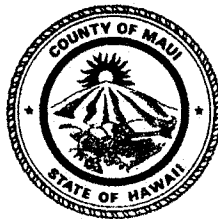


MICHAEL P. VICTORINO
Mayor

SANDY K. BAZ
Managing Director

TYSON K. MIYAKE
Deputy Managing Director



DEPARTMENT OF MANAGEMENT
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

March 28, 2019

Testimony from Sandy Baz
Managing Director
Department of Management
County of Maui
200 South High Street
Wailuku, Hawaii 96793

A handwritten signature in black ink, appearing to read "Sandy Baz".

SUBJECT: WAILUKU CIVIC COMPLEX (EDB-76)

Thank you for sending the attached inquiry dated March 27, 2019. Our staff will be in attendance at the Economic Development and Budget Committee meeting on Friday, March 29, 2019. We will be prepared to provide an overview and status update for the Wailuku Civic Complex.

Per your requests for information on the following, please see below:

1. **Identify the cost and program description of Phase 1A.** Phase 1A of the Wailuku Civic Complex project includes the reconstruction of three blocks of roads and infrastructure.
 - a. Church Street from Main to Vineyard will be improved with a traffic signal at the intersection of Main and Church and improved pedestrian crossings. Subsurface work includes waterline, sanitary sewer, and storm drain improvements along with burying the overhead utilities. At grade, continuous sidewalk will be provided on both sides of Church Street, new street lighting installed, a loading zone created on the Makai side of the street and travel lanes designed for two-way traffic. All on-street parking on Church Street is planned to be removed to accommodate the two-way travel and sidewalks.
 - b. Vineyard Street from High to Market Streets will be improved with the same subsurface improvements as Church Street. At grade, continuous sidewalk will be provided on both sides of the lower section of Vineyard and on the Waikapu side of the upper section of Vineyard. On-street parking on the Waikapu side of the street will be removed to accommodate the sidewalk and new street lighting installed, storm gutters and two-way travel lanes provided at grade.
 - c. Costs addressed in item 3 (Exhibit A).

2019 MAR 28 PM 12:14
OFFICE OF THE
COUNTY COUNCIL

RECEIVED

2. **Identify the cost and program description of Phase 1B.** Phase 1B includes the site work and construction of a 428-stall parking structure at the Wailuku Municipal Parking Lot and supporting utilities and connections. This includes ADA compliant access from Market Street next to First Hawaiian Bank and ADA compliant access from Main Street, next to the Main Street Promenade building. A required fire lane and fire suppression system is provided as well as an interior security system, cameras and lighting. Landscaping and irrigation surrounding the parking structure and temporary walkways connecting to Vineyard Street are part of the scope of 1B. A cost estimate done by Rider Levett Bucknall in September of 2018 estimated the demolition, construction and landscaping cost associated with Phase 1B to be \$29,459,487.00 (Exhibit A).
3. **Identify the dollar amounts already encumbered for Phase 1A.** The Department of Management has a contract with MIRA Image Construction LLC to build Phase 1A. This contract (C6664) is for \$10,449,847.00. In addition, the Department of Management has a contract with Dowling Company Inc. for Construction Management of Phase 1A and 1B for a total of \$2,536,722.00.
4. **Identify the dollar amounts already encumbered for any other phase of the project.** The Construction Management Contract with Dowling Company includes Phase 1B.
5. **Provide copies of executed contracts in relation to the Wailuku Civic Complex.** Please see attached contracts (Exhibit B and Exhibit C).
6. **Identify any penalties and cost implication associated with the cancellation of any executed contracts for work beyond Phase 1A of the Project.** Penalties associated with cancellation of executed contracts are outline in the County of Maui's General Terms and Conditions for Professional Services and the County of Maui General Terms and Conditions for Construction Contracts; both provided within the attached contracts. The Department of Management recommends Council seek a legal opinion as to the likely penalties and cost implications associated with cancellation of any executed contract.



OGG00041
September 4th, 2018

Ms. Jennifer Poepoe, AIA
Project Architect
Ferraro Choi
1240 Ala Moana Blvd #510
HONOLULU, HAWAII 96814

WAILUKU CIVIC HUB - CONSTRUCTION DOCUMENT COST ESTIMATE

Dear Jennifer,

Per your requested we have prepared a Construction Document cost estimate for the project listed above.

Estimated Cost Value

Our order of magnitude overall construction cost estimates is; **\$80,842,000.00** (Eighty Million Eight Hundred Forty-Two Thousand Dollars).

- Phase 1A: **\$9,238,836.00** (Nine Million Two Hundred Thirty-Eight Thousand Eight Hundred Thirty-Six Dollars).
- Phase 1B: **\$29,459,487.00** (Twenty-Nine Million Four Hundred Fifty-Nine Thousand Four Hundred Eighty-Seven Dollars).
- Phase 2: **\$40,943,801.00** (Forty Million Nine Hundred Forty-Three Thousand Eight Hundred One Dollars).
- Art Allowance: **\$1,200,000.00** (One Million Two Hundred Thousand Dollars).
- Rounding Factor: **-\$124.00** (One Hundred Twenty-Four Dollars).

Should you have any questions, or would like to discuss some aspect of this estimate, please feel free to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Mitchell', written in a cursive style.

Kevin Mitchell
Senior Vice President
Rider Levett Bucknall Ltd.



Wailuku Civic Hub

Construction Document Cost Estimate - Revision R1



CONTRACT CERTIFICATION

I, **MARK R. WALKER**, Director of Finance of the County of Maui, State of Hawaii, do certify that there is available appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the foregoing contract, i.e.

<u>Appropriation Index</u>			<u>Amount Required</u>
389744	WAILUKU REDEVT MUNI PRKG LOT	(7190)	\$ 671,443.14
390935	WAILUKU CIVIC COMPLEX	(7190)	\$ 1,865,278.86
		Total	<u>\$ 2,536,722.00</u>

CONTRACT NO. C 6659 DOWLING COMPANY, INC.

Dated this 20 day of DECEMBER 2018
Time of Performance: NTP Through March 31, 2021


MARK R. WALKER
Director of Finance

Wailuku Civic Complex
Phase 1A & 1B Construction
Management for MGMT
Job #PL 17-01
QBS #Q-MA-19-02
ORDINANCE #4456 (FY2018)
ORDINANCE #4861 (FY2019)

FY2019

jh

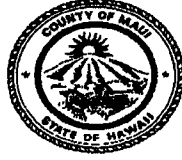
only 12/21

JAG

Exhibit "B"

*5/1
12/21*

ALAN M. ARAKAWA
Mayor



MARK R. WALKER
Director of Finance

JOHN C. KULP
Deputy Director of Finance

COUNTY OF MAUI
DEPARTMENT OF FINANCE
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

December 24, 2018

Dowling Company, Inc.
2005 Main Street
Wailuku, Hawaii 96793

RE: CONTRACT FOR PROFESSIONAL SERVICES: WAILUKU CIVIC
COMPLEX PHASE 1A & 1B CONSTRUCTION MANAGEMENT FOR THE
DEPARTMENT OF MANAGEMENT
JOB NO.: PL 17-01 QBS NO.: Q-MA-19-02
CONTRACT NO. C6659

Dear Dowling Company, Inc.:

Enclosed is a copy of the fully executed contract for your file. You will be receiving your official notice to proceed on the project from the Director of the Department of Management or his designated representative.

Sincerely,

For Christy K. Kauliehu

Mark R. Walker
Director of Finance

MRW:ckk
Enclosure

xc: Department of Management

CONTRACT NO. C6659

CONTRACT FOR PROFESSIONAL SERVICES

Department: Management
Project Title: Wailuku Civic Complex Phase 1A & 1B Construction Management
Job No.: PL 17-01
QBS #: Q-MA-19-02
Certification Requested from County: \$2,536,722.00

This CONTRACT is made and entered into by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose business address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as the "County", and DOWLING COMPANY, INC., a Hawaii corporation, whose mailing address is 2005 Main Street, Wailuku, Hawaii 96793, hereinafter referred to as the "Contractor." County and Contractor shall hereinafter be referred to collectively as the "Parties".

Source of Funds. The source(s) and availability of the funds for this Contract shall be as set forth in the Contract Certification signed by the Director of Finance of the County of Maui on or before the effective date of this Contract. Contract Certification shall be on file in the office of the Director of Finance of the County of Maui.

RECITALS:

WHEREAS, the County desires to retain and engage the Contractor to provide the goods or services, or both, as described in this Contract and its attachments, and the Contractor desires to provide such goods or services, or both, for, and on behalf of, the County; and

WHEREAS, this Contract is for professional services as defined in Section 103D-104, Hawaii Revised Statutes ("HRS"), and Section 3-122-1, Hawaii Administrative Rules ("HAR"); and

WHEREAS, pursuant to Section 46-1.5(4), HRS, the County is authorized to enter into this Contract.

NOW, THEREFORE, in consideration of the following mutual promises and agreements set forth, the Parties agree as follows:

1. **Scope of Work.** The Contractor shall, in a proper and satisfactory manner as determined by the County, provide all goods or services, or both, in accordance with Contractor's Proposal dated November 8, 2018, and any attachments thereto (hereinafter, collectively, "Contract Documents"). Contract Documents are on file in the office of the Director of Finance of

CONTRACT NO. C6659

CONTRACT FOR PROFESSIONAL SERVICES

the County of Maui, and are incorporated herein by reference and hereby made a part of this Contract.

The Parties understand and agree that as of the execution of this Contract, only Phase 1A is or will be under contract for construction, and Phase 1B is depended upon Council appropriation of sufficient funding. No claim for termination related to Phase 1B services may be made by the Contractor, except as to services or work performed at express County direction.

2. Time of Performance. The Contractor shall commence performance under this Contract upon issuance of the Notice to Proceed, and shall continue performance through March 31, 2021, unless sooner completed, terminated, or extended in compliance with the terms of this Contract. Where the contract work is structured into phases or discrete work items, if the commencement of a phase or work item is triggered not by the completion of the prior phase or work item, but by some other event not under the control of the Contractor, the time between the completion of one phase or work item and the commencement of the next shall not count towards the time of performance within which the Contractor agreed to complete its performance under the Contract. The Contractor agrees to cooperate and coordinate with the County to accurately compute and document the time of performance.

3. Compensation and Payment Schedule. The Contractor shall be compensated for services rendered and costs incurred under this Contract for a total amount not to exceed the amount of certification requested as set forth above, subject to appropriation, and inclusive of all taxes. County will pay Contractor in accordance with the fee schedule set forth in the Contract Documents. Payments shall be made monthly in arrears, subject to the receipt of an original invoice by the Officer-in-Charge no later than on the fifth (5th) day of each month for services rendered during the previous calendar month. The original invoice shall specify the amount due, certify that services requested under this Contract have been performed by the Contractor according to the Contract, and also include any other information reasonably requested from time to time by the Officer in Charge, all in accordance with Section 17 of the General Conditions.

4. General Conditions. The Contractor shall comply with the General Conditions of this Contract (the "General Conditions"), which are attached hereto and are hereby made a part of this Contract.

CONTRACT NO. C6659

CONTRACT FOR PROFESSIONAL SERVICES

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the Contractor is attached hereto and is made a part of this Contract.

6. Other Terms and Conditions. Any Special Conditions are attached hereto and made a part of this Contract. In the event of any inconsistencies or conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. Any general, miscellaneous, or other terms, conditions, or provisions that are found in any of the Contractor's proposals for this Contract or in any sub-contractor's proposals attached thereto shall be unenforceable as against the County, unless the subject of such terms, conditions, or provisions is addressed in the County's General Conditions, and such terms, conditions, or provisions are consistent with the County's General Conditions.

7. *[This paragraph is intentionally left blank.]*

8. Conflict. In the event of any conflict between or among this Contract and other documents that are attached hereto or incorporated herein by reference or both, the terms of this Contract shall control first, the County's General Conditions second, other documents prepared by the County third, and documents prepared or submitted, or both, by the Contractor last.

9. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the County shall be sent to:

Procurement Officer
Department of Finance
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Notice to the Contractor shall be sent to the Contractor's address as indicated in this Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The Contractor is responsible for notifying the County in writing of any change of address.

10. Officer-in-Charge. The Managing Director, or an authorized representative, shall be the Officer-in-Charge for all services provided herein, and shall have the right to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing Contractor's performance and approving completed work/services with verification of same for

CONTRACT NO. C6659

CONTRACT FOR PROFESSIONAL SERVICES

Contractor's invoices or requests for payment. The Officer-in-Charge also serves as the point of contact for the Contractor from award to contract completion.

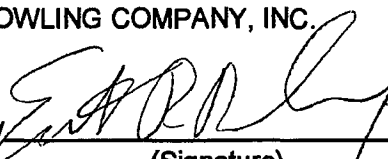
IN WITNESS WHEREOF, the Parties execute this Contract by their signatures, on the dates below, to be effective as of the date of last signature hereto.

I hereby represent and warrant that I have the legal right and authority to execute this Contract on behalf of the Contractor.

CONTRACTOR:

DOWLING COMPANY, INC.

By



(Signature)

Everett R. Dowling

(Print Name)

Its

President

(Title)

Date

12/18/18

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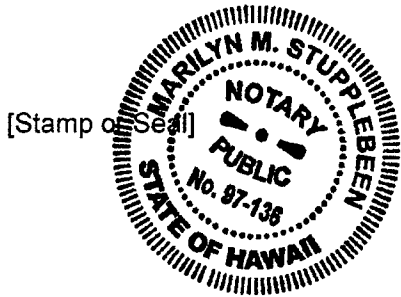
CONTRACT NO. C6659

CONTRACT FOR PROFESSIONAL SERVICES

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 18TH day of DECEMBER, 2018, before me personally appeared EVERETT R. DOWLING, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

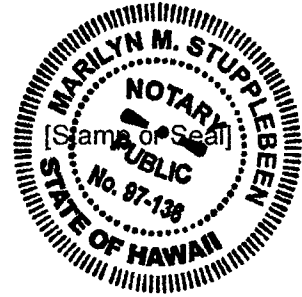


[Signature]
Notary Public, State of HAWAII

Print Name: MARILYN M. STUPPLEBEEN


My commission expires: 04/17/2021

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>12/18/18</u>	# Pages:	<u>23</u>
Notary Name:	<u>MARILYN M. STUPPLEBEEN</u>	Judicial Circuit:	<u>SECOND</u>
Doc. Description:	<u>CONTRACT NO. C6659</u>		
	<u>CONTRACT FOR PROFESSIONAL SERVICES</u>		
Notary Signature:	<u>[Signature]</u>		
Date:	<u>12/18/18</u>		



CONTRACT NO. C6659
CONTRACT FOR PROFESSIONAL SERVICES
COUNTY EXECUTION PAGE


COUNTY OF MAUI

By 
ALAN M. ARAKAWA
Its Mayor

Date 12/19/18

REVIEWED AND APPROVED:

Lynn A.S. Araki -
Regan



KEITH A. REGAN, Director
Department of Management

Date _____

By 
MARK R. WALKER
Its Finance Director

Date DEC 21 2018

APPROVED AS TO FORM
AND LEGALITY:


RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui

Date 12/20/2018
LF2018-1728
2018-12-03 Primary

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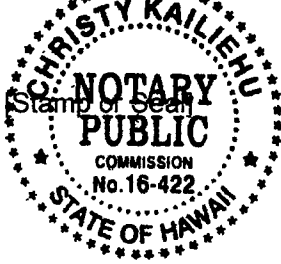
CONTRACT NO. C6659

CONTRACT FOR PROFESSIONAL SERVICES

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

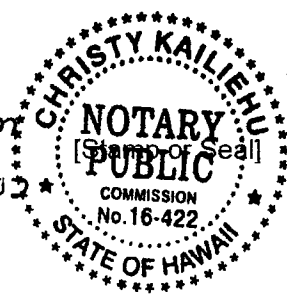
On this 21st day of December, 2018, before me appeared MARK R. WALKER, to me personally known, who being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui; and the said MARK R. WALKER acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Christy Kailiehu
Notary Public, State of Hawaii
Print Name: CHRISTY KAILIEHU
My commission expires: NOV 27 2020

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>DEC 21 2018</u>	# Pages:	<u>23</u>
Notary Name:	<u>CHRISTY KAILIEHU</u>	Judicial Circuit:	<u>2nd</u>
Doc. Description:	<u>Contract for Professional Services, Contract No. C6659, Waiheke Civic Complex Phase 1A & 1B Construction Management, Job No. PL 17-01 Q-MA-19-02</u>		
Notary Signature:	<u>Christy Kailiehu</u>		
Date:	<u>DEC 21 2018</u>		



CONTRACT NO. C6659

CONTRACT FOR PROFESSIONAL SERVICES

CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Substantial interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the County, including members of boards, commissions, and committees, and employees under contract to the County, but excluding members of the County Council ("County Council Members").

On behalf of DOWLING COMPANY, INC., Contractor, the undersigned does declare as follows:

1. Contractor is is not a County Council Member or an Employee or a business in which a County Council Member or an Employee has a substantial interest.
2. Contractor has not been represented or assisted personally in the matter by an individual who has been an Employee of the County department awarding this Contract within the preceding year and who participated while so employed in the matter with which the Contract is directly concerned.
3. Contractor has not been assisted or represented by a County Council Member or Employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a County Council Member or Employee for a fee or other compensation in the performance of this Contract, if the County Council Member or Employee has been involved in the development or award of the Contract.
4. Contractor has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an Employee, or in the case of the County Council, a County Council Member, and participated while an Employee or a County Council Member on matters related to this Contract.

*Reminder to agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$500, the Contract may not be awarded unless the Contract is made after competitive bidding.

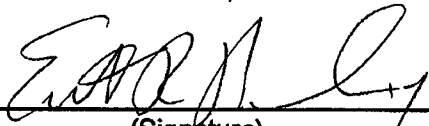
CONTRACT NO. C6659

CONTRACT FOR PROFESSIONAL SERVICES

Contractor understands that the Contract to which this document is attached is voidable on behalf of the County if this Contract was entered into in violation of any provision of Article 10 of the Revised Charter of the County of Maui ("Code of Ethics"), including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the County.

Contractor:

DOWLING COMPANY, INC.

By 
(Signature)

EVERETT R. DOWLING
(Print Name)

Its PRESIDENT
(Title)

Date 12/18/18

CONTRACT NO. C6659

CONTRACT FOR PROFESSIONAL SERVICES

**COUNTY OF MAUI
GENERAL CONDITIONS
FOR PROFESSIONAL SERVICES CONTRACTS**

1. COORDINATION OF SERVICES BY THE COUNTY. The Officer-in-Charge shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Contract. The CONTRACTOR shall maintain communications with the Officer-in-Charge at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any COUNTY department or division which is authorized to enter into contracts for the procurement of goods and services.

2. CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.

a. SUSPENSION AND DEBARMENT.

1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2) The CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3) This certification is a material representation of fact relied upon by the County. If it is later determined that the CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

4) The CONTRACTOR shall comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the term of this Contract, and further agrees to include a provision requiring such compliance in its lower tier covered transactions.

b. COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

1) Overtime requirements. No CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3) Withholding for unpaid wages and liquidated damages. County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or subcontractor under any such contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4) Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

c. FRAUD AND FALSE OR FRAUDULENT OR RELATED ACTS. The CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this contract.

d. INDEPENDENT CONTRACTOR. In the performance of services required under this Contract, the CONTRACTOR is an "independent CONTRACTOR," with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement, however, the COUNTY shall have a general right to inspect work in progress to determine whether, in the COUNTY's opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it

CONTRACT NO. C6659

CONTRACT FOR PROFESSIONAL SERVICES

is understood that the COUNTY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the COUNTY.

e. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Contract, agents or employees of the COUNTY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the COUNTY any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to the COUNTY employees.

f. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.

g. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes and (iii) general excise taxes. Unless provided otherwise by agreement between the parties, the CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

h. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes ("HRS"), and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR have been paid and submit the same to the COUNTY prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under Section 103-53, HRS and Paragraph 17 of these General Conditions.

i. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

j. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and sections 3-122-112, Hawaii Administrative rules, ("HAR") that is current within six months of the date of issuance.

k. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

3. PERSONNEL REQUIREMENTS.

a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Contract.

b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under Federal, State or County law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. NONDISCRIMINATION. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable Federal, State, or County law.

5. CONFLICTS OF INTEREST. The CONTRACTOR represents that neither the CONTRACTOR, nor any employees or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. SUBCONTRACTS AND ASSIGNMENTS; CHANGE OF NAME.

a. No assignment without consent. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (1) the CONTRACTOR obtains the prior written consent of the COUNTY and (2) the CONTRACTOR'S assignee or subcontractor submits to the COUNTY a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the COUNTY.

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b. Recognition of a successor in interest. When in the best interests of the COUNTY, a successor in interest may be recognized in an assignment agreement in which the COUNTY, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- 1) The Assignee assumes all of the CONTRACTOR'S obligations;
- 2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the COUNTY; and
- 3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

c. Change of name. When the CONTRACTOR asks to change the name under which it holds this Contract with the COUNTY, the contract officer of the purchasing agency shall, upon receipt of a document acceptable or satisfactory to said officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms or conditions of this Contract are thereby changed.

d. Reports. All assignment contracts and amendments to this Contract effecting changes of CONTRACTOR'S name or novation hereunder shall be reported to the chief procurement officer as defined in section 103D-203(b), HRS, within 30 days of the date that the assignment contract or amendment becomes effective.

e. Actions affecting more than one purchasing agency. Notwithstanding the provisions of Subparagraphs b. through d. herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the COUNTY, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the County Department of Finance.

7. INDEMNIFICATION AND DEFENSE. Except as provided for in Section 103D-713, HRS, the CONTRACTOR shall defend, indemnify and hold harmless the COUNTY, the contracting department and their directors, employees and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees and costs, and all claims, suits and demands therefor, arising out of or in connection with any acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents or subcontractors under this Contract. The provisions of this Paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract for any reason.

8. COST OF LITIGATION. In case the COUNTY shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay any cost and expense incurred by or imposed on the COUNTY, including attorneys' fees.

9. LIQUIDATED DAMAGES. When the CONTRACTOR is given notice of delay or nonperformance as specified in Paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the COUNTY the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the COUNTY reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under Subparagraph 13.d. (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay. This Paragraph is of no force and effect unless the amount of liquidated damages is specified in the Contract.

10. COUNTY'S RIGHT OF OFFSET. The COUNTY may offset against any monies or other obligations the COUNTY owes to the CONTRACTOR under this Contract, any amounts owed to the COUNTY by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the COUNTY by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The COUNTY will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this Paragraph, amounts owed to the COUNTY shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the COUNTY, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the COUNTY under such payment or other settlement plan.

11. ADMINISTRATIVE, CONTRACTUAL, OR LEGAL REMEDIES. CONTRACTOR agrees to be bound by the administrative, contractual, or legal remedies set forth in these General Terms and Conditions, and HRS Section 103D-701, et seq., which govern CONTRACTOR'S violation or breach of contract terms and appropriate sanctions and penalties.

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12. SUSPENSION OF AGREEMENT. The COUNTY reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The head of the purchasing agency may, by written order to the CONTRACTOR at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period of time not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the head of the purchasing agency shall either:

1) Cancel the stop performance order; or
2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery or performance schedule or compensation, or both, and the Contract shall be modified in writing accordingly, if:

1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract and
2) The CONTRACTOR asserts a claim for such adjustment within thirty (30) days after the end of the period of performance stoppage provided that if the head of the purchasing agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this Paragraph shall be determined in accordance with the price adjustment provisions of this Contract.

13. TERMINATION FOR DEFAULT.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the head of the purchasing agency may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the head of the purchasing agency, the head of the purchasing agency may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or failure to properly perform. In the event of termination in whole or in part the head of the purchasing agency may procure similar goods or services in a manner and upon the terms deemed appropriate by the head of the purchasing agency. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods and services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the head of the purchasing agency, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest.

c. Compensation. Payment for completed goods and services delivered and accepted by the COUNTY shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the head of the purchasing agency. If the parties fail to agree, the head of the purchasing agency shall set the amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The COUNTY may withhold from amounts due the CONTRACTOR such sums as the head of the purchasing agency deems to be necessary to protect the COUNTY against loss because of outstanding liens or claims of former lien holders and to reimburse the COUNTY for the excess costs incurred by the COUNTY in procuring similar goods and services.

d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, if the CONTRACTOR has notified the head of the purchasing agency within fifteen (15) days after the cause of the delay and the failure arises out of causes including acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar

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to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the head of the purchasing agency shall ascertain the facts and extent of the failure, and, if he or she determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule or the time of performance shall be revised accordingly, subject to the rights of the COUNTY under the clause entitled, in fixed-price contracts, "Termination for Convenience," and in cost-reimbursement contracts, "Termination." As used in this Paragraph the term "subcontractor" means subcontractor at any tier.

e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under this Paragraph, it is determined for any reason that the CONTRACTOR was not in default under this Paragraph, or that the delay was excusable under the provisions of Subparagraph d., "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 14.

f. Additional rights and remedies. The rights and remedies provided in this Paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. TERMINATION FOR CONVENIENCE BY THE COUNTY.

a. Termination for convenience. The head of the purchasing agency may, when the interests of the COUNTY so require, terminate this Contract in whole or in part, for the convenience of the COUNTY. The head of the purchasing agency shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when such termination becomes effective.

b. CONTRACTOR's obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance, and on the date(s) set in the notice of termination the CONTRACTOR shall stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the County's approval. The head of the purchasing agency may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the COUNTY. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as are necessary to do so.

c. Right to goods and work product. The head of the purchasing agency may require the CONTRACTOR to transfer title and deliver to the COUNTY in the manner and to the extent directed by the head of the purchasing agency:

1) Any completed goods or work product or both; and
2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract. The CONTRACTOR shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use CONTRACTOR'S best efforts to sell such goods and manufacturing materials. Use of this Paragraph in no way implies that the COUNTY has breached the Contract by exercise of the termination for convenience provision.

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 to the extent required by subchapter 15, chapter 3-122 of the HAR, bearing on the claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the head of the purchasing agency may pay the CONTRACTOR, if at all, an amount set in accordance with (d)(3) below.

2) The head of the purchasing agency and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted to the extent required by subchapter 15, chapter 3-122, HAR, and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the COUNTY, the proceeds of any sales of goods and manufacturing materials under Subparagraph c. of this Paragraph, and the Contract price of the performance not terminated.

3) Absent complete agreement under Subparagraph (d)(2) above, the head of the purchasing agency shall pay the CONTRACTOR the following amounts, provided payments agreed to under Subparagraph d.2) shall not duplicate payments under this Subparagraph for the following:

(A) Contract prices for goods or services or both accepted under the Contract;
(B) Costs incurred in preparing to perform and performing the terminated portion of the work or performance plus a five per cent markup on actual direct costs on the portion of the work or performance, the markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted

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goods or services or both; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss,

(C) Subject to the prior approval of the head of the purchasing agency, costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph b. Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with Subparagraph (d)(3)(B).

(D) The total sum to be paid the CONTRACTOR under this Subparagraph shall not exceed the total Contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph c.3) and the Contract price of performance not terminated.

4) Costs claimed, agreed to, or established under Subparagraphs d.2) and d.3) above shall be in accordance with Chapter 3-123, HAR.

15. CLAIMS BASED ON THE HEAD OF THE PURCHASING AGENCY'S ACTIONS OR OMISSIONS.

a. Change in scope. If any action or omission on the part of the head of the purchasing agency (which term includes the designee of such person) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of proper officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages or extension of time for completion, provided:

1) The CONTRACTOR shall have given written notice to the head of the purchasing agency:

(A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

(B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance or

(C) Within such further time as may be allowed by the head of the purchasing agency in writing.

2) This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages or an extension of time. The head of the purchasing agency or his or her designee, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable in the discretion of the head of the purchasing agency or his or her designee.

3) The notice required by Subparagraph a.1) of this Paragraph must describe as clearly as practicable, at the time, the reasons why the CONTRACTOR believes that additional compensation, damages or an extension of time may be remedies to which the CONTRACTOR is entitled; and

4) The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the COUNTY, of the claimed additional costs or an extension of time in connection with such changes.

b. Nothing herein contained, however shall excuse the CONTRACTOR from compliance with any rules or laws precluding any County officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Any adjustment in the price made pursuant to this Paragraph shall be determined in accordance with the price adjustment provisions of the Contract and these General Conditions.

16. COST AND EXPENSE. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.

b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

c. Unless prior written approval of the head of the purchasing agency is obtained, reimbursement for subsistence allowable allowance (i.e., hotel and meals) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel for County officers and employees in the executive branch who are excluded from collective bargaining coverage. No other travel or living expense (e.g., tips, entertainment, alcohol, etc.) shall be reimbursed by the COUNTY, other than those items listed in Subparagraphs a. and b. of this Paragraph. Invoices shall document the days of travel by including the name of the traveler, itinerary, airfare receipt, hotel receipt, and ground transportation receipts. All travel must be pre-approved by the COUNTY Officer-in-Charge.

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d. CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Contract are not entitled to per diem or transportation expense reimbursement unless expressly specified in the Contract.

17. PAYMENT PROCEDURES; FINAL PAYMENT; TAX CLEARANCE.

a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

b. Subject to available funds. Such payments are subject to availability of funds, and all payments shall be made in accordance with and subject to Article 9 of the County of Maui Charter.

c. Payment only for work under contract. The COUNTY is not responsible to pay for work performed by CONTRACTOR or its subcontractors that is not in this Contract and any amendments or change orders thereto. CONTRACTOR must follow Paragraph 19, Contract Modifications, or Paragraph 20, Change Orders, and must have proper authorization before performing work outside the original Contract.

d. Compensation Retained.

1) Pursuant to §103-32.1(a), HRS, the County may retain a portion of the amount due under the contract to the CONTRACTOR to ensure proper performance of the contract, provided that the sum withheld shall not exceed five percent (5%) of the amount due the CONTRACTOR and that after fifty percent (50%) of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the Procurement Officer may continue to withhold as compensation retained sums not exceeding five percent (5%) of the amount due the CONTRACTOR; provided further that the compensation retained shall not include sums deducted and withheld separately as liquidated damages from moneys due or that may become due the CONTRACTOR under the contract.

2) The County may enter into an agreement with the CONTRACTOR which will allow the CONTRACTOR to withdraw from time to time the whole or any portion of the sum retained under sub-paragraph (a) upon depositing with the County any general obligation bond of the State or its political subdivisions with a market value not less than the sum to be withdrawn; provided that the County may require that the total market value of such bond be greater than the sum to be withdrawn.

e. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. FEDERAL OR STATE FUNDS. If this Contract is payable in whole or in part from federal or state of Hawaii ("State") funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal or State funds, the CONTRACTOR shall be paid only from such funds received from the federal or State government, and shall not be paid from any other funds. Failure of the County to receive anticipated federal or State funds shall not be considered a breach by the County or an excuse for nonperformance by the CONTRACTOR.

19. CONTRACT MODIFICATIONS.

a. Modification in writing; no verbal modification. At any time, and without notice to any surety, the head of the purchasing agency, subject to mutual agreement of the parties to the Contract in writing and all appropriate adjustments, may make modifications within the general scope of this Contract to include any one or more of the following:

- 1) Drawings, designs, or specifications, for the goods to be furnished or services to be performed;
- 2) Method of shipment or packing;
- 3) Place of delivery;
- 4) Description of services to be performed,
- 5) Time of performance (i. e., hours of the day, days of the week, etc.);
- 6) Place of performance of the services; or
- 7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

b. No verbal modification. No verbal modification, alteration, amendment, change or extension of any term, provision or condition of this Contract shall be permitted or acknowledged.

c. Adjustment of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

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d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Contract.

e. Other claims not barred. In the absence of a written modification to the Contract, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.

f. Professional Services Contract. If this is a professional services contract awarded pursuant to Section 103D-304, HRS, any modification, alteration, amendment, change or extension of any term, provision or extension of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial Contract price must receive the prior approval of the County Director of Finance.

g. Tax clearance. The COUNTY may, at its discretion, require the CONTRACTOR to submit to the COUNTY, prior to the COUNTY'S approval of any modification, alteration, amendment, change or extension of any term, provision or condition of the Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued against the CONTRACTOR have been paid.

h. Sole source agreements. Amendments to sole source agreements that would change the original scope of the agreement, or increase the original contract price by ten percent or more, may only be made with the approval of the Chief Procurement Officer. Annual renewal of a sole source agreement for services shall not be submitted as an amendment.

20. CHANGE ORDERS. A change order is a written order signed by the head of the purchasing agency, directing the CONTRACTOR to make changes which the "changes clause" described below authorizes the head of the purchasing agency to order without the consent of the CONTRACTOR.

a. Changes Clause Generally. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order of the CONTRACTOR:

- 1) Changes in the work within the scope of the Contract; and
- 2) Changes in the time of performance of the Contract that do not alter the scope of the

contract work.

b. Adjustments 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, 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, where applicable, in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with Subparagraph a.5) of Paragraph 21 on Price Adjustment. Failure of the parties to agree to an adjustment in time shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the head of the purchasing agency, within fourteen days after the changed work commences, makes the provisional adjustments in time as the head of the purchasing agency deems reasonable. The right of the CONTRACTOR to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the Contract.

c. Time period for claim. Except as may be provided otherwise by section 103D-501(b), HRS, the CONTRACTOR must file a written claim disputing the contract price or time provided in a change order within ten days after receipt of a written change order, unless such period for filing is extended by the head of the purchasing agency in writing. The requirement for filing a timely written claim cannot be waived and shall be a condition precedent to the assertion of a claim.

1) Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Contract.

2) Other claims not barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. PRICE ADJUSTMENT.

a. Price adjustment. Any adjustment in the Contract price pursuant to a provision in this Contract 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;
- 2) By unit prices specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;
- 3) By the costs attributable to the events or situations covered by the provision, plus appropriate 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 upon before commencement of the pertinent performance; or
- 5) In the absence of agreement between the parties, the adjustment shall be made pursuant to 103D-501(b)(5), HRS.

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b. Submission of cost or pricing data. The CONTRACTOR shall be required to submit cost or pricing data for any price adjustment 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 in Subparagraph (a)(1) through (a)(4) of this Paragraph shall be issued within ten days after agreement on the method of adjustment.

22. VARIATIONS IN QUANTITY FOR ANY DEFINITE QUANTITY CONTRACT. If this is a definite quantity goods or services contract, upon the agreement of the COUNTY and the CONTRACTOR, the quantity of goods or services, or both, specified in this Contract, may be increased by a maximum of ten per cent (10%), provided (1) the unit prices will remain the same except for any price adjustments otherwise applicable; and (2) the head of the purchasing agency makes a written determination that such an increase will either be more economical than awarding another Contract or that it would not be practical to award another agreement.

23. CHANGES IN COST-REIMBURSEMENT CONTRACT. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

a. The head of the purchasing agency may at any time by written order, and without notice to the sureties, in any, make changes within the general scope of the Contract in any one or more of the following:

- 1) Description of performance;
- 2) Time of performance (i.e., hours of the day, days of the week, etc.)
- 3) Place of performance of services;
- 4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the COUNTY in accordance with the drawings, designs, or specifications;
- 5) Method of shipment or packing of supplies; or
- 6) Place of delivery.

b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the head of the purchasing agency shall make an equitable adjustment in the 1) estimated cost, deliver or completion schedule, or both; 2) amount of any fixed fee; and 3) other affected terms and shall modify the Contract accordingly.

c. The CONTRACTOR must assert the CONTRACTOR's rights to an adjustment under this provision within 30 days from the day of receipt of the written order. However, if the head of the purchasing agency decides that the facts justify it, the head of the purchasing agency may receive and act upon a proposal submitted before final payment under the Contract.

d. Failure to agree to any adjustment shall be a dispute under the provision on Dispute herein. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.

e. Notwithstanding the terms and conditions of Subparagraphs a. and b. of this Paragraph, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if the contract is incrementally funded, the new amount allotted to the contract.

24. PROMPT PAYMENT OF SUBCONTRACTORS.

a. Generally. Any money paid to a CONTRACTOR shall be disbursed to subcontractors within ten 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.

b. 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.

c. Penalty. The procurement officer or the CONTRACTOR, as applicable, will be subject to a penalty of one and one-half per cent 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 Subparagraph d. of this Paragraph, and:

- 1) 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
- 2) The following has occurred:
 - (A) A period of ninety 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

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(B) 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 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 procurement officer to the CONTRACTOR and subsequently, upon receipt from the procurement officer, by the CONTRACTOR to the subcontractor within the applicable time periods specified in Subparagraph b. of this Paragraph 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 Subparagraph b. three or more times within two years of the first violation, the CONTRACTOR shall be referred by the procurement officer to the CONTRACTOR's license board for appropriate action, including action under section 444-17(14), HRS.

d. A properly documented final payment request from a subcontractor, as required by Subparagraph c., shall include:

- 1) Substantiation of the amounts requested;
- 2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief,

that:

(A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

(B) 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

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

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

The procurement officer shall return any final payment request that is defective to the CONTRACTOR within seven days after receipt, with a statement identifying the defect.

e. 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 Subparagraph c. of this Paragraph; provided that any such payments withheld shall be withheld by the procurement officer.

25. ACCEPTANCE OF GOODS AND SERVICES. The COUNTY shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with the specifications, shall relieve CONTRACTOR of any obligations under this Contract or impair any rights or remedies of the COUNTY.

26. OBSOLETE PARTS/LONG TERM PARTS AVAILABILITY. CONTRACTOR shall timely report on the status of end of life (EOL) hardware that has been procured for the purchased or leased product. EOL hardware includes the following: electronic components/piece parts and mechanical hardware. CONTRACTOR shall provide advanced notification in writing to the Officer-in-Charge of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. CONTRACTOR shall notify the COUNTY of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Contract and shall work with the COUNTY to determine the need to stockpile any parts for the likely life of the product and offer those parts to the COUNTY prior to the actual discontinuance. CONTRACTOR shall extend opportunities to the COUNTY to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.

27. CONFIDENTIALITY OF MATERIAL

a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the COUNTY.

b. All information, data, or other material provided by the CONTRACTOR to the COUNTY is subject to the Uniform Information Practices Act, chapter 92F, HRS.

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CONTRACT FOR PROFESSIONAL SERVICES

28. PUBLICITY AND USE OF COUNTY, STATE, OR FEDERAL SEAL, LOGO, AND FLAGS. The CONTRACTOR shall not refer to the COUNTY or any office, agency, or officer thereof, or any COUNTY employee, including the head of the purchasing agency, the County procurement officers, the County council members, or members or directors of any County board or commission, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR without the explicit written consent of the COUNTY. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the head of the purchasing agency.

The CONTRACTOR shall not use federal, state, or County seal(s), logos, crests, or reproductions of flags or likenesses of any agency official without specific pre-approval in writing.

29. OWNERSHIP RIGHTS AND COPYRIGHT. The COUNTY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Contract and all such material shall be considered "works for hire." All such materials shall be delivered to the COUNTY upon expiration or termination of this Contract. The COUNTY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Contract.

30. INSURANCE. During the term of this Contract, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to the COUNTY under this Contract. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by the COUNTY, with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and TWO MILLION DOLLARS (\$2,000,000) in the aggregate for Contracts with a total certified amount of \$1,000,000 or less, and THREE MILLION DOLLARS (\$3,000,000) in the aggregate for Contracts with a total certified amount of \$1,000,001 or more, or such greater amount as may be required from time to time by the COUNTY. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. CONTRACTOR shall provide COUNTY not less than thirty (30) days' notice prior to any cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from the COUNTY. The COUNTY shall be listed as an additional insured on all policies, with the exception of professional liability and workers' compensation policies. Prior to the commencement of this Contract, CONTRACTOR shall provide the COUNTY with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the insurance carriers for CONTRACTOR shall provide the COUNTY with certificates of insurance evidencing the foregoing coverage and provisions. The COUNTY reserves the right to request and receive a certified copy of the policies. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Contract and the COUNTY shall thereafter have the options of pursuing remedies for such breach and/or immediate termination of this Contract.

31. LIENS AND WARRANTIES.

a. Liens. All products provided under this Contract shall be free of all liens and encumbrances.
b. Warranties for products and services. In the event this Contract is for the provision of products (goods or equipment), CONTRACTOR warrants that it has all rights, title and interest in and to all products sold, leased or licensed to the COUNTY. CONTRACTOR also warrants that the products shall substantially conform to all descriptions, specifications, statements of work and representations set forth in the Contract, schedules, publications of CONTRACTOR and/or any order(s) and will be free from defects in materials, performance, workmanship and design. CONTRACTOR further warrants that it will perform any services required with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of the COUNTY. The Warranty period shall commence after Acceptance, as defined in this Contract. Any specific warranty periods shall be as set forth in the proposals, schedules, orders or Special Conditions pertaining to this Contract but in any event such warranty period shall not be less than one (1) year.

32. ACCESS TO AND AUDIT OF BOOKS AND RECORDS OF THE CONTRACTOR. The COUNTY may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective CONTRACTOR, subcontractor, or prospective subcontractor which are related to:

a. The cost or pricing data.
b. Subcontracts, other than those related to a firm fixed-price Contract.
c. The following access to records requirements additionally apply to any Contract funded in whole or in part by the state or federal government:
1) The CONTRACTOR agrees to provide the County, State of Hawaii, Federal Emergency Management Agency or other federal agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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CONTRACT FOR PROFESSIONAL SERVICES

- 2) The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 3) The CONTRACTOR agrees to provide access to construction or other work sites pertaining to the work being completed under the contract.

33. COST OR PRICING DATA.

- a. Cost or pricing data must be submitted to the head of the purchasing agency and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the head of the purchasing agency
- b. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the County is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

34. RECORDS RETENTION.

- a. Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the COUNTY.
- b. The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the COUNTY, and any cost or pricing data, for at least three years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three year or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS, or returned to the County at the request of the County.

35. ANTITRUST CLAIMS. The COUNTY and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to the COUNTY any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the COUNTY under an escalation clause.

36. PATENTED ARTICLES. The CONTRACTOR shall defend, indemnify, and hold harmless the COUNTY, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorney's fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the COUNTY any such infringement or improper or unauthorized use, including, without limitation a. furnishing at no cost to the COUNTY a substitute article, process, or appliance acceptable to the COUNTY; b. paying royalties or other required payments to the patent holder; c. obtaining proper authorizations or releases from the patent holder; and d. furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

37. POLLUTION CONTROL. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the COUNTY and all other appropriate state, county, or federal agencies as required by law. The CONTRACTOR shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the COUNTY determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

CONTRACTOR further agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. § 7401-7671 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251-1387, and will report violations to the County, Federal Emergency Management Agency, and the regional office of the Environmental Protection Agency. The CONTRACTOR agrees to include these requirements in each subcontract.

CONTRACT FOR PROFESSIONAL SERVICES

38. RECOVERED AND RECYCLED MATERIALS. To the extent applicable to this contract, CONTRACTOR agrees to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002 requires CONTRACTOR to use only items, designated in guidelines of the Environmental Protection Agency at 40 C.F.R. part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.

a. In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements, or (iii) At a reasonable price.

b. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

39. ENERGY EFFICIENCY. To the extent applicable to this Contract, CONTRACTOR agrees to comply with all applicable mandatory standards and policies relating to energy efficiency of the State of Hawaii or County.

40. CONFIDENTIALITY OF PERSONAL INFORMATION.

a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted.

- 1) Social security number;
- 2) Driver's license number or Hawaii identification card number; or
- 3) Account number, credit or debit card number, access code, or password that would permit

access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedure for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

1) All material given to or made available to the CONTRACTOR by the COUNTY by virtue of this Contract which is identified as personal information shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the COUNTY.

2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the COUNTY to reduce the risk of unauthorized access to personal information.

4) CONTRACTOR shall report to the COUNTY in a prompt and complete manner any security breaches involving personal information.

5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this Paragraph.

6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the COUNTY, or personal information created or received by CONTRACTOR on behalf of the COUNTY.

c. Security awareness training and confidentiality agreements.

1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

(A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;

(B) Access to the personal information will be allowed only as necessary to perform the Contract; and

(C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the COUNTY learns of a material breach by CONTRACTOR of this Paragraph by CONTRACTOR, the COUNTY may at its sole discretion:

- 1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- 2) Immediately terminate this Contract.

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41. GOVERNING LAW. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a State court of competent jurisdiction in Wailuku, Maui, Hawaii.

42. COMPLIANCE WITH LAWS. This is an acknowledgement that state or federal financial assistance may be used to fund the contract only. The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, regulations, executive orders, and agency policies, procedures, and directives, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract. This specifically includes, without limitation, Sections 103-55 and 103-55.5, HRS, dealing with wages, hours and working conditions of employees of contractors providing services or construction.

The state and federal government are not party to this contract and is not subject to any obligations or liabilities to the County, CONTRACTOR, or any other party pertaining to any matter resulting from the contract.

43. CONFLICT BETWEEN GENERAL CONDITIONS AND PROCUREMENT RULES. In the event of a conflict between the General Conditions and the procurement rules in the HAR, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.

44. ELECTION-RELATED CONTRIBUTIONS BY COUNTY CONTRACTORS. CONTRACTOR acknowledges and shall comply with Section 11-355, HRS.

45. BYRD ANTI-LOBBYING AMENDMENT. If this contract is for an award of \$100,000 or more, CONTRACTOR shall file a written declaration with the County certifying that CONTRACTOR has not and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Included within the written declaration shall be the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of CONTRACTOR with respect to this contract. CONTRACTOR also agrees to disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

46. DRAFTING. No provision of this Contract shall be interpreted for or against any party on the basis that such party was the draftsman of such provision, and no presumption of burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Contract.

47. CAPTIONS. The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

48. COUNTERPARTS. This Contract may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile or electronic executions or a combination thereof shall be construed together and shall constitute one and the same Contract.

49. SEVERABILITY. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining Contract terms.

50. WAIVER. The failure of the COUNTY to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the COUNTY's right to enforce the same in accordance with this Contract. The fact that the COUNTY specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of the COUNTY's rights or the CONTRACTOR's obligations under the law.

51. ENTIRE AGREEMENT. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the COUNTY and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the COUNTY and the CONTRACTOR other than as set forth or as referred to herein.

[END OF GENERAL CONDITIONS FOR PROFESSIONAL SERVICES CONTRACTS]



CONTRACT CERTIFICATION

I, MARK R. WALKER, Director of Finance of the County of Maui, State of Hawaii, do certify that there is available appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the foregoing contract, i.e.

<u>Appropriation Index</u>			<u>Amount Required</u>
390235	WAILUKU CIVIC COMPLEX	(7190)	\$ 10,170,125.86
390935	WAILUKU CIVIC COMPLEX	(7190)	\$ 329,721.14
		Total	<u>\$ 10,499,847.00</u>

CONTRACT NO. C 6664 MIRA IMAGE CONSTRUCTION LLC

Dated this 21 day of DECEMBER 2018
Time of Performance: 460 Calendar Days from NTP



MARK R. WALKER
Director of Finance

Wailuku Civic Complex, Phase 1A for MGMT
Job #PL 17-01
ORDINANCE #4861,4858 (FY2019)
BA #85

FY2019

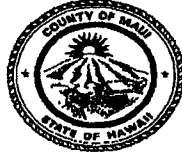
jh

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Exhibit "C"

3/4
12/24

ALAN M. ARAKAWA
Mayor



MARK R. WALKER
Director of Finance

JOHN C. KULP
Deputy Director of Finance

COUNTY OF MAUI
DEPARTMENT OF FINANCE
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

December 26, 2018

MIRA IMAGE CONSTRUCTION LLC
P.O. BOX 3160
HONOLULU, HAWAII 96802

RE: CONTRACT FOR CONSTRUCTION: WAILUKU CIVIC COMPLEX,
PHASE 1A FOR THE DEPARTMENT OF MANAGEMENT
JOB NO.: PL 17-01
CONTRACT NO. C6664

Dear Mira Image Construction LLC:

Enclosed is a copy of the fully executed contract for your file. You will be receiving your official notice to proceed on the project from the Director of the Department of Management or his designated representative.

Sincerely,

Christy K. Karliehu
For

Mark R. Walker
Director of Finance

MRW:ckk
Enclosure

xc: Department of Management

CONTRACT NO. C6664

CONTRACT FOR CONSTRUCTION

Department: Management
Project Title: Wailuku Civic Complex, Phase 1A
Job No.: PL 17-01
Certification Requested from County: / \$10,499,847.00
Contingency (included in above): [5%]

This CONTRACT is made and entered into by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose business address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as the "County", and MIRA IMAGE CONSTRUCTION LLC, a Hawaii limited liability company, whose mailing address is P.O. Box 3160, Honolulu, Hawaii 96802, hereinafter referred to as the "Contractor." County and Contractor shall hereinafter be referred to collectively as the "Parties".

Source of Funds. The source(s) and availability of the funds for this Contract shall be as set forth in the Contract Certification signed by the Director of Finance of the County of Maui on or before the effective date of this Contract. Contract Certification shall be on file in the office of the Director of Finance of the County of Maui.

RECITALS:

WHEREAS, the County desires to retain and engage the Contractor to provide the services described in this Contract and its attachments, and the Contractor desires to render such services for, and on behalf of, the County; and

WHEREAS, the Contract is for construction as defined in Section 103D-104, Hawaii Revised Statutes ("HRS"); and

WHEREAS, pursuant to Section 46-1.5(4), HRS, the County is authorized to enter into this Contract.

CONTRACT NO. C6664

NOW, THEREFORE, in consideration of the following mutual promises and agreements set forth, the Parties agree as follows:

1. Scope of Work. The Contractor shall supply, furnish, and pay for all labor, transportation, materials, tools, and equipment necessary to construct in place and complete all work as shown and called for in the Contract Documents (as defined in Paragraph 1.04 of the General Conditions). Contract Documents are maintained and on file in the office of the Director of Finance of the County of Maui, and all of the documents are hereby incorporated by reference as if fully repeated herein and made a part of this Contract.

2. Time of Performance. The Contractor shall commence performance under this Contract upon issuance of the Notice to Proceed, and shall complete performance within 460 calendar days therefrom, unless sooner terminated or extended in compliance with the terms of this Contract.

3. Compensation and Payment Schedule. In full compensation for Contractor's performance under this Contract, County agrees to pay Contractor, subject to appropriation, a total amount not to exceed the amount of certification requested as set forth above, inclusive of all taxes, which amount includes the contingency also as set forth above. Payments shall be made in accordance with the terms and schedule(s) set forth in the Contract Documents. Monthly progress payments shall be made to Contractor in arrears and subject to compensation retention, all in accordance with Section 7.3 of the General Conditions. Payments shall be subject to the prior receipt of the Contractor's monthly progress payment request by the Officer in Charge, no later than on the fifth (5th) day of each month for work performed during the previous calendar month. Requests for monthly progress payment shall set forth and include all the information, documentation, and certification required under Section 7.3 of the General Conditions, and any other information reasonably requested from time to time by the Officer in Charge. Final Payment shall be made in accordance with Section 7.7 of the General Conditions.

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4. General Terms and Conditions. The Contractor shall comply with the General Terms and Conditions of this Contract (also referred to as the "General Conditions"), which are attached hereto and is hereby made a part of this Contract.

5. Bonds. The Contractor is required to deliver to the County a performance bond in a form provided by the County, executed by a surety company authorized to do business in this County or otherwise secured in a manner satisfactory to the County, in an amount equal to one hundred per cent of the price specified in the Contract. The Contractor is required to deliver to the County a payment bond in a form provided by the County, executed by a surety company authorized to do business in this County or otherwise secured in a manner satisfactory to the County, for the protection of all persons supplying labor and material to the Contractor for the performance of the work provided for in the Contract. The payment bond shall be in an amount equal to one hundred percent of the price specified in the Contract.

6. Standards of Conduct Declaration. The Standards of Conduct Declaration of the Contractor is attached hereto and is made a part of this Contract.

7. Other Terms and Conditions. Any Special Conditions are attached hereto and made a part of this Contract. In the event of a conflict between the General Terms and Conditions and the Special Conditions, the Special Conditions shall control.

8. Liquidated Damages. The Contractor recognizes and agrees that time is of the essence under this Contract and, due to the speculative character and difficulty of ascertaining damages to the County of Maui resulting from any delay beyond the date set herein for completion, the Parties hereto, for the purpose of putting the question of damages beyond controversy and dispute, hereby agree that the Contractor shall pay to the County the sum of \$2,000.00 per calendar day as set forth in the Contract Specifications as liquidated damages, and not as a penalty, for each and every day that work or any portion of work contemplated under this Contract remains uncompleted beyond the time set herein for completion; provided, however, that the remedy of

CONTRACT NO. C6664

liquidated damages shall be in addition to any other rights and remedies otherwise available to the County of Maui and not expressly waived herein.

The Contractor agrees that the aforesaid sum is a reasonable estimate of, and reasonably proportionate to, the damages which will probably be sustained by the County as a result of any delay.

9. Conflict. In the event of any conflict between or among this Contract and other documents that are attached hereto or incorporated herein by reference or both, the terms of this Contract shall control first, the County's General Conditions second, other documents prepared by the County third, and documents prepared or submitted, or both, by the Contractor last.

10. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the County shall be sent to:

Procurement Officer
Department of Finance
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Notice to the Contractor shall be sent to the Contractor's address as indicated in this Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The Contractor is responsible for notifying the County in writing of any change of address.

11. Officer-in-Charge. The Managing Director, or an authorized representative, shall be the Officer-in-Charge for all services provided herein, and shall have the right to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing Contractor's performance and approving completed work/services with verification of same for Contractor's invoices or requests for payment. The Officer-in-Charge also serves as the point of contact for the Contractor from award to contract completion.

CONTRACT NO. C6664

IN WITNESS WHEREOF, the Parties execute this Contract by their signatures, on the dates below, to be effective as of the date of last signature hereto.

[EXECUTION PAGES TO FOLLOW]

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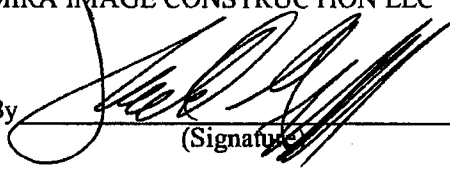
CONTRACT NO. C6664

CONTRACTOR EXECUTION PAGE

I hereby represent and warrant that I have the legal right and authority to execute this Contract on behalf of the Contractor.

CONTRACTOR:

MIRA IMAGE CONSTRUCTION LLC

By  _____
(Signature)

Michael Gangloff
(Print Name)

Its Member
(Title)

Date 12/19/18

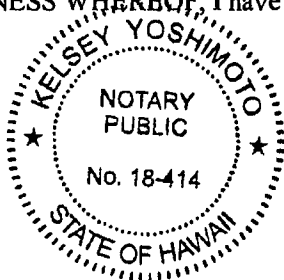
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CONTRACT NO. C6664

STATE OF Hawaii)
City & County of Honolulu) SS.

On this 19th day of December, 2018, before me personally appeared Michael Gangeloff, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

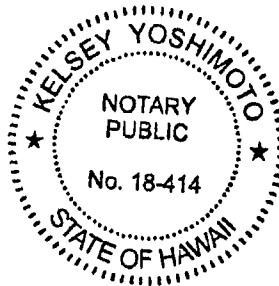


Kelsey Yoshimoto
Notary Public, State of Hawaii

Print Name: Kelsey Yoshimoto

My commission expires: 7/22/22

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>12/19/18</u>	# Pages:	<u>5</u>
Notary Name:	<u>Kelsey Yoshimoto</u>	Judicial Circuit:	<u>First</u>
Doc. Description:	<u>Contract for Construction/Mira Image</u>		
	<u>Construction LLC/Wailuku Civic Complex/</u>		
	<u>\$10,499,847.00/Job No. PL 17-01</u>		
Notary Signature:	<u>Kelsey Yoshimoto</u>		
Date:	<u>12/19/18</u>		




CONTRACT NO. C6664

COUNTY EXECUTION PAGE

COUNTY OF MAUI


By 
ALAN M. ARAKAWA
Its Mayor

Date 12/14/18

By 
MARK R. WALKER
Its Director of Finance

Date 12/24/18

APPROVAL RECOMMENDED:


KEITH A. REGAN, Director
Department of Management *Lynn A S. Araki - Regan*

Date 12-17-18

APPROVED AS TO FORM
AND LEGALITY:


RICHELLE M. THOMSON
Deputy Corporation Counsel
S:\A11\Contract Form\MIRA C6664\2018-12-05 C6664 Primary.wpd

Date 12/17/2018
LF2018-1741

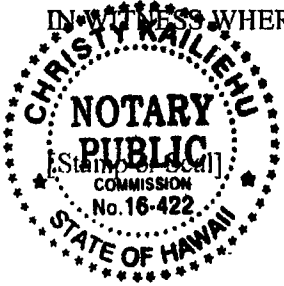
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CONTRACT NO. C6664

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

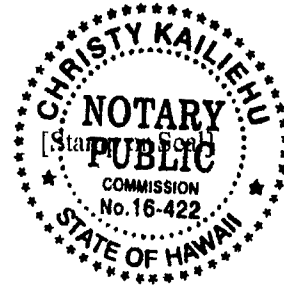
On this 24th day of December 20 18, before me appeared MARK R. WALKER, to me personally known, who being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui; and the said MARK R. WALKER acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Christy Kailiehu
Notary Public, State of Hawaii
Print Name: CHRISTY KAILIEHU
My commission expires: NOV 27 2020

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>DEC 24 2018</u>	# Pages:	<u>75</u>
Notary Name:	<u>CHRISTY KAILIEHU</u>	Judicial Circuit:	<u>2nd</u>
Doc. Description:	<u>Contract for Construction, Contract No. C6664, Wailuku Civic Complex, Phase 1A, Job No. PL 17-01</u>		
Notary Signature:	<u>Christy Kailiehu</u>		
Date:	<u>DEC 24 2018</u>		



CONTRACT NO. C6664

COUNTY OF MAUI

GENERAL TERMS AND CONDITIONS

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**COUNTY OF MAUI
GENERAL TERMS AND CONDITIONS
CONSTRUCTION CONTRACTS**

Preface

Section numbers of the Hawaii Revised Statutes are referenced at the end of some paragraphs in brackets. The purpose for the inclusion of such references is to indicate that the paragraphs are derived from Hawaii Revised Statutes. The language of the statutes has been retained for the most part, but in some instances the statutes may have been reworded. All Parties should review the referenced statutes.

In the event of a conflict between contract terms, any special provisions shall control first; technical specifications or construction plans second; State of Hawaii, Department of Transportation, Highway Division Standard Specifications & Special Provisions, if applicable, third; and these General Terms and Conditions last.

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Section 1 - Definitions

When used in these General Terms and Conditions 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:

1.01 "Addendum (plural-Addenda)" means a written or graphic document, including drawings and specifications, issued by the Procurement Officer during the bidding period which modifies or interprets the bidding documents by additions, deletions, clarifications, or corrections which document shall be considered and made a part of the contract when executed.

1.02 "Bid Documents" mean the composition of the notice to bidders, instructions to bidders, bid proposal form, general terms and conditions, special provisions, construction plans, specifications, and all addenda issued prior to opening of bids.

1.03 "Calendar Day" means any day 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.

1.04 "Contract Documents" mean the composition of general terms and conditions, special provisions, construction plans, specifications, addenda, Contractor's bid proposal, notice of award, executed contract, contract amendments, Contractor's performance and payment bonds, Notice to Proceed, and change orders.

1.05 "Contract Time" means the number of calendar days or working days provided in the contract for the completion of the work. The contract time shall commence on the effective date of the Notice to Proceed.

1.06 "County" means the County of Maui.

1.07 "Equipment" means all machinery, tools, and apparatus necessary to complete the work under the contract.

1.08 "HAR" means Hawaii Administrative Rules, as amended.

1.09 "HRS" means Hawaii Revised Statutes, as amended.

1.10 "Inspector" means the County's authorized representative assigned to make detailed inspections of contract performance, prescribed work, and materials supplied.

1.11 "Liquidated Damages" mean the amount set forth in the contract to be paid by the Contractor to the County for each and every day the work remains uncompleted beyond the contract time.

1.12 "Lowest Responsive, Responsible Bidder" means the bidder who has the capability in all respects to perform fully the contract requirements, the integrity and reliability which will assure good faith performance and who has submitted the lowest bid which conforms in all material respects to the invitation for bids.

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1.13 "Notice to Bidders" means the public advertisement inviting bids for the work contemplated. Such advertisement indicates the location of the work to be done and/or the character of the material to be furnished and the time and place for opening of bids.

1.14 "Notice to Proceed" means the written notice given by the Officer-in-Charge to the Contractor establishing the date on which the contract time will commence.

1.15 "Payment Bond" means the security executed by the Contractor and the Contractor's sureties and furnished to the County to guarantee payment by the Contractor to laborers, materials suppliers, and subcontractors according to the terms of the contract.

1.16 "Performance Bond" means the security executed by the Contractor and the Contractor's securities and furnished to the County to guarantee the completion of the work according to the terms of the contract.

1.17 "Plans or Drawings" means any and all designs, plans, construction drawings, specifications, cost estimates, work schedules, proposals, studies, reports, notes, tables, notations and other similar items which show the location, character, dimension, and details of the work to be completed under the contract, including the current and applicable portions of the *Water System Standards 2002, as amended*, for Department of Water Supply contracts.

1.18 "Procurement Officer" means the Director of the Department of Finance of the County of Maui, acting directly or through the Director's duly authorized representative.

1.19 "Shop Drawings" mean the drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by the Contractor and submitted by the Contractor to illustrate some portion of the work.

1.20 "Special Provisions" are the means by which the general terms and conditions are amended.

1.21 "State" means the State of Hawaii.

1.22 "Surety" means the qualified individual or entity, other than the Contractor, that insures the Contractor's acceptable performance of the contract.

1.23 "Total Sum Bid" means the total bid price submitted by the bidder for performing all work in accordance with the contract.

1.24 "Work" means the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient for the successful completion of the construction project and the execution of all duties and obligations imposed by the contract on the Contractor.

1.25 "Working Day" means a calendar day in which the Contractor is capable of working four (4) or more hours with its normal work force, exclusive of:

- (a) Saturdays, Sundays, and State/County recognized legal holidays;

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- (b) Days in which work is suspended by the County for four (4) or more hours through no fault of the Contractor; and
- (c) Days prevented by or resulting from inclement weather to permit the normal work force to proceed with construction operations for at least four (4) hours. Also, the Contractor shall be performing the current controlling item or items of work.

Section 2 - Bidding Instructions

2.01 Obtaining Bid Documents. Bidders shall refer to the notice to bidders for instructions in obtaining bid documents.

2.02 Proposal Forms. The County will furnish prospective bidders with proposal forms. Papers bound with or attached to the proposal form are part of the proposal. The bidder shall not detach or alter these papers when submitting its bid. The bidder shall also consider other documents, including the plans and specifications, a part of the proposal form whether attached or not.

2.03 Contractor's License Required. All bidders and all their subcontractors shall be licensed in accordance with chapter 444, HRS, and as required in the notice to bidders. It is the sole responsibility of the bidder to review the requirements of the project and determine the appropriate licenses that are required to complete the project.

2.04 Qualification of Bidders. (a) The Procurement Officer shall determine whether the prospective bidder has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. For this purpose, the Procurement Officer, in the Procurement Officer's discretion, may require any prospective bidder to submit answers, under oath, to questions contained in a standard form of questionnaire. Whenever it appears from the answers to the questionnaire or otherwise, that the prospective bidder is not fully qualified and able to perform the work, a written determination of non-responsibility of a bidder shall be made by the Procurement Officer. The reasonable failure of a bidder to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder. The decision of the Procurement Officer shall be final unless the bidder applies for administrative review pursuant to section 103D-709, HRS. [§103D-310, HRS]

(b) Questionnaires, when required by the Procurement Officer, shall be submitted not less than forty-eight (48) hours prior to the time designated for opening of bids.

(c) All bidders shall be incorporated or organized under the laws of the State of Hawaii, or be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract. The bidder shall be in compliance with all laws governing entities doing business in the State. [§103D-310, HRS]

2.05 Preparation of Bids. (a) Bids shall be submitted on the proposal form furnished by the County. The bidder shall complete the proposal using words and figures, which shall be in ink or typed. If a discrepancy occurs between the prices written in words and the those written in figures, the prices written in words shall govern.

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(b) Bids must be signed in ink by a duly authorized representative of the bidder on the spaces provided for signatures.

(c) If the bidder is a corporation, the title or titles of the person or persons signing must be stated and the corporate seal affixed thereto. If the corporation does not have a corporate seal, it should be indicated in the form of acknowledgment attached thereto. A copy of a resolution of the Board of Directors of the corporation, or other written evidence of authority signed by an officer of the corporation, authorizing the person or persons to execute bids, contracts, and other necessary documents in connection therewith shall be attached.

(d) Where the bidder is an association or group, the title or titles of the person or persons signing must be stated and an affidavit which acknowledges the authority of the signer or signers to sign bids and all other necessary documents in connection therewith for the association or group must be attached.

(e) Bids must be submitted in a sealed envelope, bearing on the outside the identity of the project and the bidder's name and address. Bids will be received only at the office designated in the notice to bidders. All bid envelopes will be stamped with the time and date received by the County. The County will reject and return a bid unopened if received after the time set for opening of bids.

2.06 Listing of Joint and Subcontractors. (a) The names of each person or entity to be engaged by the bidder as a joint Contractor or subcontractor and the nature and scope of work to be performed by each shall be submitted with the bidder's proposal. Bids that do not comply with this requirement may be accepted if acceptance is in the best interest of the County and the value of work to be performed by the joint Contractor or subcontractor is equal to or less than one percent (1%) of the total bid amount. [§103D-302, HRS]

(b) If no joint Contractor or subcontractor is to be engaged the bidder must complete the form by writing "NONE." If left blank, the County will interpret the blank as no joint Contractor or subcontractor will be used.

2.07 Examination of the Bid Documents and Project Site, and Conducting Investigations. (a) Before submitting a bid, bidders shall examine the bid documents and the project site, make inquiries at the appropriate offices of the County, State, and Federal governments, and the offices of persons and entities owning, controlling, or operating underground improvements, and conduct investigations to satisfy themselves as to the conditions to be encountered and to determine the correctness of the information contained in the bid documents.

(b) The submission of a bid shall be considered verification that the bidder:

- (1) Has made such examinations and inquiries;
- (2) Is satisfied with the conditions to be encountered in performing the work;
- (3) Acknowledges and understands the terms and conditions contained in the bid documents; and

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(4) Agrees to abide by such terms and conditions if awarded the contract.

2.08 Subsurface Investigations. (a) If the County has conducted subsurface investigations, bidders may inspect the data obtained from such investigations and examine samples, if available.

(b) Any subsurface information made available are for the bidders' convenience only. The information may have been obtained at specific locations, and no assurance is given that these conditions are necessarily typical of conditions at other locations. In addition, no assurance is given that conditions found at the time of the subsurface explorations, such as the presence or absence of water, will be the conditions that will prevail at the time of construction. The bidder shall be responsible for all assumptions, deductions, or conclusions made or derived from the subsurface information made available.

(c) Making available to bidders information from the subsurface explorations is not to be construed as a waiver of subsection 2.07 - Examination of Bid Documents and Project Site, and Conducting of Investigations.

2.09 Pre-bid Conferences. At least fifteen days prior to submission of bids pursuant to an invitation for bids (§ 103D-302) for a construction or design-build project with a total estimated contract value of \$500,000 or more, and at least fifteen days prior to submission of proposals pursuant to a request for proposals (§ 103D-303) for a construction or design-build project with a total estimated contract value of \$100,000 or more, the head of the purchasing agency shall hold a pre-bid conference and shall invite all potential interested bidders, offerors, subcontractors, and union representatives to attend. The County may, for projects that have special or unusual requirements, [e.g., requiring physical inspection,] make attendance at a pre-bid conference a condition for submitting a bid. Pre-bid conferences shall be announced to all prospective bidders in the notice to bidders. Nothing stated at the pre-bid conference shall change the solicitation unless a change is made by written addendum as provided in subsection 2.11 - Addenda.

2.10 Clarification of Bid Documents. (a) If it appears to a bidder that the performance of the work or any matter relating thereto is not sufficiently described or explained in the bid documents, or that a discrepancy exists between different parts thereof, or that the full intent of the bid documents is not clear, the bidder shall submit a written request to the Procurement Officer for clarification not less than ten (10) calendar days prior to the day designated for opening of bids.

(b) The written request may be faxed pursuant to subsection 2.19 - Use of Facsimiles.

(c) If the Procurement Officer deems that a clarification is in order, it shall be issued in the form of an addendum.

2.11 Addenda. (a) Any addendum issued prior to the opening of bids shall be binding upon the bidder and shall be made a part of the contract.

(b) No addendum will be issued during the 5 days immediately preceding the day designated for the opening of bids, unless the purpose of the addendum is to postpone the date of bid opening.

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(c) Failure by the bidder to receive any addendum shall not relieve the bidder from any obligation under its bid as submitted.

(d) No oral interpretation, instruction, or information regarding the bid documents given by any officer or employee of the County shall be binding.

2.12 Determination of Intended Bid. (a) If the proposal form contains a list of unit price or lump sum items, or both, they do not necessarily describe all of the work involved in the performance of the contract, but merely indicate that the compensation for the performance of the contract will be based upon and limited to such items. If a bidder is in doubt as to the proper bid item to which the anticipated cost of any incidental item is to be allocated, the bidder shall include such cost in the bid item which the bidder deems most appropriate.

(b) If the proposal calls for unit price items, and the bidder's unit price bid multiplied by the number of units in any item is not equal to the total amount bid for that item, it will be assumed that the unit price bid represents the bidder's intention and an error was made in the multiplication. The Procurement Officer will correct the total amount bid for the item and total sum bid of the bidder's proposal.

(c) If the figure obtained by adding the individual bid items listed in the proposal does not equal to the total figure written in the proposal, it will be assumed that an error was made in the addition and the Procurement Officer will correct the total sum bid.

(d) The bid price shall include all applicable taxes, including the State of Hawaii General Excise Tax, and shall include delivery charges F.O.B. job site.

(e) The bid price shall be firm for a minimum of sixty (60) days from the bid opening date to allow for contract execution.

2.13 Disqualification of Bids. The County may disqualify a bidder and reject its bid for reasons including but not limited to:

(a) The bidder is non-responsible;

(b) The bid is not responsive;

(c) The bid does not include a listing of subcontractors and joint Contractors or contains only a partial or incomplete listing;

(d) The bid is unsigned or is not signed by an authorized representative of the bidder;

(e) Evidence indicating that unit price or lump sum price items are unbalanced in a bid;

(f) Evidence indicating that bidders are in collusion;

(g) Submission of more than one bid whether under the same name or a different name.

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Without limiting the generality of the foregoing, a bidder shall be considered to have submitted more than one bid if the bidder submits more than one bid under the bidder's name, through bidder's agents, through joint ventures, partnerships, or corporations or which the bidder has more than twenty-five percent (25%) ownership in each of them, or through any combination of any of them;

- (h) The bidder is suspended under chapter 104 or chapter 444, HRS;
- (i) The bid is not accompanied by an acceptable form of bid security, or the bid security is in an amount less than five percent (5%) of the amount of the base bid, including additives;
- (j) The bidder fails to submit a valid and timely certificate of good standing from the Department of Commerce and Consumer Affairs Business Registration Division and/or the bidder fails to submit a valid and timely certificate of compliance from the Department of Labor and Industrial Relations.
- (k) The bidder failed to submit the standard form of questionnaire or failed to submit said questionnaire within the due time, when required by the County; or
- (l) Evidence of assistance from a person who has been an employee of the County within the preceding two years and who participated while in County office or employment in the matter with which the contract is directly concerned, pursuant to section 84-15, HRS.

2.14 Bid Security. (a) The County will not consider a bid proposal unless accompanied by bid security in an amount not less than five percent (5%) of the amount bid. [§103D-323, HRS]

- (b) Acceptable bid security shall be limited to the following:
 - (1) Surety bond underwritten by a company licensed to issue bonds in the State of Hawaii, which shall be substantially in the form provided in the project specifications;
 - (2) Legal tender;
 - (3) A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's, or official check drawn by, or a certified check accepted by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, and payable at sight or unconditionally assigned to the County. These instruments may be utilized only to a maximum of \$100,000. 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 shall be accepted.
- (c) The County will return bid security to bidders within ten (10) working days following execution of the contract by all Parties and after the successful bidder furnishes acceptable performance and payment bonds and certificates of insurances.

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2.15 Mandatory Purchase of Hawaii Products. Bidders are instructed to refer to section 103D-1002, HRS and chapter 3-124, HAR.

2.16 Substitution of Materials and Equipment. (a) Bids shall be based on materials and equipment specified in the bid documents, unless the Procurement Officer approves substitution of material or equipment by addendum.

(b) A bidder may make a written request for a material or equipment substitution for the Procurement Officer's determination. The written request shall be submitted to the Procurement Officer not less than ten (10) calendar days prior to the day designated for opening of bids. The substitution request shall be accompanied by four (4) copies of any pertinent information for the Procurement Officer's determination. If the Procurement Officer is unable to determine the quality and suitability of the substitution based on the information provided by the bidder, the request shall be rejected. The burden of proof as to the comparative quality and suitability of the substitution shall be the bidder's responsibility. The Procurement Officer shall be the sole judge as to the comparative quality and suitability of the substitution, and the Procurement Officer's decision shall be final. If the information provided to the Procurement Officer is determined incomplete or insufficient, whereas the Procurement Officer is unable to determine the quality and suitability of the substitution, the request shall be rejected.

(c) If the Procurement Officer approves a material or equipment substitution, an addendum shall be issued by the Procurement Officer.

(d) Bids based on a material or equipment substitution approved by the Procurement Officer, shall include the additional cost required for all modifications, including the cost of revising the construction plans and technical specifications required to accommodate the approved substitution.

2.17 Pre-Opening Modification and Withdrawal of Bids. (a) Bids may be modified prior to the bid submission deadline provided the Procurement Officer receives a written notice stating that a modification to the bid is submitted accompanied by the actual modified bid. The written notice may be faxed pursuant to subsection 2.19 - Use of Facsimiles, provided the bidder submits the actual written notice and actual modified bid prior to the bid submission deadline and within two (2) working days following the faxed notice.

(b) Bids may be withdrawn provided the Procurement Officer receives a written notice stating the bidder's bid is withdrawn prior to the deadline for opening of bids. The written notice may be faxed pursuant to subsection 2.19 - Use of Facsimiles. Bids may not be withdrawn after the bid opening.

2.18 Public Opening of Bids. Bids shall be opened publicly in the presence of one or more witnesses, at the time and place designated in the notice to bidders. The amount of each bid and other relevant information, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection. [§103D-302, HRS]

2.19 Use of Facsimiles. Copies of documents transmitted by bidders via facsimile machine shall be limited to the following:

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- (a) The request for clarification of bid documents pursuant to subsection 2.10 - Clarification of Bid Documents;
- (b) The request for material or equipment substitution pursuant to subsection 2.16 - Substitution of Materials and Equipment which includes four (4) copies of any pertinent information; and
- (c) The request for modification or withdrawal of bids pursuant to subsection 2.17 - Pre-Opening Modification or Withdrawal of Bids.

Documents will be received by facsimile machine at the number designated by the County. It is the bidder's responsibility to assure the faxed documents are received by the Procurement Officer in a timely manner.

Section 3 - Award and Execution of Contract

3.1 Award of Contract. The award of the contract, if it be awarded, will be made by written notice by the Officer-in-Charge to the lowest responsive, responsible bidder. Said notice shall not be construed to be authorization to proceed with the performance of services under the Contract. Any services performed by the Contractor prior to the date indicated in the Notice to Proceed from the Officer-in-Charge shall be at the Contractor's own risk. The contract will be awarded within sixty (60) days after the opening of the bids. If it appears that the contract cannot be awarded within such time, the award may be made after the specified time as mutually agreed upon between the County and the lowest responsive, responsible bidder. The County may cancel the award of the contract at any time before the execution of the contract.

3.2 Execution of Contract. Prior to the drafting of the Contract, discussions may be held between the Parties relative to the extent of the services to be performed by the Contractor and other pertinent matters. The Procurement Officer will submit the contract to the Contractor for review and signature. The Contractor shall enter into a contract with the County and provide sufficient performance and payment bonds and certificates of insurance within ten (10) calendar days after the execution of the contract or within such further time as the County may allow. The contract must be signed in ink by persons duly authorized to enter into contracts with the County. If the Contractor is an individual or partnership, the Contractor shall sign the contract before a notary public. If the Contractor is a corporation, the Contractor shall cause the contract to be signed before a notary public by an officer authorized to do so and shall affix to the contract its corporate seal, together with a certificate, resolution or other instrument vesting such officer with authority to sign the contract on the corporation's behalf. If the Contractor is an association or group, the title or titles of the person or persons signing must be stated and an affidavit which acknowledges the authority of the signer or signers to sign the contract and other necessary documents in connection therewith for the association or group must be attached. The signed contract shall be returned to the Procurement Officer for signature and further processing.

3.3 Performance and Payment Bonds. Within ten (10) calendar days after the execution of the contract or within such further time as the County may allow, the Contractor shall submit sufficient performance and payment bonds for the full and faithful performance of the contract in accordance with the terms and intent thereof and also for the prompt payment to all others for all labor and materials furnished by them to the successful bidder and used in the

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prosecution of the work provided for in the contract. Performance and payment bonds shall each be in an amount equal to one hundred percent (100%) of the contract price and shall be limited to:

- (a) Surety bond underwritten by a company licensed to issue bonds in the State of Hawaii, which shall be substantially in the form provided in the project specifications;
- (b) Legal tender; or
- (c) A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's, or official check drawn by, or a certified check accepted by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, and payable at sight or unconditionally assigned to the County. These instruments may be utilized only to a maximum of \$100,000. 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 shall be accepted.

3.4 Tax Clearance Requirement. Pursuant to §103D-328, HRS, the Contractor shall submit a tax clearance certificate issued by the Hawaii State Department of Taxation ("DOTAX") and the Internal Revenue Service ("IRS"). The certificate shall be valid for six (6) months from the most recent approval stamp date on the certificate and must be valid on the date it is received by the County. The application for the tax clearance shall be the responsibility of the Contractor, and must be submitted directly to the DOTAX or IRS and not to the County.

3.5 Hawaii Business Requirement. (a) The Contractor shall comply with either §103D-310 (c) (1) or §103D-310(c)(2), HRS, as follows:

(a) §103D-310(c)(1), HRS, Hawaii business. A business entity meeting the requirement of §103D-310(c)(1), HRS, referred to as a "Hawaii business", is incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, the Contractor shall submit a "Certificate of Good Standing" issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). A Hawaii business that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. A Contractor's status as a sole proprietor and its business street address indicated in Contractor's bid will be used to confirm that the Contractor is a Hawaii business.

(b) §103D-310(c)(2), HRS, Compliant non-Hawaii business. A business entity meeting the requirement of §103D-310(c)(2), HRS, referred to as a "compliant non-Hawaii business," is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State as a separate branch or division capable of fully performing under the contract. As evidence of compliance, the Contractor shall submit a "Certificate of Good Standing" issued by the BREG.

(c) The above certificates shall be current within six (6) months of issuance date and submitted to the County prior to award of contract. If a valid certificate is not submitted on a timely basis for award of a contract, a bid otherwise responsive and responsible may not receive the award. The application for the above certificates shall be the responsibility of the Contractor, and must be submitted directly to the BREG and not to the County.

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3.6 Department of Labor and Industrial Relations (DLIR) requirement. (a) The Contractor shall submit a certificate of compliance (DLIR form LIR #27), issued by the DLIR stating the Contractor complies with chapters 383, 386, 392 and 393 of the Hawaii Revised Statutes.

(b) The above certificate shall be current within six (6) months of issuance date and submitted to the County prior to award of contract. If a valid certificate is not submitted on a timely basis for award of a contract, a bid otherwise responsive and responsible may not receive the award. The application for the above certificates shall be the responsibility of the Contractor, and must be submitted directly to the DLIR and not to the County.

3.7 Contract Not Binding Unless Properly Executed and Appropriation Available. The contract shall not be binding or of any force until said contract has been fully and properly signed by all of the Parties thereto and approved by the Procurement Officer as to availability of funds in the amount and for the purpose set forth therein. The Contractor's execution of the contract shall be considered verification that the Contractor has reviewed, understands, accepts, and agrees to abide by the terms and conditions contained in the bid documents, the proposal submitted by the Contractor, the proposed contract, and the performance and payment bonds.

3.8 Forfeiture of Bid Security. Failure to execute the contract and furnish sufficient performance and payment bonds shall be cause for the cancellation of award to the Contractor. The Contractor also forfeits the bid security which becomes the property of the County, which is not a penalty, but liquidated damages sustained by the County. The County may make award to the next lowest responsive, responsible bidder or the County may re-advertise the work contemplated.

Section 4 - Legal Relations and Responsibility

4.1 Independent Contractor. The Contractor shall perform the contract as an independent contractor and shall not be entitled to any benefits and privileges of an employee of the County of Maui for purposes including, but not limited to, the County's civil service system, fringe benefits, unemployment benefits, worker's compensation benefits, federal and state taxes, social security tax, medicare tax, FICA tax and any other employment taxes. Upon execution of the contract, the Contractor shall comply with chapter 237 (general excise tax); chapter 383 (employment security); chapter 386 (workers' compensation); chapter 392 (temporary disability insurance); and chapter 393 (pre-paid health care), HRS. The Contractor and Contractor's sureties shall be liable for any loss caused to the County by reason of the Contractor's failure to comply with chapter 386, HRS.

4.2 Contractor's Inability to Contract for County. Notwithstanding anything herein contained to the contrary, Contractor shall not have the right to make any contracts or commitments for, or on behalf of, the County without first obtaining written consent of the County.

4.3 Insurance. (a) The Contractor shall submit to the Officer-in-Charge within ten (10) calendar days after execution of the contract, or within such further time as the County may allow, three (3) copies of insurance certification evidencing that the Contractor has in force the following types of insurance with the following minimum limits of liability:

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(1) HRS chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award. The Contractor shall submit an approved certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate shall be valid for six (6) months from the date of issue and must be valid on the date it is received by the County. The application for the certificate shall be the responsibility of the Contractor, and must be submitted directly to the DLIR and not to the County. [§103D-310(c), HRS]

(2) Employers' Liability Insurance. The Contractor and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain and require the Contractor's sub-contractors (if any) at their own expense to procure and maintain in full force at all times during the term of this Contract, employers' Liability insurance with minimum limits for bodily injury from accident of FIVE HUNDRED THOUSAND DOLLARS (\$500,000), or such other limit acceptable to the County, - each accident; for bodily injury from disease of FIVE HUNDRED THOUSAND DOLLARS (\$500,000), or such other limit acceptable to the County, - each employee; and for bodily injury from disease of FIVE HUNDRED THOUSAND DOLLARS (\$500,000), or such other limit acceptable to the County, - each policy limit.

(3) Commercial General Liability Insurance. The Contractor and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain and require the Contractor's sub-contractors (if any) at their own expense to procure and maintain in full force at all times during the terms of this Contract, Commercial General Liability insurance with a bodily injury and property damage combined single limit of liability of at least ONE MILLION DOLLARS (\$1,000,000), for any occurrence, and THREE MILLION DOLLARS (\$3,000,000) in the aggregate, or such other limit acceptable to the County. Such insurance shall include coverage in like amount for products/completed operations, contractual liability, and personal and advertising injury. "Claims made" policies are not acceptable under this section.

(4) Automobile Liability Insurance. The Contractor and anyone acting under its direction or control or on its behalf shall at its own expense procure and maintain and require the Contractor's sub-contractors (if any) at their own expense to procure and maintain in full effect at all times during the term of this Contract, Automobile Liability insurance with a bodily injury and property damage combined single limit of at least ONE MILLION DOLLARS (\$1,000,000), or such other limit acceptable to the County, per accident.

(5) Fire and Standard Extended Coverage Insurance. Except for contracts in which the scope of work is limited to roadway construction or utility improvements that do not include payment for stored materials on-site, the Contractor shall insure the work for one million dollars (\$1,000,000), or such other limit acceptable to the County, plus one hundred percent (100%) of the replaceable value thereof for the life of the contract against all loss or damage by fire at the site and against all loss or damage covered by the Standard Extended Coverage Insurance endorsement, including vandalism and malicious mischief, by an insurance company or companies acceptable to the County. The amount of insurance may vary with the extent of the work complete, but shall at all times be at least equal to one million dollars (\$1,000,000), or such other limit acceptable to the

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County, plus the replaceable value of the amount paid for the work and materials installed and delivered, plus the replaceable value of the work or materials furnished or delivered by the Contractor but not yet paid for by the County. The insurance policy or policies shall be held jointly in the name of the County, the Contractor, and the Contractor's subcontractors as their interest may appear. The Contractor shall submit to the County satisfactory proof of the amount of such insurance carried with each application for partial payment.

(6) **County as Additional Insured.** Insurance policies providing the insurance coverage required in this section (except for Workers' Compensation) shall name the County, its agents, and its employees as additional insured for any claims arising from the Contractor's activities under this Contract. Coverage must be primary in respect to the additional insured. Any other insurance carried by the County shall be excess only and not contribute with this insurance. Such policies or certificates showing the above coverage shall be deposited with the County within ten (10) days of the execution of this Contract and shall contain the following statement:

"The Named Insured, its Insurance Carrier or Broker shall notify the certificate holder of any cancellation, or reduction in coverage or limits, of any insurance within thirty (30) days of receipt of insurers' notification to that effect."

(b) When a subcontractor is utilized, the Contractor shall furnish or require the subcontractor to furnish the Procurement Officer within ten (10) calendar days after execution of the contract, or within such further time as the County may allow, with a copy of a policy or policies of insurance and certificate of insurance covering the subcontractor and the subcontractor's employees or agents in the same amount and for the same liability specified above.

(c) In the event of cancellation or termination of any policy required above or any substitute policy as provided for hereinafter, the Contractor or the subcontractor, as the case may be, shall immediately furnish the Procurement Officer with a substitute policy of insurance in the same amount and for the same liability specified above.

4.4 Indemnification. The Contractor shall defend, indemnify and hold harmless the County and its officers and employees harmless from any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, suits, action and liability therefor, caused by error, omissions or negligence in the performance of the contract by the Contractor or Contractor's subcontractors, agents and employees. The Contractor's obligations under this section shall survive and shall continue to be binding upon Contractor notwithstanding the expiration, termination or surrender of the contract.

4.5 Absence of Interest. The Contractor covenants that it currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under the contract. The Contractor further covenants that in the performance of the contract, no person having such interest shall be employed.

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4.6 Laws and Regulations. (a) The Contractor shall keep fully informed of all applicable federal, state and county laws, ordinances, codes, rules and regulations, governmental general and development plans and all changes thereto including, but not limited to, the Americans with Disabilities Act, health and safety, labor, anti-discrimination and environmental laws and regulations, and the following:

- (1) All Sections of the local County's Charter and Code;
- (2) Article I of Title 10, Maui County Code, 1980, as amended, relating to the Maui Traffic Code;
- (3) Title 12, Maui County Code, 1980, as amended, relating to Streets, Sidewalks, and Public Places;
- (4) Chapter 16.04A, Maui County Code, 1980, as amended, relating to the Fire Code;
- (5) Chapter 16.18A, Maui County Code, 1980, as amended, relating to the Electrical Code;
- (6) Chapter 16.20A, Maui County Code, 1980, as amended, relating to the Plumbing Code;
- (7) Chapters 103 and 103D, HRS, as amended, relating to Expenditure of Public Money and Public Contracts and the Hawaii Public Procurement Code, including Hawaii Administrative Rules Chapter 103D (Chapters 3-120, 3-121, 3-122, 3-123, 3-124, 3-125, 3-126, 3-128, 3-129, 3-130, 3-131, 3-132);
- (8) Chapter 104, HRS, as amended, relating to Wages and Hours of Employees on Public Works;
- (9) Chapter 22 of Subtitle 4 of Title 12, HAR, relating to Wage Determinations and the Administration and Enforcement of chapter 104, HRS;
- (10) Chapter 132, HRS, as amended, relating to the Fire Protection;
- (11) Chapter 321, HRS, as amended, relating to the Department of Health;
- (12) Chapter 378, HRS, as amended, relating to Fair Employment Practices;
- (13) Chapter 386, HRS, as amended, relating to Workers' Compensation Law;
- (14) Chapter 396, HRS, as amended, relating to Occupational Safety and Health, and specifically, all bids and proposals in excess of \$100,000 for construction jobs shall have a signed certification from the bidder or offeror that a written safety and health plan for the job will be available and implemented by the notice to proceed date of the project (see §396-18, HRS);
- (15) Chapter 444, HRS, as amended, relating to contractors for construction work. Provider shall use properly licensed contractors for all construction work as

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required by law;

(16) Part III of Subtitle 8 of Title 12, HAR, relating to Construction Standards;
and

(17) Chapters 120 to 132 of Subtitle 11 of Title 3, HAR, relating to the Hawaii Public Procurement Code.

(b) The Contractor shall comply with all such laws, ordinances, codes, rules, regulations, design standards and criteria, governmental general and development plans. If any discrepancy or inconsistency is discovered between the contract and any such law, ordinance, code, rule, regulation, design standard, design criterion, and governmental general and development plans, the Contractor shall immediately report the same in writing to the Officer-in-Charge.

(c) The Contractor shall obtain all necessary permits and approvals for the performance of the contract and shall pay for all charges in connection with such permits.

Section 5 - County Responsibility

5.1 Cooperation by the County. The County, through the Officer-in-Charge, shall cooperate fully with the Contractor and will promptly place at the disposal of the Contractor all available pertinent information which the County may have in its possession. The Officer-in-Charge will certify to the accuracy of certain information in writing whenever it is possible to do so. The County does not represent that other information not certified as accurate is so and takes no responsibility therefor, and the Contractor shall rely on such information at the Contractor's own risk.

5.2 Review by the County. The Officer-in-Charge shall review all submissions and other work and data required to be made by the Contractor and reject or approve such submissions in their entirety or approve the same subject to such deletions, additions and revisions as the County may deem necessary and proper. For submissions specified in the special provisions, all items not required by the County to be deleted, added or revised after review by the Officer-in-Charge and not defective by reason or error, omissions or negligence on the part of the Contractor, subcontractors, agents or employers shall be deemed to have been approved.

5.3 Limitation of Liability. The County shall be responsible for damage or injury caused by the County's agents, officers, and employees in the course of their employment to the extent that the County's liability for such damage or injury has been determined by a court or otherwise agreed to by the County, and the County shall pay for such damage or injury to the extent permitted by law and approved by the Maui County Council. The County's total liability under the contract, if any, is strictly limited to the provisions in this paragraph.

Section 6 - Performance of Contract.

6.1 Time. (a) Time is of the essence herein. Performance of the services under the contract shall commence on the commencement date designated in the Notice to Proceed and the

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services described herein shall be completed within the time specified.

(b) If the Contractor cannot complete the contract within the time specified due to reasons beyond its control, a written request for a time extension accompanied by a detailed accounting of the causes and reasons for such delays may be submitted to the Officer-in-Charge for determination as to whether a time extension will be granted. The Officer-in-Charge's decision shall be final.

(c) If the scope of the work is amended during construction, an appropriate adjustment may be made to the contract time subject to approval by the Officer-in-Charge.

(d) Any adjustment to the contract time shall be made by contract amendment or change order.

6.2 Preconstruction Meeting. The County may schedule a pre-construction meeting after the execution of the contract.

6.3 Construction Schedule. (a) The Contractor shall submit to the Officer-in-Charge a detailed construction schedule in critical path method ("CPM") format, itemizing the various subdivisions of work and their durations at the pre-construction meeting, if held. If a pre-construction meeting is not held, the Contractor shall submit the schedule to the Officer-in-Charge not more than ten (10) calendar days after the Notice to Proceed is issued.

(b) The detailed construction schedule shall include: construction activities, the submission and approval of samples of materials and shop drawings, the procurement of materials and equipment, fabrication of materials and equipment and their delivery, installation, and testing, and start-up in CPM format.

(c) The Contractor shall revise the construction schedule whenever any delays are anticipated in any of the various items of work, or the performance of such items of work are obviously not in accordance with the construction schedule, and submit it to the Officer-in-Charge, together with the reasons for such anticipated or actual delays, and the planned courses of action to prevent or minimize any delay in the completion of the contract. Acceptance of the revised construction schedule and the reasons for such revisions shall not be construed to mean concurrence or acceptance as a basis for any time extension by the Officer-in-Charge.

6.4 Construction Progress. (a) The Contractor shall furnish such manpower, materials, facilities and equipment as may be necessary to insure the prosecution and completion of the work in accordance with the accepted schedule. If work falls fourteen (14) days or more behind the accepted construction schedule, the Contractor agrees to take some or all of the following actions to return the project to the accepted schedule. These actions may include the following:

- (1) Increase manpower in quantities and crafts;
- (2) Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of equipment, or any combination of the foregoing; and/or
- (3) Reschedule activities.

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(b) Upon demand by the Officer-in-Charge, the Contractor shall prepare a proposed construction schedule revision demonstrating a plan to make up the lag in progress and insure completion of the work within the contract time. Upon receipt of an acceptable proposed schedule, the revision to the construction schedule shall be included a change order to the contract in accordance with section 8, Contract Amendments/Change Orders.

(c) All actions to return the project to the accepted schedule are at the Contractor's sole expense. The Contractor shall pay all costs incurred by the County which result from the Contractor's action to return the project to its accepted schedule. Contractor agrees that County shall deduct such charges from payments due the Contractor. It is further understood and agreed that none of the services performed by the Officer-in-Charge in monitoring, reviewing and reporting project status and progress shall relieve the Contractor of responsibility for planning and managing construction work in conformance with the construction schedule.

(d) When the Contractor foresees a delay in the prosecution of the work and, in any event, immediately upon the occurrence of a delay which the Contractor regards as unavoidable, the Contractor shall notify the Officer-in-Charge in writing of the probability of the occurrence of such delay, the extent of the delay, and its possible cause. The Contractor shall take immediate steps to prevent, if possible, the occurrence or continuance of the delay. If this cannot be done, the Officer-in-Charge shall determine how long the delay shall continue, to what extent the prosecution and completion of the work are being delayed thereby, and whether the delay is to be considered avoidable or unavoidable. The Officer-in-Charge shall notify the Contractor of the Officer-in-Charge's determination. The Contractor agrees that no claim shall be made for delays which are not called to the attention of the Officer-in-Charge at the time of occurrence.

(e) In case the work is not completed in the time specified, including extension of time as may have been granted for unavoidable delays, the Contractor shall be assessed damages for those costs incurred by the County which are attributable to the fact that the work was not completed on schedule.

6.5 Avoidable delays. (a) Avoidable delays in the prosecution of the work shall include delays which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or its subcontractors. Avoidable delays include:

(1) Delays which may in themselves be unavoidable but which affect only a portion of the work and do not necessarily prevent or delay the prosecution of other parts of the work nor the completion of the whole work within the contract time.

(2) Time associated with the reasonable interference of other contractors employed by the County which do not necessarily prevent the completion of the whole work within the contract time.

(b) The County may grant an extension of time for avoidable delay if deemed in the County's best interest. If the County grants an extension of time for avoidable delay, the Contractor agrees to pay actual costs, including charges for construction management, engineering and administration incurred during the extension, and other damages incurred by the County. Such time extension shall be included in the contract as a change order pursuant to section 8, Contract Amendments/Change Orders.

6.6 Unavoidable delays. (a) Unavoidable delays in the prosecution or completion of the work shall include delays which result from causes beyond the control of the Contractor and

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which could not have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or its subcontractors. Delays in completion of the work of other contractors employed by the County will be considered unavoidable delays insofar as they interfere with the Contractor's completion of the work. Delays due to normal weather conditions shall not be regarded as unavoidable as the Contractor agrees to plan work with prudent allowances for interference by normal weather conditions. Delays caused by fire, unusual storms, floods, tidal waves, earthquakes, strikes, labor disputes, freight embargoes and shortages of materials shall be considered as unavoidable delays insofar as they prevent the Contractor from proceeding with at least seventy-five percent (75%) of the normal labor and equipment force for at least four (4) hours per day toward completion of the current controlling item on the accepted critical path schedule.

(b) Should unavoidable delays prevent the work from beginning at the usual starting time, or prevent the Contractor from proceeding with seventy-five percent (75%) of the normal labor and equipment force for a period of at least four (4) hours per day, and the crew is dismissed as a result thereof, the Contractor will not be charged for a working day whether or not conditions change so that the major portion of the day could be considered to be suitable for work on the controlling item.

(c) For delays which the Contractor considers to be unavoidable, the Contractor shall submit to the Officer-in-Charge complete information demonstrating the effect of the delay on the critical path in the construction schedule. The submission shall be made within thirty (30) calendar days of the occurrence which is claimed to be responsible for the unavoidable delay. The Officer-in-Charge shall review the Contractor's submission and determine the number of days of unavoidable delay and the effect of such unavoidable delay on the critical path of the work. The County agrees to grant an extension of time, but no monetary compensation, to the extent that unavoidable delays affect the critical path in the construction schedule. During such extension of time, neither extra compensation or engineering inspection and administration nor damages for delay will be charged to the Contractor. It is understood and agreed by the Contractor and County that time extensions due to unavoidable delays will be granted only if such unavoidable delay involve critical activities which would prevent completion of the whole work within the specified contract time.

6.7 Furnishing of Plans and Specifications. The County will furnish the Contractor with up to six (6) sets of the plans and specifications at no cost to the Contractor. The Contractor shall be responsible for the cost of printing any additional plans and specifications.

6.8 Breakdown of Lump Sum Items. If the bid form calls for a total sum bid without bid items, or contains lump sum items, the Contractor shall submit a detailed cost breakdown of the total sum bid or such lump sum items not less than twenty (20) calendar days following issuance of Notice to Proceed.

6.9 Commencement of Work. The Contractor shall not commence with any work prior to the effective date of the Notice to Proceed.

6.10 Prosecution of the Work. The Contractor shall be available upon reasonable demand to discuss the progress of the services being performed under the contract. All questions arising during the performance of the contract which must be resolved by the Procurement Officer or Officer-in-Charge shall be brought to their immediate attention by Contractor.

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6.11 Contractor to Report Errors or Discrepancies. Should the Contractor discover any apparent inconsistencies within the contract documents, discrepancies between the contract documents and the conditions on the ground, or any error or omission in the contract documents or instructions, the Contractor shall immediately advise the Officer-in-Charge in writing thereof. If, after discovery, the Contractor elects to perform any work which may require revisions without authorization by the Officer-in-Charge, such work shall be performed solely at the Contractor's risk.

6.12 Authority of the Procurement Officer and Officer-In-Charge. Any question or dispute concerning any provision of the contract which may arise during its performance shall be decided by the Officer-in-Charge. The decisions of the Officer-in-Charge shall be final and binding upon all Parties unless the same is fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence, provided that decisions on questions or disputes relating to acceptance of the services performed under the contract, suspension or termination of the contract, extension of time, reduction or increase in the compensation of the Contractor and payment shall become final and binding upon all Parties only upon approval of the Procurement Officer, and provided further that nothing herein shall be construed as making final and binding any decision of the Officer-in-Charge and/or Procurement Officer on a question of law. Pending final decision of any dispute or question, the Contractor shall proceed diligently with the performance of services under the contract in accordance with the decision of the Officer-in-Charge and/or Procurement Officer.

6.13 Subcontracting. (a) The Contractor shall not subcontract any part of the contract except to those subcontractors specifically listed in the proposal submitted by the Contractor; provided that the Contractor may, for good cause, engage other subcontractors with the Officer-in-Charge's approval.

(b) Subcontractors and their employees shall be considered employees of the Contractor. Engaging subcontractors to perform any work shall not relieve the Contractor of its duty to complete the work in accordance with the contract.

(c) The Contractor shall replace any subcontractor for not performing in accordance with the contract when required and so notified by the Officer-in-Charge.

6.14 Rate of Wages for Laborers and Mechanics. (a) Every laborer and mechanic performing work on the job site for the construction of the work shall be paid no less than the prevailing wages provided that:

(1) Prevailing wages shall be not less than the wages that the Director of Labor and Industrial Relations, shall have determined to be the prevailing wages for corresponding classes of laborers and mechanics on projects of similar character in the State;

(2) The prevailing wages shall be not less than the wages payable under federal law to corresponding classes of laborers and mechanics employed on public works in the State that are prosecuted under contract or agreement with the government of the United States; and

(3) Notwithstanding the provisions of the contract, the prevailing wages shall

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be periodically adjusted during the performance of the contract in an amount equal to the change in the prevailing wages as periodically determined by the Director of Labor and Industrial Relations. [§104-2(b), HRS]

(b) No laborer or mechanic employed on the job site of any public work of the County thereof shall be permitted or required to work on Saturday, Sunday, or a legal holiday of the State or in excess of eight 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 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 laborers and mechanics on projects of similar character in the State. [§104-2(c), HRS]

(c) The Contractor or the Contractor's subcontractors shall pay all mechanics and laborers employed on the job site, unconditionally and not less often than once a week, and without deduction or rebate on any account, except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five (5) working days prior to the time of payment, at wage rates not less than those deemed to be prevailing, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and the laborers and mechanics.

(d) The rates and wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the job site, and a copy of the rates of wages required to be posted shall be given to each laborer and mechanic employed under the contract by the Contractor at the time each laborer and mechanic is employed, except that where there is a collective bargaining agreement the Contractor does not have to provide the Contractor's employees the wage rate schedules. [§104-2(d), HRS]

(e) The Contractor shall be solely responsible for any increase in rates and wages during the contract.

(f) The County may withhold from the Contractor so much of the accrued payments as the County may consider necessary to pay to the laborers and mechanics employed by the Contractor or any subcontractor on the job site the difference between the prevailing wages and the wages received and not refunded by the laborers and mechanics. [§104-2(e), HRS]

6.15 Payrolls and Payroll Records. (a) A certified copy of all payrolls shall be submitted weekly to the Officer-in-charge for review. 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 prevailing wages and the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. Any certification discrepancy found by the County shall be reported to the Contractor and Director of Labor and Industrial Relations. [§104-3(a), HRS]

(b) Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the Contractor and the Contractor's subcontractors during the course of the work and preserved for a period of three (3) years thereafter. The records shall contain the name

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of each employee, the employees' correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. [§104-3(b), HRS]

(c) The Contractor shall make payroll records available for examination within ten (10) calendar days from the date of the written request by the County, Director of Labor and Industrial Relations of the State, or any authorized representatives thereof. Any Contractor who:

- (1) Fails to make payroll records accessible within ten (10) calendar days;
- (2) Fails to provide information requested for the proper enforcement of chapter 104-3, HRS, within ten (10) calendar days; or
- (3) Fails to keep or falsifies any record required under chapter 104-3, HRS, shall be assessed a penalty as set forth in section 104-22(b), HRS. [§104-3(c), HRS]

6.16 Prompt Payment By Contractor to Subcontractors and Vendors. (a) Any money, other than compensation retained, paid to the Contractor shall be dispersed to subcontractors and vendors within ten (10) calendar days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor met all the terms and conditions of the subcontract and there are no bona fide disputes on which the County has withheld payment. [§103-10.5(a), HRS]

(b) Upon final payment to the Contractor, full payment to the subcontractor, including compensation retained, shall be made within ten (10) calendar days after receipt of money, provided that there are no bona fide disputes over the subcontractor's performance under the subcontract. [§103-10.5(b), HRS]

(c) 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 (b) above, and:

- (1) Has provided the Contractor an acceptable performance and payment bond for the work under the contract executed by a surety company authorized to do business in the State of Hawaii, as provided in Section 103-32.1, HRS; or
- (2) The following has occurred:
 - (A) 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 or surety, as provided in section 103D-324, HRS; and
 - (B) The subcontractor has provided to the Contractor:
 - (i) 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 times the amount being retained or withheld by the Contractor;

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- (ii) Any other bond acceptable to the Contractor; or
- (iii) Any other form of mutually acceptable collateral, 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 Procurement Officer to the Contractor and subsequently, upon receipt from the Procurement Officer, by the Contractor to the subcontractor within the applicable time periods specified in subsection (b) and section 103-10. If the Procurement Officer or the Contractor fails to pay in accordance with this section, a penalty of one and one-half per cent per month shall be imposed upon the outstanding amounts due that were not timely paid by the responsible party. The penalty may be withheld from future payment due to the Contractor, if the Contractor was the responsible party. If a contractor has violated subsection (b) three or more times within two years of the first violation, the Contractor shall be referred by the Procurement Officer to the Contractor license board for action under section 444-17(14), HRS.

(d) A properly documented final payment request from a subcontractor, as required by subsection (c), shall include:

- (1) Substantiation of the amounts requested;
- (2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:
 - (A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;
 - (B) 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
 - (C) 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
- (3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The Procurement Officer shall return any final payment request that is defective to the Contractor within seven days after receipt, with a statement identifying the defect.

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(e) In the case of a construction contract, a payment request made by a contractor to the Procurement 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 subsection (c) unless the payment request includes:

(1) Substantiation of the amounts requested; and

(2) A certification by the Contractor, to the best of the Contractor's knowledge and belief, that:

(A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(B) 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

(C) 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 Procurement Officer shall return any final payment request that is defective to the Contractor within seven days after receipt, with a statement identifying the defect.

(f) 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 subsection (c) of this section; provided that any such payments withheld shall be withheld by the Procurement Officer.

6.17 Termination of Work on Failure to Pay Agreed Wages. If the County 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 specifications, or has not received the laborer's or mechanic's full overtime compensation, the County may, 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 work or part by contract or otherwise, and the Contractor and the Contractor's sureties shall be liable to the County for any excess costs occasioned thereby. [§104-4, HRS]

6.18 Vehicular and Pedestrian Traffic, Public Convenience, and Safety. (a) If the project requires the closing or obstruction of any public thoroughfare, the Contractor shall comply with the Manual on Uniform Traffic Control Devices, U. S. Department of Transportation, Federal Highway Administration, and the Maui Traffic Code of the Maui County Codes, 1980, as amended.

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(b) No pedestrian or vehicular traffic within public rights of way shall be altered without authorization from the Hawaii State Department of Transportation, Department of Public Works and Environmental Management, Police Department, and Department of Fire and Public Safety.

(c) The Contractor shall minimize, to the extent possible, hazardous conditions; shall provide additional safety devices as deemed prudent; shall maintain all signs, signals, lighting devices, markings, and barricades provided to minimize public inconvenience; and shall exercise safety practices during all hours of the day for as long as such hazardous conditions exist. The Contractor shall prudently extend applicable provision of this subsection to areas, other than streets and highways, which involve the project.

(d) The presence of inspectors on the project or their oversight to discover or to point out any noncompliance on the part of the Contractor shall not relieve the Contractor from its responsibility under this subsection.

6.19 Work on Weekends and Holidays, Night Work, and Overtime Work. (a) No work, except for resolution of an emergency event, shall be performed on Saturdays, Sundays, or State/County recognized legal holidays, unless authorized by the Officer-in-Charge.

(b) No work shall be performed between sunset and sunrise, unless required by the contract documents or authorized by the Officer-in-Charge.

(c) No work in excess of eight (8) hours per day or in excess of forty (40) hours per week shall be performed unless authorized by the Officer-in-Charge.

(d) The Contractor shall be responsible for costs incurred by the County under paragraphs (a), (b), and (c).

6.20 Value Engineering. (a) Except with specific approval from the Officer-in-Charge, this subsection shall be applicable only if the contract price is in excess of \$100,000 and will result in a net savings in the project of at least \$1,000.

(b) Any cost reduction proposal intended to be considered as a value engineering change proposal (VECP) shall be so identified as a value engineering change proposal and submitted to the Officer-in-Charge.

(c) In order that any proposal be accepted as a VECP, it must result in a net cost savings to the County by providing a system, structure, procedure or process better than the design specified or by providing less costly items than those specified in the contract documents without impairing any of their essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance, and necessary standardized features. [§103-49, HRS]

(d) With the submission of any VECP, the Contractor shall submit the following information:

(1) A description of the difference between the existing contract requirements and the VECP, and the comparative advantages and disadvantages of each;

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(2) An itemization of the requirements of the contract which must be changed if the VECP is accepted and recommendations as to how each change should be made;

(3) An estimate of the reduction in construction costs or the net cost savings to the County that would result from acceptance of the VECP, taking into account the costs of implementation by the Contractor, including costs attributable to subcontractors, and the basis of the estimate;

(4) A prediction of effects the VECP would have on other costs to the County, such as County-furnished property costs, costs of related items, and costs of maintenance and operations;

(5) A statement of the time by which a change order accepting the VECP should be issued to obtain the maximum cost reduction during the remainder of the contract period, noting any effect on the contract period; and

(6) The dates of any previous submissions of the value engineering change proposals, the number of any governmental contracts under which submitted and the previous actions by the various branches of government.

(e) The submission of any VECP by the Contractor and the receipt thereof by the Officer-in-Charge, or verbal acceptance of any VECP by any employee, assign, or agent of the County shall not obligate the County to accept or approve any such proposal. The Contractor shall comply with the provisions of the contract until such time that a VECP is approved.

(f) The County may accept in whole or in part any VECP. Its decision in the acceptance of any VECP is final. The County will approve value engineering change proposals by issuing change orders.

(g) The Contractor may restrict the County's right to use any sheet of a value engineering change proposal or of the supporting data in accordance with the terms of the following legend if it is marked as follows on such the sheet:

"This data furnished pursuant to a value engineering incentive clause shall not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under said clause. This restriction does not limit the County's right to use information contained in this data if it is or has been obtained from another source, or is otherwise available, without limitations. If after use of the data in evaluating a value engineering change proposal, the County accepts the proposal by issuing a change order, the County shall have the right to duplicate, use, and disclose any data pertinent to the proposal as accepted, in any manner and for any purpose whatsoever, and authorize others to do likewise."

(h) If the VECP is approved, the Contractor grants to the County all rights to use, duplicate or disclose in whole or part, in any manner and for any purpose, and to have or permit others to do likewise, any data reasonably necessary to fully utilize such a proposal. Contract modifications made as a result of this clause will state that they are made pursuant to it.

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- (i) If a VECP is accepted, affected portions of the construction plans and specifications shall be modified by change order.
- (j) An equitable adjustment shall be made in the contract price so that the Contractor will share a portion of the realized cost reduction.
- (k) If a VECP is accepted, an adjustment shall be made to the contract time, as required.
- (l) Previously accepted or previously submitted but not accepted value engineering change proposals under other contracts, or both, may be submitted for consideration; provided that previously accepted value engineering change proposals under other contracts shall not be grounds for automatic acceptance under the contract.
- (m) The County may impose, as a condition of acceptance of any VECP, a requirement that the Contractor warrants the statements, claims, and other information contained in the VECP regarding essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance, and desired appearance, such warranty to be for an appropriate period to be determined by the County.
- (n) The determination of the proposed VECP shall be at the County's sole discretion and the decision will be final.
- (o) The County shall not be liable for costs or delays incurred by the Contractor regarding the County's determination with respect to a proposed VECP including development costs, anticipated profits, and increased material or labor costs. Non conforming work and the annulment of VECP review shall not be the basis of claim against the County including claims for delay.

6.21 Plans to Be Furnished by the Contractor. (a) Working or shop drawings shall be submitted only by the Contractor for approval by the Officer-in-Charge. Upon approval by the Officer-in-Charge, such drawings shall become part of the contract documents. The Contractor shall not proceed with work and shall not order any material, equipment, or device affected by such drawings, until such drawings are approved by the Officer-in-Charge.

(b) The Contractor shall submit six (6) copies of working or shop drawings and/or catalog cuts for fabricated items and manufactured items (including mechanical and electrical equipment). Submission shall be made in sufficient time to allow the Officer-in-Charge not less than twenty-one (21) calendar days for examining submissions, unless such submissions are for major equipment that requires review by more than one engineering discipline, in which case the time period shall be increased to thirty (30) calendar days.

(c) Drawing size shall be (8.5" x 11"), (11" x 17"), or (24" x 36"). Drawings shall be accurate, distinct, and complete, and shall contain all required information, including satisfactory identification of items, units, and assemblies in relation to the contract drawings and specifications.

(d) The Contractor shall mark drawings by a signed stamp, or other approved means, indicating that the Contractor has checked the shop drawings, and that the work shown is in

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accordance with contract requirements and has been checked for dimensions and relationship with work of all other trades involved. The practice of submitting incomplete or unchecked drawings will not be acceptable and will be returned to the Contractor for re-submission in the proper form.

(e) After the Officer-in-Charge's review, two (2) sets of submissions will be returned to the Contractor appropriately stamped. If major changes or corrections are necessary, the drawings may be rejected and will be returned to the Contractor with one (1) set of the submissions indicating such changes or corrections, and the Contractor shall correct and resubmit six (6) revised copies. No changes shall be made by the Contractor to resubmitted shop drawings other than those changes indicated by the Officer-in-Charge.

(f) The Officer-in-Charge's review of shop and working drawings and catalog cuts shall not relieve the Contractor from responsibility for correctness of dimensions, fabrication details, and space requirements.

(g) Operation and maintenance data shall be assembled in three ring binders (Slant "D" style), which shall be indexed and tabbed. The Contractor shall provide six (6) copies of originals (not photocopies) of the operation and maintenance data to the Officer-in-Charge.

6.22 Contract Documents to Be Kept on the Project Site. The Contractor shall keep a copy of the contract documents at the project site, and in such a location where they shall be readily accessible for reference.

6.23 Additional Plans to Be Furnished by the Officer-in-Charge. The construction plans are intended to be fairly comprehensive and indicate in detail the scope of the work. If during the progress of construction, the Contractor should request supplemental plans to clarify or define in greater detail the intent of the contract documents, the Officer-in-Charge may furnish such supplemental plans, and such additional plans shall become a part of the contract documents, and the Contractor shall perform the work in conformance with such supplemental plans.

6.24 Personal Supervision. (a) The Contractor shall either be personally present or have a responsible representative, authorized to act on behalf of the Contractor, at the project site at all times.

(b) The Contractor shall provide the Officer-in-Charge, in writing, with the name(s) of the Contractor's representative(s).

6.25 Character of Workers, Methods, and Equipment. (a) The Contractor shall employ persons who possess the skills required to perform the work under the contract.

(b) When required by the Officer-in-Charge, the Contractor shall replace any employee who lacks the skill to perform the work assigned to such employee, or is discourteous or disorderly while performing such work. A person who has been replaced may be assigned other work with the approval of the Officer-in-Charge.

(c) The Contractor shall use proper and efficient methods and equipment based upon standard construction industry practices for the performance of the contract.

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6.26 Lines and Grades. (a) The laying out of base lines, establishment of grades and staking out the entire work shall be done by a surveyor or civil engineer licensed in the State of Hawaii at the expense of the Contractor, and the Contractor shall be solely responsible for their accuracy. The Contractor shall be responsible for costs of replacing the horizontal and vertical control points or monuments if disturbed or destroyed by the Contractor.

(b) Should any discrepancy be discovered in the dimensions given in the plans, the Contractor shall immediately notify the Officer-in-Charge before proceeding any further with the work, otherwise the Contractor will be held responsible for any costs involved in correction of construction placed due to such discrepancy.

6.27 Contractor's Entry upon Private Properties. Unless explicitly stated in the contract documents or informed in writing by the Officer-in-Charge, the Contractor is not authorized to enter any property other than the project site. If the Contractor enters any property, whether authorized by the landowner or any other person claiming an interest in the property, or without any authorization, and causes property damage, personal injury, or wrongful death thereupon, the Contractor shall be responsible to settle any and all claims made by the landowner or person claiming an interest in the property.

6.28 Existing Underground Improvements. (a) Whenever the existence of drainage, gas, oil, sewer, or water pipelines (if applicable, see also Article 301.10 of the Water Systems Standards); cable TV, electric, or telephone lines, or other underground utility facilities are indicated in the construction plans, or are not indicated in the construction plans, but inquiries indicate their existence, the Contractor shall exercise utmost caution, keeping in mind the possible existence of unrecorded laterals and other incidental facilities, and protect all such improvements from damage. The Contractor shall be responsible for any and all damages to all such improvements resulting from its operations.

(b) The Contractor is not eligible for additional compensation and shall not make any claims against the County for extra effort required to prevent any damages or extra work caused or resulting from its operations under this subsection.

6.29 Quality of Materials. All materials furnished and installed shall be new, be of standard quality of their respective kinds, and be free of defects. Rejected materials must be removed from the project site immediately or within such time as allowed by the Officer-in-Charge and replaced with materials of the quality required by the contract documents. Failure by the Officer-in-Charge to reject materials or to require the removal of such rejected materials shall not relieve the Contractor from responsibility as to the quality and character of materials used on the project.

6.30 Defective Work. Any defective work which may be discovered before the completion of the work shall be corrected as soon as possible. The fact that the Officer-in-Charge may not be aware of defective work shall not constitute the acceptance of the same. Payment, whether partial or final, shall not be construed to be an acceptance of defective work or improper material.

6.31 Inspectors. (a) The Officer-in-Charge may place inspectors on the project. They shall have free access to inspect any and all portions of the project at all times and shall be afforded all means to inspect the materials furnished and work performed on the project. No

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defective or noncomplying material or workmanship will be considered as accepted as a consequence of the failure of the inspectors to discover or to point out said defects or deficiencies during the construction; nor will the presence of inspectors on the project relieve the Contractor from responsibility for securing the quality and progress of work required by the contract documents.

(b) The inspectors may not alter or waive the provisions of the contract, issue instructions contrary to the contract, or act as foreman for the Contractor. The inspectors shall be free to perform their duties at all times and any intimidation of any inspector by the Contractor or the Contractor's agents or employees, shall be sufficient reason for the County to terminate the contract.

(c) 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 County, or on a Saturday, Sunday, or legal State/County holiday, the Contractor shall submit a written request to the Officer-in-Charge for inspection services during such period not less than forty-eight (48) hours in advance of the time when such inspection services are required. If the Contractor's request is granted, the Contractor shall pay the County at the rate per hour designated by the County for each inspector provided. A deposit of legal tender or certified check in an amount estimated by the County to be the cost of be incurred by the County. The Contractor shall be refunded any unused portion of the deposit or be responsible for additional payment based on actual cost incurred by the County for the additional inspection. The County may reject the request for additional inspection services, and consequently deny the Contractor's request to work overtime if inspectors are not available during the period the Contractor is planning to work.

6.32 Findings Confidential. Any reports, information, or data which the County deems confidential and is given to or prepared or assembled by the Contractor under the contract shall not be made available to any individual or entity by the Contractor without the prior written approval of the Officer-in-Charge.

6.33 Ownership Vested in County. It is expressly understood that any and all equipment, materials, data, information, results and any other thing derived or obtained directly or indirectly as a result of the contract, including, but not limited to, equipment, materials, data, information, and results shall be the sole and exclusive property of the County and that the Contractor shall have no interest, right or title to or in any of the foregoing.

6.34 Pollution. In accordance with section 103D-411, HRS, the Contractor shall control any pollution in accordance with applicable federal, state, and county regulations when pollution is encountered in the performance of the contract. The Contractor shall immediately notify the Officer-in-Charge if pollution is encountered in the performance of the contract.

6.35 Best Efforts. Contractor agrees that it will, at all times, faithfully, industriously, and to the best of Contractor's ability, experience and talents, perform all of the duties that may be required of Contractor pursuant to the express and implicit terms hereof to the reasonable satisfaction of the County, as determined by the Officer-in-Charge.

6.36 Clean up. Upon the completion of the work, the Contractor shall remove all temporary structures, surplus materials, rubbish, and obstructions. Should the Contractor fail to do so, the Officer-in-Charge may undertake the work and deduct the cost of performing such

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work from compensation due the Contractor.

6.37 Responsibility of the Contractor Prior to Final Acceptance of the Work. The Contractor shall be responsible for the work until final acceptance by the County. Use of any portion of the work which may be necessitated by tie-ins to existing and live water systems and which portion of the work must be kept live and use of other portions of the work other than water system improvements by the public, with or without permission by the County, shall not be construed as an acceptance of the work and shall not relieve the Contractor from its responsibility hereunder.

6.38 Substantial Completion. (a) The Contractor, on considering the work to be substantially complete and ready for its intended use, shall so notify the Officer-in-Charge in writing. The notification shall include an itemized list of remaining incomplete work. If the Officer-in-Charge determines that the work is not substantially complete, the Officer-in-Charge will so notify the Contractor in writing identifying the reasons for such a determination. If the Officer-in-Charge finds the work substantially complete, the Officer-in-Charge will meet with the Contractor to:

- (1) prepare a punch list of incomplete items of work;
- (2) define the division of responsibility between County and Contractor with respect to security, operation, maintenance, heat, utilities, insurance, and warranties; and
- (3) describe any other issues related to acceptance of the substantially completed work.

The Officer-in-Charge will notify the Contractor in writing of the terms of the County's acceptance of substantial completion. The written notification shall include a punch list of incomplete work items, set the date for their completion, describe the division of responsibility between the County and Contractor, and describe any other terms of acceptance of substantial completion. The Contractor shall acknowledge, in writing, acceptance of all terms specified in the written notice before the project is determined substantially complete by the County.

(b) Upon receipt of the Contractor's written acknowledgment, the County shall take possession of the work or portion of the work and put it into its intended service. The date that the work or portion of the work is put into service will become the date of substantial completion.

(c) Subsequent to the substantial completion date, the County may exclude the Contractor from the work during such periods when construction activities might interfere with the operation of the project. The County, however, shall allow the Contractor reasonable access for completion or correction of incomplete punch list items.

(d) Except for any portion(s) of work specified for early completion or required by the County for early possession, substantial completion will not occur for any work until the entire project is ready for possession and use.

(e) The Officer-in-Charge shall have sole discretion for determination of substantial completion.

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6.39 Possession of Portions of the Project. Should the Contractor fail to meet any date specified for substantial completion of the work or any portion of the work requiring early possession and use by the County, the County may, after a 10-day written notice to the Contractor, take over such portion or all of the work that is behind schedule. In such case, the Officer-in-Charge will prepare a punch list of incomplete work. The County may allow the Contractor reasonable access to the work at such times that the operation of the project will not be affected or the County may complete the work itself after giving the Contractor notice of the County's intention to do so. The cost of County's work will be charged to and deducted from amounts due to the Contractor. The substantial completion date will be established as the date when the County actually begins using the project or portion of the project for its intended purpose. Division of responsibilities between the County and Contractor, beginning of warranties, and any other issues relating to substantial completion shall be as specified in the contract.

6.40 Acceptance of the Project. (a) Upon completion of the work, including portions of the work previously accepted as substantially complete, the Contractor shall so notify the Officer-in-Charge in writing. Upon receipt of the notification, the Officer-in-Charge will determine if the work conforms to the terms of the contract. If the Officer-in-Charge finds materials, equipment, or workmanship which do not meet the terms of the contract, the Officer-in-Charge shall prepare a punch list of such items and submit it to the Contractor. Following completion of the corrective work by the Contractor, the Contractor shall notify the Officer-in-Charge that the work has been completed in accordance with the contract. Final determination of the acceptability shall be made by the Officer-in-Charge. Upon acceptance of the project, the Officer-in-Charge shall immediately file a notice of completion. For portions of the project not previously accepted as substantially complete, the conditions of guarantee shall commence on the date that the Officer-in-Charge files a notice of completion.

(b) The final application for payment shall be accompanied by all required documentation called for in the contract including complete and legally effective releases or waivers of liens in a form acceptable to the County. Subject to prior approval of the County, the Contractor may submit in lieu of the lien releases and waivers: (1) receipts of releases in full; (2) an affidavit that the releases and receipts cover all labor, services, materials, and equipment for which a lien could be filed and that all payrolls, materials, and equipment bills and other indebtedness connected with the work for which the County or the County's property might in any way be responsible have been paid or otherwise satisfied; and (3) consent of the surety, if any, to final payment.

(c) If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to the County to indemnify the County against any lien.

(d) If, after reviewing the Contractor's final application for payment including all documentation required, the Officer-in-Charge determines that the work is complete, the Officer-in-Charge will recommend that final payment, including all retainages, be made by the County. The final payment will be due and payable by the County within thirty (30) days after any legal notice periods have expired.

6.41 Warranty. (a) The Contractor and Contractor's sureties shall be responsible for the work for a period of one (1) year following final acceptance to be free from defects in

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workmanship and materials. Product warranties, as applicable, beyond the one (1) year Contractor warranty shall be secured in the name of the County of Maui and furnished to the County prior to final payment request.

(b) The performance and payment bond shall remain in force during the Contractor's warranty period, or the Contractor may elect to withdraw the performance and payment bond and deposit a replacement bond in an amount not less than ten percent (10%) of the final contract price; provided that the Contractor and Contractor's sureties for the replacement bond shall be responsible for any and all costs which exceed the replacement bond amount during the warranty period.

(c) The Contractor and Contractor's sureties shall be responsible for the repair or replacement, or both, of all defective work or materials.

(d) If the Contractor or Contractor's sureties fail to perform the responsibilities under this subsection in a timely manner, the Officer-in-Charge may undertake or cause the undertaking of such work, and the Contractor and Contractor's sureties shall be responsible for all costs thereunder.

(e) If the work or any portion thereof fails, and the Officer-in-Charge determines that the public's safety, health, or welfare is jeopardized, the Officer-in-Charge may, with or without notice to the Contractor or the Contractor's surety, undertake the repair or replacement work, and the Contractor and Contractor's sureties shall be responsible for all costs incurred by the County.

Section 7 - Compensation

7.1 Compensation. The Contractor shall be paid the amount stated in the contract less any reduction in compensation and plus any increase in compensation pursuant to the contract change order and modification sections herein, as full compensation for the performance of the services under the contract.

7.2 Compensation Retained. (a) The County may retain a portion of the amount due under the contract to the Contractor to insure proper performance of the contract, provided that the sum withheld shall not exceed five percent (5%) of the amount due the Contractor and that after fifty percent (50%) of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the Procurement Officer may continue to withhold as compensation retained sums not exceeding five percent (5%) of the amount due the Contractor; provided further that the compensation retained shall not include sums deducted and withheld separately as liquidated damages from moneys due or that may become due the Contractor under the contract. [§ 103-32.1(a), HRS]

(b) The retention amount withheld by the Contractor from its subcontractors shall be the same percentage of compensation retained as that of the Contractor, provided that the subcontractor has provided evidence to the Contractor of:

(1) A valid performance and payment bond for the project that is acceptable to the Contractor and executed by a surety company authorized to do business in the State of Hawaii;

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- (2) Any other bond acceptable to the Contractor; or
- (3) Any other form of collateral acceptable to the Contractor.

This subsection shall also apply to the subcontractors who subcontract work to other subcontractors. [§103-32.1(b), HRS]

(c) The County may enter into an agreement with the Contractor which will allow the Contractor to withdraw from time to time the whole or any portion of the sum retained under sub-paragraph (a) upon depositing with the County any general obligation bond of the State or its political subdivisions with a market value not less than the sum to be withdrawn; provided that the County may require that the total market value of such bond be greater than the sum to be withdrawn. [§103-32.2, HRS]

7.3 Monthly Progress Payments. (a) The County shall pay the Contractor monthly progress payments based on the actual quantities of work done and the actual quantities of materials delivered to and safely stored at a site approved by the County. The Contractor shall submit monthly progress payment request to the Officer-in-Charge no later than the fifth (5th) day of each month for work performed during the previous calendar month.

(b) Subject to the retainage provisions of subsection 7.2, Compensation Retained, the County shall pay the Contractor an amount equal to the value of the completed and installed portion of the work for which the Contractor certifies has not previously been paid. The County shall also pay the Contractor for seventy-five percent (75%) of the value of materials furnished, delivered and stored in an approved manner, provided that:

(1) A copy of the paid receipts for the stored materials must be submitted with the pay estimate;

(2) Fire and Standard Extended Coverage Insurance is required if payment for stored materials is requested; and

(3) Payment for perishable stored materials, such as live plants and similar materials, will not be allowed.

(c) The Officer-in-Charge may decline to process a progress payment request if the total value of the work done since last estimate is less than \$1,000.

(d) Monthly progress payments may be subject to compensation retained.

7.4 Death or Disability of Contractor. In the case of an individual Contractor, if the Contractor dies or becomes physically or mentally disabled, the Contractor or the Contractor's estate shall be compensated in the same proportion of the compensation under the contract as the services performed bear to the services to be performed under the contract.

7.5 Campaign Contributions Prohibited. It is understood and agreed by the Parties that no portion of the Contractor's compensation to be paid under the terms of the contract shall be used as a campaign contribution.

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7.6 Authority to Withhold Money Due or Payable. The Procurement Officer may withhold such amounts from the money due or to become payable under the contract to the Contractor, or any assignee thereof, as may be necessary to protect the County against liability, to satisfy the obligations of the Contractor to the County, employees, subcontractors and material men who have performed labor or furnished material and equipment under the contract, or to satisfy any outstanding debts owed to the County by the Contractor and may make such payments from such amounts as may be necessary to discharge such obligations, satisfy County debts and protect the County.

7.7 Final Payment - Final Acceptance. (a) Final payment will be made only after the issuance of a notice of final approval and acceptance by the Officer-in-Charge advising the Contractor of the satisfactory fulfillment of the terms of the contract, provided that the Director of Finance has determined that the Contractor has fully satisfied all outstanding debts to the County. Acceptance by the Contractor of the final payment shall constitute payment in full for all services performed under the contract.

(b) Upon completion and acceptance of the work under the contract, the County shall pay the Contractor the balance due after deducting previous payments and amounts to be retained or deducted according to the contract.

(c) The County shall not make final payment until the following is received:

(1) Written consent of the Contractor's sureties on the Contractor's bonds;

(2) Tax clearance certificate from the State Director of Taxation stating that all delinquent taxes levied or accrued against the Contractor have been paid. The tax clearance for final payment shall be an original certificate with a green certified copy stamp, not over two (2) months old, with box 3a of the application completed for a specific job number, and indicating tax clearances from the Hawaii State Department of Taxation and the Internal Revenue Service on Tax Clearance Application A-6;

(3) An affidavit stating that payment due to all subcontractors and all persons, companies, corporations for labor, tools, materials, and equipment used in the prosecution of the work under the contract have been paid or have been satisfactorily secured; and

(4) A "Certification of Compliance for Final Payment" (SPO Form-22).

Section 8 - Contract Amendments/Change Orders

8.1 Change Order. In accordance with sections 103D-202, HRS and 3-125-4, HAR, the Procurement Officer, at any time, and without notice to any surety, in a signed writing designated or indicated to be a change order, may make changes in the work within the scope of the contract as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the Contractor shall 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 Procurement Officer with no change in contract price or time of performance.

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8.2 Adjustments of Price or Time for Performance. In accordance with section 3-125-4, HAR, 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 the contract, whether or not changed by the order, an adjustment may be made and the contract modified in writing accordingly.

(a) Any adjustment in contract price shall be determined in accordance with Section 11-Price Adjustment Clause.

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

(c) The right of the Contractor to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows written notice requirements for disputes and claims established by the contract.

(d) The County may choose to formalize a change to the scope of work or contract time by a contract amendment.

8.3 Time Period for Claim. Within thirty (30) days after receipt of a written change order under paragraph 8.1, unless such period is extended by the Procurement Officer in writing, the Contractor shall file a notice of intent to assert 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.

8.4 Claim Barred After Final Payment. No claim by the Contractor for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under the contract.

8.5 Other Claims Not Barred. In the absence of such a change order, nothing in this section shall restrict the Contractor's right to pursue a claim arising under the contract or for breach of contract.

Section 9 - Stop Work Orders

9.1 Suspension of Work. The Procurement Officer may, by written order, suspend the performance of the work, either in whole or in part for periods as the Procurement Officer may deem necessary for any cause, including but not limited to:

- (a) Weather or soil conditions considered unsuitable for prosecution of the work;
- (b) Failure on the part of the Contractor to:
 - (1) Correct conditions unsafe for the general public or for the workers;
 - (2) Carry out orders given by the Procurement Officer;

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- (3) Perform the work in strict compliance with the provisions of the contract;
or
- (4) Provide adequate supervision on the job site.

(c) Whenever a redesign that may affect the work is deemed necessary by the Procurement Officer;

(d) Unacceptable noise or dust arising from the construction even if it does not violate any law or regulation; or

(e) The convenience of the County.

9.2 Partial and Total Suspension. 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.

9.3 Reimbursement to Contractor. In the event that the Contractor is ordered by the Procurement Officer in writing as provided herein to suspend all work under the contract in accordance with paragraph (c), (d), or (e) of subsection 9.1, Suspension of Work, 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.

9.4 Cost Adjustment. If the performance of all or 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 the 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:

(a) 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

(b) For which an adjustment is provided for or excluded under any other provision of the contract.

9.5 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 compensation shall be filed in writing with the Procurement Officer within thirty (30) 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 Procurement Officer shall take the claim under consideration, may make such investigations as are deemed necessary, and shall be the sole judge as to the equitable nature of the claim. The Procurement Officer's decision shall be final.

9.6 No Adjustment. No provision of this section shall entitle the Contractor to any adjustments for delays due to failure of surety, suspensions made at the request of the Contractor, any delay required under the contract, or suspensions, either partial or whole, made by the Procurement Officer under paragraph (b) of subsection 9.1, Suspension of Work.

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Section 10 - Variations in Estimated Quantities

10.1 Variations Requiring Adjustments. Where the estimated quantity of a pay item in the contract is an estimated quantity and where the actual quantity of such pay item varies by more than fifteen percent (15%) above or below the estimated quantity in the 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 Procurement Officer shall, upon receipt of a timely written request for an extension of time, prior to final payment of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Procurement Officer the findings justify.

10.2 Adjustment of Price. Any adjustment in contract price shall be determined in accordance with Section 11 - Price Adjustment Clause.

Section 11 - Price Adjustment Clause

11.1 Price Adjustment. Any adjustment in contract price pursuant to a clause in the contract shall be made in one or more of the following ways:

- (a) By agreement on a fixed price adjustment before commencement of the pertinent performance;
- (b) By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
- (c) 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;
- (d) In any other manner as the parties may mutually agree upon before commencement of the pertinent performance; or
- (e) In the absence of agreement between the Parties, the provisions of section 103D-501(b)(5), HRS shall apply.

11.2 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 (Cost or pricing data), as amended. The submission of any cost or pricing 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 in paragraphs 11.1(a) through 11.1(d) shall be issued within ten days after agreement on the method of adjustment.

11.3 Determining Adjustments in Price. (a) In determining the adjustment in price to the County resulting from a change, the allowances for all overhead, extended overhead resulting

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from adjustments to contract time (including home office and branch office overhead) and profit combined shall not exceed the percentages set forth below:

- (a) For the Contractor, for any work performed by its own forces, twenty percent (20%) of the cost;
- (b) For each subcontractor, for any work performed by its own forces, twenty percent (20%) of the cost;
- (c) For the Contractor or any subcontractor, for work performed by their subcontractors, ten percent (10%) of the amount due the performing subcontractor.

In no event shall overhead and profit exceed a total of twenty percent (20%) of direct costs, regardless of the number of tier subcontractors.

- (a) The Contractor may add up to one percent (1%) of direct costs for bonds.
- (b) If the bid contains lump sum items, the Officer-in-Charge may delete the lump sum item, which shall be deducted from the contract price based on the bid price of the lump sum item.
- (c) If the bid contains unit price items, the Officer-in-Charge may increase or decrease the quantities of such items, or delete such items in their entirety. If quantities are increased, the Contractor shall perform such work at the unit price bids for such items. If quantities are decreased or such unit price items are deleted in their entirety, the deductions from the contract price shall be based on the unit price bids for such items.

11.4 Change Order Work by Force Account. (a) Compensation for change work by force account (time and expenses basis) shall be an amount equal to the sum of the following items:

- (1) The cost to the Contractor of all material delivered for the change order work evidenced by bills or vouchers;
- (2) The cost of all labor including foremen, except general superintendence, necessary to incorporate the above material in the change work or to finish the change order if no material are required, to be determined from the Contractor's payrolls or by inspections performed by the inspectors, or both;
- (3) Ten percent (10%) of the amount from sub-paragraph (2), which shall be considered as covering the cost of superintendence, hand tools, and clerical work in connection with the change order work and the Contractor's overhead costs;
- (4) A rental charge for the use of all construction equipment approved by the Officer-in-Charge. The rental rates shall be agreed upon by the Contractor and the Officer-in-Charge, and may or may not, include the cost of fuel oil, gasoline, electric energy, lubricating oil, repairs, and maintenance. The Contractor shall submit a proposed schedule of equipment rental charges to the Officer-in-Charge for approval prior to entering into a change order. The cost of small tools shall not be included;

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(5) The cost of workers' compensation insurance and public liability premiums, unemployment tax, social security tax, or other taxes on the labor for sub-paragraph (2);

(6) Fifteen percent (15%) of the sums of sub-paragraphs (1) through (4), which shall be considered as covering all other expenses and profit;

(7) Where force account work is performed by a subcontractor, the Contractor may add five percent (5%) to the subcontractor's computed compensation to cover its overhead and profit, provided that overhead and profit shall be limited to a total of twenty percent (20%) of direct costs;

(8) One percent (1%) of direct costs for paragraphs (1) through (7) for bonds. The addition for bond cost is applicable only to the Contractor's compensation; and

(9) The cost of state excise tax on the sum of paragraphs (1) through (8).

(b) The performance of change order work on a force account basis shall be under the supervision of the Officer-in-Charge, and the Officer-in-Charge's decision shall be final. The method of performing such work, the equipment to be used, and the amount and character of labor to be employed shall meet with the approval of the Officer-in-Charge. The force account formula may also apply to deleted work.

(c) Whenever the Contractor is directed to perform extra work on a time and expense basis, the Contractor will maintain accurate records. Each day a record of labor, materials and equipment costs shall be submitted to the Officer-in-Charge for verification. These records shall reflect the actual and necessary expenses pertaining to the extra work and shall be available for audit. Audits conducted under this provision shall be in accordance with generally acceptable auditing standards and established procedures and guidelines of the reviewing or auditing agencies.

11.5 Materials Ordered. If the Officer-in-Charge deletes any item, or decreases the quantity of any item in the bid, and the Contractor has already ordered materials involved in such deletions or decreases, the Contractor shall make every effort to return the materials if requested by the Officer-in-Charge. If the materials are returnable, the County shall pay the actual costs incurred to the Contractor to return the materials evidenced by receipt or invoice. If the materials cannot be returned, the County shall pay the actual cost to the Contractor of the materials evidenced by receipt or invoice; provided that the materials are free from defect upon inspection and acceptance by the County. Materials ordered prior to the issuance of the Notice to Proceed shall be the Contractor's responsibility and the County will not make payment for such materials.

11.6 Work by County. If additional work is required to complete the contract, the County reserves the right to (1) perform the additional work itself; and (2) employ another contractor to perform the work. The Contractor shall fully cooperate with the County to schedule the completion of the additional work.

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Section 12 - Differing Site Conditions

12.1 Notification. The Contractor shall promptly, and before such conditions are disturbed, notify the Procurement Officer of:

- (a) Subsurface or latent physical conditions at the site differing materially from those indicated in the contract; or
- (b) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

12.2 Adjustments of Price or Time for Performance. After receipt of the notice, the Procurement Officer shall promptly investigate the site, and if it is found that the conditions do materially so differ and cause an increase in the Contractor's cost of, or the time required for, performance of any part of the work under the contract, whether or not changed as a result of the conditions, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this section shall be determined in accordance with Section 11 - Price Adjustment Clause.

12.3 Timeliness of Claim. No claim of the Contractor under this section shall be allowed unless the Contractor has given the notice required in this section; provided, however, that the time prescribed therefore may be extended by the Procurement Officer in writing.

12.4 No Claim After Final Payment. No claim by the Contractor for an adjustment thereunder shall be allowed if asserted after final payment under the contract.

12.5 Knowledge. Nothing contained in this section shall be grounds for an adjustment in compensation if the Contractor had actual knowledge of the existence of such conditions prior to the submission of bids.

Section 13 - Novation or Change of Name

13.1 No Assignment. No County contract is transferable, or otherwise assignable, without the written consent of the Procurement Officer. A Contractor may assign monies receivable under a contract with written consent of the Procurement Officer.

13.2 Recognition of a Successor in Interest; Assignment. When in the best interest of the County, a successor in interest may be recognized in an assignment agreement in which the transferor, the transferee and the County shall agree that:

- (a) The transferee assumes all of the transferor's obligations;
- (b) The transferor remains liable for all obligations under the contract but waives all rights under the contract as against the County; and
- (c) The transferor shall continue to furnish, and the transferee shall also furnish, all required bonds.

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13.3 Change of Name. When a Contractor requests to change the name in which it holds a contract with the County, the Procurement Officer 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 a novation 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.

Section 14 - Claims Based on Oral Directives

14.1 Notice Required. Any oral order, direction, instruction, interpretation, or determination from the Procurement Officer which, in the opinion of the Contractor, causes any change, can be considered as a change only if the Contractor gives the Procurement Officer written notice of its intent to treat the oral order, direction, instruction, interpretation, or determination as a change directive. The written notice must be delivered to the Procurement Officer before the Contractor acts in conformity with the oral order, direction, instruction, interpretation, or determination, but not more than five (5) 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 order 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.

14.2 Change Order Issued. Not more than five (5) working days after receipt of the written notice from the Contractor, the Procurement Officer shall issue a change order for the subject work if the Procurement Officer agrees that it constitutes a change. If no change order is issued in the time established, it shall be deemed a rejection of the Contractor's claim for a change. If the Contractor objects to the Procurement Officer's refusal to issue a change order, it shall file a written protest with the Procurement Officer within thirty (30) days after delivery to the Procurement Officer 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 section 17 - Remedies.

Section 15 - Default, Delay, and Time Extensions

15.1 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 the contract, or any extension thereof, fails to complete the work within such time, or commits any other substantial breach of the contract, and further fails within seven (7) days after receipt of written notice from the Procurement Officer to commence and continue correction of the refusal or failure with diligence and promptness, the Procurement 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 that event, the County 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 plant as may be on the site of the work and necessary therefor. Whether or not

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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 County resulting from the Contractor's refusal or failure to complete the work within the specified time.

15.2 Liquidated Damages Upon Termination. If fixed and agreed liquidated damages are provided in the contract, and if the County 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.

15.3 Liquidated Damages in Absence of Termination. If fixed and agreed liquidated damages are provided in the contract, and if the County does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages accumulated until the work is completed or accepted.

15.4 Time Extension. The Contractor's right to proceed shall not be so terminated nor shall the Contractor be charged with resulting damage if:

(a) The delay in the completion of the work arises from causes such as: acts of God; acts of the public enemy; acts of the 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 County; 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 a shortage of materials, unless the Contractor furnishes to the Procurement Officer proof that the Contractor has diligently made every effort to obtain the 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

(b) The Contractor, within ten (10) days from the beginning of the delay (unless the Procurement Officer grants a further period of time before the date of final payment under the contract), notifies the Procurement Officer in writing of the causes of delay. The Procurement 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 Procurement Officer, the findings of fact justify such an extension.

15.5 Additional Rights and Remedies. The rights and remedies of the County provided in the contract are in addition to any other rights and remedies provided by law.

Section 16 - Termination for Convenience

16.1 Terminations. The Procurement Officer may, when the interests of the County so require, terminate the contract in whole or in part, for the convenience of the County. The Procurement Officer shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

16.2 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

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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 County's approval. The Procurement Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the County. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

16.3 Right to Construction and Goods. The Procurement Officer may require the Contractor to transfer title and deliver to the County in the manner and to the extent directed by the Procurement Officer:

(a) Any completed constructions; and

(b) The partially completed construction, goods, 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 the contract. The Contractor shall protect and preserve property in the possession of the Contractor in which the County has an interest. If the Procurement Officer does not exercise this right, the Contractor shall use the Contractor's 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 County has breached the contract by exercise of the termination for convenience clause.

16.4 Compensation. (a) 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 sub-chapter 15, chapter 3-122, HAR, bearing on such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the Contractor, if at all, an amount set in accordance with clause (2) of paragraph (c).

(b) The Procurement Officer 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 County, the proceeds of any sales of construction, goods, and construction materials under clause (3) of paragraph (c), and the contract price of the work not terminated.

(c) Absent complete agreement under paragraph (b), the Procurement Officer shall pay the Contractor the following amounts, provided payments under paragraph (b) shall not duplicate payments under this paragraph, for the total (without duplication of any items) of:

(1) The cost of all contract work performed prior to the effective date of the notice of termination plus a five per cent (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;

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(2) Subject to the prior approval of the Procurement Officer, the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the "Contractor's obligations" provisions of the contract. Subcontractors shall be entitled to a markup of no more than ten per cent (10%) on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with clause (1);

(3) 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 16.3, Right to Construction and Goods, and the contract price of work not terminated.

(d) Cost claimed, agreed to, or established under paragraphs (b) and (c) shall be in accordance with chapter 3-123, HAR.

Section 17 - Remedies

17.1 General. Any dispute arising under or out of the contract is subject to chapter 3-126, HAR.

17.2 Disputes. (a) All controversies between the County and the Contractor which arise under, or are by virtue of, the Contract and which are not resolved by mutual agreement shall be decided by the Procurement Officer in writing, within ninety calendar days after a written request by the Contractor for a final decision concerning the controversy; provided that if the Procurement Officer does not issue a written decision within ninety calendar days after written request for a final decision, or within such longer period as may be agreed upon by the Parties, then the Contractor may proceed as if an adverse decision had been received.

(b) The Procurement Officer 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.

(c) 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 Circuit Court of the Second Circuit, State of Hawaii, County of Maui, within the six months from the date of receipt of the decision.

(d) The Contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of the contract pending final resolution by the Circuit Court of the Second Circuit, State of Hawaii, County of Maui, of any controversy arising under, or by virtue of, the contract, except where there has been a material breach of contract by the County; provided that in any event the Contractor shall proceed diligently with the performance of the contract where the Procurement Officer has made a written determination that work under the contract is essential to the public health and safety.

CONTRACT NO. C6664

Section 18 - Miscellaneous Provisions

18.1 Severability. If any provision of the contract is held invalid, the other provisions of the contract shall not be affected thereby. If the application of the contract or any of its provisions as to any person or circumstance is held invalid, the application of the contract and its provisions as to other persons or circumstances shall not be affected thereby.

18.2 Entire Agreement. The contract contains the complete agreement concerning the subject arrangement between the Parties and shall, as of the effective date hereof, supersede all other agreements between the Parties. The Parties stipulate that neither has made any representations with respect to the subject matter, execution and delivery of the contract except as such representations are specifically set forth herein. Each party acknowledges that the party has relied on the party's own judgment in entering into the contract. The Parties further acknowledge that any payments or representations that may have previously been made by either of them to the other are of no effect and that neither has relied thereon in connection with its dealing with the other.

18.3 Notices. (a) Any written notice required to be given by a party to the contract shall be:

- (1) delivered personally to the Contractor's designated representative on the project site, or
- (2) sent by United States first class mail, postage prepaid to the party's address listed in the contract.

(b) A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The Contractor shall notify the County in writing of any change of address. The Contractor shall maintain a post office address within the County of Maui and file the same with the Officer-in-Charge prior to or with the execution of the contract. All notices addressed in compliance with the directions of the Contractor and properly mailed shall be effective when mailed, or delivered by any of the above methods.

18.4 Assistance of Legal Counsel. The Parties have carefully read and fully understand all of the provisions and effects of the contract. The Parties shall consult with their respective counsel if any provision of the contract is not fully understood. The Parties are voluntarily entering into the contract and neither Party has made representations concerning the terms or effects of the contract other than those contained herein.

18.5 Applicable Law and Venue. The contract shall be governed by the laws of the State of Hawaii. Any action or court proceeding which may arise from the contract shall be heard in the Circuit Court of the Second Circuit, State of Hawaii, County of Maui.

[END OF GENERAL TERMS AND CONDITIONS]

CONTRACT NO. C6664

PERFORMANCE BOND WITH SURETY

BOND NO. 9823735

KNOW TO ALL BY THESE PRESENTS:

That MIRA IMAGE CONSTRUCTION LLC, a Hawaii limited liability company, whose mailing address is P.O. Box 3160, Honolulu, Hawaii 96802, as Contractor, hereinafter called "Principal," and Lexon Insurance Company, as surety, hereinafter called "Surety," a corporation authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the COUNTY OF MAUI, a political subdivision of the State of Hawaii, Wailuku, Maui, Hawaii, its successors and assigns, hereinafter called "Obligee," in the amount of \$10,499,847.00 as performance bond, (being \$10,499,847.00 in the amount of one hundred percent of the contract price as required by section 103D-324, Hawaii Revised Statutes), lawful money of the United States, for the payment of which to the said Obligee, well and truly made, Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed a Contract with Obligee dated December 18, 2018 for the following project: Wailuku Civic Complex, Phase 1A, Job No. PL 17-01, 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 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,

CONTRACT NO. C6664

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 18th day of December, 2018.

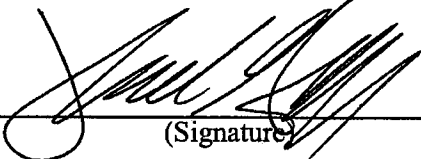
[EXECUTION PAGES TO FOLLOW]

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CONTRACT NO. C6664

PRINCIPAL:

MIRA IMAGE CONSTRUCTION LLC

By  _____
(Signature)

Michael Gangloff

(Print Name)

Its Member _____
(Title)

Date 12/19/2018

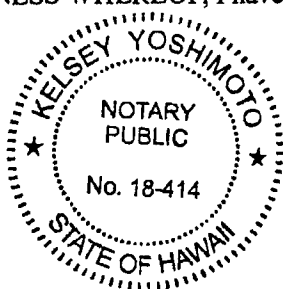
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CONTRACT NO. C6664

STATE OF Hawaii)
) SS.
City & County of Honolulu)

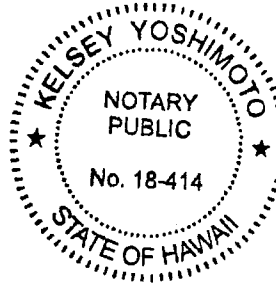
On this 19th day of December, 2018, before me personally appeared Michael Gangeloff, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Kelsey Yoshimoto
Notary Public, State of Hawaii
Print Name: Kelsey Yoshimoto
My commission expires: 7/22/22

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>12/18/18</u>	# Pages:	<u>2</u>
Notary Name:	<u>Kelsey Yoshimoto</u>	Judicial Circuit:	<u>First</u>
Doc. Description:	<u>Performance Bond/Bond #9823735/ Mira Image Construction LLC/Lexon Insurance Co./ \$10,499,847.00/Wailuku Civic Complex</u>		
Notary Signature:	<u>Kelsey Yoshimoto</u>		
Date:	<u>12/19/18</u>		



CONTRACT NO. C6664

SURETY:

Lexon Insurance Company

By 

(Signature)

John Y. Shigenaga

(Print Name)

Its **Attorney-in-Fact**

(Title)

Date **December 18, 2018**

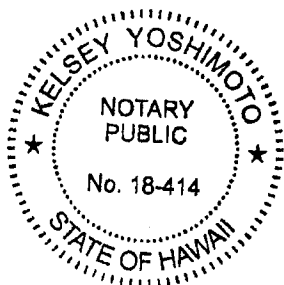
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CONTRACT NO. C6664

STATE OF Hawaii)
) SS.
City & County of Honolulu)

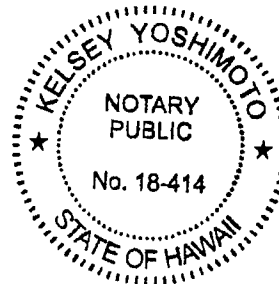
On this 18th day of December, 2018, before me personally appeared John Y. Shigenaga, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Kelsey Yoshimoto
Notary Public, State of Hawaii
Print Name: Kelsey Yoshimoto
My commission expires: 7/22/22

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>12/18/18</u>	# Pages:	<u>2</u>
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Notary Signature:	<u>Kelsey Yoshimoto</u>		
Date:	<u>12/18/18</u>		



POWER OF ATTORNEY

LX- 315812

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that LEXON INSURANCE COMPANY, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: John Y. Shigenaga, Rodney Y. Iwamoto, Wesley Imamura its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of LEXON INSURANCE COMPANY on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$2,500,000.00, Two Million Five Hundred Thousand dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, LEXON INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 5th day of August, 2015.



LEXON INSURANCE COMPANY

BY [Signature]
David E. Campbell
President

ACKNOWLEDGEMENT

On this 5th day of August, 2015, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of LEXON INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



AMY TAYLOR
Notary Public- State of Tennessee
Davidson County
Mv Commission Expires 07-08-19

BY [Signature]
Amy Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of LEXON INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 18th Day of December, 2018.



BY [Signature]
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

CONTRACT NO. C6664

PAYMENT BOND WITH SURETY

BOND NO. 9823735

KNOW TO ALL BY THESE PRESENTS:

That we, MIRA IMAGE CONSTRUCTION LLC, a Hawaii limited liability company, whose mailing address is P.O. Box 3160, Honolulu, Hawaii 96802, as Contractor, hereinafter called "Principal," and Lexon Insurance Company, as surety, hereinafter called "Surety," a corporation authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the COUNTY OF MAUI, a political subdivision of the State of Hawaii, Wailuku, Hawaii, its successors and assigns, as Obligee, hereinafter called "Obligee," in the amount of \$10,499,847.00 as payment bond (being \$10,499,847.00 in the amount of one hundred percent of the contract price as required by section 103D-324, Hawaii Revised Statutes), lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed a Contract with the Obligee dated December 18, 2018 for the following project: Wailuku Civic Complex, Phase 1A, Job No. PL 17-01, 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,

CONTRACT NO. C6664

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 the Principal and its Surety on this bond at the time and in the manner prescribed in Section 103D-324, Hawaii 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 this 18th day of December, 2018.

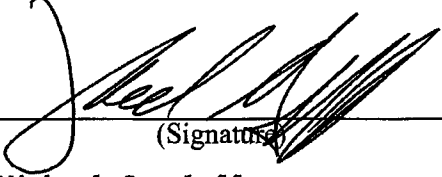
EXECUTION PAGES TO FOLLOW

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CONTRACT NO. C6664

PRINCIPAL:

MIRA IMAGE CONSTRUCTION LLC

By  _____
(Signature)

Michael Gangloff

(Print Name)

Its Member _____
(Title)

Date 12/19/2018

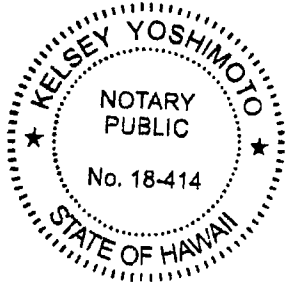
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CONTRACT NO. C6664

STATE OF Hawaii)
) SS.
City & County of Honolulu)

On this 19th day of December, 2018, before me personally appeared Michael Gangloff, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

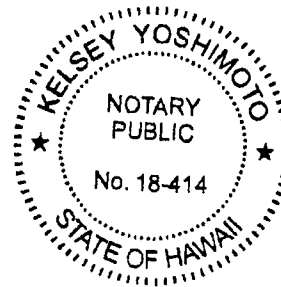


Kelsey Y. Yoshimoto
Notary Public, State of Hawaii

Print Name: Kelsey Yoshimoto

My commission expires: 7/22/22

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>12/18/18</u>	# Pages:	<u>2</u>
Notary Name:	<u>Kelsey Yoshimoto</u>	Judicial Circuit:	<u>First</u>
Doc. Description:	<u>Payment Bond/Bond #9823735/ Mira Image Construction LLC/Lexon Insurance Co./ \$10,499,847.00/Wailuku Civic Complex</u>		
Notary Signature:	<u>Kelsey Y. Yoshimoto</u>		
Date:	<u>12/19/18</u>		



CONTRACT NO. C6664

SURETY:

Lexon Insurance Company

By



(Signature)

John Y. Shigenaga

(Print Name)

Its

Attorney-in-Fact

(Title)

Date

December 18, 2018

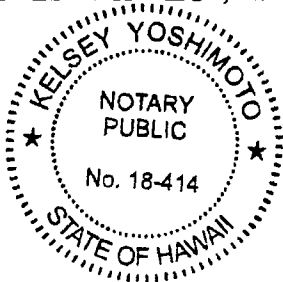
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CONTRACT NO. C6664

STATE OF Hawaii)
) SS.
City & County of Honolulu)

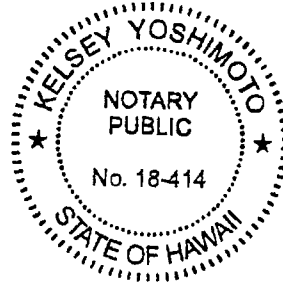
On this 18th day of December, 2018, before me personally appeared John Y. Shigenaga, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Kelsey Yoshimoto
Notary Public, State of Hawaii
Print Name: Kelsey Yoshimoto
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Notary Signature:	<u>Kelsey Yoshimoto</u>		
Date:	<u>12/18/18</u>		



CONTRACT NO. C6664

**CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION**

For the purposes of this declaration:

"Substantial interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the County, including members of boards, commissions, and committees, and employees under contract to the County, but excluding members of the County Council ("County Council Members").

On behalf of MIRA IMAGE CONSTRUCTION LLC, Contractor, the undersigned does declare as follows:

1. Contractor is / is not a County Council Member or an Employee or a business in which a County Council Member or an Employee has a substantial interest.
2. Contractor has not been represented or assisted personally in the matter by an individual who has been an Employee of the County department awarding this Contract within the preceding year and who participated while so employed in the matter with which the Contract is directly concerned.
3. Contractor has not been assisted or represented by a County Council Member or Employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a County Council Member or Employee for a fee or other compensation in the performance of this Contract, if the County Council Member or Employee has been involved in the development or award of the Contract.
4. Contractor has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an Employee, or in the case of the County Council, a County Council Member, and participated while an Employee or a County Council Member on matters related to this Contract.

*Reminder to agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$500, the Contract may not be awarded unless the Contract is made after competitive bidding.

CONTRACT NO. C6664

Contractor understands that the Contract to which this document is attached is voidable on behalf of the County if this Contract was entered into in violation of any provision of Article 10 of the Revised Charter of the County of Maui ("Code of Ethics"), including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the County.

Contractor:

MIRA IMAGE CONSTRUCTION LLC

By  _____
(Signature)

_____ Michael Gangloff _____
(Print Name)

Its _____ Member _____
(Title)

Date _____ 12/19/2018 _____