

ALAN M. ARAKAWA
Mayor



TEENA M. RASMUSSEN
Economic Development Director

OFFICE OF ECONOMIC DEVELOPMENT

COUNTY OF MAUI

2200 MAIN STREET, SUITE 305, WAILUKU, MAUI, HAWAII 96793. USA

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April 27, 2017

Ms. Lynn A.S. Araki-Regan
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 G. Riki Hokama, Chair
Budget & Finance Committee
200 South High Street
Wailuku, Maui, Hawaii 96793

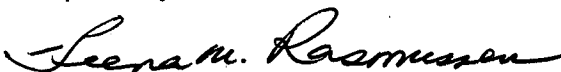
SUBJECT: Requests/Questions from the April 26, 2017 Meeting
(OM-7)

Dear Chair Hokama:

Pursuant to Council letter dated April 26, 2017, OED has the following response:

1. Please provide a breakdown of the grants and disbursements for water and environmental resource protection and conservation proposed for Fiscal Year 2018. See Addendum 1
2. Please provide a breakdown reflecting how the \$90,000 will be used for Central Maui Economic Development and Cultural Programs for Fiscal Year 2018. See Addendum 2
3. Due to the discussions regarding OED's responsibilities to HTA, we have attached our contract with HTA that clearly defines the details of OED's duties. See Addendum 3

Respectfully,


Teena M. Rasmussen, Director

APPROVED FOR TRANSMITTAL


Mayor Date 4/27/17

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OFFICE OF THE
COUNTY COUNCIL

Addendum 1

FY18 (Projected)

ENVIRONMENTAL PROTECTION		
\$1,315,000		
Fiscal Sponsor	DESCRIPTION	Amount
Tri-Isle RC&D	Hoaloha'Aina (P)	\$ 11,500.00
University of Hawaii	MISC	\$ 895,000.00
Maui Huliau Foundation	Huliau Environmental Filmmaking Club	\$ 10,000.00
Friends of the D.T. Fleming Arboretum	Pahana Ho'ola Seeds of Hope	\$ 25,000.00
Maui Nui Marine Resources	Maui Coral Reef Recovery Plan	\$ 169,000.00
Na Koa Manu Conservation	Conservation Capacity Building	\$ 5,000.00
Ke Ao I Ka Makani HoEha'illi	Ka'ehu Bay Management	\$ 75,000.00
Oahu Economic Development Board	Hawaii Green Growth	\$ 15,000.00
University of Hawaii	Maui Nui Seabird Recovery	\$ 50,000.00
OTHER PROJECTS		
Reimbursement of Maalaea PumpOut	FY 2006	\$ 40,000.00
	Emergency Environmental Fund	\$ 19,500.00
	Total:	\$ 1,315,000
	Balance:	\$ -0-

OED Response to (ED-5) (BF-1)

Addendum 2

Possible Uses for Central Maui Culture and Economic Development Fund:

1. Maui Academy for Performing Arts planning grant for Expansion to their new building \$25,000.
2. Saturday Night Street Event for Food Trucks in Kahului \$10,000.
3. Complete a market valuation for vacant shopping center space to assess the possibility of redeveloping to avoid derelict properties that will drive down all property values in the vicinity. \$40,000. (KMART, Maui Marketplace, etc.)
4. Barrio Fiesta \$10,000.
5. Art/Theater/Restaurant night in Wailuku \$10,000.
6. Shop Small Maui/Small Business Saturday for Wailuku and Kahului \$5000.
7. Wailuku share of Umbrella Marketing Campaign for 1st Friday \$13,000.

These are just possibilities that we have come up with.

Addendum 3

2017 Community Enrichment Programs –County of Maui
HTA Contract No. CON 17007

HTA CONTRACT NO. CON 17007
BETWEEN THE
HAWAI'I TOURISM AUTHORITY
AND THE
COUNTY OF MAUI

This Contract ("Contract") is effective as of December 29, 2016, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawai'i ("COUNTY" or "CONTRACTOR"), whose principal place of business is 200 South High Street, Wailuku, Hawai'i 96793, and the HAWAI'I TOURISM AUTHORITY ("HTA" or "STATE"), an agency of the State of Hawai'i, whose mailing address is 1801 Kalākaua Avenue, Honolulu, Hawai'i 96815.

WITNESSETH:

WHEREAS, the HTA desires to implement its Brand Management Plan 2017 through a Hawaiian Culture Execution Plan, Natural Resources Execution Plan, and Product Development Execution Plan that will achieve the respective goals and strategic plan directives for each of the respective execution plans;

WHEREAS, under the Hawaiian Culture Execution Plan, HTA desires to implement its Kūkulu Ola Program, hereinafter referred to as "Kūkulu Ola," which is a community-based initiative that helps to perpetuate the Hawaiian culture for the long term;

WHEREAS, under the Natural Resources Execution Plan, HTA desires to implement its Aloha 'Āina Program, hereinafter referred to as "Aloha 'Āina," by seeking to support community-based programs that help to protect, enhance and maintain the unique and fragile environment in Hawai'i;

WHEREAS, under the Product Development Execution Plan, HTA desires to implement its Community-Based Tourism Program through various programs, including the Community Enrichment Program with the various counties, hereinafter referred to as "CEP," and engaging in efforts to create new travel experiences by fostering and cultivating programs, projects and

events that will provide a variety of offerings for the visitor and foster community-based tourism programs throughout the Hawaiian Islands;

WHEREAS, the HTA desires to realize Hawai'i's potential as a great place to live and to visit by ensuring that Hawai'i's rich cultural heritage and resources are enhanced, preserved, perpetuated, and promoted in a manner that is economically and environmentally sound and culturally and socially sensitive;

WHEREAS, the HTA desires to support and encourage the expansion, enhancement, diversification, and enrichment of Hawai'i's tourism product;

WHEREAS, section 201B-3(a)(20) of the Hawai'i Revised Statutes provides a mandate directing the HTA to "coordinate the development of new products with the counties and other persons in the public sector and the private sector, including the development of sports, culture, health and wellness, education, technology, agriculture, and nature tourism;"

WHEREAS, the COUNTY has the knowledge, experience, and expertise in the numerous and various tourism product activities within the COUNTY's jurisdiction;

WHEREAS, the HTA desires to strengthen existing partnerships with the COUNTY to increase the effectiveness, efficiency, quantity, and quality of tourism product activities and programs;

WHEREAS, the HTA and the COUNTY desire to support and encourage tourism product activities such as those in the niche markets of agriculture, culture, education, health and wellness, nature, sports, and technology; and

WHEREAS, the HTA and the COUNTY desire to support and encourage efforts to provide activities and experiences for visitors and residents throughout the year and throughout Hawai'i;

NOW, THEREFORE, the HTA and the COUNTY, in consideration of the mutual promises hereinafter set forth hereby agree as follows:

- A. Scope of Services. The COUNTY shall:
 1. As further described herein, COUNTY shall provide technical assistance to support HTA's request for proposals solicitation for the 2017 Kuku Ola, Aloha 'Āina, and CEP (cumulatively referred to herein as "PROGRAMS")

and to evaluate the selected programs, projects and events awarded contracts pursuant to the solicitation through the submission of monthly evaluation reports, site visits, and providing a final report of any recommendations.

2. Meet and consult with HTA to obtain training on the COUNTY'S efforts to assist in HTA's implementation of the PROGRAMS.
3. Provide COUNTY personnel primarily responsible for directing and supervising the scope of services under this contract and shall have the following experience:
 - a. At least three years in economic development, preferably community economic development;
 - b. Excellent oral and written communication skills;
 - c. Demonstrated knowledge of marketing and business feasibility research and analysis;
 - d. Demonstrated knowledge of phases of marketing, including product development, sales, advertising and promotion, and distribution structure;
 - e. Familiar with governmental organization and programs as they relate to business and economics;
 - f. Demonstrated knowledge of issues pertaining to the areas of community based economic development, natural resources, tourism, and Hawaiian cultural programs, provided that if the personnel has not directly work in any one of these areas, the personnel shall know who in the COUNTY or community to seek and obtain such knowledge; and,
 - g. Independently performs a full range of program planning, development and evaluation activities.
4. Adhere to the PROGRAMS criteria and guidelines established by HTA.

5. Provide technical assistance to applicants seeking to submit proposals in response to the HTA's request for proposals solicitation for the PROGRAMS ("RFP"). Technical assistance, shall include but not be limited to:
 - a. Provide technical and non-substantive guidance to an applicant desiring to submit a proposal or application in response to the RFP that may be related to the any of the respective PROGRAMS;
 - b. Assist individual applicants and provide guidance in the completion of a proposal or application in response to the RFP.
6. Assist in the promotion of the PROGRAMS and solicitation process described in the RFP.
7. Attend all workshops provided by HTA to provide support for potential applicants interested in submitting a proposal or application in response to the RFP.
8. Actively identify and recruit new applicants to submit a proposal or application in response to the RFP.
9. Provide a work plan regarding the evaluation of the PROGRAMS, including but not be limited to a timeline for providing any periodic evaluation of each individual project or event within PROGRAMS and a monthly and final evaluation report regarding the scope of services provided under this contract, that will be due for HTA's prior approval.
10. Complete and provide a final evaluation report for each project or event within the PROGRAMS by utilizing the HTA's evaluation form and must be provided to HTA within two (2) weeks after the completion of a project or event. For projects or events that have ongoing programming and do not have a concluding event, a periodic evaluation should be conducted after at least three-quarters of the activities have been completed and are due two (2) weeks after a site visit or interview with the project or event organizer has been conducted.

11. If applicable, coordinate and facilitate quarterly site visits with HTA of projects or events under the PROGRAMS. STATE will make its own travel arrangements for CONTRACTOR at STATE's expense, including but not limited to flights and accommodations.
12. Provide a monthly evaluation report to HTA, due not later than the fifth business day of each month, that shall include but not be limited to:
 - a. A completed evaluation form provided by HTA;
 - b. Update on any programs and/or organizations assisted by the COUNTY;
 - c. Identification of any potential new applicants; and
 - d. Identification of any issues and resources needed for capacity building and technical assistance.
13. Complete and provide a final evaluation report to the HTA upon the completion of every project or event conducted under the PROGRAMS. The format and content of the final written evaluation report shall be provided by HTA to the COUNTY. The final evaluation report for the PROGRAMS shall be due on March 31, 2018.
14. Provide a representative for the COUNTY to serve as a member of an evaluation committee established by the HTA to evaluate the various proposals or applications submitted in response to the RFP, provided that the representative shall not have participated, directly or indirectly, in the solicitation of proposals from any offeror or applicant, or may in any manner have engaged in any activity or conduct that will provide an appearance of any conflict of interest when evaluating said proposals or applications. If COUNTY representative must travel to fulfill this condition, STATE will make travel arrangements at STATE's expense for such COUNTY representative, including but not limited to flights and accommodations, as necessary.

- B. **TIME OF PERFORMANCE.** Performance of the scope of services by the COUNTY shall commence on the effective date of this contract and all goods and services required under this contract shall be completed by March 31, 2018, unless this contract is sooner terminated as provided herein; provided that the HTA has the sole discretion to extend this contract until no later than March 31, 2020 by the exercise of the following two (2) one-year option periods: April 1, 2018 to March 31, 2019, and April 1, 2019 to March 31, 2020.
- C. **COMPENSATION AND METHOD OF PAYMENT SCHEDULE.** The total compensation for services to be provided by the COUNTY under this contract shall be the total sum of money not to exceed SEVENTY THOUSAND AND NO/100 DOLLARS (\$70,000.00), tax inclusive, and is subject to the availability of funds. Payment shall be made and transferred by the HTA to the COUNTY in accordance with paragraph 17 of the "General Conditions," attached hereto and made a part of this contract, and shall be subject to the following provisions:
1. An amount not to exceed SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00) within thirty (30) days after the full execution of this contract, provided the COUNTY has received a notice to proceed from the HTA and upon the HTA's prior receipt and approval of the following:
 - a. A written request for payment or invoice for said amount under the letterhead of the COUNTY and bearing the original signature of an authorized officer of the COUNTY requesting payment; and
 - b. A budget of how the total funds provided under this contract will be used and the COUNTY personnel assisting or performing the services under this contract.
 2. An amount not to exceed TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) upon the complete and satisfactory completion of the scope of services described in this contract and HTA's prior receipt and approval of:

- a. A written request for payment or invoice for said amount under the letterhead of the COUNTY and bearing the original signature of an authorized officer of the COUNTY;
 - b. A final evaluation report after the satisfactory completion of the entire scope of services as described in this contract; and
 - c. The satisfactory completion of services in accordance with this contract and as determined by the HTA.
3. The COUNTY shall submit to the HTA all requested reports, including any periodic evaluation report for each project or event, and its progress reports and annual final written report of the work performed by COUNTY under this contract, detailing activities and use of funds with certification by the COUNTY that all the work for which funds were utilized were performed in accordance with this contract.
 4. Progress payments shall not be construed as final acceptance of services required under this contract. The COUNTY acknowledges and agrees to perform all services in accordance with this contract for a total sum of money not to exceed SEVENTY THOUSAND AND NO/100 (\$70,000.00) tax inclusive, as specified above, subject to the availability of funds.

D. Availability of Funds.

1. The COUNTY acknowledges and agrees that the availability of funds from the Tourism Special Fund established under the laws of the State of Hawai'i for any fiscal year (July 1 to June 30) shall initially be subject to the passage of a budget appropriation of public funds by the Legislature, and subsequently to the approval of an allotment of the budgeted funds by the Governor, through the Director of Finance, State of Hawai'i. If there are insufficient funds appropriated, allotted, or otherwise made available to the STATE to pay the COUNTY, the STATE may, without liability to the STATE and the COUNTY, reduce the amount of compensation to the COUNTY, upon written notification by the STATE to the COUNTY.

2. The COUNTY further acknowledges and agrees that should the transient accommodations tax revenue collections authorized under the laws of the State of Hawai'i fall below those projected by the Hawai'i Council on Revenues and thereby cause insufficient funds to be made available to the STATE for its expenses as determined by its board of directors, the STATE may reduce the maximum amount of compensation under this Contract upon written notification to the COUNTY and without liability to the STATE.
 3. Within 15 days after the receipt of any written notification of insufficient funds during any fiscal year, the COUNTY shall submit a revised budget to the STATE for review and approval that reflects the reduction set forth in the notification and in the manner provided in this Contract.
 4. The COUNTY acknowledges and agrees that the STATE's ability to compensate the COUNTY for goods and services under this Contract is subject to appropriation, allotment, the collection of transient accommodation tax revenues, the Governor's directives, and any other factors requiring the allocation of public funds available to pay the COUNTY. The COUNTY hereby waives any and all claims for damages, including consequential damages arising from insufficient funds being appropriated, allotted, or available to the STATE to pay the COUNTY.
- E. Withholding of Payments. The STATE may withhold any and all payments to the COUNTY if the COUNTY fails to comply with any of the terms of this Contract.
- F. Promotional Material. The COUNTY and all recipients of STATE funds through the COUNTY for this Program shall acknowledge the HAWAI'I TOURISM AUTHORITY as a contributor of funds in all printed, broadcast, and other advertisement and promotional materials and documents relating to this Program.
- G. Modification of Contract. Any modification, alteration, or change to this Contract including, but not limited to, modification of the services to be

performed and extension of the time of performance, shall be made only by prior written supplemental agreements executed by the STATE and the COUNTY.

- H. **Termination of Contract.** If, for any cause, the COUNTY fails to satisfactorily fulfill in a timely or proper manner, its obligations under this Contract, or if the COUNTY breaches any of the promises, terms, or conditions of this Contract and, having been given reasonable written notice of an opportunity to cure any such default, fails to take satisfactory corrective action within the time specified by the STATE, the STATE may terminate this Contract by giving written notice to the COUNTY of such termination. The STATE may also terminate this Contract without cause by giving written notice to the COUNTY thirty (30) calendar days before the effective date of such termination.
- I. **General Conditions.** The General Conditions (AG-008 Rev. 4/15/2009) are attached hereto and incorporated herein as a part of this Contract (Exhibit A).
- J. **Execution.** This Contract may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument. This Contract may be executed and delivered by any party by facsimile or electronic transmission.
- K. **Special Conditions.**
1. Notwithstanding any provisions or representations to the contrary, any conflict among the various provisions of this Contract shall be resolved by allowing the various provisions in the following documents, in order of priority, to control:
 - a. This Contract and the above-referenced paragraphs A-K; and
 - b. The General Conditions, attached hereto and incorporated herein (Exhibit A).
 2. For purposes of this Contract, paragraph nos. 2.d., 2.e., 2.f., 2.g., 2.h., 7, 8, 9, 16, 17.d., 19.h., and 25 of the General Conditions are hereby deleted and shall have no operative effect between the STATE and the COUNTY.

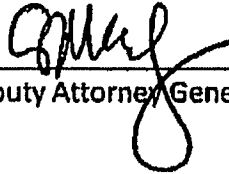
All other paragraphs of the General Conditions remain in effect and are incorporated herein.

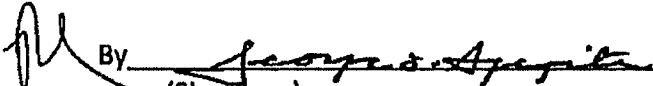
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed and made effective this contract on the day, month, and year first above written.

HAWAII TOURISM AUTHORITY:

APPROVED AS TO FORM:

By 
Deputy Attorney General

By 
(Signature)

GEORGE SZIGETI
(Print Name)


Its _____
(Title)

Date _____

COUNTY OF MAUI

Approval Recommended:

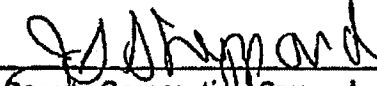
By 
Economic Development Director

By 
(Signature)

Alan Arakawa
(Print Name)

Its Mayor
(Title)

Approved as to form and legality:

By 
Deputy Corporation Counsel
County of Maui

Date 12/29/2016

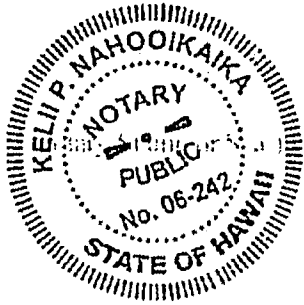


STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

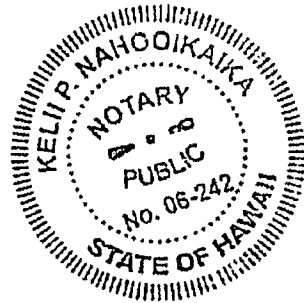
STATE OF Hawaii)
) SS.
COUNTY OF Maui)

On this 29th day of December, 2016 before me appeared
Alan Arakawa, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are
Mayor of
County of Maui, the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument
as the free act and deed of the CONTRACTOR.



Kelii P. Nahwekaika
(Signature)
KELII P. NAHOOIKAIKA
(Print Name)
Notary Public, State of Hawaii
My commission expires: 4-30-18

Doc. Date: 12-29-16 # Pages: 12
Notary Name: KELII P. NAHOOIKAIKA 2nd Circuit
Doc. Description: HTA Contract No. CON17007
between the Hawaii Tourism Authority and
the County of Maui
Kelii P. Nahwekaika 12-29-16
Notary Signature Date



NOTARY CERTIFICATION



HAWAII TOURISM AUTHORITY

Hawaii Convention Center
1801 Kalia Avenue, Honolulu, Hawaii 96815
kolepona tel 808 973 7255
kolopou'i fax 808 973 7253
ka hua pa'e web hawaitourismauthority.org

David Y. Igo
Governor

George D. Szigeti
President and Chief Executive Officer

GENERAL CONDITIONS

1. Coordination of Services by the STATE.
 - a. The President and Chief Executive Officer of the Hawaii Tourism Authority is the head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA). The HOPA shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract.
 - b. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract.

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 Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract.
 - b. Unless otherwise provided by special condition, it is understood that the STATE 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 STATE.
 - c. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - d. 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.
 - e. 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. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - f. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof.
 - g. The CONTRACTOR shall obtain and provide the agency with a current Certificate of Vendor Compliance from the Hawaii Compliance Express that is current within six months of the start of the contract prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the Vendor Certificate of Compliance as required for final payment under sections 103-53 and paragraph 17 of these General Conditions.

- h. 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.

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 employee 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. 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 (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a Vendor or Certificate of Compliance. 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 Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, 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 STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the Agency procurement 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 and conditions of this Contract are thereby changed.
- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the HOPA within thirty days of the date that the assignment contract or amendment becomes effective.

- d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment and the novation and change of name amendments to this Contract shall be processed only through the Hawaii Tourism Authority.
7. **Indemnification and Defense.** The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorney fees, and all claims, suits, and demands therefore, arising out of or resulting from the 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.
8. **Cost of Litigation.** In case the STATE 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 all costs and expenses incurred by or imposed on the STATE, 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 STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE 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 paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
10. **STATE'S Right of Offset.** The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii 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 State of Hawaii, 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 State of Hawaii under such payment or other settlement plan.
11. **Disputes.** Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
12. **Suspension of Contract.** The STATE 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 Agency procurement officer 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 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. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however,

the CONTRACTOR shall 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 Agency procurement officer 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 schedule or contract price, 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 an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer 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 provision 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 written extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer 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 Agency procurement officer, such officer 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 a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. 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 or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.
- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE 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 Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to

protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.

- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a 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 reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer 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 shall be revised accordingly, subject to the rights of the STATE under this Contract. 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 13d, "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 termination for convenience.
- 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.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance. On the date(s) set in the notice of termination, the CONTRACTOR will 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 STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:
 - (1) Any completed goods or work product; 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 Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE 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 the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with *subparagraph 14d(3)* below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under *subparagraph 14c*, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under *subparagraph 14d(2)* the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under *subparagraph 14d(2)* shall not duplicate payments under this subparagraph for the following:
- (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to *subparagraph 14b*. These costs must not include costs paid in accordance with *subparagraph 14d(3)(B)*;
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing

materials under *subparagraph 14d(2)*, and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under *subparagraphs 14d(2) and 14d(3)* shall be in accordance with HAR Chapter 3-123 (Cost Principles).

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph) 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 such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (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 Agency procurement officer in writing.
- (2) Notice content. 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 Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by *subparagraph 15a(1)* describes 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) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state 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. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs 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 air fare, 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 HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for Inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures: Final Payment: Certificate of Vendor Compliance.

- 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 allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to CONTRACTOR providing a Certificate of Vendor Compliance current within 30 days of the final invoice.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to recede anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with *paragraph 20* herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer 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.
- d. Adjustments 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 contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
- f. Claims not barred. In the absence of a written contract modification, 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.
- g. HOPA approval. If this is a professional services contract, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the HOPA.
- h. Certificate of Vendor Compliance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a Certificate of Vendor Compliance current within 30 days of the demand for the Certificate.
- i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the HOPA. Annual renewal of a sole source contract for services should not be submitted as an amendment unless in exercise of a pre-existing option.

20. Change Order.

- a. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
 - (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- 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, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.
- c. Time period for claim. Within ten (10) days after receipt of a written change order under *subparagraph 20a*, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.

- d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- e. Other claims not barred. In the absence of a change order, nothing in this *paragraph 20* 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 or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, indefinite quantity is specified in this Contract, may be increased by a maximum of ten percent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer 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 contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services; Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (4) Method of shipment or packing of supplies; or
 - (5) 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 Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery 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 thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer 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 paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, 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 this contract is incrementally funded, the new amount allotted to the contract.
24. 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 STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, 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. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE 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 made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, 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.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.
28. Audit of Books and Records of the CONTRACTOR. The STATE 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 state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures. 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 STATE 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.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. 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 STATE.
 - b. The CONTRACTOR and any subcontractors shall maintain the files, books, and records that related to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) 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 (3) 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 STATE at the request of the STATE.
32. Antitrust Claims. The STATE 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 STATE 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 STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorney's fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (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.
34. 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 Honolulu, Hawaii.
35. 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.
36. Conflict between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE 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 STATE and the CONTRACTOR other than as set forth or as referred to herein.

38. **Severability.** In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. **Waiver.** The failure of the STATE 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 STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. **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 STATE 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 STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. **Campaign Contributions.** The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. **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 procedures 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 STATE 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 STATE.
 - (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 STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE 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 STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

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 STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE 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.

in either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

c. Records Retention.

- (1) 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 STATE.
- (2) 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 STATE, and any cost or pricing data, for at least three (3) 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 (3) 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 STATE at the request of the STATE.