or regulation; or

5. The convenience of the Department.

B. Suspension of work on some but not all items of work shall be considered a “partial suspension”. Suspension of work on all items shall be considered “total suspension”. The period of suspension shall be computed from the date set out in the written order for work to cease until the date of the order for work to resume.

C. In the event that the contractor is ordered by the Contracting Officer in writing as provided herein to suspend all work under the contract in accordance with the above paragraphs 3, 4, or 5, the contractor may be reimbursed for actual money expended towards the project during the period of suspension. No allowance will be made for anticipated profits.

D. If the performance of all or any part of the work is, suspended, for reasons beyond the control of the contractor, an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such suspension, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension:

1. To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor; or

2. For which an adjustment is provided for or excluded under any other provisions of the contract.

E. Claims for adjustment. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the provisions on changes and claims for adjustment. Claims for the compensation shall be filed in writing with the Manager within thirty days after the date of the order to resume work or the claims will not be considered. Together with the claim, the contractor shall submit substantiating documents covering the entire amount shown on the claim. The Manager shall take the claim under consideration and may make such investigations as are deemed necessary. The Contracting Officer shall be the sole judge as to the equitability of the claim and the Contracting Officer's decision shall be final.

F. No adjustment. No provision of this subsection shall entitle the contractor to any adjustments for delays due to failure of surety, for suspensions made at the request of the contractor, for any delay required under the contract, for suspensions, either partial or whole, made by the Manager under the provisions in subparagraph A2. (Auth: 3-125-7, HAR)

8.5 TERMINATION OF CONTRACT - WORK MAY BE TAKEN OVER BY DEPARTMENT

The Department may terminate the contract, or require the work therein to be completed by the surety or sureties under the contractor’s bond or take over such work as hereinafter provided without terminating the contract, if the contractor:

A. fails to begin work under the contract at the time required,

B. is unnecessarily delaying the performance of the contract or any part thereof,

C. is failing to perform the contract with sufficient or adequate workmen, equipment or materials or is not making sufficient progress to ensure the completion of the contract within the time specified,

D. fails to perform the contract in accordance with directions of the Manager,

E. discontinues performance of the contract,

F. fails to re-commence performance of the contract within a reasonable time after service of a written order to do so if the performance had been suspended,

G. becomes insolvent or is declared bankrupt,

H. commits any act of bankruptcy or insolvency,

I. allows any final judgment to stand against him unsatisfied for a period of ten (10) days,

J. makes an assignment for the benefit of creditors,

K. fails to pay for all labor, tools, materials, and equipment,

L. has been or is paying wages to any laborer or mechanic employed on the job site at a rate below the minimum rate specified in the contract,

M. has failed to pay full compensation for overtime work by any such laborer or mechanic,

N. has abandoned the performance of the contract,

O. has made unjustifiable and substantive changes from the condition set forth in his or her original itemized bid or proposal,

P. or violates or fails to perform the contract in accordance with the terms, covenants, conditions, provisions and intent thereof.

Whenever the Contracting Officer is not satisfied with the performance of the contract the Contracting Officer, with the approval of the Contracting Officer, may make specified orders as to the progress or conduct of such work, giving the contractor a definite period within which to comply with such orders; or whenever the contractor shall be in default in any particular requirement, the Contracting Officer, with the approval of the Contracting Officer Manager, shall serve the contractor, or its authorized representatives, with a written notice to remedy said default or any part thereof within fourteen (14) calendar days after notice thereof, serving copies of such notice to the surety or sureties of the contractor, as the case may be. If, after the expiration of the time of such notice, the contractor fails to comply with the notice, or the default continues, the Contracting Officer, with the approval of the Contracting Officer Manager, may order all payment under the contract to cease and the work to be discontinued. Upon such order the contractor shall discontinue the work. Failure on the part of the Department to order a discontinuance of the work or payment for the same shall in no event be construed as an acceptance of the work, nor as a waiver of any failure or any default. (Auth: 3-125-16, HAR [generally]).

Immediately upon or after ordering the contractor to discontinue the work, the Contracting Officer Manager may require the completion of the contract by the surety or sureties upon the contractor's bond, or (without prejudice to the Department to rely upon said bond), the Department's contract to a second contractor or contractors, or may direct DOW employees to enter upon the work and to use such materials, tools and equipment as he or she may find

upon the work and to procure labor, additional tools, materials and equipment for the completion of the work, and to complete said work in such a manner as he or she may deem advisable, and in such event the cost or expenses of completing the work and the delay resulting therefrom shall be a charge against the contractor and/or surety or sureties.

8.6 TERMINATION FOR CONVENIENCE

A. Terminations. In addition to any other reason specified in subsection 8.5 above, the Contracting Officer may, with approval of the Manager, when the interests of the Department so require, terminate this contract in whole or in part, for the convenience of the Department. The Contracting Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

B. Contractor's obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the Department's approval. The Contracting Officer, upon recommendation by the Manager, may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the Department. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

C. Right to construction and goods. The Contracting Officer may, upon recommendation by the Manager, require the contractor to transfer title and deliver to the Department in the manner and to the extent directed by the Contracting Officer:

1. Any completed constructions; and
2. The partially completed construction, books, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "construction material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The contractor shall protect and preserve property in the possession of the contractor in which the Department has an interest. If the Contracting Officer does not exercise this right, the contractor shall use best efforts to sell the construction, goods, and construction materials in accordance with the standards of section 490:2-706, HRS. This in no way implies that the Department has breached the contract by exercise of the termination for convenience clause.

D. Compensation.

1. The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by subchapter 15, chapter 3-122, HAR,

bearing on such claim. If the contractor fails to file a termination claim within one (1) year from the effective date of termination, the Contracting Officer, upon recommendation of the Manager, may pay the contractor, if at all, an amount set in accordance with subparagraph 8.6D3(b) of this subsection.

2. The Contracting Officer, upon recommendation of the Manager, and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the Department, the proceeds of any sales of construction, goods, and construction materials under subparagraph 8.6D3(c), and the contract price of the work not terminated.

3. Absent complete agreement under paragraph 8.6D2 of this subsection, the Contracting Officer, upon notice from the Manager, shall pay the contractor the following amounts, provided payments under paragraph 8.6D2 of this subsection shall not duplicate payments under this paragraph the total (without duplication of any items) of:

   a. The cost of all contract work performed prior to the effective date of the notice of termination work plus a five percent (5%) markup on actual direct costs on the portion of the work (the markup shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of the work; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

   b. Subject to the prior approval of the Contracting Officer, the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to "contractor's obligations" provisions of this contract. Subcontractors shall be entitled to a markup of no more than ten percent (10%) on direct costs incurred to the date of termination.

      These costs must not include costs paid in accordance with clause 8.6D3a.;

   c. The total sum to be paid the contractor under this paragraph shall not exceed the total contract price reduced by the amount of any sales of construction, goods, and construction materials under subsection 8.3C, and the contract price of work not terminated.

4. Cost claimed, agreed to, or established under paragraphs 8.3D2 and 8.3D3 of this subsection shall be in accordance with chapter 3-123, HAR

8.7 COSTS OF COMPLETING CONTRACT

The contractor and/or his or her surety or sureties shall pay the Department for all costs incurred to complete the work under the contract if the Department takes the work out of the hands of the contractor pursuant to the provisions of Subsection 8.5, and for damages for any delay in the performance of the contract.

8.8 DAMAGES FOR DELAY

A. **Liquidated Damages.**
The amount of damage to the Department as a result of failure to complete the work under the contract within the time fixed or any extension thereof, exclusive of overhead expenses, being certain but difficult, if not impossible, to ascertain, the contractor agrees to pay the sum stated in the contract as liquidated damages, and not by way of penalty, for every day of delay until the work under the contract is completed and accepted, or a reasonable time has expired for completion and acceptance of the portion of the contract remaining to be performed if the Department takes the work under the contract out of the hands of the contractor.

8.9 DAMAGES FOR EXTRA EXPENSES IMPOSED ON DEPARTMENT

The contractor shall pay the Department for all the expenses incurred in re-doing any of the Department's obligations under the contract due to any actions or conduct of the contractor, including the replacing of marks or stakes set by the Manager.

8.10 DEFECTIVE WORK

Any defective work, workmanship or materials that may be discovered in the performance of the contract before its acceptance or within one (1) year thereafter as provided in the performance bond, shall be replaced by the contractor with work and materials that conform to the contract at no cost or expense to the Department. The fact that the Manager may have overlooked defective work during the performance of the contract shall not constitute the acceptance of the same. No payment, whether partial or final, shall be construed to be an acceptance of any defective work, workmanship or materials in the work performed under the contract.

The Contracting Officer may at any time, stop the performance of the contract or any portion thereof which is not being done in accordance with a contract by written order. Such order shall not in any way relieve the contractor from performing the contract and shall not in any way terminate, cancel or abrogate the contract or any part thereof; and the Department shall not in any way be responsible for the delay due to stopping the performance of the contract or any portion thereof as aforesaid.

The Contractor shall provide a warranty on the project work for one year after final inspection date as reflected in the final inspection letter.

8.11 UNAUTHORIZED PERFORMANCE

Performance of any work beyond the lines and grades shown on the plans or established by

the Contracting Officer or performance of any extra work without written order will be considered as unauthorized and will not be paid for. The Contracting Officer may require the removal of such work by service of a written order upon the contractor. If the contractor fails to comply promptly with such order, the Department shall remove such work and the contractor shall pay the Department for all expenses incurred in the removal of such work.

8.12 AUTHORITY TO WITHHOLD MONEY DUE OR PAYABLE

The Department may withhold such amounts from the money due or to become payable under the contract to the contractor, or any assignee under subsection 5.6, as may be necessary to:

A. Protect the Department from any liability resulting from the work performed under this contract;

B. Satisfy any obligation of the contractor or its subcontractors to the Department, including obligations not relating to the contract, and the obligation of the contractor to the workmen, subcontractors, and materialmen who have performed labor or furnished material and equipment under the contract as provided by law; and

C. Repair, restore, or compensate for, any real or personal property located within the project site or in the vicinity thereof which has been damaged as a result of the fault or negligence of the contractor while performing the work under this contract; provided that the estimated amount of damages for each separate property shall not be in excess of five hundred dollars ($500.00).

The Department may make such payments from such amounts withheld as may be necessary to cause the repair or restoration of the damaged properties or to compensate therefor, to discharge such obligation as provided under paragraph B above, and to protect the Department from any liability resulting from the work performed under this contract; provided, however, before making any payment for damages to property prescribed in paragraph C above, the Department through the Manager shall request the contractor in writing to undertake the repair or restoration of the damaged property or make compensation therefor. If the contractor fails or refuses to make such repair, restoration or compensation to the satisfaction of the Manager within thirty (30) calendar days after such notification, the Department may make the necessary payments.

8.13 SPECIAL EMERGENCY TERMINATION

In the event of a finding by the Manager and approved by the Contracting Officer that a national emergency exists which creates a shortage of materials, labor, or equipment and that such emergency will probably continue to exist for an indefinite length of time, or that funds are no longer available to the Department by reason of which the contractor will be unable to perform the work under the contract, the Department may cancel all remaining work required to be performed under the contract by written order.

Upon such cancellation, the Department shall pay the contractor the amount hereinafter provided. For lump sum contracts, an agreed upon price for the performance of the contract up to the time of cancellation, or at the option of the Manager, a price for such performance

determined on the basis of a Force Account pursuant to subsection 7.4. For unit price contracts, the sum of the results obtained by multiplying the number of units of each item incorporated into the parts of the project performed under the contract up to the time of cancellation by the unit price therefor. For both lump sum and unit price contracts, the contractor shall also be paid for such expenditures as in the judgment of the Manager are not otherwise compensated for and are require in the preparation and moving of equipment and materials to the site of the project, the intent being that an equitable settlement shall be made with the contractor. No claim for loss of anticipated profits, however, shall be made or considered.

Materials obtained by the contractor for the project, that have been inspected, tested, and accepted by the Manager, and that are not incorporated in the work under the contract, and which have been properly stored and maintained, will be purchased from the contractor at actual cost as shown by receipted bills or other proper evidence of actual cost at such points of delivery as may be designated by the Manager.

8.14 REMEDIES NOT EXCLUSIVE

The express provision herein of certain measures which may be exercised by the Department for its protection shall not be construed to preclude the Department from exercising any other or further legal or equitable right to protect its interest.

8.15 REMEDIES

Any dispute arising under or out of this solicitation or contract is subject to chapter 3-126, HAR. (Auth: 3-125-24, HAR)

APPROVED:

Manager & Chief Engineer	May 19, 2016 Date

EXHIBIT A – SURETY [BID][PROPOSAL] BOND

SURETY [BID] [PROPOSAL] BOND
(11/15/11)

Bond No._____

KNOW TO ALL BY THESE PRESENTS:

That we,

_____,
(full name or legal title of offeror)

as Offeror, hereinafter called Principal, and

_____
(name of bonding company)

as Surety, hereinafter called Surety, a corporation authorized to transact business as a Surety in the State of Hawai‘i, are held and firmly bound unto the Department of Water, County of Kaua‘i, as Owner, hereinafter called the Owner, in the penal sum of

_____
_____
(required amount of bid/proposal security)

Dollars ($_____), lawful money of the United States of America, for the payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS:

The Principal has submitted an offer for _____
_____
(project by number and brief description)

NOW, THEREFORE:

The condition of this obligation is such that if the Department of Water, County of Kaua‘i, shall reject said offer, or in the alternate, accept the offer of the Principal and the Principal shall enter into a Contract with the Department of Water, County of Kaua‘i, in accordance with the terms of such offer, and give such bond or bonds as may be specified in the solicitation or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof as specified in the solicitation then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed this _____day of_____, 20____.

(Seal)

_____
Name of Principal (Offeror)

_____
Signature

_____
Title
(Seal)

_____
Name of Surety

_____
Signature

_____
Title

EXHIBIT B – PERFORMANCE BOND (SURETY)

PERFORMANCE BOND (SURETY)
(11/15/11)

KNOW TO ALL BY THESE PRESENTS:

That

_____,
(full legal name and street address of Contractor)

as Contractor, hereinafter called the Principal, and

_____,
(name and street address of bonding company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a Surety in the State of Hawai'i, are held and firmly bound unto the Department of Water, County of Kaua'i, its successors and assigns, hereinafter called Obligee, in the amount of

_____
_____

Dollars ($_____), 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 signed a Contract with Obligee _____, for the following project: _____
_____

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 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 waives 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 and subject to the limitation of the penal sum of this bond, Surety shall remedy the Default, or take over the work to be performed under the Contract and complete such work, or pay moneys to the Obligee in satisfaction of the surety's performance obligation on this bond.

Signed this _____day of_____, 20____.

(Seal)

_____
Name of Principal (Contractor)

*_____
Signature

_____
Title

(Seal)

_____
Name of Surety

*_____
Signature

_____
Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

Not Applicable, Refer to Exhibit J

EXHIBIT C – PERFORMANCE BOND

PERFORMANCE BOND
(11/15/11)

KNOW TO ALL BY THESE PRESENTS:

That we,

_____
(full legal name and street address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto the Department of Water, County of Kaua'i, its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of

_____
(dollar amount of contract)

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
_____
_____
Description_____
_____

☐ 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 National 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 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 _____;

Not Applicable
Refer to Exhibit J

☐ Certified Check No. _____, dated_____, accepted by 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 _____;

WHEREAS:

The Contractor has by written agreement dated _____ entered into a Contract with Obligee for the following Project:

_____

_____

_____

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, 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 of 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 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 or 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 _____, 20____.

(Seal)

_____
Name of Contractor

*_____
Signature

_____
Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

PERFORMANCE BOND (EXHIBIT C)

EXHIBIT D – LABOR AND MATERIAL PAYMENT BOND (SURETY)

LABOR AND MATERIAL PAYMENT BOND (SURETY)

(11/15/11)

KNOW TO ALL BY THESE PRESENTS:

That_____,

(full legal name and street address of Contractor)

as Contractor, hereinafter called Principal, and

_____

(name and street address of bonding company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a Surety in the State of Hawai'i, are held and firmly bound unto the Department of Water, County of Kauai, its successors and assigns, hereinafter called Obligee, in the amount of _____ Dollars ($_____), 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 signed a Contract with Obligee on _____ for the following project:_____, 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 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.

Every Claimant who has not been paid amounts due for labor and materials furnished for work provided in the Contract may institute an action against he or she Principal and its Surety on this bond at the time and in the manner prescribed in Section 103D-324, Hawai'i Revised Statutes, and have the rights and claims adjudicated in the action, and judgment rendered thereon; subject to the Obligee's priority on this bond. If the full amount of the liability of the Surety on this 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_____.

(Seal)

_____

Name of Principal (Contractor)

*_____

Signature

_____

Title

(Seal)

_____

Name of Surety

*_____

Signature

_____

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

LABOR AND MATERIAL PAYMENT BOND (SURETY) (EXHIBIT D)

Not Applicable, Refer to Exhibit J

EXHIBIT E – LABOR AND MATERIAL PAYMENT BOND

LABOR AND MATERIAL PAYMENT BOND
(11/15/11)

KNOW TO ALL BY THESE PRESENTS:

That we,

_____,
(full legal name and street address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto the Department of Water, County of Kaua'i, its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of

_____
(dollar amount of contract)

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 and made payable at sight _____
_____
Description _____
_____

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

Not Applicable, Refer to Exhibit J

☐ 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_____, accepted by 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 _____;

WHEREAS:

The Contractor has by written agreement dated _____ entered into a Contract with Obligee for the following Project:

_____
_____
_____
_____

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 brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, is any, shall be forfeited to the Obligee, its successor 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 _____, 20____.

(Seal)

_____
Name of Contractor

*_____
Signature

_____
Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

LABOR AND MATERIAL PAYMENT BOND (EXHIBIT E)

EXHIBIT F – PERFORMANCE BOND (SURETY) FOR SUPPLEMENTAL AGREEMENT FOR GOODS AND SERVICES

(11/15/11)

KNOW TO ALL BY THESE PRESENTS:

That

_____,

(full legal name and street address of Contractor)

as Contractor, hereinafter called Principal, and

_____

(name and street address of bonding company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a Surety in the State of Hawai'i, are held and firmly bound unto the Department of Water, County of Maui, its successors and assigns, hereinafter called Obligee, in the amount of _____ Dollars ($_____), 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_____, and entered into Supplemental Agreement No. _____, dated _____ for the period hereinafter collectively 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 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 _____ day of _____, 20_____.

(Seal)

_____

Name of Principal (Contractor)

*

_____

Signature

_____

Title

(Seal)

_____

Name of Surety

*

_____

Signature

_____

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

Not Applicable, Refer to Exhibit J

EXHIBIT G– PERFORMANCE BOND FOR SUPPLEMENTAL AGREEMENT FOR GOODS AND SERVICES

(11/15/11)

KNOW TO ALL BY THESE PRESENTS:

That we, _____,

(full legal name and street address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto the Department of Water, County of Kaua'i, its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of

_____

(dollar amount of contract)

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 payable at sight to

_____

_____

Description _____

_____

☐ 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 National 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 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 _____;

Not Applicable, Refer to Exhibit J

☐ Certified Check No. _____, dated_____, accepted by 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 _____;

WHEREAS:

The Contractor has by written agreement dated _____ entered into a Contract with Obligee for the following Project:

_____

_____

_____

_____ and entered into Supplemental Agreement No._____, dated _____ for the period _____; hereinafter collectively 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, 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 specified in the said Contract as liquidated damages, is any, shall be forfeited to the Obligee, its successor 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 and sealed this _____ day of _____, 20____.

(Seal)

_____
Name of Contractor

*_____
Signature

_____
Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

PERFORMANCE BOND
FOR SUPPLEMENTAL AGREEMENT FOR GOODS AND SERVICES (EXHIBIT G)

EXHIBIT H – CONTRACTOR ACKNOWLEDGMENT

[FOR USE WITH PERFORMANCE AND PAYMENT BONDS]
(11/15/11)

CONTRACTOR ACKNOWLEDGMENT:

STATE OF _____)
): SS
_____COUNTY OF _____)

On this _____ day of _____, 20____, before me appeared _____ and _____ to me known to be the person(s) described in and, who, being duly sworn, did say that he/she/they is/are _____ and _____ of _____ the Contractor named in the foregoing instrument, and that he/she/they is/are authorized to sign said instrument in behalf of the Contractor, and acknowledges that he/she/they executed said instrument as the free act and deed of the Contractor.

_____ (Notary Seal)
Notary Public
State of _____
My commission expires _____

Not Applicable, Refer to Exhibit J

CONTRACTOR ACKNOWLEDGMENT (EXHIBIT H)

EXHIBIT I – SURETY ACKNOWLEDGMENT

[FOR USE WITH SURETY PERRFORMANCE AND PAYMENT BONDS]
(11/15/11)

SURETY ACKNOWLEDGMENT:

STATE OF _____)
): SS
_____COUNTY OF _____)

On this _____ day of _____, 20_____, before me personally came _____ to me known to be the person described in and who, being by me, did depose and say that _____ resides in _____; that _____ is the Attorney-in-Fact of _____ the corporation described and which executed the attached instrument; that _____ knows corporate seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; and that it was so affixed by order of the Board of Directors of the said corporation; and that _____ signed _____ name thereto by like order.

_____ (Notary Seal)
Notary Public

State of _____

My commission expires:_____

Not Applicable, Refer to Exhibit J

EXHIBIT J – SAMPLE CONTRACT

SAMPLE CONTRACT
(05/19/16)

CONTRACT NO._____

CONSTRUCTION CONTRACT

THIS CONTRACT, effective as of the date of the last signatory, 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 _____, a _____ _____, under the laws of the State of_____, whose principle mailing address is _____ _____(hereinafter the "CONTRACTOR");

THIS CONTRACT for construction services has been procured under:

- ☐ Hawai'i Revised Statute (H.R.S.) §103D-302 (Competitive Sealed Bidding)
- ☐ H.R.S. §103D-303 (Competitive Sealed Proposals)
- ☐ H.R.S. §103D-305 (Small Purchase)
- ☐ H.R.S. §103D-307 (Emergency Procurement #_____)

W I T N E S S E T H:

THAT, for and 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:

(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. _____ and all Addenda thereto;

☐ Request for Proposals PROJECT No. _____ and all Addenda thereto;

☐ Bid/Proposal/Best and Final Offer;

☐ Method of Award;

☐ 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 _____ 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 this entire Contract, the Board hereby agrees to pay the Contractor the sum of

_____

DOLLARS ($_____), federal, state and local taxes included, in lawful money of the United States of America; provided that 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.

4. **Liquidated Damages:** THE CONTRACTOR UNDERSTANDS AND AGREES that time is an essential factor of this Contract; 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; and that as liquidated damages for any such delays, the sum of

_____

DOLLARS ($_____), for each and every calendar day which said performance remains uncompleted will be charged the Contractor and deducted from the Contract price; and it is expressly stipulated by and between the Contractor and 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 penalty.

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 primary basis and at its sole expense, at all times during the life of the Contract insurance coverages, limit, including endorsements as described in **Exhibit B**, 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.

7. **Officer in Charge:** The Officer in Charge of this PROJECT is:

   _____

   _____

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.

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. Further, facsimile signatures and notarizations are permissible provided original signatures and notarizations bearing the notary's seal are later provided to the party in receipt of the facsimile signature and notarizations.

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.

THE PARTIES FURTHER AGREE that:

- Concurrently with its execution of this Contract, Contractor shall submit to the Officer-in-Charge:
  - a tax clearance pursuant to Haw. Rev. Stat., as amended (hereinafter "H.R.S." §103-53;
  - a Certificate of Compliance pursuant to Hawai'i Administrative Rules (hereinafter "H.A.R.") §3-122-112; and

- a Certificate of Good Standing pursuant to H.A.R. §3-122-112.

Further, as a condition of final payment on this Contract, Contactor shall submit to the Officer-in-Charge:

- a tax clearance to pursuant to H.R.S. §103-53; and
- a Certificate of Compliance pursuant to H.A.R. §3-122-112.

All clearances and certificates submitted pursuant to the foregoing statutory requirements shall be valid when the Contract is executed by all parties hereto and when final payment is made.

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.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this instrument to be executed as of the _____day of _____, _____.

APPROVED:

_____

APPROVED AS TO FORM
AND LEGALITY:

_____

BOARD OF WATER SUPPLY
COUNTY OF KAUA'I

By _____

CONTRACTOR

By _____
Its

By _____
Its

STATE OF HAWAI‘I)
) ss.
COUNTY OF KAUA‘I)

On this _____ day of _____, _____, before me appeared _____ to me personally known, who being by me was duly sworn, and that said officer is the Chairperson of the BOARD OF WATER SUPPLY, COUNTY OF KAUA‘I, and that the foregoing instrument was signed on behalf of said Board with authority of said Board, and that said officer acknowledged the instrument to be the free act and deed of said Board, and that said Board has no corporate seal.

_____
Notary Public, State of Hawai‘i

Name of Notary: _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Name of Notary: _____ Fifth Circuit

Doc. Description: _____

_____

_____

_____
Notary Signature Date

STATE OF HAWAI‘I)
) 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_____ and that said instrument was signed and sealed on behalf of said _____; and said officer acknowledged said instrument to be the free act and deed of said _____.

_____
Notary Public, State of Hawai‘i

Name of Notary: _____

My commission expires: _____

(PLEASE INSERT YOUR APPLICABLE NOTARY SECTION)

EXHIBIT A1
PERFORMANCE BOND (SURETY)

KNOW ALL MEN BY THESE PRESENTS:

That_____,

a_____ corporation, whose principle mailing address is

_____,

as Principal, (hereinafter referred to as "Principal"), and_____,

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

_____

DOLLARS ($_____) 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 _____ (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 stipulated 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_____,_____.

_____
Principal Seal

By _____

Its By _____

Its _____

_____
Surety Seal

By _____

Its By _____

Its _____

ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

SURETY PERFORMANCE BOND

STATE OF HAWAI‘I)
) 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 Hawai‘i

Name of Notary: _____

My commission expires: _____

(SURETY PLEASE INSERT YOUR APPLICABLE NOTARY SECTION.)

EXHIBIT A1
PERFORMANCE BOND

KNOW TO ALL BY THESE PRESENTS:

That we,_____, 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

_____
Description
_____;

☐ 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 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_____,

accepted by 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 _____;

WHEREAS:

The Contractor has by written agreement dated_____entered into a contract with Obligee for the following PROJECT:

_____

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, 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 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

STATE OF HAWAI‘I)
) 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 Hawai‘i

Name of Notary: _____

My commission expires: _____

ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC.

EXHIBIT A2
LABOR AND MATERIAL PAYMENT BOND (SURETY)

KNOW ALL MEN BY THESE PRESENTS:

That _____, a_____ corporation, whose principle mailing address is_____, as Principal (hereinafter referred to as "Principal"), and_____, 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

_____

DOLLARS ($_____), 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 _____ (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; 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_____,_____.

_____

Principal Seal

By _____

Its By _____

Its _____

_____

Surety Seal

By _____

Its By _____

Its _____

ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC.

SURETY LABOR AND MATERIAL
PAYMENT BOND

STATE OF HAWAI‘I)
) 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 Hawai‘i

Name of Notary: _____

My commission expires: _____

(SURETY PLEASE INSERT YOUR APPLICABLE NOTARY SECTION)

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

KNOW TO ALL BY THESE PRESENTS:

That we, _____, 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

_____

Description

_____;

☐ 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 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_____,

accepted by 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 _____;

WHEREAS:

The Contractor has by written agreement dated_____entered into a contract with Obligee for the following PROJECT:

_____

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 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

STATE OF HAWAI‘I)
) 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 Hawai‘i
Name of Notary: _____
My commission expires: _____

(ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC)

EXHIBIT B
INSURANCE REQUIREMENTS
BOARD OF WATER SUPPLY COUNTY OF KAUA'I

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 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 Department of Water, County of Kaua'i's (hereinafter "DOW") 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 of Water Supply, County of Kaua'i (hereinafter "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.
Subcontractors. If applicable, Contractor shall include all subcontractors as additional insureds under its policies and shall retain the records of the separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the same requirements as the Contractor as stated herein.

☐ APPLICABLE ☐ NOT APPLICABLE

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 DOW. At the option of the DOW, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Board; or the Contractor shall provide a financial guarantee (audited financial statement) satisfactory to the Department guaranteeing payment of losses and related investigations, claim administration and defense expenses.
When a self-insured retention (SIR) or deductible exceeds $50,000, the Department reserves the right, but not the obligation, to review and request a copy of the Contractor's most recent annual report or audited financial statement.

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 Department 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 Department by providing written notice.

The Certificate Holder address shall read:

Board of Water Supply, County of Kaua'i
4398 Pua Loke Street, Lihue, HI 96766
Attention: (_____Name of Contact Person)
Contract No._____
Project Title_____

Concurrent with the execution the contract the Contractor shall furnish the Department with original certificates and endorsements effecting required coverage(s). The Department 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 the 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. Department 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 Department 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 Manager and Chief Engineer, 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 Hawaii and rated A-VII by A.M. Best:

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

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

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

Contractor must provide evidence the Board is an Additional Insured for Products/Completed Operations coverage for both ongoing operations and after substantial completion of the work. This coverage may be provided by the ISO form CG 2010 (11 85) or an equivalent policy form. Coverage provided by a non-equivalent CGL form shall be specifically endorsed providing both the course of construction and products/completed operations. ISO CG 2010 (04 13) and ISO form CG 2037 (04 13) or an equivalent form is required from the Contractor. The Contractor and subcontractor(s), if any, shall provide evidence to the Department on an annual basis the products/completed operation coverage is in effect for two (2) years after substantial completion of the project.

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

Bodily Injury
$1,000,000 per person
$1,000,000 per occurrence
Property Damage
$1,000,000 per accident

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

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

Coverage B: Employer's Liability:
Bodily Injury from each accident $1,000,000
Bodily Injury from disease $1,000,000
Bodily Injury from disease aggregate$1,000,000

☐ **Builder's Risk**. The Contractor shall procure and maintain an Inland Marine Builder's Risk policy providing coverage to protect the interests of the 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 Department 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 Department. 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 Department 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 Department. 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."

CONTRACT **(**EXHIBIT J)

EXHIBIT K – CONTRACT CHANGE ORDER

CONTRACT CHANGE ORDER
DEPARTMENT OF WATER
COUNTY OF KAUA'I

Project	Order No.
	Date

Project No.	Change Requested By:	Contract No.

To _____, Contractor:

Estimate of Quantities and Costs:

Item No.	Item	Quantity	Unit	Contract Unit Price		Agreed Unit Price		$ Amount (+ or -)	

CONTRACT PRICE	CONTRACT CERTIFICATION	CONTRACT TIME
___ No Change ___ Increased by $_____ ___ Decreased by $_____	Amount Certified $_____ New Contract Price $_____	___ No Change ___ Increased by _____Calendar days ___ Decreased by _____ Calendar days
Submitted by:	Approved:	Accepted:
Project Engineer Date	Fiscal Officer Date	
ED&C Division Head Date	Mgr & Chief Engineer Date	

This Change Order No. __ is issued pursuant to the Contract and, upon execution, shall become incorporated in the Contract. The amount set forth in this Change Order comprises the total compensation due the Contractor, all Subcontractors, and all Suppliers, for any work performed under this Change Order, including impact on unchanged work. The signing of this Change Order indicates that the Change Order constitutes full mutual accord and satisfaction for the contract including any change and that the charge under this Change Order constitutes the total equitable adjustment owed the Contractor, all Subcontractors, and all Suppliers under this contract. Any future dispute regarding time required for performance or contract price as related to this Change Order is subject to the terms of the General Provisions for Construction Contracts of the Department of Water, County of Kaua'i as amended and Hawai'i Revised Statutes and Hawai'i Administrative Rules.

Accepted:

Contractor Title Date

CONTRACT CHANGE ORDER (EXHIBIT K)

EXHIBIT L – CONTRACT MODIFICATION FORM

CONTRACT MODIFICATION FORM
(11/15/11)

DEPARTMENT OF WATER
COUNTY OF KAUA'I
STATE OF HAWAI'I

MODIFICATION ORDER NO._____ Date_____

Contractor _____ Contract No._____

Contract Title _____

A. MODIFICATIONS

The following modifications are to be performed in accordance with all contract stipulations (specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions by mutual action of the parties to the contract.)

_____
_____
_____
_____

B. CONTRACTOR''S QUOTATION

The modifications described in "A" above will be performed at a contract price _____ increase _____decrease of $_____. Contractor will not undertake to perform the changes in "A" above until this modification order has been approved and issued.

_____
Contractor's Signature and Date

C. STATEMENT OF CONTRACT FUNDS

Original Contract Price	$_____
Previous Adjusted Contract Price	$_____
Amount this Change: Plus____ Minus_____	_____
New Adjusted Contract Price	$_____

D. VALIDATION OF CONTRACT MODIFICATION

_____ _____
Dept. of Water Date Manager & Chief Engineer Date

DISTRIBUTION: Original - Contracting Office c: Contractor

EXHIBIT M – AS BUILT INFORMATION REQUIRED

AS-BUILT INFORMATION REQUIRED

A. As-built information for Waterlines

1. Note any changes in alignment and grade.
   a. Reference alignment change to baseline or original waterline alignment.
2. Note the cover and existing waterlines (when exposed) and at connection areas.
3. Note the brand and model no. of the following:
   a. Fire Hydrants
   b. Valves
   c. A.C. pipe
   d. D.I. pipe
   e. Backflow Preventers (also note down the serial number)
4. Count the number of turns required to open each valve.
   a. Note this down in the as-builts and write in the date that this was checked.
5. Reference the location of all valves.
   a. Use the best available reference points.
   b. If a power pole is used, note down the pole number.
   c. Use at least two (2) reference points per valve
   d. Examples of reference points.
      i. Fire hydrant
      ii. Water meter box
      iii. ARV box
      iv. Cleanout box
      v. Power pole
      vi. Street light base
      vii. Guy wire anchor
      viii. Street Monument
      ix. Corner of catch basin
      x. Drainage structures
      xi. Manhole Cover
      xii. Street Signs
      xiii. Bridge abutments
      xiv. Corner of a building
      xv. Any reasonably permanent object
6. Reference hydrant valves to at least two (2) other reference points in addition to the distance from the hydrant head.
   a. If the hydrant gets knocked down by a vehicle and doesn't get replaced until later, and in the meantime, if the State or County repaves the roadway and the roadway and the hydrant bury gets overgrown with vegetation, Operations can locate the hydrant valve by measuring from the reference points.

B. As-built information for Service Laterals

1. When a new service lateral is installed away from the property corners, measure the distance from the nearest property corner to the meter box.
2. When the existing service laterals are not located at the property corners, measure the distance from the nearest property corner to the existing meter boxes.
   a. Write down the meter numbers for the existing meter(s).
3. Measure the distance from the angle valve to the waterline at cul-de-sacs and along curves
4. Detector Checks and Compound Meter Laterals

a. Verify that the meter spool cannot flow water through the lateral.

C. As-built Drawing Information for Pumping Stations

1. Depth to bottom of well
   a. Usually measured with a bailer
2. Depth of static water level
   a. Use well sounder
3. Length and diameter of discharge columns installed
4. Length of pump bowls
5. Length of strainer
6. Location of the bottom of the airline
   a. Usually placed at the top of the pump coupling
   b. The bottom of the airline should be beveled at a 45-degree angle
7. Pump data
   a. Brand, serial number, model number, number of stages.
8. Take meggar readings when installing submersible pumps
9. Motor data
   a. Write down the nameplate data and space heater serial number on the as-built plans
10. Record the nameplate data for:
    a. Booster pumps
    b. Chlorinator booster pumps
    c. Air compressors

D. As-built Information for Water Tanks

1. Reference the location of the splices along the water stop.

EXHIBIT N – BMP INSPECTION FORM

Department of Water
County of Kauai
Lihue, Kauai, Hawaii

Site Specific Construction Best Management Practices Inspection Form

Job No.: _____ Water Plan 2020 No.: _____ NGPC File No.: _____
Project Title: _____

Date: _____ /____ /_____ Weather: _____

DOW Inspector: _____
Duly Authorized Representative: _____ Contractor: _____

Site Specific Construction Best Management Practices (SSCBMPs) Plan	Yes	No	N/A	Date Corrected	Notes*
Is a copy of the SSCBMP plan available at the site?					
Is the SSCBMP plan certified, signed and dated?					
Is the SSCBMP pan current and up-to-date?					
Are accompanying erosion and sediment control (ESC) drawings available at the site?					
Are the ESC drawings up-to-date?					
Are all NGPCs available at the site?					
Are inspection records available at the site?					

Best Management Practices	Location	Installed per Specification (Y/N)	Adequate	Needs maintenance	N/A	Date Corrected	Notes*
Storm Water Run On (SSCBMP Section 3.1)							
Vegetated Diversion Ditches							
Soil Stabilization (SSCBMP Section 3.2)							
n/a							

Best Management Practices	Location	Installed per Specification (Y/N)	Adequate	Needs maintenance	N/A	Date Corrected	Notes*
Slope Protection (SSCBMP Section 3.3)							
Erosion Control Mats							
Storm Drain Inlet Protection (SSCBMP Section 3.4)							
Mulch socks at all active inlets							
Perimeter Controls and Sediment Barriers (SSCBMP Section 3.5)							
Silt Fence							
Mulch socks							
Sediment Basins and Detention Ponds (SSCBMP Section 3.6)							
Sed Basin							
Stabilized Ingress/Egress (SSCBMP Section 3.7)							
Stabilized egress							
Signage for entrance only							
Signage for exit only							
Additional Erosion and Sediment Control BMPs (SSCBMP Section 3.8)							
Mirafi over soil stockpile							
Material Handling and Waste Management (SSCBMP Section 3.9)							

Bins for Trash							
Baseyards/Staging Areas (SSCBMP Section 3.10)							
Store paint/resin/plaster in container							
Silt Fence							
Wash out Areas (SSCBMP Section 3.11)							
Concrete Washout Container							
Concrete Washout Container							
Proper Equipment/Vehicle Fueling and Maintenance Practices (SSCBMP Section 3.12)							
Lined pit under diesel tank							
Spill kit next to diesel tank							
Additional Non-Erosion or Sediment Control BMPs (SSCBMP Section 3.13)							

Best Management Practices	Location	Installed per Specification (Y/N)	Adequate	Needs maintenance	N/A	Date Corrected	Notes*
Post Construction BMPs (SSCBMP Section 3.14)							
Other							

* Attached additional sheet for notes if necessary

Site Conditions	Yes	No	N/A	Notes and Corrective Actions

Are Off-site flows entering the construction site?				
Is there evidence of polluted discharges off the site?				
Is there evidence of polluted discharges from the site to a state water (e.g. storm drain, ditch, stream, ocean)?				
Is repair, maintenance, or installation of sediment control BMPs needed at the site?				
Is repair, maintenance, or installation of erosion control BMPs needed at the site?				
Are construction materials/debris/trash/soil stored or disposed of properly on site?				
Is there vehicle tracking from the site to receiving streets?				
Do locations exist where additional or revised BMPs are needed?				
Do locations exist where BMPs may no longer be necessary and may be removed?				
Does your site evaluation indicate a need to update or revise the current SSCBMP plan and/or accompanying erosion and sediment control drawings?				

Pictures taken during the SSCBMP inspection documented above ate attached. ☐ YES ☐ NO

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false

information, including the possibility of fine and imprisonment for knowing violations.

_____

Duly Authorized Representative Printed Name

_____

Duly Authorized Representative Signature Date

* Duly Authorized Representative as submitted to DOH for NPDES permit

As an inspector, acting on behalf of the Department of Water, County of Kauai, I certify, to the best of my knowledge and belief, that the inspection verified the compliance of the approved and/or amended site specific BMP plan. All other requirements of the NPDES permit approval are the sole responsibility of the contractor, who is the independent contractor, hired to act as a duly authorized representative of the Kauai Department of Water, and I shall not be personally liable for any violations to the approved permit conditions.

_____

DOW Inspector Printed Name

_____

DOW Inspector Signature Date

Rev. 7/5/2016
SITE SPECIFIC CONSTRUCTION BEST MANAGEMENT PRACTICES INSPECTION FORM (EXHIBIT N)

EXHIBIT O – EMPLOYMENT OF STATE RESIDENTS COMPLIANCE FORM

CERTIFICATION OF COMPLIANCE
FOR
EMPLOYMENT OF STATE RESIDENTS
ACT 68, SESSION LAWS OF HAWAI'I 2010

Project Title:_____

Agency Project No.:_____

Contract No.:_____

As required by Act 68, Session Laws of Hawai'i 2010-Employment of State Residents on Construction Procurement Contracts, I hereby certify under oath, that I am an officer of _____ and for the month of _____, 20____, _____ is in compliance with Act 68, SLH 2010, by employing a workforce of whom not less than eighty percent are Hawai'i residents, as calculated according to the formula in the solicitation, to perform this Contract.

☐ I am an officer of the **Contractor** for this contract.
☐ I am an officer of a **Subcontractor** for this contract.

CORPORATE SEAL

_____
(Name of Company)

_____
(Signature)

_____
(Print Name)

_____
(Print Title)

Subscribed and sworn to me before this ____ day of _____, 20____.

_____
Notary Public, __ Circuit, State of Hawai'i

My Commission Expires:_____

Doc. Date:_____ # Pages:_____

Name of Notary:_____ , ____Circuit

Doc. Description:_____

_____

_____

_____
Notary Signature Date

NOTARY CERTIFICATION

EMPLOYMENT OF STATE RESIDENTS COMPLIANCE FORM (EXHIBIT O)

EXHIBIT P – REQUEST FOR INFORMATION (RFI) FORM

RFI

To: Dustin Moises, P.E.
Kauai Department of Water
4398 Pua Loke Street
Lihue, HI 96766

RFI #:
Date:
Job No.:
Contractor Phone:
Contractor email:

CC:

Subject:

Drawing Sheet #:
Specification Section:
Cost Impact:
Schedule Impact:

Request:

Requested by: Date response required:

Response:

Answered by:
Company:
Date:

REQUEST FOR INFORMATION (RFI) FORM (EXHIBIT P)