

ALAN M. ARAKAWA
Mayor

DAVID C. GOODE
Director

ROWENA M. DAGDAG-ANDAYA
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

GLEN A. UENO, P.E., P.L.S.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

JOHN R. SMITH, P.E.
Highways Division

January 25, 2018

Mr. Sananda K. Baz
Budget Director
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

For Transmittal to:

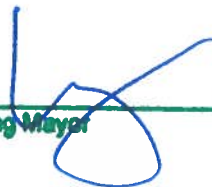
Honorable Riki Hokama, Chair
Budget and Finance Committee
Maui County Council
200 South High Street
Wailuku, Maui, Hawaii 96793

Dear Chair Hokama:

**SUBJECT: AMENDING FISCAL YEAR 2018 BUDGET: DEPARTMENT OF
PUBLIC WORKS (REMOVAL OF TREES ON PI'IHOLO ROAD)
(BF-112)**

This is in response to your letter dated January 25, 2018, in which you requested the bid specifications and bid results for the removal of trees along Pi'iholo Road. In response to your requests, the Department of Public Works (Department) provides the following:

APPROVED FOR TRANSMITTAL



Acting Mayor

1-26-18
Date

2018 JAN 26 AM 11:23
OFFICE OF THE
COUNTY COUNCIL

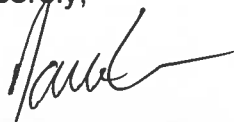
RECEIVED

Mr. Sananda K. Baz
Honorable Alan M. Arakawa
For Transmittal to:
Honorable Riki Hokama, Chair
January 25, 2018
Page 2

1. Request for Proposal letter dated December 8, 2017 to all prospective bidders. See Attachment "A".
2. Bid Specifications for Emergency Tree Removal at Piiholo Road, DPW Job No. 18-31, December 2017. See Attachment "B".
3. Addendum No. 1 to Job No. 18-31. See Attachment "C".
4. Bid results. See Attachment "D".

Should you have any questions, please contact me at Ext. 7845.

Sincerely,



DAVIC C. GOODE
Director of Public Works

DCG:RMDA:jso

Attachments

cc: Engineering Division
Kaala Buenconsejo, Director, Department of Parks and Recreation
Keith Regan, Managing Director
Corporation Counsel

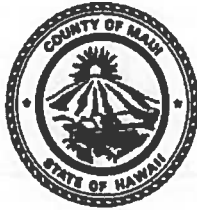
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TEL. (808) 270-7745
FAX (808) 270-7975



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Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

December 8, 2017

SUBJECT: EMERGENCY TREE REMOVAL AT PIIHOLO ROAD
DPW JOB NO. 18-31
REQUEST FOR PROPOSAL

Dear Prospective Bidder:

Your company is invited to submit a proposal for the removal of existing Eucalyptus trees along Piiholo Road. Please refer to the enclosed project contract specifications, requirements, and special provisions.

To be eligible to bid, you must be licensed in accordance with Chapter 444, HRS, related to the licensing of contractors, and shall possess or retain a subcontractor with a C-27 or a C-27b contractor's license, including a certified arborist of the International Society of Arboriculture, holding current certification.

This project involves two bid alternates. Please refer to the contract documents for a description. A pre-bid meeting will be held on Piiholo Road on Tuesday, December 12, 2017 at 9:00 AM in the vicinity of the parking lot of TMK: 2-4-012: 080. Attendance is not mandatory, but strongly encouraged. A performance bond in the amount of twenty percent (20%) of the contract price is required at the time of contract.

Please provide us with your proposal including a project schedule by **2:00 PM Wednesday, December 13th 2017.** Bids may be transmitted via email or hand delivered to 200 South High Street, 4th Floor, Wailuku. If you have any questions, please contact Kristi Ono at (808) 270-7745 or kristi.ono@co.maui.hi.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Yamashita", is written over a horizontal line.

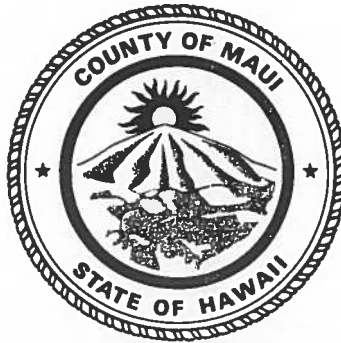
CARY YAMASHITA
Engineering Division Chief

CY/KO (ED17-1243)

S:\ENGIN\PROJECTS\02 CIP\2018\18-31 EMERGENCY TREE REMOVAL AT PIIHOLO ROAD\01 DESIGN\B CORRESPONDENCE\LETTERS\2017-12-08 PIIHOLO TREES REQUEST FOR PROPOSAL.DOC

ATTACHMENT " A "

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
FURNISHING OF LABOR AND EQUIPMENT
FOR
EMERGENCY TREE REMOVAL AT PIIHOLO ROAD
DPW JOB NO. 18-31



DECEMBER 2017

ATTACHMENT “ B ”

NOTICE TO BIDDERS

FURNISHING OF LABOR AND EQUIPMENT FOR THE EMERGENCY TREE REMOVAL AT PIIHOLO ROAD FOR THE DEPARTMENT OF PUBLIC WORKS COUNTY OF MAUI

Bids for the **EMERGENCY TREE REMOVAL AT PIIHOLO ROAD, JOB NO. 18-31, ISLAND OF MAUI**, shall be submitted via email to kristi.ono@co.maui.hi.us or hand delivered to 200 S. High Street, 4th Floor, Wailuku, HI 96793, no later than 2:00 P.M. on

Wednesday, December 13th, 2017

The project involves cutting down existing trees along Piihoho Road, hauling of green waste, and traffic control.

Please note that we are transitioning our construction bid notifications to Public Purchase, a web based e-procurement system. In order to be able to view and download the bid specifications and plans for this procurement, you will need to follow the instructions on the following link:

http://www.co.maui.hi.us/documents/3/36/PublicPurchase_201405121705561879.pdf.

The registration link is: <https://www.publicpurchase.com/gems/register/vendor/register>

Bids shall be submitted in a sealed envelope, and shall be on the Proposal Form provided with the specifications. Bids received after the established due date and time will not be considered.

A pre-bid conference is set for Tuesday, December 12, 2017 at 9:00 AM at Piihoho Road, Makawao, in the vicinity of the parking lot of TMK: 2-4-012: 080. All prospective bidders or their representatives (employees) are encouraged to attend, but attendance is not mandatory. Persons needing special accommodations at the pre-bid conference due to a disability may contact the Department of Public Works, Engineering Division by phone at (808) 270-7745.

To be eligible to bid, bidders must be licensed in accordance with Chapter 444, HRS, relating to the licensing of contractors, and shall possess or retain a subcontractor with a C-27 or a C-27b contractor's license, issued by the State of Hawaii and Workman's Compensation prior to submitting their bid.

The County of Maui, Department of Public Works is required to be named as "Additional Insured" within the Vendors Certificate of Insurance for Liability and Property that is \$1 million coverage combined single limit for each occurrence.

All sections of work contained in the Offer Form require that a Certified Arborist of the International Society of Arboriculture, holding current certification, is on site providing instruction and supervision of the specified work.

This project's emergency funding has not been approved by Maui County Council. The County anticipates that funding will be in place in December 2017. Any bid submitted for this project shall be valid until December 31, 2017.

Bidders are required to comply with HRS, Chapter 103-D, any rules and regulations and policy directives issued with respect to Chapter 103-D and any amendments thereof. The contractor shall also comply with the current Schedule of Wage Rates Bulletin for purposes of Chapter 104, Hawaii Revised Statutes.

Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or County government contractors during the term of the contract if the contractors are paid with funds appropriated by the legislative body.

The County of Maui, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the Regulations of the U.S. Department of Transportation (Title 49, Code of Federal Regulations Part 21) issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that the contract entered into pursuant to this advertisement will be awarded to the lowest responsible bidder without discrimination on the grounds of race, color, religion, sex, national origin, age, or disability.

The Equal Employment Opportunity Regulations of the Secretary of Labor implementing Executive Order 11246, as amended shall be complied with on this project.

Each proposal shall be on a form furnished by the Department of Public Works, County of Maui.

Estimated construction cost is \$150,000 to \$300,000.

For additional information on this project, contact Kristi Ono at (808) 270-7745, 200 South High Street, Wailuku, Maui, Hawaii 96793.

REQUIREMENTS
DPW JOB NO. 18-31

1. License – Contractors bidding on the project must be or retain a State Licensed Tree Trimmer in good standing with a current Contractors License Type 27 or 27B.
2. Insurance – During the term of this Contract, the Contractor shall maintain at all times or cause to be maintained general and professional liability insurance coverage for the 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. The Contractor shall provide the 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. Prior to the commencement of this Contract the Contractor shall provide the County with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the insurance carriers for the 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. The Contractor shall also carry workers' compensation insurance for the Contractor's employees in the amounts required by applicable law. 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.
3. Prices submitted should include all taxes, cutting, controlled felling, bucking costs, and equipment as specified within this contract work. Loading and hauling of debris from trimming will be done by the Contractor daily. No debris from trimming shall be allowed to enter the adjacent drainageway or remain within the County right-of-way.
4. A contract shall be awarded to the lowest responsive bidder for either bid alternate, provided work can be completed within sixty (60) calendar days from the Official Commencement Date as specified in the "Notice to Proceed" issued by the Department of Public Works.
5. Damage to County of Maui equipment or facilities and privately owned property shall be repaired by the Contractor.

CONTRACT SPECIFICATIONS
DPW JOB NO. 18-31

1. Hazardous Tree Situations – Any hazardous tree situations encountered on County of Maui property or right-of-way needs to be reported to the County of Maui, Department of Public Works.
2. Tree Trimming Activities – All tree trimming activities are required to be done to International Society of Arboriculture standards for tree pruning activities. Work activities will be performed to meet or exceed American National Standards Institute (ANSI) Z133.1-2012 standards for “for Tree Care Operations – Pruning, Trimming, Repairing, Maintaining, and Removing Trees, and Cutting Brush – Safety Requirements” safety requirements and ANSI A300-2017 standards “for Tree Care Operations – Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices” practices for tree care maintenance operations.
3. All rubbish will be removed the same day trees are trimmed.
4. Adequate traffic control and safety management of work area is critical and to be provided by the Contractor.
5. The Scope of Work is as follows:

Bid Alternate A: The scope of work shall include removal of 60 eucalyptus trees located along Piiholo Road in the vicinity of TMK: (2) 2-4-012: 080 and 081, within the County right-of-way. Trees are to be cut to 1-2 feet stumps. Trees to be removed are numbered with white paint or are identified by marking on the pavement. Remove all green waste each day to the Central Maui Landfill. Provide adequate traffic control to notify motorists of road work and allow one lane open for alternating traffic flow. If work requires a complete roadway shutdown on Piiholo Road, road closure shall be between 8:00 AM to 3:30 PM with a detour to Olinda Road. Coordinate traffic control plan with Public Works engineer. A map and sample traffic control plan is enclosed.

Bid Alternate B: The scope of work shall include cutting down approximately 300 eucalyptus trees located along Piiholo Road in the vicinity of TMK: (2) 2-4-012: 080 and 081, within 35 feet of the edge of pavement. Trees are to be cut to 1-2 feet stumps. All green waste and fallen trees are to remain on the property identified by TMK: 2-4-012: 080. The lump sum bid cost shall include clearing and grubbing required for access to laydown areas on TMK: 2-4-012: 080. Move green waste and trees into piles such that it will not enter the adjacent gulch. Provide adequate traffic control to notify motorists of road work and allow one lane open for alternating traffic flow. If work requires a complete roadway shutdown on Piiholo Road, road closure shall be between 8:00 AM to 3:30 PM with a detour to Olinda Road. Coordinate traffic control plan with Public Works engineer. A map and sample traffic control plan is enclosed.

6. Tree stumps and existing tree stumps shall be trimmed of vegetation and treated with Garlon 3A or approved equal.

7. No spikes will be used on trees that are intended to be left standing and alive.

8. Crew make-up and equipment required for work is as follows:

Minimum one 55 foot lift boom truck with three person crew makeup consisting of an operator for lift boom truck, and two additional laborers, and additional equipment for tree trimming; bid requires boom truck to be insulated for working near charged utility lines. Adequate personnel to manage work site and traffic control with safety equipment for communication and road work.

A traffic control plan for a one-lane closure and full road closure is provided as part of the contract documents. Revisions to the traffic control plan shall be submitted to the Department of Public Works for review and approval.

9. Workmanship - In selecting employees to undertake the Work under this Contract, Contractor shall select only those persons who are qualified by the necessary education, training and experience to provide high quality performance of the particular work for which each such employee is responsible. Contractor personnel shall perform their Work in a responsible and quality workmanship manner.

10. Materials – All materials used by the Contractor in performance of this Contract shall be new, of first class quality, and guaranteed by the Contractor to be fit for the specific purpose for which the material is used.

11. Warranty - Correction of Defective Work - Contractor acknowledges its absolute responsibility for insuring that the materials and procedures used in the performance of this Contract are sufficient to satisfactorily accomplish the Work, and that review and approval by the County of Maui of any drawings, specifications or other documents prepared by Contractor in the performance of the Work shall not relieve Contractor or any of its subcontractors or vendors of its professional responsibility for the Work. Contractor shall promptly correct without expense to County of Maui all situations caused by inadequate or defective materials or workmanship furnished by Contractor or any failures of materials or workmanship to meet the performance standards established herein. Contractor shall make such corrections of defective Work upon written notice thereof anytime such defects appear within one year of County of Maui's acceptance of the Work performed herein. If any of the Work fails to withstand reasonably anticipated operating conditions encountered within 1 year of County of Maui's acceptance of the Work, then such failure shall be conclusively presumed to be the result of defects in materials and workmanship.

12. Right to Reject - Due to the critical nature of the County of Maui's operations, Contractor agrees that if County of Maui, in its sole discretion and after

reasonable consultation with Contractor, determines that any Contractor employee, or material or equipment provided under this Contract shall be unsuitable for the performance of the work, or that the continued presence of such employee, material or equipment at the Work site is not consistent with the best interests of County of Maui, then in such an instance County of Maui may request that Contractor remove such employee, material or equipment from the Work and Contractor shall forthwith comply with this request. Contractor will then immediately replace such employee, material or equipment with an employee, material or equipment which fully meets the standards under this Contract and will do so at no cost to County of Maui.

A schedule of work shall be prepared by the Contractor and shall be coordinated with and submitted to the County of Maui within 1 week after the "Notice to Proceed" has been issued.

SPECIAL PROVISIONS
DPW JOB NO. 18-31

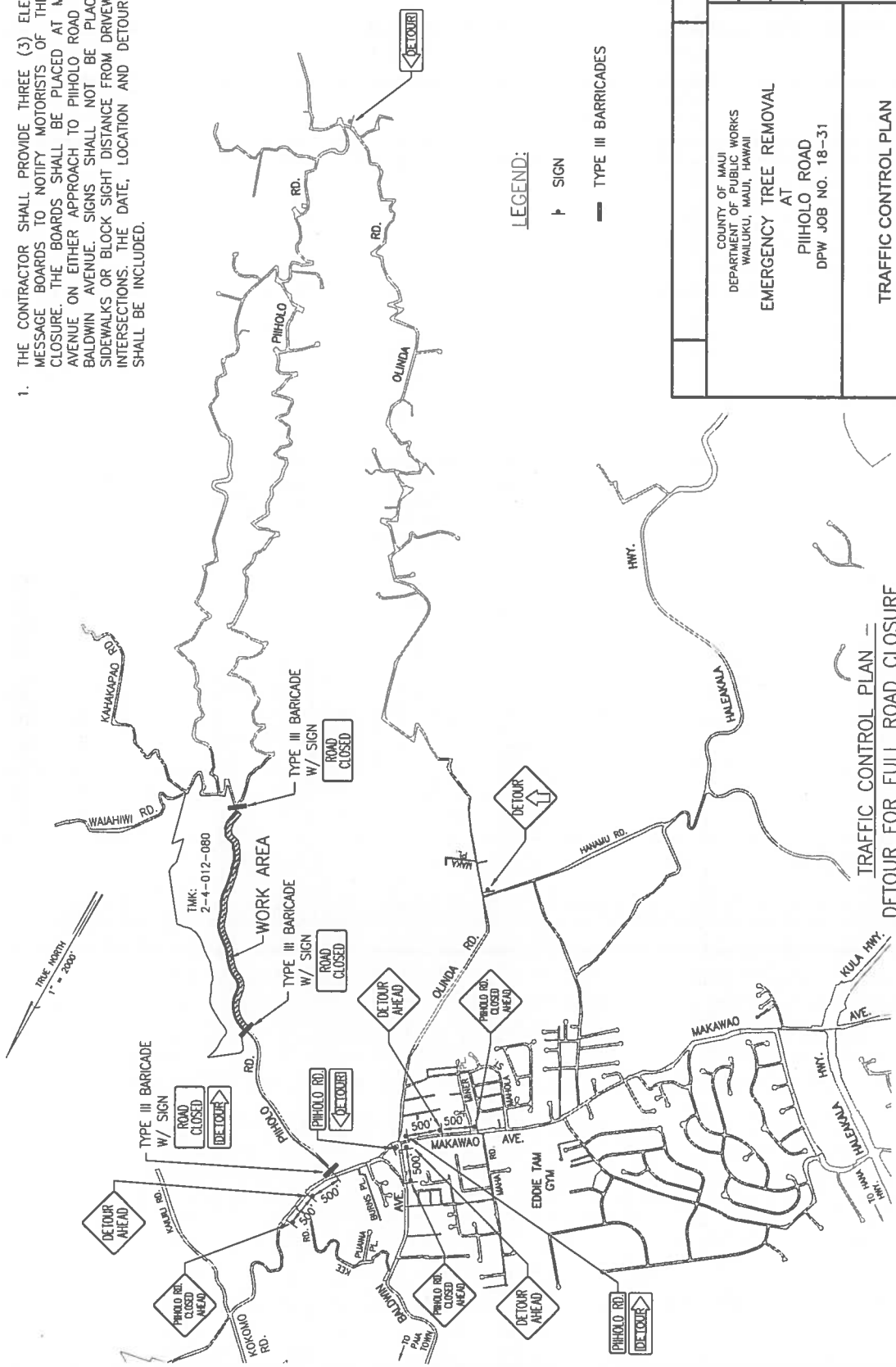
1. This project calls for the Furnishing of Labor and Equipment as specified but not limited to that described within the SPECIFICATIONS SECTION of this contract.
2. Prices quoted are to be inclusive of all taxes, except Federal Excise Tax from which the County is exempt, and other charges, and shall be NET to the County.
3. Services rendered shall comply with all applicable revisions of the law relative to the Prevailing Wage Schedule, as required under Chapter 104, HRS. Bidders shall complete the "Certificate of Compliance for Wages, Hours and Working Conditions" form and submit it with their bid.
4. Bidder shall not submit more than one (1) bid document and shall not submit more than one (1) offer for each item specified in the bid document. Doing so, will be cause for rejection of all bids from that bidder.
5. Whenever there is a price discrepancy, the unit price shall govern. Therefore, all unit prices must be included on the proposal form in the amount column, where applicable.
6. Individual awards shall be made to the lowest responsible and responsive bidder based on the Total Bid Amount.
7. This project may not proceed depending upon available funds.
8. The Director reserves the right to accept to reject any or all bids and to waive any minor or inadvertent discrepancy in the bid documents.
9. In the case of identical bids being submitted, the contractor will be determined by the drawing of lots.
10. The Director reserves the right to withhold award of contract for a period of thirty (30) calendar days from the date of the bid opening.
11. A bid bond will not be required.
12. A performance bond in the amount of twenty percent (20%) of the contract price is required at the time of contract. Refer to sample forms.
13. No withdrawal of bid will be allowed after the bids are opened.
14. Monies due and payable to the County of Maui that are in arrears may be deducted from the amount due to the contractor per the agreed contract amount.

15. The Purchase General Terms and Conditions for Goods and/or Services for the County of Maui applies and is available on the County website at www.mauicounty.gov.
16. It is mutually understood and agreed by and between the parties to the contract that time shall be of the essence of the contract and that in case of failure on the part of the Contractor to complete his contract within the time specified and agreed upon, the County will be damaged thereby, and the amount of said damages, being difficult if not impossible of definite ascertainment and proof, it is hereby agreed that the amount of such damages shall be estimated, agreed upon, liquidated and fixed at the sum of Two Hundred & No/100 Dollars (\$200.00) for each and every calendar day, including Saturdays, Sundays and holidays, the contractor shall delay in the completion of his contract; and the contractor hereby agrees to pay the County as liquidated damages, and not by way of penalty, such total sum as shall be due for such delay, computed as aforesaid.
17. In accordance with Section 3-122-112, as amended, of the Hawaii Administrative Rules, the successful bidder must produce the following documents:
 - a. State Tax Clearance Certificate
 - b. Federal Tax Clearance Certificate
 - c. A certificate of compliance (DLIR Form LIR#27) issued by the Department of Labor and Industrial Relations stating that the contractor complies with Chapters 383, 386, 392 and 393 of the Hawaii Revised Statutes (HRS), current within six (6) months of the issuance date. This certificate is required prior to an award of a contract.
 - d. A certificate of good standing from the business registration division of the Department of Commerce and Consumer Affairs (DCCA), current within six (6) months of the issuance date. This certificate is required prior to an award of a contract.
 - e. In lieu of submitting the tax clearance certificate, certificate of compliance, and certificate of good standing, the successful bidder may submit a current State of Hawaii Certificate of Vendor Compliance that indicates the status of these certificates.
18. The Contractor shall comply with federal, State, and County laws, ordinances, codes, rules, and regulations, 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.

19. A contract shall be awarded to the lowest responsive bidder for either bid alternate, provided work can be completed within sixty (60) calendar days from the Official Commencement Date as specified in the "Notice to Proceed" issued by the Department of Public Works.
20. A Certificate of Compliance for Final Payment will be required, affirming that the contractor has, as applicable, remained in compliance with all laws required by this section (3-122-112 HAR). This certificate is required prior to final payment of the contract.

NOTES:

1. THE CONTRACTOR SHALL PROVIDE THREE (3) ELECTRONIC MESSAGE BOARDS TO NOTIFY MOTORISTS OF THE ROAD CLOSURE. THE BOARDS SHALL BE PLACED AT MAKAWAO AVENUE ON EITHER APPROACH TO PIHOLO ROAD AND AT BALDWIN AVENUE. SIGNS SHALL NOT BE PLACED ON SIDEWALKS OR BLOCK SIGHT DISTANCE FROM DRIVEWAYS OR INTERSECTIONS. THE DATE, LOCATION AND DETOUR ROUTE SHALL BE INCLUDED.



LEGEND:

- ↑ SIGN
- TYPE III BARRICADES

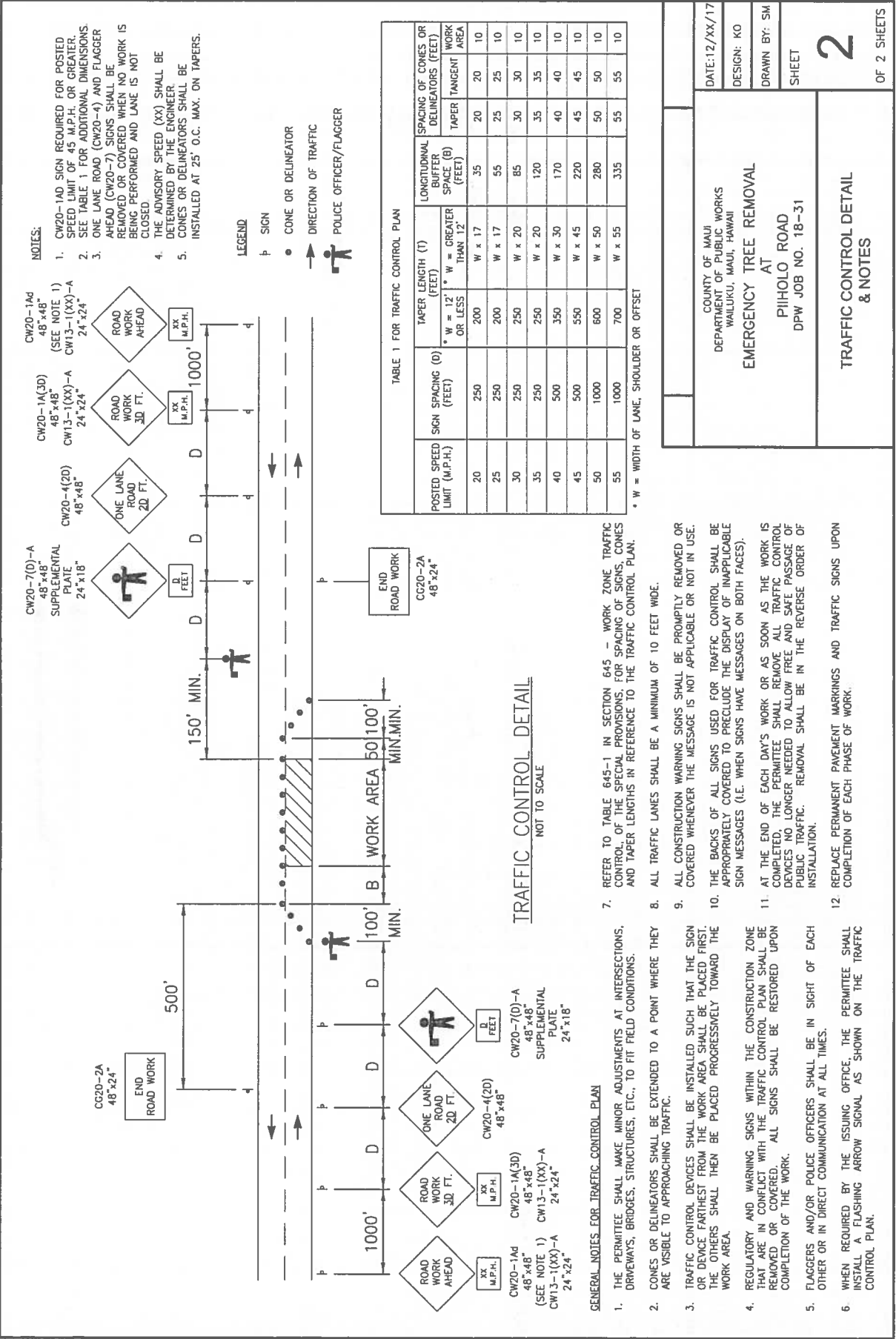


**TRAFFIC CONTROL PLAN -
DETOUR FOR FULL ROAD CLOSURE**

SCALE: 1" = 2000'

DATE: 12/XX/17	COUNTY OF MAUI DEPARTMENT OF PUBLIC WORKS WAILUKU, MAUI, HAWAII
DESIGN: KO	
DRAWN BY: SM	
SHEET	PIHOLO ROAD DPW JOB NO. 18-31
1	
TRAFFIC CONTROL PLAN	

OF 2 SHEETS



- NOTES:**
- CW20-1AD SIGN REQUIRED FOR POSTED SPEED LIMIT OF 45 M.P.H. OR GREATER. SEE TABLE 1 FOR ADDITIONAL DIMENSIONS.
 - ONE LANE ROAD (CW20-4) AND FLAGGER AHEAD (CW20-7) SIGNS SHALL BE REMOVED OR COVERED WHEN NO WORK IS BEING PERFORMED AND LANE IS NOT CLOSED.
 - THE ADVISORY SPEED (XX) SHALL BE DETERMINED BY THE ENGINEER.
 - CONES OR DELINEATORS SHALL BE INSTALLED AT 25' O.C. MAX. ON TAPERS.

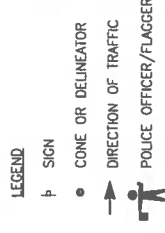


TABLE 1 FOR TRAFFIC CONTROL PLAN

POSTED SPEED LIMIT (M.P.H.)	SIGN SPACING (D) (FEET)	TAPER LENGTH (T) (FEET)	LONGITUDINAL BUFFER SPACE (B) (FEET)	SPACING OF CONES OR DELINEATORS (FEET)
20	250	* W = 12' OR LESS	35	20
25	250	W x 17	55	25
30	250	W x 20	85	30
35	250	W x 20	120	35
40	500	W x 30	170	40
45	500	W x 45	220	45
50	1000	W x 50	280	50
55	1000	W x 55	335	55

* W = WIDTH OF LANE, SHOULDER OR OFFSET

TRAFFIC CONTROL DETAIL
 NOT TO SCALE

- GENERAL NOTES FOR TRAFFIC CONTROL PLAN**
- THE PERMITEE SHALL MAKE MINOR ADJUSTMENTS AT INTERSECTIONS, DRIVEWAYS, BRIDGES, STRUCTURES, ETC., TO FIT FIELD CONDITIONS.
 - CONES OR DELINEATORS SHALL BE EXTENDED TO A POINT WHERE THEY ARE VISIBLE TO APPROACHING TRAFFIC.
 - TRAFFIC CONTROL DEVICES SHALL BE INSTALLED SUCH THAT THE SIGN OR DEVICE FARTHEST FROM THE WORK AREA SHALL BE PLACED FIRST. THE OTHERS SHALL THEN BE PLACED PROGRESSIVELY TOWARD THE WORK AREA.
 - REGULATORY AND WARNING SIGNS WITHIN THE CONSTRUCTION ZONE THAT ARE IN CONFLICT WITH THE TRAFFIC CONTROL PLAN SHALL BE REMOVED OR COVERED. ALL SIGNS SHALL BE RESTORED UPON COMPLETION OF THE WORK.
 - FLAGGERS AND/OR POLICE OFFICERS SHALL BE IN SIGHT OF EACH OTHER OR IN DIRECT COMMUNICATION AT ALL TIMES.
 - WHEN REQUIRED BY THE ISSUING OFFICE, THE PERMITEE SHALL INSTALL A FLASHING ARROW SIGNAL AS SHOWN ON THE TRAFFIC CONTROL PLAN.
 - REFER TO TABLE 645-1 IN SECTION 645 - WORK ZONE TRAFFIC CONTROL OF THE SPECIAL PROVISIONS FOR SPACING OF SIGNS, CONES AND TAPER LENGTHS IN REFERENCE TO THE TRAFFIC CONTROL PLAN.
 - ALL TRAFFIC LANES SHALL BE A MINIMUM OF 10 FEET WIDE.
 - ALL CONSTRUCTION WARNING SIGNS SHALL BE PROMPTLY REMOVED OR COVERED WHENEVER THE MESSAGE IS NOT APPLICABLE OR NOT IN USE.
 - THE BACKS OF ALL SIGNS USED FOR TRAFFIC CONTROL SHALL BE APPROPRIATELY COVERED TO PRECLUDE THE DISPLAY OF INAPPLICABLE SIGN MESSAGES (I.E. WHEN SIGNS HAVE MESSAGES ON BOTH FACES).
 - AT THE END OF EACH DAY'S WORK OR AS SOON AS THE WORK IS COMPLETED, THE PERMITEE SHALL REMOVE ALL TRAFFIC CONTROL DEVICES NO LONGER NEEDED TO ALLOW FREE AND SAFE PASSAGE OF PUBLIC TRAFFIC. REMOVAL SHALL BE IN THE REVERSE ORDER OF INSTALLATION.
 - REPLACE PERMANENT PAVEMENT MARKINGS AND TRAFFIC SIGNS UPON COMPLETION OF EACH PHASE OF WORK.

COUNTY OF MAUI
 DEPARTMENT OF PUBLIC WORKS
 WAILUKU, MAUI, HAWAII

**EMERGENCY TREE REMOVAL
 AT
 PIHULO ROAD**
 DPW JOB NO. 18-31

DATE: 12/XX/17
 DESIGN: KO
 DRAWN BY: SM
 SHEET

2

OF 2 SHEETS

**TRAFFIC CONTROL DETAIL
 & NOTES**

ALTERNATE A

Numbered trees in white to be cut (typ.)

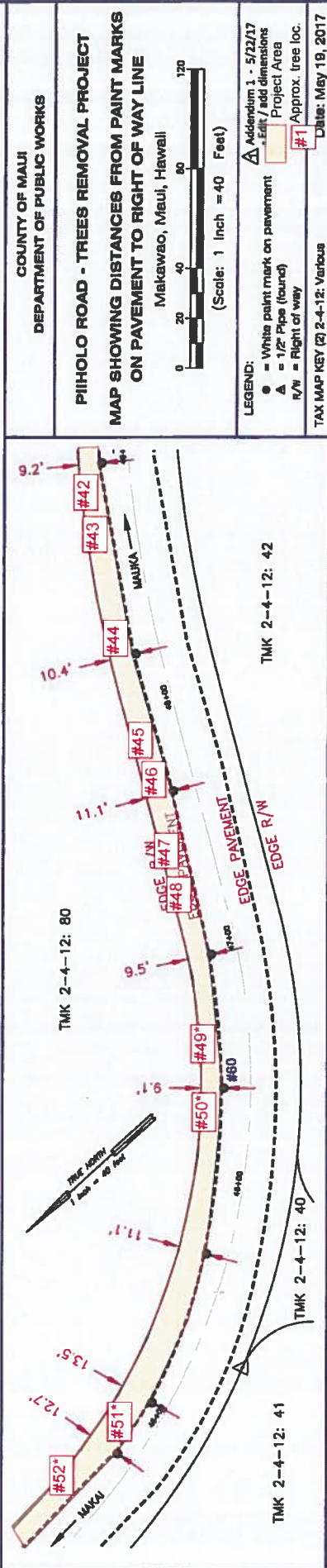
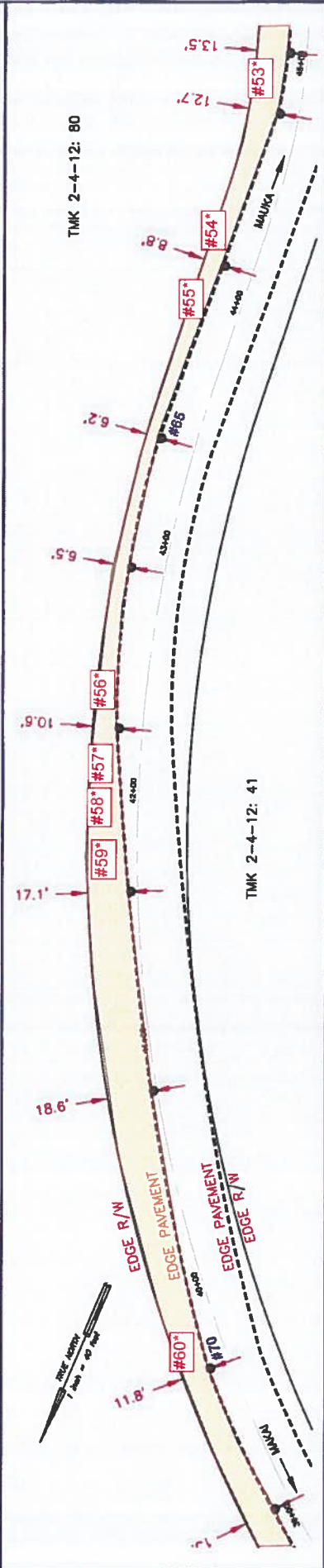
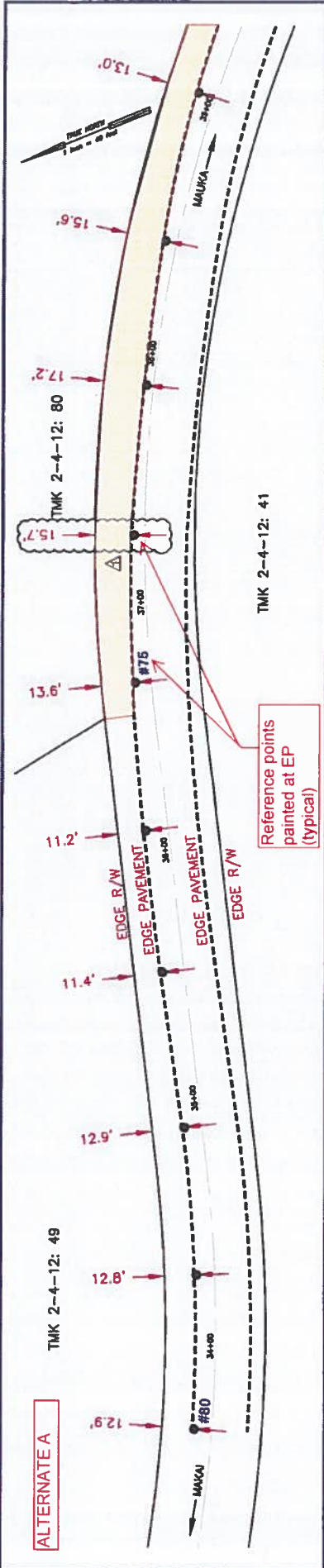
Number corresponds to reference point on plan - see next sheets.

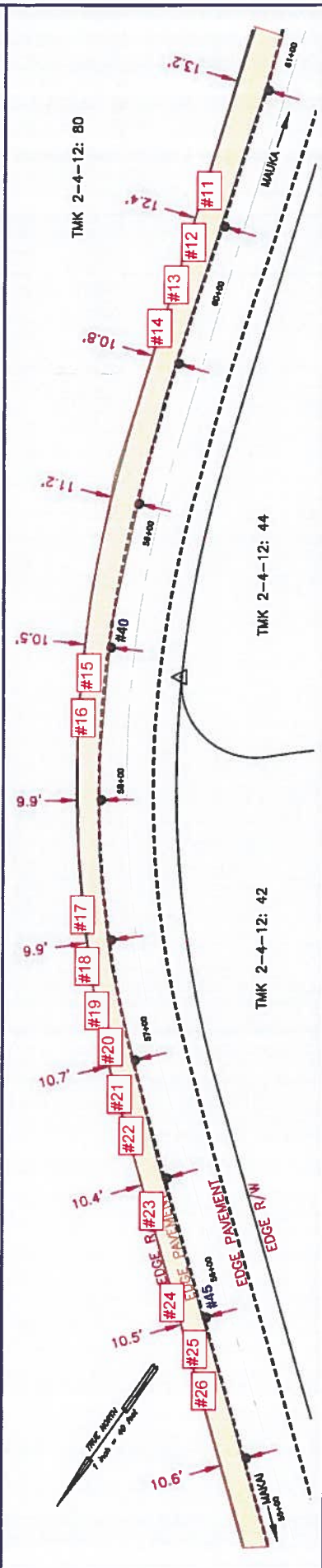
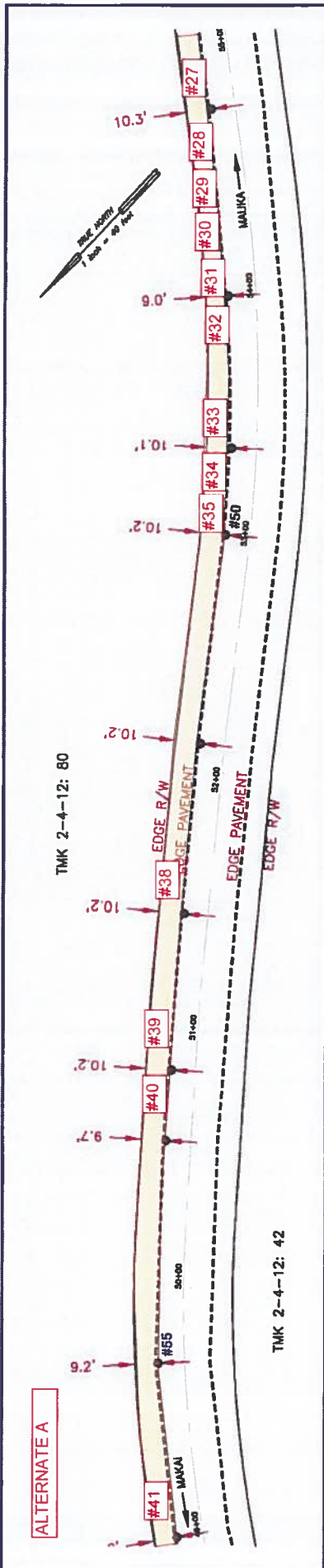


ALTERNATE A

Unmarked tree to be cut identified by pavement marking (typ.)







COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS

PIIHOLO ROAD - TREES REMOVAL PROJECT
MAP SHOWING DISTANCES FROM PAINT MARKS ON PAVEMENT TO RIGHT OF WAY LINE

Makawao, Maui, Hawaii

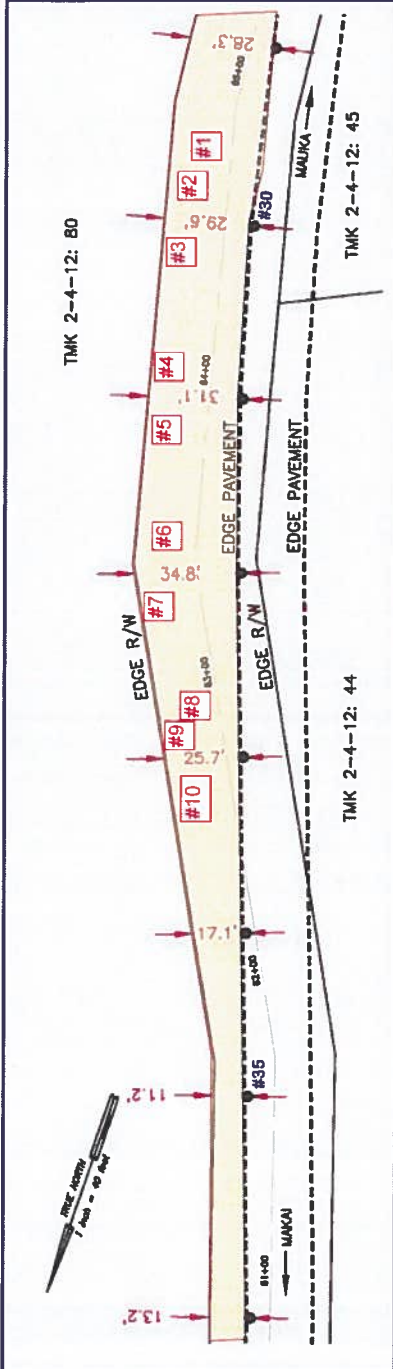
(Scale: 1 Inch = 40 Feet)

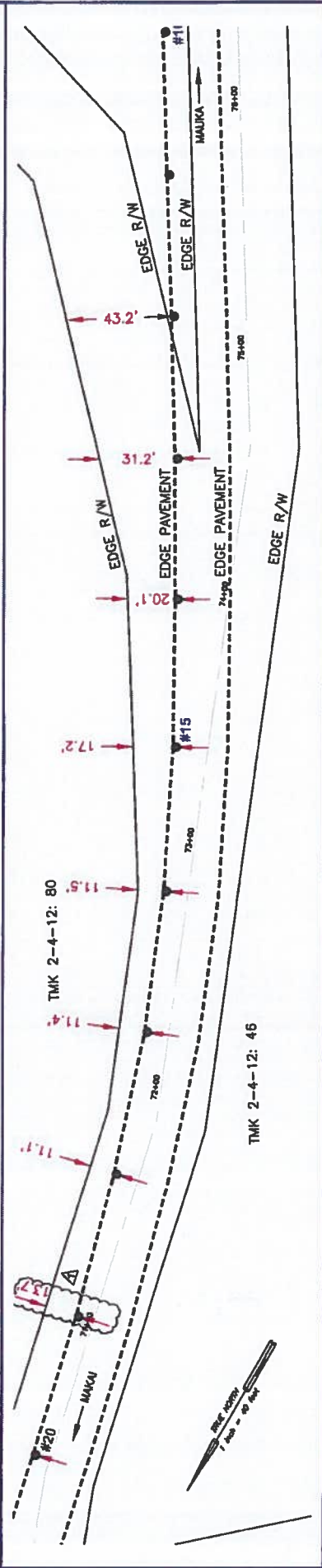
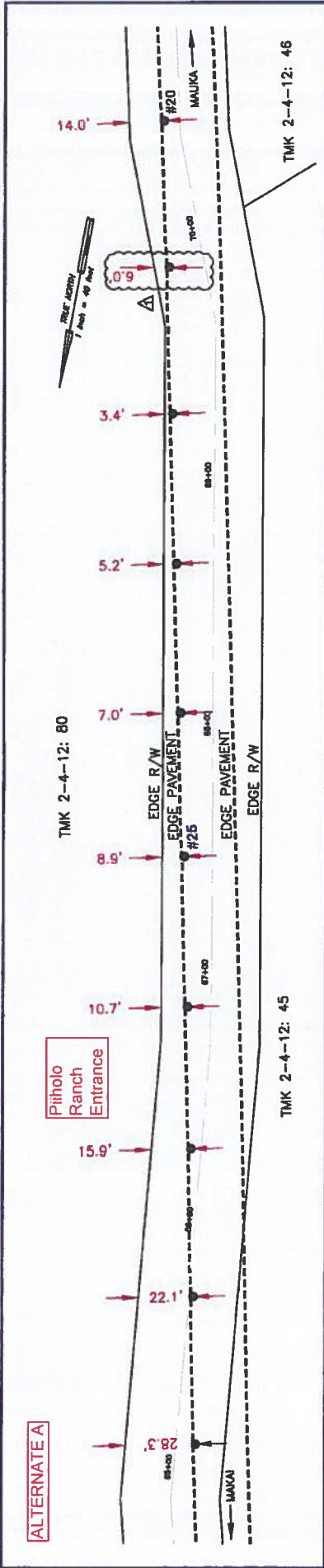
LEGEND:

- White paint mark on pavement
- 1/2" Pipe (found)
- R/W = Right of way
- Project Area
- #1 Approx. tree loc.

TAX MAP KEY (2) 2-4-12: Various

Date: May 19, 2017





COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS

PiiHOLO ROAD - TREES REMOVAL PROJECT
MAP SHOWING DISTANCES FROM PAINT MARKS ON PAVEMENT TO RIGHT OF WAY LINE

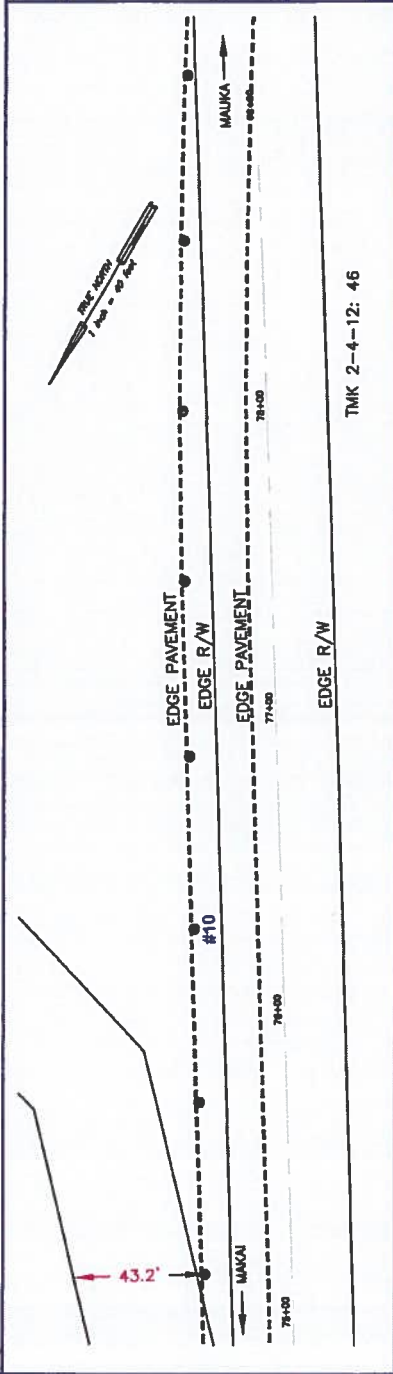
Makawao, Maui, Hawaii

(Scale: 1 inch = 40 Feet)

LEGEND:
 ◻ = White paint mark on pavement
 ◻ = 1/2" Pipe (found)
 R/W = Right of way

ATTACHMENT 1 - 5/22/17
 - Edit / add dimensions
 Project Area
 Approx. tree loc.
 #1
 Created: May 19, 2017

TAX MAP KEY (2) 2-4-12: Various

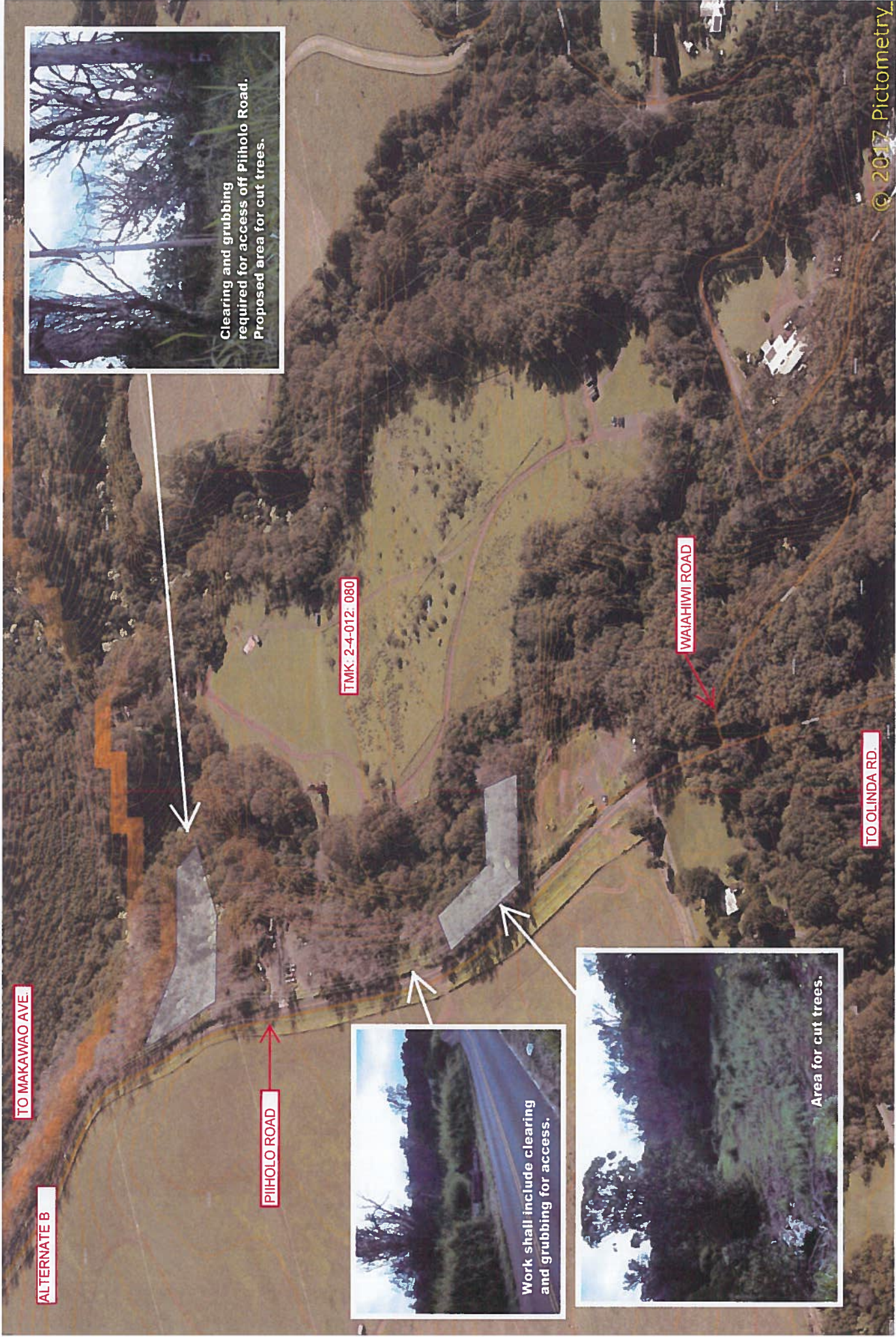




Remove trees
within 35' of edge
of pavement.

TWK.
2-4-012-080

ALTERNATE B



ALTERNATE B

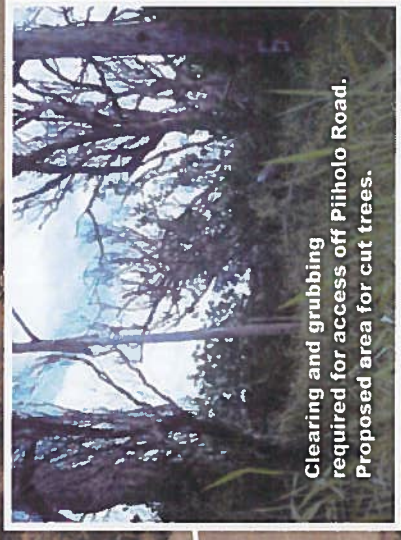
TO MAKAWAO AVE.

PIIHOLO ROAD

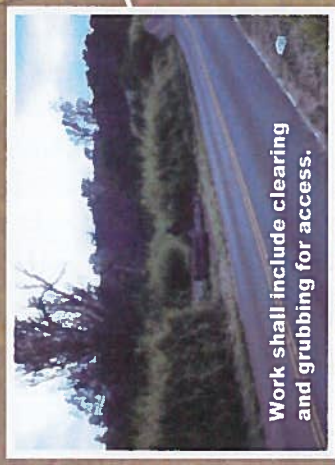
TMK: 2-4-012: 080

WAI'AHII ROAD

TO OLINDA RD.



Clearing and grubbing required for access off Piihoho Road. Proposed area for cut trees.



Work shall include clearing and grubbing for access.



Area for cut trees.

PROPOSAL
FOR
COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS

PROJECT: **EMERGENCY TREE REMOVAL AT PIIHOLO ROAD
ISLAND OF MAUI**

JOB NO.: **18-31**

COMPLETION TIME: **SIXTY (60) calendar days**
from the date indicated in the Notice to Proceed from the
County of Maui.

PROJECT ENGINEER: Kristi Ono

ADDRESS: Department of Public Works
Engineering Division
200 South High Street
Wailuku, Maui, Hawaii 96793

PHONE NUMBER: (808) 270-7745

FAX NUMBER: (808) 270-7975

EMAIL ADDRESS: kristi.ono@co.maui.hi.us

Department of Public Works
County of Maui
200 South High Street, 4th Floor
Wailuku, Maui, Hawaii 96793

Dear Sir:

The undersigned, as bidder, declares that this proposal is made without collusion with any other person, firm or corporation; that the bidder has carefully examined the job site; that the bidder has studied the proposed scope of work contemplated, the annexed proposed form of contracts and bonds and the project plans therein referred to.

The undersigned agrees that if this proposal is accepted, the bidder shall execute a contract with the County of Maui, to provide all necessary labor, machinery, tools, equipment, apparatus and any other means of construction, to do all the work and to furnish all the materials specified in the contract in the manner and within the time therein prescribed in the contract. Compensation for work performed and expenses incurred under this contract shall be on a lump sum bid as described herein. The lump sum rates and particular expenses which the Contractor may invoice to County of Maui under this contract are based upon the equipment and resources described within the Specifications outlined within this contract and the bid submitted for lump sum. No other rates or expenses may be charged by the Contractor unless agreed to by the parties in an amendment hereto. The County of Maui General Terms and Conditions for Goods and Services shall be made a part of these bid documents, and can be found at the following links:

<https://www.mauicounty.gov/DocumentCenter/Home/View/3186>

It is understood and agreed that if a contract is awarded to the undersigned, he/she shall enter into and execute a contract for the faithful furnishing of labor and equipment to trim and remove they trees on which the award is made. The undersigned agrees to begin the work within fifteen (15) calendar days after the date of notification to commence with the work which date is indicated in the Notice to Proceed and shall finish the entire project within the time prescribed.

Receipt is now acknowledged and complete examination is now expressly guaranteed of the following listed items: Hawaii Standard Specifications for Road, Bridge, and Public Works Construction, 2005, or such other standard specifications as provided for by Department of Public Works, the Notice to Bidders, Instruction to Bidders, Special Provisions, the amendments to Special Provisions, if any, the Proposal, the Contract and Bond Forms, and the Project Plans.

The undersigned acknowledges receipt of any addendum issued by Department of Public Works, County of Maui by recording in the space below the date of receipt.

Addendum No. 1 _____ Addendum No. 3 _____

Addendum No. 2 _____ Addendum No. 4 _____

SUBCONTRACTOR AND JOINT CONTRACTOR LISTING

In accordance with Section 103D-302, Hawaii Revised Statutes, the undersigned as bidder has listed below the name of each person or firm, who will be engaged by the bidder on the project as joint contractor or subcontractor and the nature of work to be done by each. It is understood that failure to comply with these requirements may be cause for rejection of the bid submitted.

Each bidder shall fill in all subcontractors' and all joint contractors' names, nature of work, and valid license numbers as indicated on the DCCA contractor's licensing website at <http://pvl.ehawaii.gov/pvlsearch/app>. If no joint contractor or subcontractor is to be engaged, the bidder must complete the form by writing "NONE". If left blank, the Department will interpret the blank as no joint contractor or subcontractor will be used.

The County will verify the licenses of the contractor and all of the listed subcontractors on the State Website at <http://pvl.ehawaii.gov/pvlsearch/app>, of the lowest bidder after the bid opening. The County will also print out the license status for the contractors and each subcontractor listed and keep them in the bid file.

The County will also verify the licenses of the 2nd and 3rd contractor and their subcontractors in case the low bidder does not end up with the contract. If, for whatever reason, the County does not end up contracting with one of the three lowest bidders, the County will check the licenses of the other bidders, on a later date, and that verification date will be at the sole discretion of the County.

If a subcontractor is listed, and the license number is listed but not listed accurately, or numbers are transposed, or the subcontractor name listed does not match DCCA listing, or the name and license number cannot be verified through the State Website, etc., the County will have the sole discretion to accept or reject that contractor's bid based on the ability to quickly locate that license number on the State Website using the license holder information provided below.

If the State contractor's licensing website is unavailable after the bid opening, or if the County internet service is down, etc., the County has the sole discretion to verify licenses as soon as possible at a later date, but prior to the award of a contract.

Subcontractors List:

(List all; if more space is needed, attach additional sheets.)

Complete Firm Name of Subcontractor	Nature of Work to be Performed
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

("None" or if left blank indicates no Subcontractor or Joint Contractor)

Joint Contractors:

(List all; if more space is needed, attach additional sheets.)

Complete Firm Name of Joint Contractor	Nature of Work to be Performed
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

("None" or if left blank indicates no Subcontractor or Joint Contractor)

The undersigned hereby certifies that the bid prices contained in the attached proposal schedule have been carefully checked and are submitted as correct and final.

This declaration is made with the understanding that the undersigned is subject to the penalty of perjury under the laws of the United States and is in violation of the Hawaii Penal Code, Section 710-1063, unsworn falsification to authorities, of the Hawaii Revised Statutes, for knowingly rendering a false declaration.

Name of Corporation, Partnership or Individual

Signature and Title of Signer (Corporate Seal)

Contractor's License No.

Business Address

Business Telephone

Email Address

Dated: _____, 20 ____

NOTE:

If bidder is a CORPORATION, the legal name of the corporation shall be set forth above, with the signature(s) of the officer(s) authorized to sign contracts for the corporation. Please attach to this page current (not more than six months old) evidence of the authority of the officer(s) to sign for the corporation.

If bidder is a PARTNERSHIP, the true name of the partnership shall be set forth above, with the signature(s) of the general partner(s). Please attach to this page current (not more than six months old) evidence of the authority of the partner authorized to sign for the partnership.

If bidder is an INDIVIDUAL, the bidder's signature shall be placed above.

If signature is by an agent, other than an officer of a corporation or a partner of a partnership, a POWER OF ATTORNEY must be on file with the Department before opening bids or submitted with the bid. Otherwise, the Department may reject the bid as irregular and unauthorized.

HEALTH AND SAFETY PROGRAMS

Bidders for construction projects in excess of \$100,000 must include a signed certification with their bids that a written safety and health plan for the job will be available and implemented by the "Notice to Proceed" date of the project. Certificate form is attached.

***ACT 68, SB 2840 - EMPLOYMENT OF STATE RESIDENTS ON CONSTRUCTION PROCUREMENT CONTRACTS**

Bidders are advised of the applicability of Act 68, SB 2840 - Employment of State Residents on Construction Procurement Contracts, (2010) ("Act 68"). Act 68 requires the awarded contractor to ensure that Hawaii Residents (as defined in the Act) compose not less than eighty percent of the workforce employed to perform the contract. This requirement shall also apply to subcontracts of \$50,000 or more in connection with any construction contract procured under HRS Chapter 103D, but does not apply to procurements made pursuant to HRS §103D-304 (professional services), HRS § 103D-305 (small purchases), or if there is a conflict with any federal law.

ACT 291, SLH 2006 – PROMPT PAYMENT ACT

In conjunction with Section 109.09 of the Hawaii Standard Specifications for Road, Bridge, and Public Works Construction, 2005; bidders are advised of the applicability of Act 291, SLH 2006 –the Prompt Payment Act. This act enables prompt payment for government work of general contractors, subcontractors, and material suppliers. A copy of the Act is available at:

[http://www.capitol.hawaii.gov/session2006/bills/HB3036_cd1 .htm](http://www.capitol.hawaii.gov/session2006/bills/HB3036_cd1.htm). All applicable references contained in the General Terms and Conditions, Instruction to Bidders, Standard Specifications, Special Provisions, and other bid documents are superseded by this Act.

** Shall not apply if the application of the Act is in conflict with any federal law, or if application of Act will disqualify the County from receiving federal funds or aid.*

CERTIFICATE OF COMPLIANCE
FOR WAGES, HOURS AND WORKING CONDITIONS

I certify that the services to be rendered under my bid shall be performed in compliance with federal and state labor laws relating to workers' compensation, unemployment compensation, payment of wages and safety.

I further certify that the services to be rendered shall be performed by employees paid at wages and salaries not less than those paid to public officers and employees for similar work. (Section 103-55 (a), Hawaii Revised Statutes).

I understand that failure to comply with the applicable wage and labor laws or failure to correct any such noncompliance within a reasonable period shall result in the cancellation of the contract and the withholding of payment in final settlement of the contract. Section 103-55 (a), Hawaii Revised Statutes).

BIDDER:

Name of Firm or Individual

Title

Date

CERTIFICATION OF COMPLIANCE
WITH HRS 396-18, SAFETY AND HEALTH PROGRAMS
FOR CONTRACTOR BIDDING ON COUNTY JOBS IN EXCESS OF \$100,000

PROJECT NAME AND NUMBER _____

This is to certify that the undersigned will comply with the requirements of HRS 396-18, as follows:

- (A) Pursuant to HRS 396-18, all bids and proposals in excess of \$100,000 shall include a signed certification from the bidder that a written safety and health plan for the job will be available and implemented by the notice to proceed dates of the project. The written safety and health plan shall include:
- (1) A safety and health policy statement reflecting management commitment;
 - (2) A description of the safety and health responsibilities of all levels of management and supervisors on the job and a statement of accountability appropriate to each;
 - (3) The details of:
 - (a) The mechanism for employee involvement in job hazard analysis;
 - (b) Hazard identification, including periodic inspections and hazard correction and control.
 - (c) Accident and "near-miss" investigations; and
 - (d) Evaluations of employee training programs;
 - (4) A plan to encourage employees to report hazards to management as soon as possible and to require management to address these hazards promptly; and
 - (5) A certification by a senior corporate or company manager that the plan is true and correct
- (B) Failure to submit the required certification may be grounds for disqualification of the bid.
- (C) Failure to have available on site or failure to implement the written safety and health plan by the project's notice to proceed date shall be considered willful noncompliance and be sufficient grounds to disqualify the award and terminate the contract.

Name of Contractor

Signature and Title

Date: _____

18-31 EMERGENCY TREE REMOVAL AT PIIHOLO ROAD

BID ALTERNATE A:

Removal of 60 eucalyptus trees located along Piihoho Road in the vicinity of TMK: (2) 2-4-012: 080 and 081, within the County right-of-way, hauling green waste each day to the Central Maui Landfill, and traffic control.

BID ALTERNATE B:

Removal of approximately 300 eucalyptus trees located along Piihoho Road in the vicinity of TMK: (2) 2-4-012: 080 and 081, within 35 feet of the edge of pavement. Haul all fallen trees and green waste to areas within 2-4-012: 080, including clearing and grubbing work for access, and traffic control.

BID ALTERNATE A TOTAL LUMP SUM BID AMOUNT: \$ _____

BID ALTERNATE B TOTAL LUMP SUM BID AMOUNT: \$ _____

ISA Certified Arborist to be on crew for the project:

Name

ISA Arborist Cert. #

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
WAILUKU, MAUI, HAWAII

SAMPLE FORMS

Contents

Performance Bond (Surety)

Chapter 104 Compliance Certificate

Certification of Compliance for Final Payment

Certification for Employment of State Residents on Construction Procurement
Contracts

*Bidders must use the most updated State approved bid, performance, and payment
bond forms which can be found at the following link
<http://www4.hawaii.gov/StateForms/SPOInt/ShowInternal.cfm>.*

PERFORMANCE BOND (SURETY)

KNOW TO ALL BY THESE PRESENTS:

That _____,
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Principal, and _____

(Name and Street Address of Bonding Company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a
surety in the State of Hawaii, are held and firmly bound unto the _____,
(State/County Entity)

its successors and assigns, hereinafter called Oblige, in the amount of _____

_____ DOLLARS (\$_____), to which payment Principal and Surety bind themselves,
their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by
these presents.

WHEREAS, the above-bound Principal has signed a Contract with Oblige on
_____, for the following project: _____

hereinafter called Contract, which Contract is incorporated herein by reference and made a part
hereof.

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

If the Principal shall promptly and faithfully perform, and fully complete the Contract in
strict accordance with the terms of the Contract as said Contract may be modified or amended
from time to time; then this obligation shall be void; otherwise to remain in full force and effect.

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Oblige 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 Oblige in satisfaction of the surety's performance obligation on this bond.

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Contractor)

* _____
Signature

Title

(Seal)

Name of Surety

* _____
Signature

Title

***ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC**

CHAPTER 104, HRS COMPLIANCE CERTIFICATE

The undersigned bidder does hereby certify to the following:

1. Individuals engaged in the performance of the contract on the job site shall be paid:

A. Not less than the wages that the director of labor and industrial relations shall have determined to be prevailing for corresponding classes of laborers and mechanics employed on public works projects; and

B. Overtime compensation at one and one-half times the basic hourly rate plus fringe benefits for hours worked on Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day.

2. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety shall be fully complied with.

DATED at Honolulu, Hawaii, this ____ day of _____.

Name of Corporation, Partnership, or Individual

Signature and Title of Signer

Subscribed and sworn before me
this ____ day of _____.

Notary Public, _____ Judicial
Circuit, State of Hawaii
My Commission Expires: _____

CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT
(Reference §3-122-112, HAR)

Reference: _____
(Contract Number) (IFB/RFP Number)

_____ affirms it is in
(Company Name)
compliance with all laws, as applicable, governing doing business in the State of Hawaii
to include the following:

1. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker's Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

maintains a "Certificate of Good Standing" from the Department of Commerce and
Consumer Affairs, Business Registration Division.

Moreover, _____
(Company Name)
acknowledges that making a false statement shall cause its suspension and may cause
its debarment from future awards of contracts.

Signature: _____

Print Name: _____

Title: _____

Date: _____

**CERTIFICATION FOR EMPLOYMENT OF STATE RESIDENTS ON CONSTRUCTION
PROCUREMENT CONTRACTS**

Date

Director of Finance
County of Maui
200 South High Street
Wailuku, HI. 96793

Subject:

As required by of Act 68, SB 2840, Employment of State Residents on Construction Procurement Contracts, (2010), I hereby certify under oath, that for the month of _____, 20____, Hawaii Residents composed not less than eighty per cent of the workforce employed to perform on the subject Contract and all subcontracts to the subject Contract that are \$50,000 or more.

*CORPORATE SEAL
(IF APPLICABLE)*

CONTRACTOR

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

(Date)

STATE OF _____) SS

COUNTY OF _____)

The foregoing Certification, Employment of State Residents on Construction Procurement Contracts, dated _____ 20_____, was subscribed and sworn to before me, this _____ day of _____ 20_____, in the State of _____

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

**COUNTY OF MAUI
GENERAL CONDITIONS
FOR PURCHASE OF GOODS AND SERVICES**

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. RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.

a. 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 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

g. 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.

h. 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.

I. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

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.

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 novations 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 owned 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. **DISPUTES.** Disputes shall be resolved in accordance with Section 103D-703, HRS and Chapter 3-126, HAR.

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 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) of this Paragraph.

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 of the 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 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 EXPENSES. 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.

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. 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.

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.

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

(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 contractors 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.

28. PUBLICITY. 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 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.

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 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. 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. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. 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. 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, and

b. A county contract, including subcontracts, other than a firm fixed-price 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. AUDIT OF COST OR PRICING DATA. When cost or pricing principles are applicable, the County may require an audit of cost or pricing data.

35. 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.

36. 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.

37. 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 attorneys 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.

38. 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.

39. 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.

40. 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.

41. COMPLIANCE WITH LAWS. The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, and regulations, 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.

42. 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.

43. CAMPAIGN CONTRIBUTIONS. CONTRACTOR acknowledges that it is unlawful under Section 11-355, HRS, unless specifically permitted under that law, for CONTRACTOR at any time between the execution of this Contract through the completion of the Contract to: (a) directly or indirectly make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any

candidate or to any person for any political purpose or use; or (b) knowingly solicit any contribution from any person for any purpose during any period.

44. 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.

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

46. 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.

47. 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 terms of this Contract.

48. 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.

49. 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 OF PURCHASE OF GOODS AND SERVICES]

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION

ADDENDUM NO.1

EMERGENCY TREE REMOVAL AT PIIHOLO ROAD
JOB NO. 18-31

Contractors preparing bids are notified of the following clarification and changes to the subject project as follows:

A. TIME OF PERFORMANCE

The Time of Performance has been revised to 60 working days.

B. CLARIFICATION IN RESPONSE TO QUESTIONS FROM CONTRACTORS:

Who owns the existing waterline, and what should be done if it is impacted during the course of work?

Response: The existing waterline services 546 Piihola Road (TMK: 2-4-012: 049) and DPW has been in contact with the landowner. The Contractor shall conduct work so as to avoid impacts to the existing utilities. Any damage to the utilities during the course of work shall be repaired at the Contractor's cost. The non-potable waterline is active and cannot be shutdown for an extended duration. Contact DPW in an emergency situation if a waterline shutdown is necessary so the landowner and tenant can be notified.

When will the Notice to Proceed be issued?

Response: The date depends on the approval of emergency funding. If funding is approved on 12/15/17, the NTP will be issued 1-2 weeks thereafter.

Will the Contractor be required to pay for landfill fees?

Response: Yes.

Will weather delays be allowed in case of high winds and rain?

Response: Yes.

For Alternate B, can the trees be left where they fall on TMK: 2-4-012: 080?

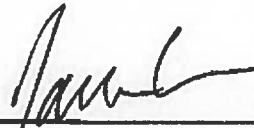
Response: Yes, however no trees are allowed to fall or be dumped into the existing gulch.

**COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION**

ADDENDUM NO.1

**EMERGENCY TREE REMOVAL AT PIIHOLO ROAD
JOB NO. 18-31**

Please acknowledge receipt of this Addendum No. 1 by recording the date of its receipt in the space provided on P-3 of the Proposal and by also signing and returning the attached receipt of Addendum to the County of Maui, Department of Public Works.



DAVID C. GOODE
Director of Public Works

RECEIPT OF ADDENDUM NO. 1

Please acknowledge receipt of Addendum No. 1 by signing and returning this receipt to the County of Maui, Department of Public Works.

Attached is copy of Addendum No. 1 for the **Emergency Tree Removal at Piiholo Road, Job No. 18-31.**

Bidder

Address

Phone No.

Signature

Date

18-31 EMERGENCY TREE REMOVAL AT PIIHOLO ROAD
BID OPENING: 12/13/17 2:00 PM

CONTRACTOR	BID ALTERNATE A	BID ALTERNATE B
LAND PREP LLC	\$380,000	\$680,000
HEMAN	\$1,600,000	\$1,150,000
C. HAYES EXCAVATION	\$342,420	\$448,818
WAILEA TREE AND LANDSCAPE	\$342,728	-