



STATE OF HAWAII

CONTRACT FOR PROFESSIONAL SERVICES

CONTRACT NO. 6.1625

This Contract, executed on the respective dates indicated below, is effective as of December 13, 2012, between Department of Transportation, State of Hawaii ("STATE"), by its Director, (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is 869 Punchbowl Street, Honolulu Hawaii 96813 and Moffatt & Nichol ("CONTRACTOR"), a Corporation under the laws of the State of Hawaii, whose business address and federal and state taxpayer identification numbers are as follows: 3780 Kilroy Airport Way, Suite 750, Long Beach, California 90806; Federal ID: 95-1951343; State GET: W20245628-01

RECITALS

A. The STATE desires to retain and engage the CONTRACTOR to provide the services described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said services.

B. This Contract is for professional services as defined in section 103D-104, Hawaii Revised Statutes ("HRS").

C. Money is available to fund this Contract pursuant to:

(1) ACT 106 SLH 2012; Fund Symbol B-12-654-D (Identify state sources)

or (2) N/A (Identify federal sources)

or both, in the following amounts: State \$ 6,500,000.00 Federal \$ 0.00

D. Pursuant to Chapter 103D-304, Hawaii Revised Statutes, the STATE is authorized to enter into this Contract.

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the services set forth in Attachment-S1, which is made a part of this Contract.

2. Term of Contract. This Contract starts on [blank], and ends on [blank] with [blank] option(s) to extend for [blank] each. References. See attachment S-3

3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Contract for a total amount not to exceed SIX MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS

(\$ 6,500,000.00), including approved costs incurred and taxes, according to the Compensation and Payment Schedule set forth in Attachment-S2, which is made a part of this Contract.

4. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

5. Standards of Conduct Declaration. The Standards of Conduct Declaration by the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of FIFTY AND NO/100 DOLLARS (\$ 50.00) per day, in accordance with paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in this Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in this Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.



CORPORATE SEAL
(If available)

STATE

Glenn M. Okimoto
(Signature)

GLENN M. OKIMOTO, Ph.D
(Print Name)

Director of Transportation
(Print Title)

DEC 13 2012
(Date)

CONTRACTOR

Moffatt & Nichol
(Name of Contractor)

Michael J. McCarthy
(Signature)

Michael J. McCarthy
(Print Name)

Vice President
(Print Title)

November 26, 2012
(Date)

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



moffatt & nichol

Certified Resolution

I, Timothy J. Rellaford, Corporate Secretary of Moffatt & Nichol, a California corporation, do hereby certify the following to be true and correct and that such resolution is in full force and effect:

RESOLVED: That Mr. Michael J. McCarthy, Vice President of Moffatt & Nichol, is empowered and authorized, on behalf of Moffatt & Nichol, to sign and execute contract documentation for the Kapalama Container Terminal Warf and Dredging Design Project, Honolulu Harbor, Oahu, Hawaii – Project H.C. 10498.

IN WITNESS WHEREOF, the undersigned has affixed his signature and the Corporate Seal of Moffatt & Nichol this 26th day of November, 2012.



[Corporate Seal]



(Signature)

Timothy J. Rellaford
Corporate Secretary

(Name/Title)

CALIFORNIA JURAT WITH AFFIANT STATEMENT

- See Attached Document (Notary to cross out lines 1-6 below)
 See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this

26 day of November, 2012, by
Date Month Year
(1) Timothy J. Rellatord,
Name of Signer

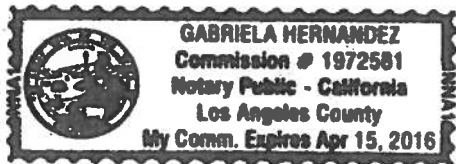
proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)

(and

(2) _____,
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature Gabriela Hernandez
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

RIGHT THUMBPRINT
OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT
OF SIGNER #2
Top of thumb here



STATE OF HAWAII
CONTRACTOR'S
STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

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

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of Moffatt & Nichol, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR is* is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

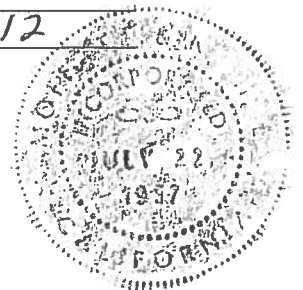
CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

*Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

By Michael J. McCarthy
(Signature)
 Print Name Michael J. McCarthy
 Print Title VICE President
 Name of Contractor Moffatt & Nichol

Date November 26, 2012



STATEMENT OF ATTESTATION FOR INTERNET POSTING

I, Kelly Otake, Departmental Contracts Specialist
(Name) (Title)

of the Department of Transportation, do attest that in
(Agency)

(Check appropriate statement)

Chapter 103D, HRS
compliance with Section 3-122-16, Hawaii Administrative Rules, the attached
procurement notice was posted to the State & County Procurement Notice System
(PNS) Website, [<http://www4.hawaii.gov/bidapps/>]

Chapter 103F, HRS
compliance with Procurement Circular No. 2003-04, dated May 9, 2003, the attached
procurement notice was posted to the State & County Procurement Notice System
(PNS) Website, [<http://www4.hawaii.gov/bidapps/>]

on 2/7/2012
(Date(s))

Kelly Otake
(Signature)

2/7/2012
(Date)

Attached: Procurement notice



Solicitation Number: HC 10498

ID: 568

Posted by: Kelly Otake

Department: Department of Transportation

County/Island(s): Oahu

Category (Select One): Professional Services

Publication Date: 02/07/2012

Due Date: 03/07/2012 - 16:30PM HST

Solicitation Number: HC 10498

Description: Department of Transportation (DOT), Harbors Division seeks the services of a qualified professional architectural and/or engineering firm to provide design services for The New Kapalama Container Terminal – Wharf and Dredging, Honolulu Harbor, Oahu – Job H.C. 10498

Contact Name: Bert Toba

Phone Number: (808) 586-2455

E-mail Address: bert.r.toba@hawaii.gov

Comments:

IFB/RFP/RFI,
Professional Svcs., etc. hc-10498.pdf
documents:

Pre-Bid / Pre-Proposal / Orientation Conference

Conference Scheduled:

Date/Time:

Address:

City:

Zip Code:

Additional Info:

Addenda

Amended:

Date Last Amended:

Submission Date: 02/07/2012 - 01:30PM

Last Modified: 02/07/2012 - 01:30PM

[Edit](#)

[Delete](#)

[Close](#)

'12 JUL 24 A10:04

July 23, 2012

HARBORS DIVISION

Mr. Michael J. McCarthy, P. E.
Principal-in-Charge
Moffatt & Nichol
733 Bishop Street, Suite 1740
Honolulu, Hawaii 96813

Dear Mr. McCarthy:

Subject: Kapalama Container Terminal Wharf and Dredging Design, Honolulu,
Oahu – Job H. C. 10498

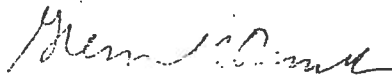
We have reviewed your negotiated fee proposal of FIVE MILLION EIGHT HUNDRED FORTY-SEVEN THOUSAND NINE HUNDRED FIFTY-FIVE AND 19/100 DOLLARS (\$5,847,955.19) dated July 10, 2012 and find it acceptable to the State.

As stated in the selection letter dated May 8, 2012, I am pleased to inform you that your firm has been selected in accordance with Section 103D-304, Hawaii Revised Statutes, to provide design services for the subject project.

This notice of award is issued as the second step in the award process. For a variety of reasons, the State may find cause for cancellation of the award, thus the State of Hawaii is not liable for any work, contract, costs, expenses, loss of profit, or any damages what so ever incurred by your company until a contract has been fully executed by the State of Hawaii and the executed contract issued.

If you have any questions, please feel free to contact Ms. Sharilyn Ikeda, HMP Project Manager, of the Harbors Division Engineering Special Projects Section at 586-2458.

Very truly yours,


GLENN M. OKIMOTO, Ph.D.
Director of Transportation

bc: DEP-H, CON, HAR-S, HAR-SF

DV:lm

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
JADE T. BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:
HAR-ESP
162.11

May 8, 2012

Mr. Michael J. McCarthy, PE
Principal-in-Charge
Moffatt & Nichol
733 Bishop Street, Suite 1740
Honolulu, Hawaii 96813

Dear Mr. McCarthy:

Subject: KAPALAMA CONTAINER TERMINAL WHARF AND DREDGING
DESIGN, HONOLULU, OAHU – JOB H.C. 10498

I am pleased to inform you that your firm has qualified in accordance with Section 103D-304, Hawaii Revised Statutes, to provide engineering services for the subject project. Upon successful negotiations a separate award letter will be sent.

You will be contacted by our Harbors Engineering Special Projects Section to discuss the scope of work for the project. If you have any questions, please feel free to contact Mr. Bert Toba, Development Officer, at 586-2455.

Very truly yours,

Glenn M. Okimoto, Ph.D.
Director of Transportation

DV:



STATE OF HAWAII
STATE PROCUREMENT OFFICE

CERTIFICATE OF VENDOR COMPLIANCE

This document presents the compliance status of the vendor identified below on the issue date with respect to certificates required from the Hawaii Department of Taxation (DOTAX), the Internal Revenue Service, the Hawaii Department of Labor and Industrial Relations (DLIR), and the Hawaii Department of Commerce and Consumer Affairs (DCCA).

Vendor Name: **MOFFATT & NICHOL**

DBA/Trade Name: **MOFFATT & NICHOL**

Issue Date: **11/26/2012**

Status: **Compliant**

Hawaii Tax#: W20245628-01
FEIN/SSN#: XX-XXX1343
UI#: XXXXXX5553
DCCA FILE#: 13232

Status of Compliance for this Vendor on issue date:

| Form | Department(s) | Status |
|-------|---|------------------------|
| A-6 | Hawaii Department of Taxation Internal Revenue Service | Compliant Compliant |
| COGS | Hawaii Department of Commerce & Consumer Affairs | Compliant |
| LIR27 | Hawaii Department of Labor & Industrial Relations | Compliant |

Status Legend:

| Status | Description |
|-----------|---|
| Exempt | The entity is exempt from this requirement |
| Compliant | The entity is compliant with this requirement or the entity is in agreement with agency and actively working towards compliance |
| Pending | The entity is compliant with DLIR requirement |
| Submitted | The entity has applied for the certificate but it is awaiting approval |
| | The entity is not in compliance with the requirement and should contact the issuing agency for more information |



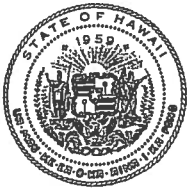
STATE OF HAWAII
SCOPE OF SERVICES

S1.1 General. The CONTRACTOR shall provide professional General Engineering services necessary to prepare design documents under the State project number Job H.C. 10498, "The New Kapalama Container Terminal - Wharf and Dredging Project, Honolulu Harbor, Oahu" (hereinafter collectively referred to as the PROJECT).

S1.2 Project Description. The Department of Transportation, Harbors Division (STATE) has prepared the *Kapalama Planning Final Report* (a development plan) and the *Kapalama Container Terminal Environmental Impact Statement* for the PROJECT and anticipates that the proposed improvements will be implemented as part of the State of Hawaii "New Day" initiatives. Design documents will be required for the wharf and dredging segments of this PROJECT.

S1.3 Project Scope. The CONTRACTOR shall provide the required preliminary engineering, planning, environmental and design services necessary to complete the work required for the PROJECT including, but not limited to, the following:

1. Administration, Management and Coordination
 - a. Supervise all project staff and sub-consultants to ensure the PROJECT is properly and effectively managed.
 - b. Coordinate all work activities with the STATE and stakeholders. Includes conducting monthly meetings with the STATE, stakeholders and interested parties to provide PROJECT coordination and updates. Prepare necessary presentation materials for these meetings.
 - c. Prepare summaries of all meetings in a timely manner, i.e., within three working days after each meeting is held.
 - d. Provide detailed written updates of the PROJECT as needed and respond to correspondence received from the STATE in a timely basis, i.e., within 24 hours from the time of receipt.
 - e. Conduct a kickoff meeting that includes all key PROJECT members to establish assignments and schedules, communication protocols, etc.
 - f. Participate in the final EIS public meeting.
 - g. Conduct quality control/quality assurance reviews and coordination, inclusive of all sub-consultant work products.
 - h. Prepare a comprehensive project schedule, monitor performance and progress, and adjust staffing as necessary (inclusive of sub-consultants), to ensure project remains on or ahead of schedule.



STATE OF HAWAII

SCOPE OF SERVICES

2. Data Collection and Site Evaluation

- a. Collect, compile and review data and information relating to the project site and its environs for incorporation in the design, including:
 - Literature review of any available relevant studies, surveys, design drawings, reports and other documents.
 - Review the *Kapalama Container Terminal Environmental Impact Statement* to understand that issues raised during the preparation of the document.
 - Review the Harbors *Storm Water Management Program* and *Low Impact Development Standards* and any other regulatory requirements that have to be incorporated into the design.
- b. Conduct site visits of the project site to gain familiarity of the area, to confirm existing conditions, to establish property boundaries and to identify potential concerns.
- c. Meet with the Oahu District Manager, the Hawaii Pilots Association and other relevant parties to discuss issues and other concerns.
- d. Identify data gaps and recommend how to obtain additional data.
- e. Obtain or conduct additional site evaluation as needed, including, but not limited to:
 - Site and topographic surveys.
 - Bathymetric survey.
 - Wind, wave and currents survey.
 - Mooring and berthing study.
 - Sediment testing.

3. Field Investigations and Special Studies

- a. After a review of all available information, conduct geotechnical investigations to support the PROJECT including, but not limited to:
 - Develop geotechnical exploration plan.
 - Develop subsurface characterization profiles.
 - After obtaining necessary clearances, conduct necessary borings.
 - Perform testing to determine load characteristics of the materials; and analyze the results.
 - Conduct a seismic evaluation.
 - Prepare a geotechnical report and recommend design parameters.
- b. Evaluate navigation issues to support the PROJECT including, but not limited to:
 - Consult stakeholders and identify navigational constraints to the development.
 - Determine design requirements and prepare concept layouts.
- c. Evaluate economic, technical and environmental viability of providing shore power / cold ironing along new wharf. Prepare a letter report summarizing findings of the shore power evaluation.



STATE OF HAWAII
SCOPE OF SERVICES

2. Environmental Permits and Coordination

- a. Review all environmental reports and studies, and identify data gaps and recommend how to obtain additional environmental data required to support the PROJECT.
- b. Consult with Federal resource agencies to determine necessary steps to address impacts to marine resources.
- c. If deemed necessary, initiate Section 7 Endangered Species Act (ESA) consultation process with US Fish and Wildlife Service.
- d. Conduct a Habitat Equivalency Analysis (HEA) and develop a coral mitigation plan.
- e. Prepare and submit all necessary permits, including but not limited to:
 - Department of the Army (DA) permits (Sections 10, 404, 103).
 - State permits (Section 401, DCAB, NPDES).
 - Utility permits (HECO, BWS, etc.).
- f. Coordinate with county agencies (Board of Water Supply, Honolulu Fire Department, etc.).
- g. Develop a dredge plan and consult with the US EPA on sediment testing to determine the suitability of dredged material for ocean disposal.
- h. Conduct sediment testing.
- i. Review the noise study and recommend mitigation measures.
- j. Incorporate noise mitigation measures in the PROJECT design, as appropriate.

3. Update Planning Studies

- a. Review and validate the *Kapalama Planning and Conceptual Plans (2007)* to ensure that all components of the plans are workable and consistent with Harbors Division's goals and objectives. Provide suggested modification and updates to the plan to address information that may have been missing in the previous study, changes in the industry, changes in technology and changes in the total cost of ownership. Areas for review include, but are not limited to the following:
 - Project fact sheet.
 - Design vessels.
 - Terminal layout.
 - Gate size and location.
 - Building size and location.
 - Site utilities.
- b. Review and coordinate for utilities (electrical, lighting, cold ironing {pending concept evaluation}, water, fire suppression, drainage, sewer and communications) services.
- c. Preparation of the Conceptual Design (15%) (see Project Scope Item No. 6 – Conceptual Design of Entire Terminal (15%)) to support the acquisition of the necessary permitting for the designed improvements (per Project Scope Item No. 4 – Environmental Permits and Coordination).



STATE OF HAWAII
SCOPE OF SERVICES

4. Conceptual Design of Entire Terminal (15%)

- a. Prepare a Basis of Design (BOD) report for design elements including, but not limited to:
- Wharf.
 - Backland.
 - Gates.
 - Buildings.
 - Water and fire protection.
 - Sanitary sewer.
 - Storm water management and disposal.
 - Power and communications
 - Pavement.
- b. Prepare Conceptual Design (15%) for all design elements including, but not limited to:
- Wharf, including alternatives and seismic design considerations.
 - Yard.
 - Gates.
 - Buildings.
 - Utilities including, but not limited to: electrical, lighting, cold ironing (pending concept evaluation), water, fire suppression, drainage, sewer and communications.
 - Dredging.
 - Quay crane and its power system.
 - HVAC.
 - Cost estimates.

5. Public Informational Meeting Number One

- a. Conduct a public informational meeting near the project site to present the proposed action, respond to questions and solicit input to encourage and facilitate public participation in the process.
- b. Includes securing meeting venue, providing public notification, preparation of all meeting materials and documentation of the meeting.
- c. The meeting shall comply with Title VI of the Civil Rights Act and Environmental Justice requirements of the US Environmental Protection Agency.
- d. Immediately prior to the public informational meeting, participate in a monthly Hawaii Harbors Users Group (HHUG) meeting. Prepare and present a PowerPoint presentation to brief HHUG on the project status and information to be presented at the public meeting.



STATE OF HAWAII
SCOPE OF SERVICES

6. Preliminary Design of Dredging and Wharf (30%)

- a. Prepare Preliminary Design (30%) for all design elements including, but not limited to:
 - Site civil design for backland area 200 feet landward of landside crane rail.
 - Wharf related calculations (including, but not limited to: structural, electrical, cold ironing {pending concept evaluation}, lighting, grounding) and design.
 - Demolition plans for existing shoreline and landside structures affected by construction of new wharf and 200 feet of adjacent backland.
 - Demolition plans for all existing University of Hawaii Marine Center Buildings and structures at their Snug Harbor leased property.
 - Utility plans for new wharf and 200 feet of adjacent backland (including, but not limited to: electrical, lighting, water, fire suppression, drainage, sewer and communications).
 - Wharf design, specifications and plans.
 - Dredging design, specifications, and plans.
 - Cost estimates.

7. Public Informational Meeting Number Two

- a. Conduct a public informational meeting near the project site to present the proposed action, respond to questions and solicit input to encourage and facilitate public participation in the process.
- b. Includes securing meeting venue, providing public notification, preparation of all meeting materials and documentation of the meeting.
- c. The meeting shall comply with Title VI of the Civil Rights Act and Environmental Justice requirements of the US Environmental Protection Agency.
- d. Immediately prior to the public informational meeting, participate in a monthly Hawaii Harbors Users Group (HHUG) meeting. Prepare and present a PowerPoint presentation to brief HHUG on the project status and information to be presented at the public meeting.

8. Pre-Final Design of Dredging and Wharf (80%)

- a. Prepare Pre-final Design (80%) for all design elements including, but not limited to:
 - Site civil design for backland area 200 feet landward of landside crane rail.
 - Wharf related calculations (including, but not limited to: structural, electrical, cold ironing {pending concept evaluation}, lighting, grounding) and design.
 - Demolition plans for existing shoreline and landside structures affected by construction of new wharf and 200 feet of adjacent backland.
 - Demolition plans for all existing University of Hawaii Marine Center Buildings and structures at their Snug Harbor leased property.



STATE OF HAWAII
SCOPE OF SERVICES

- Utility plans for new wharf and 200 feet of adjacent backland (including, but not limited to: electrical, lighting, water, fire suppression, drainage, sewer and communications).
- Wharf design, specifications and plans.
- Dredging design, specifications, and plans.
- Cost estimates.

9. Final Design of Dredging and Wharf (100%)

- a. Prepare Final Design (100%) for all design elements including, but not limited to:
- Site civil design for backland area 200 feet landward of landside crane rail.
 - Wharf related calculations (including, but not limited to: structural, electrical, cold ironing {pending concept evaluation}, lighting, grounding) and design.
 - Demolition plans for existing shoreline and landside structures affected by construction of new wharf and 200 feet of adjacent backland.
 - Demolition plans for all existing University of Hawaii Marine Center Buildings and structures at their Snug Harbor leased property.
 - Utility plans for new wharf and 200 feet of adjacent backland (including, but not limited to: electrical, lighting, water, fire suppression, drainage, sewer and communications).
 - Wharf design, specifications and plans.
 - Dredging design, specifications, and plans.
 - Cost estimates.

10. Pre-Construction and Construction Support Services

- a. Prepare site construction package for backland area 200 feet landward of landside crane rail.
- b. Prepare dredging and wharf construction package.
- c. Participate in pre-bid conferences.
- d. Respond to information requests.
- e. Prepare bid tabulations.
- f. Provide construction administration services including, but not limited to:
- Design team project management.
 - General administration during construction.
 - Participate in the pre-construction conference.
 - Review of contractor's construction schedule.
 - Review of procurement schedule.
 - Review of sequence of work items and critical path submittals.
 - Review of contractor time extension requests.



STATE OF HAWAII

SCOPE OF SERVICES

- Review of contractor's staffing plan.
- Participate in regular site meetings (limited to twice monthly).
- Review and respond to requests for information.
- Review of estimates.
- Review of master schedule prepared by others.
- Provide technical consultation.
- Review of contractor change orders.
- Review of contractor shop drawings and other contract-required submittals.
- Review of contractor invoices and progress payments.
- Participate in final inspections (two maximum).
- Provide consultation for final punch list.
- Conduct periodic site visits to assess general conformance with project drawings and specification (approximately monthly).
- Review and preparation of record drawings.

S1.4 Review by the State. The CONTRACTOR's working office shall be established on the Island of Oahu to enable the STATE to inspect, review, and discuss the proposed work associated with the PROJECT, and compliance with STATE polices and other requirements with the least amount of delay.

S1.5 Data and Work to be Furnished by the State. The STATE may furnish at no or reasonable cost to the CONTRACTOR any plans or records that the STATE determines will aid in accomplishing the work for the PROJECT.

S1.6 Property of the STATE. All reports, documents, drawings, visual aids, electronic files, and all other products, materials, equipment, supplies, etc. paid for by the STATE under this Contract shall become the property of the STATE. Unless requested by the STATE, the above properties shall be retained at the CONTRACTOR's office. In addition to the submittals required under this Contract, the CONTRACTOR shall be required to turn over to the STATE, the electronic files of any documents (plans, drawings, specifications, etc.) and of the Record Drawings.

S1.7 Subcontracting. The CONTRACTOR shall not use, retain or employ any person or entity as a subcontractor on the PROJECT or any portion thereof without the prior written consent of the STATE.

S1.8 CONTRACTOR's Failure. If the CONTRACTOR fails to prosecute the PROJECT under this contract with due efficiency or complete the PROJECT within the specified or extended time, the STATE may complete the PROJECT in such manner as the STATE deems is in the best interest of the STATE for any additional cost and expenses incurred by the STATE to complete the PROJECT and for any damages sustained by the STATE for such breach. Any sum payable hereunder to the CONTRACTOR may be applied by the STATE to cover the additional costs and expenses that may be incurred to effect such completion.



STATE OF HAWAII
SCOPE OF SERVICES

S1.9 Conflict. If there is a conflict between this Attachment S1 (Scope of Services) and the General Conditions, the Attachment S1 shall govern and control unless otherwise specified.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

S2.1 “Lump Sum Fee” Basis. The services shall be provided by the CONTRACTOR on a “lump sum fee” basis. The services to be provided by the CONTRACTOR shall be for the PROJECT specified in Attachment S1.

S2.2 Compensation and Payment for Services. The STATE shall pay the CONTRACTOR a total sum not to exceed SIX MILLION FIVE HUNDRED THOUSAND and 00/100 DOLLARS (\$6,500,000.00), inclusive of the State of Hawaii General Excise Tax for the satisfactory completion of all work required, as described in Attachment S1, under this Contract to the satisfaction of the STATE.

For payment purposes, the said sum shall be allocated as follows:

| <u>Item</u> | <u>Amount</u> |
|--|--------------------------------------|
| 1. Administration, Management and Coordination | \$ 405,929.69 |
| 2. Data Collection and Site Evaluation | \$ 211,850.50 |
| 3. Field Investigations and Special Studies | \$1,577,402.15 |
| 4. Environmental Permits and Coordination | \$ 404,395.39 |
| 5. Update Planning Studies | \$ 115,520.00 |
| 6. Conceptual Design of Entire Terminal (15%) | \$ 344,792.12 |
| 7. Public Informational Meeting Number One | \$ 11,404.71 |
| 8. Preliminary Design of Dredging and Wharf (30%) | \$ 675,937.31 |
| 9. Public Informational Meeting Number Two | \$ 11,404.71 |
| 10. Pre-Final Design of Dredging and Wharf (80%) | \$1,119,247.79 |
| 11. Final Design of Dredging and Wharf (100%) | \$ 582,612.33 |
| 12. Pre-Construction and Construction Support Services | \$ 387,458.49 |
| 13. Title Search Allowance | \$ <u>30,000.00</u> |
| | Lump Sum Fee = <u>\$5,877,955.19</u> |
| 14. Allowance for Reimbursable Costs | \$ 67,000.00 |
| 15. Allowance for Extra Work | \$ 555,044.81 |
| | Total <u>\$6,500,000.00</u> |

S2.3 Scope of Payment. Except as otherwise provided herein, the fee set forth in this Agreement shall be deemed full compensation for all work to be performed by the CONTRACTOR under this Contract and shall cover all services, materials, supplies, equipment, overhead, profit, taxes and any other incidentals and operating expenses.

S2.4 Compensation for Extra Work. An allowance of FIVE HUNDRED FIFTY FIVE THOUSAND FORTY FOUR and 81/100 DOLLARS (\$555,044.81) is hereby provided for extra work. If the CONTRACTOR is required to perform additional work beyond that required under the contract, he shall be entitled to additional compensation which, if agreement is reached between the parties as to the



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

amount, shall, together with the scope of the additional work, be incorporated into the contract by written amendment.

S2.5 Reimbursable Costs. An allowance of SIXTY SEVEN THOUSAND and 00/100 DOLLARS (\$67,000.00) is hereby provided for reimbursable items, as authorized and requested in writing by the STATE and which are not already included in or required by the project scope, as described in Attachment S1, under this Contract. If the CONTRACTOR is requested to provide any of the authorized items described below, the CONTRACTOR shall be reimbursed on a direct cost basis for said expenses, as are actually incurred and supported by appropriate receipts and other invoices and by a brief statement as to the purpose sought and/or accomplished by such expenses. Reimbursable items shall be limited to the following:

1. Air travel, including vehicle rental or cab fare, fuel cost and commercial lodging. The CONTRACTOR shall cost compare the most advantageous option for airfare, vehicle rental and commercial lodging for its personnel. If the CONTRACTOR intends to purchase liability, collision, or comprehensive insurance from the car rental agency, the CONTRACTOR shall provide proof of non-coverage for such rental vehicles under the CONTRACTOR's corporate insurance policy. Fuel for rental vehicles shall be standard grade. The maximum allowable meal reimbursement shall not exceed the STATE's authorized amounts for employee travel.
2. Printing of additional plans, specification, reports and other report materials pertinent to this PROJECT, as requested and approved by the STATE.
3. Graphics, renderings, models and other presentation materials pertinent to this PROJECT.
4. Conversion to electronic format.
5. Purchase of other items and services as approved by the STATE. All items purchased under this provision shall be used in connection with this PROJECT only and ownership shall revert to the STATE upon completion of the PROJECT.

S2.6 Progress Payment. As long as the services of the CONTRACTOR are being performed in a manner satisfactory to the STATE, the STATE will pay the CONTRACTOR, unless indicated otherwise in this Contract, monthly progress payments based upon the value of the services performed by the CONTRACTOR, as estimated by the CONTRACTOR and approved by the STATE.

CONTRACTOR shall submit a monthly Accomplishment Report of completed tasks prior to submission of each progress payment. Progress payment submission shall only be submitted upon approval of the monthly Accomplishment Report by the STATE Project Manager.

Progress payment shall not be construed as an absolute acceptance of the work done up to the time of the payments and the entire work is subject to acceptance at the time the CONTRACTOR advises the STATE that the work required under this Agreement is fully completed.

For the total amount ascertained as payable, an amount equivalent to five percent (5%) of each progress payment shall be deducted and retained by the STATE until completion of all work required under this



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

Contract in a manner acceptable by the STATE. It is provided that after fifty percent (50%) of the work has been completed, as determined by the STATE, the STATE may make any subsequent progress payments in full. Progress payments shall not be construed as an absolute acceptance of the work done up to the time of the payments and the entire work is subject to acceptance at the time the CONTRACTOR advises the STATE that the work required under this Contract is fully completed.

S2.7 Acceptance and Final Payment. Final acceptance shall occur when the STATE gives written notice to the CONTRACTOR that the CONTRACTOR has satisfactorily fulfilled all of the terms of this Contract. Final acceptance of the work shall not relieve the CONTRACTOR from any liability to the STATE for any damages resulting from improperly prepared documents (which may include, but are not limited to inventories, maps, and Working Papers) for the Project. These damages may include the cost of redoing the PROJECT.

Final payment will be made only after the issuance of the notice of final acceptance by the Director of Transportation and submission by the CONTRACTOR of a tax clearance as stipulated in Paragraph 17, Payment Procedures; Final Payment; Tax Clearance of the General Conditions.

Acceptance by the CONTRACTOR of the final payment shall constitute payment in full for all work done to complete the PROJECT.

S2.8 Conflict. If there is a conflict between this Attachment – S2 (Compensation and Payment Schedule) and the General Conditions, this Attachment – S2 (Compensation and Payment Schedule) shall govern and control unless otherwise specified.



STATE OF HAWAII
TIME OF PERFORMANCE

S3.1 Contract Time. The CONTRACTOR shall commence work upon issuance of a written Notice to Proceed from the STATE and shall complete, except and excluding the Pre-Construction and Construction Support Services, all planning and design services, work and tasks described in the Scope of Services within the specified Five Hundred Forty Six (546) calendar days unless said time period for the CONTRACTOR'S performance is extended by the STATE.

S3.2 Conflict. If there is a conflict between this Attachment – S3 (Time of Performance) and the General Conditions, this Attachment – S3 (Time of Performance) shall govern and control unless otherwise specified.

S3.3 CONTRACTOR shall submit a PROJECT schedule that is agreeable to both CONTRACTOR and STATE and CONTRACTOR shall be responsible for meeting all PROJECT scheduled timelines and deadlines within these prescribed limits. Whenever necessary and authorized by the STATE, the PROJECT schedule shall be revised and updated.



STATE OF HAWAII
SPECIAL CONDITIONS

1. Definitions and General Terms. Wherever in this Agreement the following terms or pronouns in place of them are used, the intent and meaning, unless the context clearly indicates otherwise, shall be as follows:

HRS - Hawaii Revised Statutes.

SLH - Session Laws of Hawaii.

Comptroller - The Comptroller, State of Hawaii, acting either directly or through Comptroller's duly authorized representatives or subordinates.

Agreement - The written agreement between the STATE and the CONTRACTOR, including all attachments, and any amendments thereto setting forth the obligations of the parties.

County - The applicable county (Hawaii, Maui, Honolulu or Kauai) in which the project is located.

Department - The Department of Business, Economic Development, and Tourism, State of Hawaii.

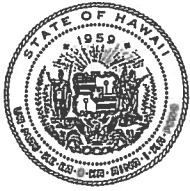
Project Plans - Any designs, plans, drawings, specifications, cost estimates, proposal schedules, studies, reports and other items required under the Agreement for the Project.

Director - The Director of Business, Economic Development, and Tourism, State of Hawaii, acting either directly or through the Director's duly authorized representative or subordinates.

Director of Finance - The Director of Finance, State of Hawaii, acting either directly or through the Director of Finance's duly authorized representatives or subordinates.

Director of Taxation - The Director of Taxation, State of Hawaii, acting either directly or through the Director of Taxation's authorized representatives or subordinates.

State - The State of Hawaii.



STATE OF HAWAII
SPECIAL CONDITIONS

Work - The furnishing of all labor, materials, supplies, equipment and other incidentals necessary or convenient to the successful completion of the Agreement.

The titles or headings of the sections are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

References to all governmental laws, ordinances, codes and rules and regulations shall include all amendments thereto.

All words used in the singular shall extend to and include the plural. All words used in the plural shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

2. Agreement Not Binding Unless Properly Executed and Appropriation Available. The Agreement shall not be binding or of any force or effect unless the Comptroller has endorsed thereon the Comptroller's certificate that there is available an unexpended appropriation sufficient to cover the amount required by this Agreement.

If the Agreement involves supplemental funds from the federal government, the Comptroller's certification of funds shall be applicable only to that portion of the Agreement price that is payable out of State funds. It is covenanted and agreed by and between the parties hereto that, as to the portion of the obligation under this Agreement to be payable out of federal funds, this Agreement shall be construed to be an agreement to pay such portion to the CONTRACTOR only out of federal funds to be received from the federal government when the federal funds are so received and shall not be construed as a general agreement to pay such portion in any event out of any funds other than those which are received from the federal government.

3. Notice to Proceed. The CONTRACTOR shall not perform any work under this Agreement until the CONTRACTOR has been issued a written Notice to Proceed from the STATE. Any work



STATE OF HAWAII
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performed by the CONTRACTOR prior to the date indicated in the Notice to Proceed will be done at the

CONTRACTOR's own risk.

4. Compliance with Design Standards and Criteria. The CONTRACTOR shall be familiar with and shall at all times comply with and observe all applicable design standards and criteria which in any manner affect the work or the CONTRACTOR's conduct. If any discrepancy or inconsistency is discovered in any such design standards and criteria insofar as it pertains to the scope of work under this Agreement, the CONTRACTOR shall immediately report the same to the STATE in writing.

5. Plans and Principles to be Observed. The CONTRACTOR shall be familiar with and shall at all times comply with, observe and conform to the State and County general plans, all applicable State and County approved development plans, setback limitations, rights of way, established objectives and principles for good exterior appearances, grading ordinances, coastal zone regulations, and all such similar current governmental requirements applicable to the Project as may be promulgated prior to and during the period of this Agreement. Where the CONTRACTOR's planning appears to be non-conforming, the CONTRACTOR shall direct the attention of the STATE to such areas of non-conformity, and the reasons substantiating such departures from the norm. The CONTRACTOR shall direct its work to relate appropriately to, and in accordance with, established engineering and/or architectural design principles and practices and to the natural and man-made environment.

6. Designation of Project Manager. The Director shall designate in writing a representative to coordinate the work under this Agreement and to act as principal liaison between the CONTRACTOR and the Department to resolve any questions, and to expedite decisions and progress reports. The CONTRACTOR shall designate in writing, with the approval of the Director, a project manager who will maintain close and frequent communications with the Department's representative, and said project



STATE OF HAWAII
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manager shall be experienced and qualified in the type of work involved and shall be directly responsible

for the prosecution of the work under this Agreement.

The manager designated by the CONTRACTOR shall be registered with the State Board of Professional Engineers, Architects, Land Surveyors and Landscape Architects, provided that where the Agreement involves only planning services, the requirement of registration shall not be applicable; but such designated manager shall be at least an associate member of the American Institute of Planners. Every effort will be made by all parties to this Agreement to retain the same liaison representatives during the term of this Agreement in order to maintain continuity of effort and control.

7. Information and/or Designs and Plans Furnished by the State. Where it is provided in SCOPE OF SERVICES that the STATE will furnish information for the guidance of the CONTRACTOR's work and/or provide actual designs and plans for portions of the Project that are to be incorporated into the CONTRACTOR's work, it is agreed that the STATE will assume responsibility for the accuracy and adequacy of such information and/or designs and plans furnished, unless otherwise specified.

If the CONTRACTOR discovers any apparent error or omission in the information and/or designs and plans furnished by the STATE, the CONTRACTOR shall immediately notify the STATE in writing. The STATE will then make such corrections and interpretations as may be deemed necessary for performing the work under this Agreement. In the event that such corrections and interpretations cause the CONTRACTOR to perform additional work over and above the original scope of work intended, the CONTRACTOR may be compensated for such additional work as provided in the General Conditions.

8. Prosecution of the Work. The CONTRACTOR shall commence work under this Agreement



STATE OF HAWAII
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on the date indicated in the Notice to Proceed from the Director. The CONTRACTOR shall be available

upon reasonable demand to discuss the progress of the work. All questions arising during the course of the work which must be resolved by the Director shall be brought to the Director's immediate attention.

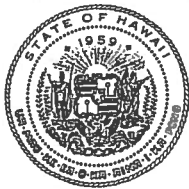
Unless otherwise specified, the CONTRACTOR shall submit to the STATE at the end of each calendar month a written narrative progress report of the major phases of work being performed and the approximate percentage of completion of the entire work and of each phase.

Except as otherwise provided in Section 7, the CONTRACTOR shall be responsible for the accuracy of all computations, sufficiency of designs and completeness of all Project Plans.

All Project Reports shall be approved in writing by the STATE. The approval of the Project Report by the STATE shall not be construed to relieve the CONTRACTOR of the responsibility for correcting any errors or discrepancies on the Project Report which may become apparent after approval has been given nor shall the approval be construed to relieve the CONTRACTOR of the responsibility for designing the Project to conform to all applicable design standards and criteria, laws, plans, and the applicable engineering, architectural, landscape architectural and planning principles and practices. Any additional work required of the CONTRACTOR after the approval has been given because of the aforementioned errors or discrepancies, excluding those errors and discrepancies found in the information and/or designs and plans furnished by the STATE to the CONTRACTOR, shall be performed by the CONTRACTOR at no further cost to the STATE.

If this Agreement specifies a maximum construction cost for the Project, the final Project Report shall be developed so that the actual construction cost of the Project, when bid, does not exceed the maximum amount specified in this Agreement

9. Alterations or Revisions to the Agreement. The STATE reserves the right to alter the



STATE OF HAWAII
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scope of the services to be performed by the CONTRACTOR at any time by notifying the CONTRACTOR in writing. Should such alterations or revisions cause an increase or decrease in cost to the CONTRACTOR and/or affect the time of completion, an adjustment in the amount of compensation and/or time of completion will be made. The adjustment for an increase in compensation shall be determined as provided in the General Conditions of this Agreement and the adjustment for a decrease in compensation shall be determined as mutually agreed to in writing by the CONTRACTOR and the STATE. In the event the parties are unable to agree upon such adjustment for said decrease, the CONTRACTOR shall be paid based upon the reasonable value of the reduced scope of work performed or services rendered, as determined by the Director.

Should the STATE alter or revise this Agreement without requesting in writing an adjustment in compensation and/or time of completion and if the CONTRACTOR fails to submit a written request for an adjustment in compensation and/or time of completion within seven (7) calendar days after being notified of such alterations or revisions, it is understood and agreed by and between the parties hereto that all work shall be completed in accordance with such alterations or revisions without any adjustment in compensation and/or time of completion.

In the event the CONTRACTOR believes that extra compensation is due the CONTRACTOR for such work and services and payment therefor is not clearly covered by this Agreement, the CONTRACTOR shall notify the STATE in writing of the CONTRACTOR's intention to make a claim for such extra compensation before the CONTRACTOR begins the work on which the CONTRACTOR bases the CONTRACTOR's claim. If such notification is not received by the STATE, no claim for such extra compensation will be considered. Such notice by the CONTRACTOR shall not in any way be construed as proving the validity of the claim. The claim shall be reviewed by the STATE. In case the



STATE OF HAWAII
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claim is found to be just, it may be allowed as extra work.

10. Extra Work. Any additional work beyond that required under this Agreement shall be performed by the CONTRACTOR when ordered in writing by the Director. Such work shall be performed in accordance with the Director's order and will be paid for as provided in the General Conditions. Except as provided in Section 9, the STATE shall not be liable for the payment of any additional services without such prior written order.

11. Time of Completion and Extension Thereof. The time of completion of this Agreement shall be that specified in the Time of Performance of this Agreement. The CONTRACTOR shall prosecute the work with due efficiency and diligence to complete the work within the specified time. Any delay in the progress of the work which may adversely affect the completion of the work under this Agreement within the required time shall be promptly reported in writing to the STATE.

If the CONTRACTOR's work is delayed by conditions beyond the CONTRACTOR's control, the CONTRACTOR shall, subject to the written approval of the Director, be entitled to a reasonable extension of time to complete the CONTRACTOR's work. In addition to the above, the Director may, in the Director's discretion, upon the written request of the CONTRACTOR and regardless of cause, extend the completion date of this Agreement by written notice to the CONTRACTOR.

If the CONTRACTOR fails to prosecute the work with due efficiency and diligence or complete the work within the specified time, the STATE may complete the work in such a manner as the Director deems is in the best interest of the STATE. The CONTRACTOR shall be liable to the STATE for any additional cost and expenses incurred to complete the work under this Agreement and for any damages sustained by the STATE, including, without limitation, any delay damages.

12. Inspection. The CONTRACTOR and the CONTRACTOR's subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred in



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connection with this Project and shall make such materials available at their respective offices in the State at all reasonable times during the Agreement period and for three (3) years from the date of final payment under this Agreement, for inspection by the STATE and, in case of federal-aid projects, by authorized representatives of the federal government and shall furnish, if requested, a maximum of eight (8) copies thereof.

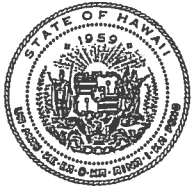
Conferences will be held at the request of the STATE, and visits to the CONTRACTOR's working office and inspection of the work may be made at any time by the STATE, and in the case of federal-aid projects, by authorized representatives of the federal government.

13. Non-liability of State Employees. The Director and any of the Director's duly authorized representatives and subordinates, in carrying out the provisions of this Agreement or in exercising any power or authority granted herein, shall not be held personally liable in any way, it being understood that in such matters they act as agents and representatives of the STATE.

14. Employment of State Workers. The CONTRACTOR covenants that the CONTRACTOR shall not engage any professional or technical personnel who are or have been in the employ of the STATE at any time during the negotiation or term of this Agreement on a full-time, part-time or any other basis, except regularly retired employees, for the performance of the work under this Agreement.

In the event the CONTRACTOR fails to comply with the provisions of this section, the STATE may terminate this Agreement, and the CONTRACTOR may be declared ineligible for further agreements and/or contracts with the STATE in accordance with applicable law.

15. Indemnification and Defense – General Conditions – (AG-008 rev 4/15/2009). Replace Item Number 7. Indemnity and Defense with the following:



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Indemnification. The CONTRACTOR shall 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 reasonable attorney's fees, and all claims, suits and demands therefor, arising out of or resulting from the negligent, reckless, intentional, or wrongful acts, errors, 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.

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. 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. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
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. 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.
 - b. 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.
 - 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. 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, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the 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 and submit the same to the STATE 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 sections 103-53 and 103D-328, 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 section 3-122-112, 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 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 tax clearance certificate 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'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 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 chief procurement officer (CPO) as defined in section 103D-203(a), HRS, 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 contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
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 attorneys' 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 13³ (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 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 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.

- 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 and 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 Chapter 3-123 (Cost Principles) of the Procurement Rules.

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 15) 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; 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 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 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 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 receive 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:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) 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.
 - e. 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. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, 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 CPO.
 - h. Tax clearance. 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 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.
 - 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 CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. 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.
- a. 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.

- b. 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.
- c. 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.
- d. 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, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (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;

- (4) 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;
 - (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 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.

- (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.

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 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 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 11-205.5, 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.

e. 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.