



STATE OF HAWAII
CONTRACT FOR GOODS OR SERVICES
BASED UPON
COMPETITIVE SEALED BIDS

This Contract, executed on the respective dates indicated below, is effective as of _____, _____, between _____ Department of Hawaiian Home Lands _____,
(Insert name of state department, agency, board or commission)
 State of Hawaii ("STATE"), by its _____ Chairman-Designate, Hawaiian Homes Commission _____,
(Insert title of person signing for State)
 (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is _____ 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707 _____
 _____ and _____
 ("CONTRACTOR"), a _____
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
 under the laws of the State of _____, whose business address and federal and state taxpayer identification numbers are as follows: _____

RECITALS

- A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services, or both.
- B. The STATE has issued an invitation for competitive sealed bids, and has received and reviewed bids submitted in response to the invitation.
- C. The solicitation for bids and the selection of the CONTRACTOR were made in accordance with section 103D-302, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 5, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").
- D. The CONTRACTOR has been identified as the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation.
- E. Pursuant to _____ HHCA of 1920, as amended _____, the STATE
(Legal authority to enter into this Contract)
 is authorized to enter into this Contract.
- F. Money is available to fund this Contract pursuant to:
 (1) _____ Hawaiian Homes Trust Fund _____
(Identify state sources)
 or (2) _____
(Identify federal sources)
 or both, in the following amounts: State \$ _____
 Federal \$ _____

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 goods or services, or both, set forth in the Invitation for Bids number _____ IFB-23-HHL-009 _____ ("IFB") * and the CONTRACTOR'S accepted bid ("Bid"), both of which, even if not physically attached to this Contract, are made a part of this Contract.
- 2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed _____ * and summarized in Attachment S-1

TBD _____ DOLLARS

(\$ TBD), including approved costs incurred and taxes, at the time and in the manner set forth in the IFB and CONTRACTOR'S Bid. And generally described in Attachment S-2.

3. 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.

4. Bonds. The CONTRACTOR is required to provide or is not required to provide: a performance bond, a payment bond, a performance and payment bond each in the amount of _____ DOLLARS (\$ _____).

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

6. Other Terms and Conditions. The General Conditions, Construction 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, Construction General Conditions, and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the IFB, including all attachments and addenda; and (3) the CONTRACTOR'S Bid.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of N/A and 00/100 _____ DOLLARS (\$ 0.00) per day, in accordance with the terms of 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 the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the 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.

STATE

(Signature)

Justin-Michael Ikaika Anderson

(Print Name)

Chairman-Designate, Hawaiian Homes Commission

(Print Title)

(Date)

CONTRACTOR

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

(Date)

CORPORATE SEAL
(If available)

APPROVED AS TO FORM:

Deputy Attorney General

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



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 _____, 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 _____
(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

Date _____



STATE OF HAWAII
SCOPE OF SERVICES

Project: Operation and Maintenance of the DHHL Anahola Water System
Location: Anahola, Island of Kauai, Hawaii
Contractor: TBD

Pursuant to 103D, Hawaii Revised Statutes, the CONTRACTOR shall perform and provide the Scope of Services listed below and detailed in Invitation for Bids IFB-23-HHL-009 and in CONTRACTOR's proposal submitted on February 20, 2023, in a proper and satisfactory manner as determined by the STATE and in accordance with all Federal, State and local laws, both of which are incorporated by reference.

SCOPE OF SERVICES FOR ANAHOLA WATER SYSTEM AND EMERGENCY AND CALL OUT SERVICES FOR THE PUU OPAE DITCH WATER SYSTEM ON KAUAI

The contractor shall operate and maintain the system in compliance and to the standards of County, State, and Federal rules and regulations.

The Contractor shall perform complete operation, maintenance and repair services including inspections and emergency calls for all pumps, reservoirs, distribution water lines, telemetering systems, equipment and other appurtenances included under the contract, in accordance with the manufacturer's specifications and recommended time intervals.

If the manufacturer does not provide these Operating and Maintenance (O & M) specifications, the Contractor shall contact the Contract Administrator or his designated representative and provide recommendations regarding the maintenance and repair of the specific equipment or system. Such service shall include regularly scheduled operation and maintenance tasks and inspections and any repairs required for each listed herein.

The maintenance and repair tasks and inspection shall consist of the furnishing of all labor, equipment, parts, materials and tools necessary to perform a thorough servicing and complete repair of all integral parts, lubricating, adjusting, and touch up painting where needed to keep the equipment and structures in, or returned to, a continuous operating condition. Maintenance of the system shall also include all activities such as routine flushing and water leak repair to insure water quality. All services performed will be subject to inspection and approval by the Department of Hawaiian Home Lands (DHHL) prior to start of work.

All tools and labor needed to perform the operation and maintenance services shall be the responsibility of the Contractor. DHHL will reimburse the Contractor for parts and supplies on a cost plus 10% basis. This is under normal operations and maintenance and includes all appurtenances. The Contractor shall submit invoice copies with reimbursement request. Reimbursement request will not be accepted without invoice copies.

The Contractor will not be responsible for the cost of repairs due to flagrant vandalism, fire, storm or related damages that can be attributed to causes beyond his control 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 as described under General Condition Section 13 item d. However, the Contractor shall be responsible for



STATE OF HAWAII

SCOPE OF SERVICES

such repairs at no cost to the State if the damages are caused by the Contractor's failure to properly maintain and service the systems and equipment.

The Contractor shall be responsible to provide and maintain a communication system to notify their maintenance personnel in the event of an emergency at the pump station.

The Contractor shall also be responsible for all extraordinary incidents above the normal operation and maintenance including emergency call-outs and equipment breakdowns. The Contractor shall provide the Contract Administrator or his designated representative with following:

1. Cost estimates if repairs can be made with in-house labor and materials. The Contractor will submit cost estimates to the Contract Administrator or his designated representative for approval prior to starting work. Labor charges will be based on the rates for the applicable time situations listed on a current Wage Rate Schedule Bulletin published by the Department of Labor and Industrial Relations. The current Wage Rate Schedule Bulletin is included in this IFB under the section titled IFB NOTIFICATION AND INFORMATION. The current wage rate bulletin will be updated in mid-February and that new bulletin can be obtained at www.hawaii.gov/labor. All material and equipment required shall be on a cost plus 10% basis. The Contractor shall submit invoice copies with reimbursement request. Reimbursement request will not be accepted without invoice copies.
2. If repairs require using outside sub-contractors in addition to in-house labor or is more economically feasible (reduce down-time of system or special equipment or personnel to repair) to utilize outside sub-contractors, the Contractor shall be responsible to obtain quotations from sub-contractors and submit to the Contract Administrator for review. Charges for work performed by the sub-contractor will be for only the dollar amount quoted. The Contractor shall submit invoice copies with reimbursement request. Reimbursement request will not be accepted without invoice copies.

Such services require the approval of the Contract Administrator or his designated representative prior to commencement of work.

The contractor shall act as liaison between DHHL and SDWB (Hawaii Safe Drinking Water Branch) regarding procedures, sanitary surveys, and other regulatory matters; meet with DOH personnel at site as requested to answer questions and/or disseminate information regarding operation of the system.

All normal operations performed by the Contractor shall include, but not be limited to the following applicable listed items:

1. Familiarization of the Water System at Startup: The purpose for this requirement is to ensure that the Contractor is familiar with the water system, is able to start up the system in the event of power or water outage, equipment breakdown, or heavy storms and flooding for which the Contractor shall be responsible and accountable.
 - a. Operate entire water system. A DHHL representative shall be present for training purposes.



STATE OF HAWAII

SCOPE OF SERVICES

- b. Contractor shall maintain a regular maintenance log for record keeping of essential equipment needed to operate the system such as operating hours of pumps, water level indicators and alarm systems. Contractor shall submit format of logbook and determination of essential equipment based on the SDWB requirements and approval of DHHL.
 - c. Review the water sample points and make recommendations on changes as necessary. The Contractor shall be responsible for the submission of any sample site plan modification to the SDWB and DHHL for approval.
2. Operations and Maintenance of Anahola Water System
- a. Wells, pumps, and related equipment
 - i. The contract operator shall personally inspect wells, pumps, and equipment and record all findings, including operating pressures, run-time meter readings, and flow-meter readings on the Daily Well Logs at least two days each week.
 - ii. The contract operator shall initial all Daily Well Log entries as well as record the date and time of inspection in his/her state-issued Operators Log Book. A monthly .pdf scan of the log shall be sent to DHHL Contract Point of Contact (POC) within 10 days of the end of the month.
 - iii. The contract operator shall use the Daily Well Logs to compile a Monthly Production Report.
 - iv. The contract operator shall alert the DHHL POC when a necessary pumping test is needed.
 - v. The contract operator shall perform grass-cutting services surrounding the well site as needed and ensure that area is clean of debris.
 - vi. At minimum, the following schedule will be maintained:
 - 1. Pump System
 - a. Twice weekly
 - i. Inspect, adjust, repair and or replace if necessary, after receiving approval from DHHL, chlorine metering pump system.
 - ii. Inspect, adjust, repair and or replace if necessary, after receiving approval from DHHL, flow metering and totalizer system.
 - iii. Check, adjust and repair if necessary after receiving approval from DHHL, deepwell pump for vibration, noise and proper operation.
 - b. Monthly
 - i. Check, adjust, repair and or replace if necessary, after receiving approval from DHHL, automatic pump control valves for proper operation.
 - ii. Check seals on deepwell pump for leakage and adjust, repair and or replace as required.
 - iii. Check for proper alignment of motor/pump coupling and adjust, repair and or replace if necessary after receiving approval from DHHL.



STATE OF HAWAII

SCOPE OF SERVICES

- iv. Check pump bearings for abnormal temperature and replace if necessary after receiving approval from DHHL.
- v. Lubricate motor and pump bearings per manufacturer's recommendations.
- vi. Check mounting bolts for tightness and tighten per manufacturer's recommendations.
- vii. Clean motor starter contacts and replace if necessary.
- viii. Test, check and maintain the alarm system that notifies maintenance personnel of an emergency at the pump station.
- c. Quarterly
 - i. Check and adjust automatic pump control system (tank to sequence switch assembly) for start/stop signal and repair if necessary after receiving approval from DHHL.
 - ii. Check and adjust reservoir level indicator assembly for proper operation and level readings.
 - iii. Inspect all sensors, gauges, monitors, control devices and adjust through field calibration if necessary for proper operation.
- d. Semi-Annually
 - i. Clean strainer.
 - ii. Check all valves for proper operation, tightness and repair or replace if necessary after receiving approval from DHHL.
 - iii. Thoroughly clean out all dust and dirt from inside of electrical panels and starters.
- e. Annually
 - i. Scrape and sand bare metal and paint all rusted areas for preventive maintenance.
 - ii. Inspect condition of wiring and conduit from motor to starter and repair or replace if necessary, after receiving approval from DHHL.
 - iii. Open, inspect, clean and test pressure regulating and automatic control valves for proper operation and pressure setting.
 - iv. Megger motor and submit report and recommendations to the DHHL in writing.
- b. Tanks
 - i. The contract operator shall twice weekly make a visual inspection of the ground exterior of the storage tank. The contract operator shall alert the DHHL POC when necessary of any unusual activities or repairs needed.
 - ii. The contract operator shall at least quarterly inspect and repair if necessary, after receiving approval from DHHL the following: the tank roof, tank vent, lock on entry port, safety condition of ladder, water level mechanism, operating overflow, conditions of exterior tank surface coating. The contractor shall at least annually inspect the tank hatch and seal. The contractor will include quarterly inspections of the tank to DHHL as a .pdf file.



STATE OF HAWAII

SCOPE OF SERVICES

- iii. The contract operator shall alert the DHHL POC when a necessary professional tank inspection or cleaning is needed.
 - iv. At the discretion of DHHL, the contractor shall work with DHHL to contract out to have the tanks internally inspected as necessary. If DHHL elects to contract out this inspection, these costs shall be incurred through the contingency allotment.
- c. Fire hydrants
- i. The contract operator shall number all fire hydrants or refresh the numbering system of the fire hydrants.
 - ii. The contract operator shall annually exercise and lubricate all fire hydrants to ensure they are properly functioning. The contract operator shall inspect and paint hydrants as necessary.
 - iii. Upon completion of the fire hydrant maintenance, the contract operator shall supply DHHL a copy of all residual pressure readings at each hydrant.
 - iv. The contract operator shall maintain a testing log to document each hydrant's condition and inspection history and submit the testing log to DHHL no later than 12/31 of each year.
- d. Water mains
- i. The contract operator shall locate and mark necessary water mains within 48 hours of receiving a request by a citizen or contractor to excavate within 10 feet of a water main or service line. The contract operator shall also document any request for line locations as well as any leaks or breaks caused by excavators and shall present this information to the DHHL POC.
 - ii. The contract operator shall coordinate a leak-detection survey if non-revenue water loss exceeds 30 percent of the total water produced, or if it is recorded that there is a 10 percent increase in non-revenue water during a bi-monthly period. The contractor is responsible for providing a report of the water sold, water produced, and estimated other uses to the DHHL POC bi-monthly.
 - iii. The contract operator shall periodically perform visual leak inspections to ensure that non-revenue water loss is identified and repairs are scheduled in a timely basis.
 - iv. Within three months of contract award, the contract operator shall submit a valve exercising program plan to DHHL for review and approval. The contractor shall exercise all valves, checking for proper operation and tightness; repair or replace, if necessary, after receiving approval from DHHL. Record results and submit to DHHL annually.
 - v. The contract operator shall annually submit a unidirectional fire hydrant flushing program to DHHL for review and approval which shall include the date range of flushing so that the Homestead may be notified prior to flushing. The contract operator may need to flush dead ends and other locations within the system more frequently than annually to maintain water quality and a chlorination residual throughout the system. If the contractor can demonstrate that flushing of dead ends is required more frequently than monthly to maintain water quality, the contractor shall work with DHHL in installing and maintaining automatic flushing stations. Flushing of mainlines are additionally required when contaminants are found, after repair of line breaks and after major components are replaced.



STATE OF HAWAII

SCOPE OF SERVICES

- vi. Inspect pressure reducing stations for proper operations, perform maintenance and service on the pressure reducing station, and adjust as needed to maintain downstream pressure.
 - vii. Flush and maintain the inter-connection manifold system semi-annually. The contractor shall coordinate with Kauai Department of Water (KDOW) at least annually to inspect and schedule any necessary repairs to the inter-connection. Monthly, the contract operator shall test and maintain emergency equipment used for the interconnect for proper operation.
 - viii. The contract operator shall work with the DHHL Kauai District Office if water needs to be shut off in order to complete water system repairs or replacements. The Contract Operator shall provide customers notice of water outages at least one week prior to scheduled maintenance when possible.
 - ix. The Contractor shall paint valves or other exposed plumbing for preventive maintenance.
- e. Meters and service connections
- i. Bi-monthly, the contract operator shall read all distribution system meters and calculate customer usage using DHHL handheld meter reading computer. The contract operator shall provide usage reports to DHHL Kauai District Office.
 - ii. Every other month, the contract operator shall document any indications of leaks, damage, tampering, and non-functioning meters. The contract operator shall inspect conditions of the water meters and meter boxes. The contractor shall repair or replace meters and meter boxes after receiving approval by DHHL.
 - iii. DHHL shall periodically generator a computer report detailing possible non-functioning meters and the contract operator shall check the meter for validity and perform meter change-outs as necessary.
 - iv. The contract operator shall install new meters in existing boxes and de-activate existing meters as authorized by DHHL representative. The Contractor shall submit invoice copies for reimbursement requests. Reimbursement request will not be accepted without invoice copies.
- f. Sampling Stations
- i. The contractor shall maintain the integrity and cleanliness of the sampling stations. The contractor shall replace or install new sampling station as necessary.
- g. Emergency Repairs and Call outs
- i. Repair to equipment and appurtenances other than routine servicing described shall be performed as described under Scope of Work, SPECIFICATIONS page S-1 and S-2. Contractor shall respond to an emergency or a break in service within 60 minutes of notification.
 - ii. The contract operator shall notify DHHL of the extent of the damage as soon as reasonable. If a boil water notice or do not use order is issued, the contract operator shall immediately notify the DHHL POC.
- h. Recordkeeping



STATE OF HAWAII

SCOPE OF SERVICES

- i. The contractor shall be responsible for maintaining an Operator Log Book detailing his/her activities. A copy of the operator log shall be submitted annually to DHHL as an Adobe.pdf file.
- ii. Prepare and maintain copies of the Monthly and Annual Production Reports as well as supply a copy to DLNR and DHHL.
- iii. Prepare a water accountability report to DHHL after the completion of every billing cycle which notes water produced, water sold, and other known water uses. The water accountability report shall be submitted bi-monthly.
- iv. Prepare the Annual Operations & Maintenance Report and supply a copy to the DHHL POC. The Annual Operations and Maintenance Report shall note deficiencies and recommendations for the water system and any trends noted by the operator.
- v. Prepare the annual consumer confidence report (CCR) by April 15th of each year. The draft shall be reviewed by the DHHL POC prior to distribution to the public.
- vi. The contract operator shall be responsible for maintaining copies of all state correspondence, test results, sanitary surveys and annual reports. The contract operator shall ensure that DHHL POC has received a .pdf copy of all state correspondence and sanitary surveys.

i. Testing and Monitoring

i. Chlorine residual tests

1. Twice each week the contract operator shall check the free chlorine residuals at the well site and at least weekly at the ends of the distribution system.
2. The contract operator shall document the chlorine residual test results on a Chlorine Testing log
 - a. If the free chlorine residual is tested as 0.2 mg/l or less at the end of the distribution system, the contract operator shall take the necessary steps to increase the free chlorine residual, including adjusting the chlorine feed rate and flushing.
 - b. The contract operator shall ensure that there is sufficient supply of chlorine stock and coordinate replenishment of chlorine stock. The contractor shall monitor chlorine stock and solution quality to ensure a sanitary, safe product. The contract operator shall keep chlorine storage facility clean and free of debris and pests.

ii. Bacteriological tests and other required testing, reporting and monitoring

1. The contract operator shall collect the monthly bacteriological samples at the approved sampling sites and deliver them to the State or approved laboratory per the state approved schedule each month.
2. If the bacteriological tests indicate the presence of coliform bacteria or are in any way not satisfactory, the contract operator shall take immediate necessary actions prescribed by the SDWB which may include public notification, flushing of lines, resampling procedures, and assessments prescribed by the revised total coliform rule.

iii. Other required testing, reporting, and monitoring

1. All other required testing, reporting, and monitoring specified by the Safe Drinking Water Act and/or directed by the SDWB shall be completed by



STATE OF HAWAII

SCOPE OF SERVICES

- the Contract Operator following the state-prescribed guidelines and by the date that such testing, reporting, or monitoring is specified by the SDWB
- iv. If DHHL has been found to be in non-compliance with the Safe Drinking Water Act due to monitoring violations, exceeding a maximum contaminant level standard, or has triggered an action level, the contract operator shall contact the DHHL POC and so advise on the status. The contractor shall work with DHHL in notifying all users and initiate corrective measures as required by the SDWB.
 - v. All costs including labor to obtain samples of water quality tests that are performed at the State laboratory are the contract operator's responsibility. The testing costs associated with any water quality tests that are not performed at the State laboratory shall be reimbursed at a cost plus 10% basis.
 - j. Chlorine and Other Supplies
 - i. Contractor shall coordinate the ordering and receiving of chlorine and other supplies required for system operation such as gasoline for mowers, replacement parts for chlorine pump, electrical components and hoses. Replacement supplies will be the responsibility of the DEPARTMENT. The CONTRACTOR shall be reimbursed the cost of such items only with DHHL approval prior to purchase.
 - k. Landscape Maintenance
 - i. Mow lawn, cut brush and weeds, and remove all rubbish within fence line of well site and storage tank.
 - ii. Cut and remove brush and weeds around fire hydrants and valve boxes.



STATE OF HAWAII
SCOPE OF SERVICES

3. SCOPE OF SERVICES FOR THE PUU OPAE DITCH WATER SYSTEM, KAUAI
EMERGENCY AND CALL OUT SERVICE

The Contractor shall provide emergency and call out service for repair of a gravity flow ditch water distribution system. Repairs may include, but are not limited to, water ditches, distribution water lines, water meters and intake ducts.

Contractor shall contact the Contract Administrator or his designated representative and provide recommendations regarding the repair of the affected portions of the system.

Repair tasks shall include inspection and shall consist of furnishing all labor, equipment, parts, materials and tools necessary to perform a thorough and complete repair to operating condition. All services shall be performed and subject to inspection and approval by the Department of Hawaiian Home Lands (DHHL) prior to the start of work.

All tools and labor needed to repair the system shall be the responsibility of the Contractor. DHHL will reimburse the Contractor for parts and supplies. The Contractor shall submit invoice copies with reimbursement request. Reimbursement request will not be accepted without invoice copies.

In the event of an emergency repair and/or call out service, the Contractor shall provide the Contract Administrator, or his designated representative, with the following:

1. Cost estimates if repairs can be made with in-house labor and materials. The Contractor will submit cost estimates for approval prior to the start of work. Labor charges will be based on the rates for the applicable time situations listed on a current Wage Rate Schedule Bulletin published by the Department of Labor and Industrial Relations. All material and equipment required shall be on a cost plus 10% basis. The Contractor shall submit invoice copies with reimbursement request. Reimbursement requests will not be accepted without invoice copies.
2. If repairs require using outside sub-contractors in addition to in-house labor or is more economically feasible (reduce down-time of system or special equipment or personnel to repair) to utilize outside sub-contractors, the Contractor shall be responsible to obtain quotations from Sub-contractors and submit to the Contract Administrator for review. Charges for work performed by the sub-contractor will be for only the dollar amount quoted. The Contractor shall submit invoice copies with reimbursement request. Reimbursement requests will not be accepted without invoice copies.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

Project: Operation and Maintenance of the DHHL Anahola Water System
Location: Anahola, Island of Kauai, Hawaii
Contractor: TBD

The State shall pay the CONTRACTOR a sum not to exceed _____ AND ___/100 DOLLARS (\$ _____) for the satisfactory completion of the work under this contract.

<u>Item No.</u>	<u>Description</u>	<u>Unit Bid Price</u>	<u>No. of Months</u>	<u>Total Bid Price</u>
Group IA Operation & Maintenance of Anahola Water System				
1	Operation and maintenance service of pump station, distribution system, water storage system, landscape maintenance, laboratory testing and reporting, meter and billing.	\$ /mo.	36 mos.	\$
2	Chlorine and Supplies (Allowance)			\$ 30,000.00
3	Sub-total Bid Price (Group 1A, Item Nos. 1-2)			\$
Group IB Emergency Repairs and Call-outs				
4	Twenty-four (24) hour emergency call-out services provided seven (7) days a week with one (1) hour response time performed by appropriate licensed trade.	(Allowance)		\$ 50,000.00
5	Unforeseen Equipment Failures: An allowance is provided for unforeseen equipment failures, including but not limited to, total replacement or replacement of parts for pumps, electrical lines, tanks, transmission and distribution lines and other related water facility needs.	(Allowance)		\$ 100,000.00
6	Sub-total Bid Price (Group 1B, Item Nos. 4-5)			\$ 150,000.00
7	TOTAL GROUP IA AND IB (Items Nos., 3+6)			\$



STATE OF HAWAII

TIME OF PERFORMANCE

Project: Operation and Maintenance of the DHHL Anahola Water System
Location: Anahola, Island of Kauai, Hawaii
Contractor: TBD

1. The Time of Performance for this Contract shall be thirty-six (36) months from the effective date specified in the Notice to Proceed issued by the STATE separately to the CONTRACTOR.
2. Unless terminated, the contract shall be extended for not more than one (1) additional thirty-six-month period or parts thereof, without the necessity of rebidding upon mutual agreement in writing at least sixty (60) days prior to expiration, provided that the contract price for the extended periods shall remain the same or lower than the initial bid price or as adjusted in accordance with the price adjustment provisions below and/or by State initiated contract modifications.
3. The CONTRACTOR or the STATE may terminate the extended contract period at any time upon three (3) months prior written notice.

SAMPLE



STATE OF HAWAII

**CERTIFICATE OF EXEMPTION
FROM CIVIL SERVICE**

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature)
Justin-Michael Ikaika Anderson

(Print Name)
Chairman Designate, Hawaiian Homes Commission

(Print Title)

(Date)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to §76-16, HRS.

(Signature)

(Print Name)

(Print Title, if designee of the Director of DHRD)

(Date)



STATE OF HAWAII

SPECIAL CONDITIONS

Project: Operation and Maintenance of the DHHL Anahola Water System
Location: Anahola, Island of Kauai, Hawaii
Contractor: TBD

SC-01 INTERCHANGEABLE TERMS

The following terms are one and the same:

- a. “Contract” and “Agreement”.
- b. “Department of Hawaiian Home Lands” “Department” “DHHL” and “STATE”.

SC-02 INSURANCE COVERAGE

The CONTRACTOR shall obtain separate insurance coverage for this project that complies with the requirements set forth in the DHHL Construction General Conditions, Article 7, Section 7.3, as amended. Payment for all work required to comply with this item will not be paid for separately but shall be considered incidental to the various contract items.

CONTRACTOR shall maintain insurance acceptable to the STATE in full force and effect throughout the term of this Contract. The policies of insurance maintained by CONTRACTOR shall provide the following minimum coverage:

<u>Coverage</u>	<u>Limit</u>
General Liability Insurance (occurrence form)	Bodily Injury and Property Damage (combined single limit): <u>\$1,000,000</u> per occurrence and <u>\$2,000,000</u> aggregate Personal Injury: <u>\$1,000,000</u> per occurrence and <u>\$2,000,000</u> aggregate
Automobile Insurance (covering all owned, non-owned and hired automobiles)	Bodily Injury: <u>\$1,000,000</u> per person and <u>\$1,000,000</u> per occurrence. Property Damage: <u>\$1,000,000</u> per accident or combined single limit of <u>\$2,000,000</u> .
Workers Compensation (statutory limit is required by laws of the State of Hawaii)	Insurance to include Employer’s Liability. Both such coverages shall apply to all employees of the CONTRACTOR and, in case any subcontractor fails to provide adequate similar protection for all his employees, to all employees of subcontractors.
Builder’s Risk covering the CONTRACTOR and all subcontractors	100% Replacement Value
Fire and extended coverage	100% Replacement Value



STATE OF HAWAII
SPECIAL CONDITIONS

Malicious Mischief 100% Replacement Value
Flood Insurance, if applicable Maximum Coverage available

- a. The State of Hawaii, Department of Hawaiian Home Lands, its elected and appointed officials, officers, employees, and agents shall be named as additional insured with respect to operations, services or products provided to the State of Hawaii. CONTRACTOR agrees to provide to the DHHL, before the effective date of the Contract, certificate(s) of insurance necessary to evidence compliance with insurance provisions of this Contract. CONTRACTOR shall keep such insurance in effect and the certificate(s) on deposit with DHHL during the entire term of this Contract. Upon request by the STATE, CONTRACTOR shall furnish a copy of the policy or policies.
- b. Failure of CONTRACTOR to provide and keep in force such insurance shall be regarded as a material default under this Contract. The STATE shall be entitled to exercise any or all of the remedies provided in this Contract for default of CONTRACTOR.
- c. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability under this Contract or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, CONTRACTOR shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.
- d. CONTRACTOR shall immediately provide written notice to the contracting department or agency should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.
- e. DHHL is a self insured State agency. CONTRACTOR's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with, insurance provided by CONTRACTOR.
- f. The CONTRACTOR shall require all subcontractors to have in full force and effect the same insurance coverage as required of the CONTRACTOR. Such insurance shall name the State of Hawaii, Department of Hawaiian Home Lands, its elected and appointed officials, officers, employees, and agents as additional insured with respect to operations, services or products provided to the State of Hawaii. The CONTRACTOR shall be responsible to enforce its subcontractors' compliance with these insurance requirements and CONTRACTOR shall, upon request, provide the STATE a copy of the policy or policies of insurance for any subcontractor.

SC-03 COMPLETION SCHEDULE AND LIQUIDATED DAMAGES

The CONTRACTOR shall enter into a contract for furnishing services for a three (3) year period commencing on the date specified on the Notice to Proceed issued by the STATE.

Unless terminated, contract shall be extended for not more than one (1) additional thirty-



STATE OF HAWAII
SPECIAL CONDITIONS

six month period or portions thereof, without the necessity of rebidding, upon mutual agreement in writing, at least sixty (60) days prior to expiration.

The CONTRACTOR or the STATE may terminate the extended contract period at any time upon three (3) months prior written notice.

SC-04 PROCESS THROUGH DHHL

Any and all submittals, reports, requests, claims and notices under the contract shall be processed through Land Development Division Project Manager, at Hale Kalaniana'ole, 91-5420 Kapolei Parkway, Kapolei, Hawaii 96707.

SC-05 ALLOWANCES

The proposal may contain payment items designated as allowances. Funds listed in allowance items are to be spent at the direction of DHHL. The allowance is an estimate only and is subject to increase or decrease depending on the actual cost of the item. The funds are for the direct costs of an item and all pricing, submittal and review, overhead, installation, profit, insurance, surety, processing of the issuance of checks for payment to other parties, and all other costs will be included. No payment will be made for incidental costs.

Allowances specifically set aside for construction work and materials will be negotiated when the scope of work is determined. Any unspent allowance costs will be deducted from the contract by change order prior to final payment.

SC-06 CONTRACTOR'S LICENSING

It is the CONTRACTOR's sole responsibility to review the requirements of this project and determine the appropriate contractor's licenses that are required to complete the project. If the CONTRACTOR does not hold all of the licenses required to perform a particular item of work on this project with its own workers, when bidding, he must list subcontractors that hold the appropriate licenses in its proposal.

SC-07 OFFEROR QUALIFICATIONS

In addition to meeting legal and other requirements of this IFB, offeror must meet these bidder qualification requirements to be considered for award:

1. The Offeror shall have a minimum of five (5) consecutive years of experience at the time of bid opening in the operations and maintenance of domestic water systems. Offeror shall submit with offer, documented operations and maintenance and repair experience to substantiate 5 consecutive years of experience requirement.
2. Offeror must possess the necessary business and tax licenses to conduct business in the State of Hawaii.



STATE OF HAWAII

SPECIAL CONDITIONS

3. Offeror, or, Offeror's subcontractor performing plumbing services, shall have at the time of bid submittal, current C-37 contractor license or C-37d and C-37e contractor licenses issued by the Department of Commerce and Consumer Affairs (DCCA) pursuant to Chapter 444, HRS. In addition, plumber mechanics of the Offeror or its subcontractor who will be physically performing plumbing work shall possess a Chapter 448E, HRS, journey worker or master plumber license issued by the DCCA at the time of bid submittal. Questions as to the procedures for obtaining and registering for such licenses should be addressed to:

DCCA, Division of Professional and Vocational Licensing
Princess Victoria Kamamalu Building
1010 Richards Street, 1st and 17th Floor
Honolulu, Hawaii 96813
Phone: (808) 586-3000
E-mail: <http://www.state.hi.us/dcca/pvl/contact.html>

On the appropriate Bid Offer Form page, Offeror shall list its company name or its subcontractor's name along with the type(s) of HRS Chapter 444 Contractor license(s) who will physically perform the plumbing work and the HRS Chapter 448E license number(s). Copies of the licenses shall be submitted to the State within five (5) working days upon request. Failure to provide current licenses upon request shall result in rejection of bid.

4. Offeror's personnel or personnel of subcontractor in responsible charge of the water system shall have obtained water distribution system operator certification as required by the State Department of Health (DOH) at the time of bid opening. Questions as to the procedures for obtaining and registering for such certification should be addressed to:

DOH, EMD
Safe Drinking Water Branch
919 Ala Moana Blvd., Room 308
Honolulu, Hawaii 96814
Phone: (808) 586-4258
E-mail: <http://www.azane.eha.health.state.hi.us>
Contact: Ann Takushi Zane P.E.
Nora Macariola-See P.E.

Copies of the certificate shall be submitted to the State within five (5) working days if requested. Failure to provide current certificate shall result in rejection of bid.

5. The Contractor shall have a service facility on the Island of Kauai where servicing and repair of equipment will be performed. The State shall have access to Contractor's personnel via telephone 24 hours a day, seven (7) days a week, who shall respond to complaints or emergency service requests. This information shall



STATE OF HAWAII

SPECIAL CONDITIONS

be provided on the appropriate Bid Offer Form page. Contractor must be able to respond to emergencies within one hour of notification.

If the Offeror does not have a facility on the Island of Kauai, arrangements shall be made with a company on the island to provide the State with repair services. Offeror shall provide the name and address of this facility in the space provided on the appropriate Bid Offer Form page. The State reserves the right to inspect the designated service facility to determine acceptability under this requirement. Failure on the part of the bidder to meet this requirement shall result in rejection of bid.

SC-08: CERTIFICATION OF INDEPENDENT COST DETERMINATION

By submission of a bid in response to the IFB, bidder certified as follows:

1. The costs in this IFB have been arrived at independently, without consultation, communication, or agreement with any other bidder, as to any matter relating to such costs for the purpose of restricting competition.
2. Unless otherwise required by law, the cost which have been quoted in this IFB have not been knowingly disclosed by the bidder prior to award, directly or indirectly, to any other bidder or competitor prior to the award of the contract.
3. No other attempt has been made or will be made by the bidder to indicate any other person or firm to submit or not to submit for the purpose of restricting competition.

SC-09: SITE INSPECTION

Prior to submittal of an offer, Offerors may inspect the location to thoroughly familiarize themselves with existing conditions, rules and regulations, and the extent and nature of work to be performed. Offeror inspection is not mandatory; however, submission of an offer shall be evidence that the Offeror understands the scope of the project and shall comply with specifications herein, if awarded the contract. No additional compensation, after bid opening, shall be allowed by reason of any misunderstanding or error regarding site conditions or work to be performed.

SC-10 STATUTORY REQUIREMENTS OF SECTION 103-55, HRS

Offeror shall complete and submit the attached wage certification by which offeror certified that the services required will be performed pursuant to Section 103-55, HRS, as amended.

Offerors are advised that Section 103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Offerors are further advised that in the event of an increase in wage rates to public employees performing similar work during the



STATE OF HAWAII

SPECIAL CONDITIONS

contract period, Contractor will be obliged to provide wages no less than those increase wages.

Contractor shall be further obliged to notify its employees performing work under this contract of the provisions of Section 103-55, HRS, and of the current wage rate for public employees performing similar work. Contractor may meet this obligation by posting a notice to this effect in the Contractor’s place of business accessible to all employees, or Contractor may include such notice with each paycheck or pay envelope furnished to the employee.

To assist the Offeror in determining whether the work his employees are to perform under this contract is similar to that performed by public employees, attached are class specifications for State positions. Effective 10/1/2016, the basic hourly wages paid to the State positions are as follows:

<u>Class</u>	<u>Hourly Rate</u>
<u>Effective Date: 10/1/22</u>	
Water System Maintenance Worker (10.145)	\$ 30.73
Water System Maintenance Helper (10.140)	\$ 24.57
Plumber I (10.130)	\$ 30.73
Plumber II (10.133)	\$ 32.53
(See Attachment for Position Class Specification)	

<u>Effective Date: 7/1/23</u>	
Water System Maintenance Worker (10.145)	\$ 32.27
Water System Maintenance Helper (10.140)	\$ 25.79
Plumber I (10.130)	\$ 32.27
Plumber II (10.133)	\$ 34.16
(See Attachment for Position Class Specification)	

<u>Effective Date: 7/1/24</u>	
Water System Maintenance Worker (10.145)	\$ 33.88
Water System Maintenance Helper (10.140)	\$ 27.09
Plumber I (10.130)	\$ 33.88
Plumber II (10.133)	\$ 35.87
(See Attachment for Position Class Specification)	

Accordingly, Offeror should consider the aforementioned wage rates when preparing his/her quote.

SC-11 PRICE ADJUSTMENT DUE TO WAGE INCREASE TO STATE EMPLOYEES

At the release of this IFB, only the current wages of State employees performing similar work are known. Should their wages increase during any period of the contract, including supplements, the Contractor may request for increase in contract price if the current wages paid for similar positions are lower than wages paid to State employees. The increase requested must result in increase in wages to the Contractor’s employees



STATE OF HAWAII
SPECIAL CONDITIONS

performing the work herein, including any increase in costs for benefits required by law that are automatically increased as a result of increased wages, such as workers' compensation, temporary disability insurance, unemployment insurance, and prepaid public health insurance.

Contractor's request for increase must meet the following criteria:

1. At the time of a request, Contractor must provide documentation to show that he is in compliance with Section 103-55, HRS, i.e., its employees are being paid no less than the known wage of the State position listed herein. Documentation shall include the employees' payroll records and a statement that the employees are being utilized for this contract.
2. At the time of bidding, the Contractor must have specified on the appropriate Bid Offer Form page, the percentage of the unit bid price that represents labor costs. If the Contractor fails to specify the percentage, the Contractor's request for increase will not be considered.
3. Request for increase must be made in writing to DHHL on a timely basis.
 - a. Request for increase for the initial contract period must be made as soon as practicable after the State wage agreements are made public. Approved request will be retroactive to the date of the increase for the State employee.
 - b. Request for increase for a supplemental period of the contract must be made prior to the start of the supplement. Contractor should call the Project Manager named on the cover of this Invitation for Bids to obtain the current wage information.
4. Contract price adjustment shall be considered:
 - a. Only upon request by the Contractor accompanied by proof satisfactory to the State that its employees have been paid comparable wages to State employees; and
 - b. Only if there is a wage increase to public employees performing comparable work; and
 - c. Only for the contract period in which the price adjustment request is submitted (current contract period only).

Example:

Original contract period: March 7, 2003 to March 6, 2004
Extension period: March 7, 2004 to March 6, 2005



STATE OF HAWAII
SPECIAL CONDITIONS

The option to extend the original contract is exercised for the period March 7, 2004 to March 6, 2005. On March 1, 2005, the State announces a pay raise retroactive to July 1, 2003 and the Contractor soon thereafter submits a request for modification accompanied by acceptable documentation. A contract modification is issued to reflect a price adjustment for the current period of the contract, March 7, 2004 to March 6, 2005. Note that the price adjustment is not applied retroactively to July 1, 2003 since the condition of this contract allows price adjustment to the current contract period only.

5. Price adjustment based on the actual dollar increase per hour per State employee shall be calculated as follows:
 - a. Bid Price/Hr/Officer (A) =(A) for example = \$15.00/hr
 - b. Current Hourly Wage Rate (B) =(B) for example = \$11.00/hr
 - c. New Hourly Wage Rate paid to
State Employees (C) =(C) for example = \$11.50/hr
 - d. Hourly Wage Increase to
State employees (D) =(D) for example = \$.50/hr
 - e. Adjusted Bid Price/Hr/Officer (E) =(A) + (D), or
\$15.00 + \$.50 = \$15.50/hr

6. In addition to the actual dollar amount of wage increase, Contractor may apply for the percentage (%) fringe benefits required by Statute. However, the resulting fringe benefit percentage shall only be applicable to the actual dollar amount of increase and the State shall only consider those benefits that are required by contract and are directly affected by the wage increase.

If request includes adjustment for wage related fringe benefits, Contractor must provide support documentation and an itemized percentage breakdown of the fringe benefits being paid.

The State had determined that the applicable fringe benefits for wage related price adjustments shall be limited to: 1) Federal Old Age Benefits, 2) Worker Compensation, 3) Temporary Disability Insurance, and 4) Unemployment Insurance. Based on past experience, it has been determined that the percentage increase be set at 16%. If Contractor is able to document that their percent for fringe is higher than 16%, the State will review and consider Contractor's claim.

The following method of calculation shall be applied for the fringe benefits:

- a. 16% for Allowable Fringe Benefits



STATE OF HAWAII

SPECIAL CONDITIONS

- b. \$ Adjusted for Allowable Fringe Benefits (F) = (D) x (.16), or
\$.50 x .16 = \$.08
 - c. Adjusted Bid Price/Hr/Officer + Fringe Benefits
(E) + (F), or \$15.50 + \$.08 = \$15.58
7. After the contract modification for the increase is issued by the State, but before payment of an increase is made on the portion of the current contract period already performed, the Contractor shall show proof that its employees were given the retroactive wage increase.

The increase shall be reflected in either a contract modification or in the supplemental agreement issued for any extended period of the initial contract.

SC-12 INSPECTION

The State retains the general right of inspection by a designated representative in order to judge, whether in the State’s opinion, such work is being performed by the Contractor in accordance with terms of this bid proposal.

SC-13 INVOICING

Invoices shall be payable upon certification by the Project Manager that the Contractor has satisfactorily performed the required services.

Contractor shall submit original and three copies of the invoice to the following address:

Department of Hawaiian Home Lands
Attention: Mr. Richard Speer, Project Manager
91-5420 Kapolei Parkway
Kapolei, HI 96707

Invoice shall reference both the contract number and the IFB number.

For emergency services or extra work approved by the Project Manager, a separate detailed invoice is required. Invoices shall contain a description of the work done, the amount and purchase order number authorizing the work. The Contractor shall also submit copies of material invoices and labor time sheets to substantiate parts and services charges to the State.

SC-14 PAYMENT

Section 103-10, HRS, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the State will reject any bid submitted with a condition requiring payment within a shorter period. Further, the State will reject any bid submitted with a condition requiring interest payments greater than that allowed by § 103-10, HRS, as amended.



STATE OF HAWAII
SPECIAL CONDITIONS

The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract, which required payment within a shorter period or interest payment not in conformance with statute.

SC-15 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-355, HRS, which states that campaign contributions from specified State or County government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body.

SC-16 WATER SYSTEM SPECIFICATIONS

The “WATER SYSTEM STANDARDS,” State of Hawaii, dated 2002, and all subsequent amendments and additions, are by reference incorporated herein and made a part of these contract documents. The work embraced herein shall be performed by the CONTRACTOR in accordance with the “WATER SYSTEM STANDARDS,” and the various sections of the Special Conditions.

The term “Water System Standards” used in these contract documents refers to the “WATER SYSTEM STANDARDS” State of Hawaii, dated 2002, and all subsequent amendments and additions.

SC-17 STATE GENERAL EXCISE TAX

This project is not exempt from the State of Hawaii General Excise Tax. The CONTRACTOR’s prices shall include the General Excise Tax for all work.

GENERAL CONDITIONS

Table of Contents

	<u>Page(s)</u>
1. Coordination of Services by the STATE.....	2
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	2
3. Personnel Requirements	3
4. Nondiscrimination	3
5. Conflicts of Interest	3
6. Subcontracts and Assignments	3
7. Indemnification and Defense.....	4
8. Cost of Litigation.....	4
9. Liquidated Damages	4
10. STATE'S Right of Offset.....	4
11. Disputes	4
12. Suspension of Contract.....	4
13. Termination for Default.....	5
14. Termination for Convenience.....	6
15. Claims Based on the Agency Procurement Officer's Actions or Omissions.....	8
16. Costs and Expenses	8
17. Payment Procedures; Final Payment; Tax Clearance	9
18. Federal Funds	9
19. Modifications of Contract.....	9
20. Change Order.....	10
21. Price Adjustment	11
22. Variation in Quantity for Definite Quantity Contracts	11
23. Changes in Cost-Reimbursement Contract.....	11
24. Confidentiality of Material	12
25. Publicity.....	12
26. Ownership Rights and Copyright	12
27. Liens and Warranties	12
28. Audit of Books and Records of the CONTRACTOR.....	13
29. Cost or Pricing Data	13
30. Audit of Cost or Pricing Data	13
31. Records Retention.....	13
32. Antitrust Claims.....	13
33. Patented Articles.....	13
34. Governing Law	14
35. Compliance with Laws	14
36. Conflict between General Conditions and Procurement Rules	14
37. Entire Contract.....	14
38. Severability.....	14
39. Waiver	14
40. Pollution Control	14
41. Campaign Contributions.....	14
42. Confidentiality of Personal Information.....	14

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 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

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

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

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

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

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

13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any 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. Head of the purchasing agency 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 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
 - 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 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

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

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

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided 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.