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IN REPLY REFER TO:
HRT7/11-424287

HONOLULU AUTHORITY for RAPID TRANSPORTATION

Kenneth Toru Hamayasu, P.E.
INTERIM EXECUTIVE DIRECTOR

July 12, 2011

Mr. Kevin Rozendaal
Project Manager
Kiewit Infrastructure West Company
94-235 Leoku Street
Waipahu, Hawaii 96797

BOARD OF DIRECTORS
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Wayne Y. Yoshioka

Dear Mr. Rozendaal:

Subject: Contract No. CT-DTS-1100195, RFP-DTS-261611
Kamehameha Highway Guideway Design Build Contract
Honolulu High-Capacity Transit Corridor Project

Attached for your files is a fully executed copy of the subject contract.

If there are any questions regarding this matter, please contact Wes Mott at 768-6155.

Sincerely,

Kenneth T. Hamayasu
Interim Executive Director

Attachment

rc (D. Ha) D.H

FILE COPY

JUL 12 2011

Honolulu High-Capacity Transit Corridor Project

**AGREEMENT FOR DESIGN-BUILD SERVICES
RFP-DTS-261611
CONTRACT NO. CT-DTS-1100195**

This Contract for Design-Build Services dated June 30, 2011, (the "Contract"), is entered into by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawai'i, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawai'i 96813 (the "CITY"), and KIEWIT INFRASTRUCTURE WEST CO., a [State] corporation, whose principal place of business and mailing address is 2215 East 1st Street, Vancouver, Washington 98661 (the "DESIGN-BUILDER").

WITNESSETH THAT:

WHEREAS, the CITY desires the DESIGN-BUILDER to undertake the design and construction of the Kamehameha Highway Guideway for the Honolulu High-Capacity Transit Corridor Project in Honolulu, Hawai'i, from a location east of Pearl Highlands Station to a point east of Aloha Stadium Station (the "PROJECT" as defined in the Special Provisions);

WHEREAS, CITY personnel are not able to provide the services entered hereunder; and

WHEREAS, the DESIGN-BUILDER was selected pursuant to Section 103D-303 of the Hawai'i Revised Statutes (HRS), as amended, and related Hawai'i Administrative Rules (HAR), relating to competitive sealed proposals;

NOW, THEREFORE, the CITY and the DESIGN-BUILDER, in consideration of the foregoing and of the mutual promises hereinafter set forth, and intending to be legally bound, hereby mutually agree as follows:

1. The DESIGN-BUILDER shall perform and complete all of the services required for the PROJECT in accordance with and as set forth in the Contract Documents as hereinafter described, shall furnish all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of the PROJECT and work contemplated under the Contract Documents (the "Work"), and the DESIGN-BUILDER shall receive and accept as full compensation for all of the Work the price for the various items of the Work as hereinafter set forth.

2. The DESIGN-BUILDER shall perform and complete the Work in accordance with:

- a. Part 1 – This Agreement;
- b. Part 2 – The Special Provisions and any attachments and exhibits thereto (collectively, "Special Provisions");
- c. Part 3 – The General Conditions of Design-Build Contracts for the City and County of Honolulu, dated February 2009 ("GCDB");
- d. Part 4 – The Design Criteria;
- e. Part 5 – The Engineering Data;

Honolulu High-Capacity Transit Corridor Project

- f. Part 6 – The Request For Proposal Drawings as modified by the DESIGN-BUILDER’s proposal information, dated October 7, 2010 (“RFP Part 2 Proposal”), as modified (if applicable) by the first Best and Final Offer, dated December 30, 2010 (“BAFO 1”), and as modified (if applicable) by the second Best and Final Offer, dated March 4, 2011 (“BAFO 2”); modifications in BAFO 2 control over modifications in BAFO 1; modifications in BAFO 1 control over the RFP Part 2 Proposal;
- g. Part 7 – The , Technical Provisions, Standard Specifications in that order, and any attachments and exhibits thereto (collectively, “Standard Specifications”);
- h. Part 8 – The Plan Standards, the City and County of Honolulu Department of Transportation Services, Rapid Transit Division Standard and Directive Drawings, the RFP and all corresponding RFP addenda; and
- i. Part 9 – The DESIGN-BUILDER’s Proposal, as modified (if applicable) by BAFO 1, and as modified (if applicable) by BAFO 2; modifications in BAFO 2 control over modifications in BAFO 1; modifications in BAFO 1 control over the RFP Part 2 Proposal;

all of which are collectively referred to as the “Contract Documents” as defined in the Special Provisions, are attached hereto and incorporated herein, and are listed in order of controlling precedence should there be any conflict in the terms of the Contract Documents, and any modifications, changes or amendments in connection therewith being specifically referred to and incorporated herein by reference and made a part hereof as though fully set forth herein. Provided, those portions of Part 9 that exceed the requirements of the other Contract Documents become the new minimum Contract requirements.

3. The DESIGN-BUILDER shall complete the Work required under the Contract Documents as provided for in the Special Provisions and other Contract Documents attached hereto.

4. There will be several separate and distinct written notices to proceed under the Contract. Work shall not begin until the CITY has issued the respective Notice to Proceed (“NTP”). Any Work undertaken by the DESIGN-BUILDER prior to issuance of a required written NTP will be the sole responsibility of and will be undertaken at the sole risk of the DESIGN-BUILDER, without any obligation on the part of the CITY.

The first NTP (“NTP #1”) will be for all required Preliminary Engineering Work activities, as defined by the CITY.

The second NTP (“NTP #2”) will be for Final Design Work activities, as defined by the CITY.

The third NTP (“NTP #3”) will be for all remaining Work of the Contract

All NTPs shall be issued in support of the accepted Baseline Schedule (as Proposed) in compliance with the schedule required dates defined in SP-4.1 and attached to this Agreement in Part 9.

Unless specifically addressing NTP #1, NTP #2, or NTP #3, whenever reference is made to “the NTP” it shall be understood that what is intended by the reference is the applicable NTP as determined by the context. In the event the context is not clear, the reference shall be assumed to refer to NTP #3.

Honolulu High-Capacity Transit Corridor Project

5. This is a firm fixed-price contract, and subject to the provisions of this paragraph and in accordance with Chapter 6 of the GCDB as amended by Chapter 6 of the Special Provisions, the CITY agrees to pay the DESIGN-BUILDER, for the satisfactory performance and completion of the Work, the payments in accordance with the Schedule of Milestones. The aggregate amount of these lump sum payments shall not exceed THREE HUNDRED SEVENTY TWO MILLION ONE HUNDRED FIFTY THOUSAND and 00/100 DOLLARS (\$372,150,000.00). The lump sum payments for services and the Work performed under the Contract are all inclusive of direct labor, overhead, general and administrative expenses, other direct costs, subcontractor costs, fixed fees, and all applicable taxes including State general excise and use tax ("GET") and county one-half percent (0.5%) GET Surcharge

In accordance with the paragraphs above, the total aggregate amount of THREE HUNDRED SEVENTY TWO MILLION ONE HUNDRED FIFTY THOUSAND and 00/100 DOLLARS (\$372,150,000.00) is established as the maximum payable under this Contract and is subject to the Special Provisions and the GCDB, including the provisions thereof relating to reducing or increasing the compensation of the DESIGN-BUILDER.

6. By signing below, the DESIGN-BUILDER hereby certifies that, to the best of its knowledge and belief, cost or pricing data, as defined in Section 3-122-122, HAR, and submitted pursuant to Section 3-122-125, HAR, is accurate, complete, and current as of the date of this Contract.

7. Unless notified otherwise by the Officer-In-Charge in writing when notice is to be given to the CITY, it shall be mailed or delivered to:

City and County of Honolulu
Department of Transportation Services
650 South King Street, 3rd Floor
Honolulu, Hawai'i 96813

Attention: Director

8. Unless agreed to otherwise in writing when notice is to be given to the DESIGN-BUILDER, it shall be mailed or delivered to:

Kiewit Infrastructure West Co.
2215 East 1st Street
Vancouver, WA 98661

Attention: Kevin Rozendaal, Project Manager

9. This Contract, its integrated attachments, and the Contract Documents constitute the entire agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract or the other Contract Documents, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

From BFS - 74
(Mar. 1996)

Certificate

The attached contract for Design and construction of the Kamehameha Highway
Guideway for the Honolulu High-Capacity Transit Corridor Project in Honolulu, Hawaii, from a location east of
Pearl Highlands Station to a point east of Aloha Stadium Station

(\$372,150,000.00)

is hereby approved as to availability and designation of funds, and certification is hereby made that there is a valid appropriation from which expenditures to be made under said contract may be made and that sufficient unencumbered funds are available in the Treasury of the City and County of Honolulu to the credit of such appropriation to pay the amounts of such expenditures when the same become due and payable.

CONTRACT NO. CT - DTS- 1100195

FUND Transit Fund (690)

Transit Improvement Bond Fund (695)

ACCOUNT NO.

<u>690/7801-10-D (4064)</u>	<u>\$ 12,257,246.00</u>
<u>695/7801-10-D (4064)</u>	<u>23,827,421.00</u>
<u>695/7801-11-D (4064)</u>	<u>30,555,758.00</u>
<u>695/7801-10-C (4072)</u>	<u>305,509,575.00</u>
	<u>\$ 372,150,000.00</u>

HONOLULU, HAWAII

DATE: JUL 11 2011



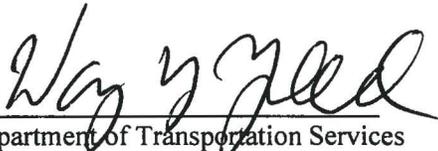
Director of Budget & Fiscal Services *dh*

Honolulu High-Capacity Transit Corridor Project

IN WITNESS WHEREOF, the CITY and the DESIGN-BUILDER have executed this Contract by their duly authorized officers or agents on the day and year first above written.

APPROVED AS TO CONTENT:

CITY AND COUNTY OF HONOLULU

By: 
Department of Transportation Services

By: 
Director of Budget and Fiscal Services *vs 02/11*

Date: JUL 11 2011

DESIGN-BUILDER
KIEWIT INFRASTRUCTURE WEST CO.

By: 
Its A. T. Skoro, Sr. Vice President

By: 
Its Lee R. Zink, Vice President

APPROVED AS TO FORM AND
LEGALITY

By: 
Deputy Corporation Counsel

POWER OF ATTORNEY

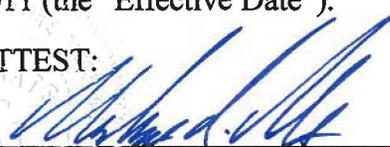
KIEWIT INFRASTRUCTURE WEST CO., a Delaware corporation (the "Corporation"), appoints **A. T. SKORO** as its Attorney-in-Fact with the authority to act on behalf of the Corporation for the purpose of executing and delivering the following documents with respect to the Honolulu High-Capacity Transit Corridor Project, Kamehameha Highway Guideway Design-Build Contract, Contract No. CT-DTS-1100195, RFP-DTS-261611, located in Honolulu, Hawaii (the "Project"):

- Bid Proposals
- Bid Bonds
- Contracts
- Contract Change Orders
- Surety Bonds
- Performance/Payment Bonds
- Final Contract Payments
- Joint Venture Agreements and Joint Venture Agreement Amendments
- Corporate guarantees
- Subcontracts and Material Contracts, including Incidental Work Orders and related agreements
- Change Orders to Subcontracts and Material Contracts
- Purchase Agreements
- Release of Retainage
- Professional Service Agreements
- Real Estate purchases, that do not exceed Five Hundred Thousand Dollars (\$500,000)
- Real Estate leases
- Equipment purchases
- Rental Agreements, provided the rental period does not exceed twelve (12) months
- Payroll Affidavits
- Progress Payment Estimates

The Corporation reserves the right to revoke or amend this Power of Attorney. This Power of Attorney shall remain in effect for a period of three (3) years from its effective date, unless earlier revoked in writing, thereby expiring on May 2, 2014.

IN WITNESS WHEREOF, Kiewit Infrastructure West Co. has caused its name to be subscribed hereto and its corporate seal to be affixed by its duly authorized officers on May 2, 2011 (the "Effective Date").

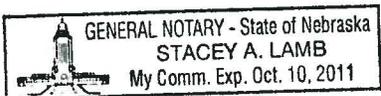
ATTEST:


Michael F. Norton, Secretary

KIEWIT INFRASTRUCTURE WEST CO.

By 
Michael J. Piechoski, Vice President

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)



Subscribed and sworn to before me this 2nd day of May, 2011.


Notary Public

My commission expires: 10-10-11

POWER OF ATTORNEY

KIEWIT INFRASTRUCTURE WEST CO., a Delaware corporation (the "Corporation"), appoints **LEE R. ZINK** as its Attorney-in-Fact with the authority to act on behalf of the Corporation for the purpose of executing and delivering the following documents with respect to the Honolulu High-Capacity Transit Corridor Project, Kamehameha Highway Guideway Design-Build Contract, Contract No. CT-DTS-1100195, RFP-DTS-261611, located in Honolulu, Hawaii (the "Project"):

- Bid Proposals that do not exceed Ten Million Dollars (\$10,000,000)
- Bid Bonds that do not exceed Ten Million Dollars (\$10,000,000)
- Contracts that do not exceed Ten Million Dollars (\$10,000,000)
- Contract Change Orders that do not exceed Ten Million Dollars (\$10,000,000)
- Subcontracts, includes Incidental Work Orders and related agreements, that do not exceed Ten Million Dollars (\$10,000,000)
- Material Contracts that do not exceed Ten Million Dollars (\$10,000,000)
- Change Orders to Subcontracts and Material Contracts, provided the increase or decrease in the Subcontract or Material Contract amount does not exceed Ten Million Dollars (\$10,000,000)
- Purchase Agreements that do not exceed Ten Million Dollars (\$10,000,000)
- Release of Retainage that does not exceed Ten Million Dollars (\$10,000,000)
- Professional Service agreements that do not exceed One Hundred Thousand Dollars (\$100,000)
- Real Estate leases that do not exceed Five Hundred Thousand Dollars (\$500,000)
- Rental Agreements, provided the rental period does not exceed six (6) months
- Payroll Affidavits
- Progress Payment Estimates

The Corporation reserves the right to revoke or amend this Power of Attorney. This Power of Attorney shall remain in effect for a period of three (3) years from its effective date, unless earlier revoked in writing, thereby expiring on June 8, 2014.

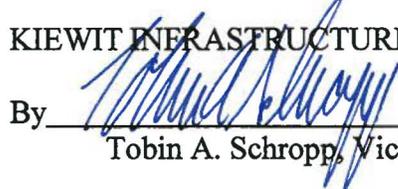
IN WITNESS WHEREOF, Kiewit Infrastructure West Co. has caused its name to be subscribed hereto and its corporate seal to be affixed by its duly authorized officers on June 8, 2011 (the "Effective Date").

ATTEST:



Michael F. Norton, Secretary

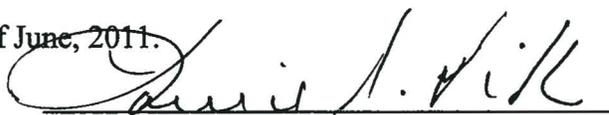
KIEWIT INFRASTRUCTURE WEST CO.



By Tobin A. Schropp, Vice President

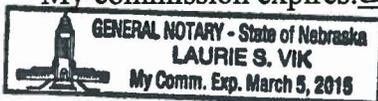
STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

Subscribed and sworn to before me this 8th day of June, 2011.



Notary Public

My commission expires: 3-5-2015



PERFORMANCE BOND (SURETY)
(6/21/07)

KNOW TO ALL BY THESE PRESENTS:

That Kiewit Infrastructure West Co., 2215 East 1st Street, Vancouver,
Washington 98661
(Full Legal Name and Street Address of Contractor)

as Design-Builder, hereinafter called Principal, and Travelers Casualty and Surety Company of America
One Tower Square, Hartford, CT 06183
(Name and Street Address of Bonding Company)

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

its successors and assigns, hereinafter called Obligee, in the amount of THREE HUNDRED SEVENTY TWO MILLION ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$372,150,000.00), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed a Contract with Obligee on June 7, 2011, for the following project:

CONTRACT NO. CT-DTS-1100195, RFP-DTS-261611

Kamehameha Highway Guideway Design-Build Contract
Honolulu High-Capacity Transit Corridor Project
for the City and County of Honolulu

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

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

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

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

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Obligee to the Surety and the Principal and subject to the limitation of the penal sum of this bond, Surety shall remedy the Default, or take over the work to be performed under the Contract and complete such work, or pay moneys to the Obligee in satisfaction of the surety's performance obligation on this bond.

Signed this 12th day of May, 2011.

(Seal) Kiewit Infrastructure West Co.
Name of Principal (Contractor)

* 
Signature A. T. Skoro

Sr. Vice President
Title

(Seal) Travelers Casualty and Surety Company of America
Name of Surety

* 
Signature

Christina M. Harnden, Attorney-in-Fact
Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

DESIGN-BUILDER ACKNOWLEDGMENT
(Corporation)

STATE OF ~~KANSA~~ Washington)
) ss.
~~KIAWAH COONK OF WAKOONK~~)
City of Vancouver, County of Clark

On this 7 day of June, 2011, before me appeared

A. T. Skoro and Lee R. Zink

to me personally known, who, being by me duly sworn, did say that they are the
Sr. Vice President and Vice President, respectively,
of Kiewit Infrastructure West Co., and that

the seal affixed to the foregoing instrument is the corporate seal of said
corporation; and that said instrument was signed and sealed in behalf of said
corporation by authority of its Board of Directors, and the said _____

A. T. Skoro and Lee R. Zink acknowledged said
instrument to be the free act and deed of said corporation.



Shari E. Springe
Notary Public, State of Washington
My commission expires: April 13, 2013

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____
(Separate acknowledgment for contract,
performance bond and payment bond.)

Doc. Date: Undated at time of notarization No. of Pages: _____ Jurisdiction: _____

Signature of Notary _____ Date of Certificate _____

Printed Name of Notary _____

(Official Stamp or Seal)



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 221586

Certificate No. 003813799

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Philip G. Dehn, Terry K. Bartel, Tammy Pike, Paul A. Foss, Lisa Buller, Marie Huggins, and Christina M. Harnden

of the City of Omaha, State of Nebraska, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 15th day of December, 2009.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 15th day of December, 2009, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2011.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 12th day of May, 20 11.


Kori M. Johanson, Assistant Secretary

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

LABOR AND MATERIAL PAYMENT BOND (SURETY)
(6/21/07)

KNOW TO ALL BY THESE PRESENTS:

That Kiewit Infrastructure West Co., 2215 East 1st Street, Vancouver,
Washington 98661
(Full Legal Name and Street Address of Contractor)

as Design-Builder, hereinafter called Principal, and Travelers Casualty and Surety Company of America
One Tower Square, Hartford, CT 06183
(Name and Street Address of Bonding Company)

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

its successors and assigns, hereinafter called Obligee, in the amount of THREE HUNDRED SEVENTY TWO MILLION ONE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$372,150,000.00), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed Contract with the Obligee on June 7, 2011 for the following project:

CONTRACT NO. CT-DTS-1100195, RFP-DTS-261611

Kamehameha Highway Guideway Design Build Contract
Honolulu High-Capacity Transit Corridor Project
for the City and County of Honolulu

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

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor and materials supplied to the Principal for use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.

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

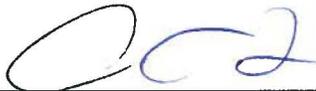
2. A "Claimant" shall be defined herein as any person who has furnished labor or materials to the Principal for the work provided in the Contract.

Every Claimant who has not been paid amounts due for labor and materials furnished for work provided in the Contract may institute an action against the Principal and its Surety on this bond at the time and in the manner prescribed in Section 103D-324, Hawaii Revised Statutes, and have the rights and claims adjudicated in the action, and judgment rendered thereon; subject to the Obligee's priority on this bond. If the full amount of the liability of the Surety on this bond is insufficient to pay the full amount of the claims, then after paying the full amount due the Obligee, the remainder shall be distributed pro rata among the claimants.

Signed this 12th day of May, 2011.

(Seal)

Kiewit Infrastructure West Co.
Name of Principal (Contractor)

* 

Signature A. T. Skoro

Sr. Vice President
Title

(Seal)

Travelers Casualty and Surety Company of America
Name of Surety

* 
Signature

Christina M. Harnden, Attorney-in-Fact
Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

DESIGN-BUILDER ACKNOWLEDGMENT
(Corporation)

STATE OF ~~XXXX~~ Washington)
) ss.
~~XXXX AND COUNTY OF XXXXXX~~)
City of Vancouver, County of Clark

On this 7 day of June, 2011, before me appeared

A. T. Skoro and Lee R. Zink

to me personally known, who, being by me duly sworn, did say that they are the
Sr. Vice President and Vice President, respectively,
of Kiewit Infrastructure West Co., and that

the seal affixed to the foregoing instrument is the corporate seal of said
corporation; and that said instrument was signed and sealed in behalf of said
corporation by authority of its Board of Directors, and the said _____

A. T. Skoro and Lee R. Zink acknowledged said

instrument to be the free act and deed of said corporation.



Shaiv E. Springer
Notary Public, State of Washington
My commission expires: April 13, 2013

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

(Separate acknowledgment for contract,
performance bond and payment bond.)

Doc. Date: Undated at time of notarization No. of Pages: _____ Jurisdiction: _____

Signature of Notary _____ Date of Certificate _____

Printed Name of Notary _____

(Official Stamp or Seal)



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 221586

Certificate No. 003813798

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Philip G. Dehn, Terry K. Bartel, Tammy Pike, Paul A. Foss, Lisa Buller, Marie Huggins, and Christina M. Harnden

of the City of Omaha, State of Nebraska, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 15th day of December, 2009.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 15th day of December, 2009, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2011.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this _____ day of _____, 20 ____.

WARNING: THIS POWER OF ATTORNEY IS INVALID WITHOUT THE RED BORDER


Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

SPECIAL PROVISION

CHAPTER SP-5 MODIFICATIONS; CHANGE ORDERS

SP-5.3 Change Orders

Chapter 5, Section 5.3 (a), of the GCDB is amended by adding the following subparagraphs:

(1) The City acknowledges and agrees that the Contract is based on baselines provided by the City in its RFP Part 2. These baselines include the Basic Project Configuration (see Definition) and the Geotechnical Baseline Report (GBR). Design-Builder is obligated to use the Basic Project Configuration and GBR standards as a firm baseline, unless Design-Builder demonstrates to the City that a change is necessary for either of these baseline standards. If the request for change to the baseline standards is approved by the City, the City will issue a Change Order according to the procedures set forth herein.

(2) If the Design-Builder's request for additional compensation is due to a Differing Site Condition (DSC) from what is described in the Geotechnical Baseline Report (GBR), the Design-Builder must comply with the requirements of this section and include the following:

(A) Provide documentation of the stratigraphy and soil properties actually encountered in the construction and a detailed narrative describing the differing conditions between the actual and those described in the GBR.

(B) Provide detailed engineering analysis describing the foundation design changes necessitated by the DSC, and/or other DSC that causes the Design-Builder loss in production that could not have been reasonably interpreted by Design-Builder from the stratigraphy and soil properties described in the GBR.

(C) Provide detailed engineering analysis describing the alternative foundation processes the Design-Builder attempted in order to mitigate the DSC and an in-depth explanation as to why these processes do not mitigate the loss.

(3) Acceptance of RFP Part 2. Design-Builder shall review all the plans and Specifications in the RFP Part 2 provided by the City. Unless Design-Builder requests a Change Order for what it deems a discrepancy or inaccuracy in the plans and Specifications in the RFP Part 2, including the RFP Drawings, Design-Builder shall be responsible for and deemed to have accepted the terms as provided in RFP Part 2. Any cost increases and/or delays which affect the duration of a Critical Path resulting from such discrepancies or inaccuracy shall be the responsibility of Design-Builder.

Chapter 5, Sections 5.3 (b), of the GCDB is amended by being deleted in its entirety and replaced with the following:

(b) Adjustments of price or time for performance. If any change order increases or decreases Design-Builder's cost of, or the time required for performance of any part of the Work under this Contract, an adjustment may be made and the Contract modified in writing accordingly. Any adjustment in Contract Price made pursuant to this section shall be determined in accordance with HAR § 3-125-13(a), which is included in Section 6.9 of this Special Provision, "Price Adjustments." Failure of the parties to agree to an adjustment in Contract Price shall be resolved in accordance with the price adjustment clause included in Section 6.9 pursuant to HAR § 3-125-13(a)(1)(E). Failure of the parties to agree to an adjustment in time shall not excuse Design-Builder from proceeding with the Contract as changed, provided that the City, within fourteen (14) Days after the changed Work commences, makes such provisional adjustments in time as the City deems reasonable. The right of Design-Builder to dispute the Contract Price or time required for performance or both shall not be waived by its performing the Work, provided however, that it follows the

Honolulu High-Capacity Transit Corridor Project

notice requirements for disputes and claims established by the Contract. [HAR 3-125-4(2)]

On any price adjustment, Design-Builder shall submit a pricing breakdown in the format attached in the GCDB as Exhibit F, Estimate for Change Order Work for the City's Review and Comment, within thirty (30) Days or within such further time as the City may allow, from the time Design-Builder is informed of the Work to be performed or of any changes. GCDB Exhibit H, Certification of Current Pricing must accompany the cost estimate. The substantiation shall include Design-Builder's and subcontractor's cost breakdown to a level of detail acceptable to the City.

Should Design-Builder delay or refuse to submit detailed cost breakdown for the changed Work, the City may pay Design-Builder in accordance with Section 6.9 "Price Adjustments."

Chapter 5, Section 5.3 of the GCDB is amended by adding the following new paragraph (f):

(f) Claims Process. This section outlines the exclusive procedure to be followed if Design-Builder believes that it is entitled to additional compensation, additional Contract Time or both. This section applies to all claims for additional compensation and all requests for additional Contract Time, regardless of whether the basis for the claim for additional compensation, or request for additional Contract Time, or both, stems from the performance of extra or additional Work, changed Work, excusable delays of any nature, or any other reason whatsoever. For suspension of Work see GCDB Section 7.1.

(1) When Design-Builder believes it is entitled to be paid more than that provided for in the Contract, Design-Builder shall notify the City in writing as soon as Design-Builder becomes aware of the event. Claims must be made within thirty (30) Days after giving written notice to the City. Design-Builder's documentation of claim shall include:

- (A) A description of the disputed change condition that requires additional compensation.
- (B) The estimated amount of the additional cost to the City.
- (C) Any Contract provision(s) that support the claim.
- (D) The date upon which the condition occurred or was observed.

(2) When an event occurs that Design-Builder believes entitles it to more time to complete the Work than Contract Time permits, Design-Builder shall notify the City in writing as soon as Design-Builder becomes aware of the event. Claims must be made within thirty (30) Days after giving written notice to the City. Design-Builder's documentation of claim shall include:

- (A) A description of the disputed change condition that requires additional time, including a schedule analysis that shows the event delayed the completion of the project as a whole.
- (B) The estimated amount of the additional time (in days) to the City.
- (C) Any Contract provision(s) that support the claim.
- (D) The date upon which the condition occurred or was observed.

(3) The City may request additional documentation from Design-Builder at any time regarding a Claim. Failure to provide additional documentation when requested and when such documentation exists constitutes a waiver of that portion of Design-Builder's Claim to which the additional documentation relates.

(4) If Design-Builder does not provide a written notice of a claim for additional compensation or additional Contract Time, any subsequent claim for additional compensation, additional Contract Time, or both, is waived.

Honolulu High-Capacity Transit Corridor Project

(5) If the City agrees with Design-Builder's request for additional compensation or Contract Time the parties shall negotiate a Change Order setting forth their agreement. If the City disagrees, Design-Builder shall continue promptly with the Work.

(6) Should Design-Builder disagree with the City's determination of the claim, Design-Builder may pursue remedies as set forth in GCDB Section SP-7.4.

SP-5.4 Claims Based on Oral Directives

Chapter 5, Section 5.4, of the GCDB is amended by adding new subsection (c) as follows:

(c) Notice to Sureties. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design-Builder's responsibility. A copy of Design-Builder's notice to Surety shall be delivered simultaneously to the City. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

SP-5.5 Overtime Inspections

Chapter 5, Section 5.5 of the GCDB is amended by being deleted in its entirety.

SP-5.6 Delay; Time Extensions; Unforeseeable Delays; Suspension

Chapter 5, Section 5.6 (d), Other Unforeseeable Delays, of the GCDB is amended by being deleted in its entirety and replaced with the following SP 5.6 (d), Force majeure events:

(d) Force Majeure Events:

(1) Time Extensions. The City will issue Change Orders to extend the completion deadlines as the result of any delay in the Critical Path on Baseline Schedule caused by a force majeure event. It shall be the responsibility of Design-Builder to demonstrate to the City that the delay in the Critical Path is attributable solely to the force majeure event. The term "force majeure" shall mean any event beyond the control of Design-Builder, not due to an act or omission of Design-Builder, any Subcontractors, their employees, agents and officers or any other Person for whom Design-Builder may be legally or contractually responsible, and to the extent that the event (or the effects of which event) could not have been avoided or prevented by due diligence and use of reasonable efforts by Design-Builder. [HAR 3-125-18]

(2) Additional Compensation. The City will issue Change Orders to compensate Design-Builder for reasonable, verifiable additional direct costs incurred arising from force majeure events as defined below, excluding delay damages except for any force majeure event, which is determined to be a City-caused delay. The term "force majeure" is limited to the following:

(A) Any floods (fifty (50)-year or greater) within one (1) mile of the Project; any Windstorm (Cat-3 or more severe) within one mile of the Project; or any earthquake exceeding 3.5 on the Richter scale and epicentered within twenty-five (25) miles of the specific location of damage on the Site; exceeding 5.0 on the Richter scale and epicentered within 50 miles from the specific location of damage on the Site; or exceeding 6.5 on the Richter scale and epicentered within seventy-five (75) miles from the specific location of damage on the Site; in all cases based on the final determination regarding the location and magnitude of the earthquake published by the National Earthquake Information Center in Golden, Colorado;

(B) Any epidemic, blockade, rebellion, war, riot, act of terrorism or sabotage, or civil commotion;

(C) Any spill or release of Hazardous Materials by a third party at, near or on

Honolulu High-Capacity Transit Corridor Project

the Site which occurs after the Proposal Due Date and is required to be reported to the City;

(D) The discovery at, near, or on the Site of any archaeological, paleontological, biological, or cultural resources, or any species presently or in the future listed as threatened or endangered under the federal or state endangered species act; provided that the existence of such resources was not identified in the Contract Documents;

(E) The suspension, termination, interruption, denial or failure to obtain, nonrenewal, or amendment of any Environmental Approval, except as otherwise provided in the Contract;

(F) Any change in a Governmental Rule or change in the judicial or administrative interpretation of or adoption of any new Governmental Rules which is materially inconsistent with Governmental Rules in effect on the Proposal Due Date and materially affects the Contract; and

(G) Any court action seeking to restrain, enjoin, challenge, or delay construction of the Project or the granting or renewal of any governmental approval for the Project, except to the extent that the court action is due to an act or omission of Design-Builder or any Subcontractor, and could not have been avoided or prevented by due diligence and use of reasonable efforts by Design-Builder.

(3) The term “force majeure” specifically excludes from its definition the following matters which might otherwise be considered force majeure:

(A) Any climatic conditions, storms, floods (less than fifty (50)-year), droughts, fires, Windstorms (less than Cat-3), earthquakes (3.5 or lower on the Richter scale), landslides, or other catastrophes as measured, recorded, or experienced within proximity to the Project;

(B) Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout, or other similar occurrence;

(C) The suspension, termination, interruption, denial or failure to obtain, or nonrenewal of any permit, license, consent, authorization, or approval (including all Governmental Approvals other than Environmental Approvals) which is necessary for the performance of the Work or the maintenance of the Project;

(D) Any change in a Governmental Rule (excluding material changes in Environmental Laws) which was proposed or was otherwise reasonably foreseeable at the Proposal Due Date or does not materially affect the Contract;

(E) The Work or the presence on the Project Site of any third party, including, but not limited to, that of other contractors or personnel employed by the State of Hawai'i; by other public bodies; by railroad, transportation, or utilities; or by private enterprises or any delay in progressing such Work by any third party as indicated or disclosed in the Contract Documents or ordinarily encountered or generally recognized as inherent in the Work;

(F) The existence of any facility or appurtenance owned, operated, or maintained by any third party, as indicated or disclosed in the Contract Documents or ordinarily encountered or generally recognized as inherent in the Work;

(G) The act, or failure to act, of any other public or governmental body, transportation company or corporation, or utility, including, but not limited to, approvals, permits, restrictions, regulations, or ordinances attributable to Design-Builder's design, submission, action or inaction, or means and methods of construction;

Honolulu High-Capacity Transit Corridor Project

(H) Restraining orders, injunctions, or judgments issued by a court which were caused by Design-Builder's submissions, action or inaction, or means and methods of construction;

(I) Any shortages of supplies or Material required by the Contract Work;

(J) Variations in soil moisture content from that represented in reports, borings, or tests conducted by the City and included in the Contract Documents;

(K) Any situation which was within the contemplation of the parties at the time of entering into the Contract; and

(L) All other matters not caused by the City or beyond the control of the City.

(4) The foregoing limitations shall not affect Design-Builder's ability to obtain proceeds of insurance required under the Contract to be used for repair and replacement work associated with insured events.

Chapter 5, Section 5.6 (f)(4) of the GCDB is amended by adding the following paragraphs (G) through (M):

(G) Delays by Subcontractors or suppliers at any tier unless it can be shown that the delay was unforeseeable and not caused by any failure or neglect on the part of the Subcontractor or supplier;

(H) Delays that affect Design-Builder's planned early completion, but do not affect the specified or adjusted Contract Time;

(I) Shortages of materials or equipment if the supplies, services, or equipment were obtainable from other sources in sufficient time to permit Design-Builder to meet the required schedule;

(J) Financial difficulties;

(K) Lack of know-how or other inability to perform;

(L) Labor problems; and

(M) Any requirement that Design-Builder use equipment designated by the City for the Project ("sole source" equipment).

Chapter 5, Section 5.6 (g) of the GCDB is amended by adding the following subparagraphs (1) through (5):

(1) The City will not be liable for any delays in contract schedule and/or cost that are the fault of the Design-Builder. Should the HHCTCP Schedule be delayed due to the fault of the Design-Builder the cost and/or schedule impacts shall be the responsibility of the Design-Builder.

(2) No additional compensation will be paid to Design-Builder for any time period when the overall project completion date is delayed as a result of concurrent delay. Delays are considered to be concurrent when the Design-Builder encounters an excusable delay but also has caused its own delay to the Project for the same period of time. In that situation, the Design-Builder is only entitled to an adjustment to time and/or compensation for the period of time that the excusable delay exceeds the concurrent delay.

(3) Additional compensation shall be paid to Design-Builder if unreasonable delays caused by City are the sole reason that the overall project completion date is delayed. No additional compensation is warranted for delay if that delay does not affect the overall project completion date.

Honolulu High-Capacity Transit Corridor Project

(4) When Design-Builder is entitled to additional compensation as stated above, Design-Builder is entitled to reimbursement during the period of time when overall project completion was actually delayed. Such reimbursement shall include direct costs, if any, incurred as a result of the delay and a total of ten percent (10%) added to these amounts for both overhead and profit. Work performed by a first tier Subcontractor shall include no more than a ten percent (10%) mark-up for both overhead and profit, with an additional five percent (5%) mark up for Design-Builder for both overhead and profit. If the Work is performed by a Subcontractor at the second tier or lower, that Subcontractor is entitled to a total of ten percent (10%) for both overhead and profit and Design-Builder and any Design-Builders above that tier are entitled to a total of three percent (3%) mark up each for overhead and profit. Any other cost or consequential damage, including, but not limited to costs incurred on other construction projects, is not compensable.

(5) All adjustments of Contract Time shall be solely for the period of time during which the overall project completion date was actually delayed.

SP-5.7 Variations in Estimated Quantities

Chapter 5, Section 5.7 (a) of the GCDB is amended by being deleted in its entirety and replaced with the following:

(a) Where the quantity of a Price Item in the Contract is an estimated quantity and where the actual quantity of such Price Item varies more than fifteen percent (15%) above or below the estimated quantity stated in the Contract, an adjustment in the Contract Price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the City shall, upon receipt of a timely written request for an extension of time, prior to final payment of the Contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the City the findings justify. Any adjustment in the Contract Price shall be in accordance with Section 6.9 "Price Adjustments." [HAR 3-125-10]

SP-5.8 Value Engineering Incentive

Chapter 5, Section 5.8 of the GCDB is amended by being deleted in its entirety.

SP-5.9 Escrowed Proposal Documents

Chapter 5 of the GCDB is amended by adding the following new Section SP-5.9.

(a) Upon Award of the Contract, designated representatives of the City and Design-Builder shall jointly retrieve the Escrowed Proposal Documents from the designated escrow agent, and shall deliver to the City one (1) copy of all documentary information used in preparation of the Price Proposal, which shall be held in a locked fireproof cabinet supplied by Design-Builder and located in the City's offices, with the key held only by Design-Builder. Notwithstanding the foregoing, at Design-Builder's option and at Design-Builder's sole expense, the Escrowed Proposal Documents may remain with another depository reasonably acceptable to the City located in the Project vicinity, pursuant to instructions incorporating the provisions of this SP-5.9. Concurrently with submission of quotations or revisions to quotations provided in connection with formally proposed Amendments to this Contract and concurrently with approval of each Change Order, if appropriate, one copy of all documentary information used in preparation of the quotation or Change Order shall be added to the cabinet to be held with the other Escrowed Proposal Documents. The Escrowed Proposal Documents will be held in such cabinet or otherwise maintained subject to Section (b) below until all of the following have occurred:

(1) Two hundred seventy (270) Days have elapsed from Final Acceptance or termination of the Work, as applicable;

Honolulu High-Capacity Transit Corridor Project

- (2) All disputes regarding this Contract have been settled; and
- (3) Final payment on this Contract has been made by the City and accepted by Design-Builder.

(b) Availability for Review. The Escrowed Proposal Documents shall be available during business hours for joint review by Design-Builder and the City, in connection with review changes in the Baseline Schedule and/or PPS-C, negotiations of price adjustments and Change Orders, and the resolution of disputes. The City shall be entitled to review all or any part of the Escrowed Proposal Documents in order to satisfy itself regarding the applicability of the individual documents to the matter at issue. The City shall be entitled to make and retain copies of such documents as it deems appropriate in connection with any such matters, provided that the City has executed and delivered to Design-Builder a confidentiality agreement specifying that the Escrow Proposal Documents will be kept confidential; that copies of such documents will not be distributed to any third parties other than the City's agents, attorneys, and experts, and other dispute resolvers hereunder; and that all copies of such documents (other than those delivered to the dispute resolvers) will be either destroyed or returned to the depository (or to Design-Builder, if the Escrowed Proposal Documents have been returned to it) upon final resolution of the negotiations or disputes. The foregoing shall in no way be deemed a limitation on the City's discovery rights with respect to such documents.

(c) Proprietary Information. The Escrowed Proposal Documents shall be labeled "confidential." The Escrowed Proposal Documents are, and shall always remain, the property of Design-Builder, subject to the City's right to review the Escrowed Proposal Documents as provided herein. The City acknowledges that Design-Builder may consider that the Escrowed Proposal Documents constitute trade secrets or proprietary information. This acknowledgment is based upon the City's understanding that the information contained in the Escrowed Proposal Documents is not known outside Design-Builder's business; is known only to a limited extent and by a limited number of Employees of Design-Builder; is safeguarded while in Design-Builder's possession; and may be valuable to Design-Builder's construction strategies, assumptions, and intended means, methods, and techniques of construction. The City further acknowledges that Design-Builder expended money in developing the information included in the Escrowed Proposal Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. The City acknowledges that the Escrowed Proposal Documents and the information contained therein are being provided to the City only because it is an express prerequisite to Award of this Contract. Thus, the Escrowed Proposal Documents will at all times be treated as proprietary and confidential information and will be used only for the purposes described in this SP-5.9.

At Design-Builder's request, confidentiality agreements will be executed and delivered to Design-Builder by the City's employees or agents who review or have access to the Escrowed Proposal Documents.

(d) Representation. Design-Builder represents and warrants that the Escrowed Proposal Documents provided with the Proposal constitute all of the information used in the preparation of its Price Proposal and agrees that the information contained in the Escrowed Proposal Documents will be utilized in resolving disputes or claims. Design-Builder also agrees that the Escrowed Proposal Documents are not part of the Contract and that nothing in the Escrowed Proposal Documents shall change or modify the Contract.

(e) Contents of Escrowed Proposal Documents. The Escrowed Proposal Documents shall, inter alia, clearly itemize the estimated costs of performing the Work required by the Contract Documents. All Work shall be separated into sub-items as required to present a complete and detailed estimate of all costs. Crews, Equipment, quantities, and rates of production shall be detailed. Estimates of costs shall be further divided into Design-Builder's usual cost categories such as direct labor, repair labor, Equipment ownership and operation, expendable Material, permanent Material, and subcontract costs, as appropriate. Plant and Equipment and indirect costs shall also be detailed in Design-Builder's usual format. Design-Builder's allocation of plant and Equipment, indirect costs, contingencies, markup, and other items to each

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direct cost item shall be clearly identified. The Escrowed Proposal Documents shall include all assumptions, quantity takeoffs, rates of production and progress calculations, quotes from Subcontractors and Suppliers, memoranda, narratives, and all other information used by Design-Builder to arrive at the Price Proposal or Change Order price, as applicable.

(f) Form of Escrowed Proposal Documents. The Escrowed Proposal Documents shall be submitted in the format actually used by Design-Builder in preparing its Proposal. It is not intended that Design-Builder perform any significant extraordinary work in the preparation of these documents prior to the Proposal Due Date. However, Design-Builder represents and warrants that the Escrowed Proposal Documents related to the Proposal have been personally examined prior to delivery to escrow by an authorized officer of Design-Builder and that they meet the requirements of Section (e) above and are adequate to enable a complete understanding and interpretation of how Design-Builder arrived at its Price Proposal. Design-Builder further represents, warrants, and covenants that the Escrowed Proposal Documents related to each Change Order will be personally examined prior to delivery to escrow by an authorized officer of Design-Builder and that they meet the requirements of Section (e) above and will be adequate to enable a complete understanding and interpretation of how Design-Builder arrived at its Change Order price.

(g) Review by the City. The City may at any time conduct a review of the Escrowed Proposal Documents to determine whether they are complete. In the event the City determines that any data is missing, Design-Builder shall provide such data within three (3) Working Days of the request, and at that time it will be date stamped, labeled to identify it as supplementary Escrowed Proposal Documents information, and added to the Escrowed Proposal Documents. Design-Builder shall have no right to add documents to the Escrowed Proposal Documents except upon the City's request. At the City's option, which may be exercised at any time, the Escrowed Proposal Documents associated with any Change Order shall be reviewed, organized, and indexed in the same manner described in the RFP.

(h) Subcontractor and Supplier Pricing Documents. Design-Build Contractor shall require each Subcontractor and /or supplier to submit to Design-Build Contractor a copy of all documentary information used in preparing its sub-bid or sub-proposal immediately prior to executing the subcontract, to be held by the same escrow depository which is holding the Escrowed Proposal Documents and which shall be accessible by Design-Builder and its successors and assigns (including the City) and other dispute resolvers on terms substantially similar to those contained herein. Each such subcontract shall include a representation and warranty from the Subcontractor stating that its Escrowed Proposal Documents constitute all the documentary information used in preparation of its sub-bid or sub-proposal.

SPECIAL PROVISIONS

CHAPTER SP-6 PAYMENT; PRICE ADJUSTMENTS

Chapter 6, Sections 6.1 through 6.4, of the GCDB is amended by being deleted in its entirety and replaced with the following SP-6.1 through SP-6.4.

This Chapter describes and specifies the lump sum pricing concepts and the means of determining the payment for the progress of Work.

SP-6.1 Lump Sum Pricing Concept

(a) Design-Builder is required to break their Price down into a City-provided list of Price Items, referred to as the “Schedule of Prices.” The sum of all the Price Items on the Schedule of Prices will be the Lump Sum Contract Price. The Schedule of Prices typically defines a summary level of Price items.

(b) Upon selection and prior to first payment, Design-Builder is required to further break down the Schedule of Prices into a “Schedule of Milestones” (SM). The SM is intended to provide linkage between the Baseline Schedule, Project Work Breakdown Structure (WBS) and the Schedule of Prices. Design-Builder shall provide a Schedule of Milestones that is itemized by Pay Items that corresponds to the Schedule of Prices for comparative analysis purposes. Design-Builder is paid the agreed upon amount upon satisfactory completion of the Pay Item.

Authorized changes to the firm price Contract are entered as separate line items on the SM and measured as mutually determined between Design-Builder and the City.

(1) Relationship to the Baseline Schedule and City-provided WBS. The Pay Item itemization is based on Design-Builder’s Baseline Schedule and shall utilize the City-provided WBS, which provides a common framework for comparative analysis of cost and schedule progress.

(2) General requirements for establishing SM Pay Items. The Project shall be divided into Sections, as follows:

(A) Preliminary and General Requirements:

- (i) Mobilization;
- (ii) Project Management / Construction Management (PM/CM);
- (iii) Quality Management;
- (iv) Maintenance of Traffic
- (v) Safety & Security;
- (vi) Environmental Compliance; and
- (vii) Public Information / Coordination.

(B) Engineering & Design – itemized into Design Units reflective of the construction Milestones and the sequence of design development by Design-Builder;

(C) Maintenance of Traffic – Design-Builder shall itemize this Section into construction Milestones relating to traffic control associated with construction activities;

(D) Environmental Compliance – Design-Builder shall itemize this Section into construction Milestones relating to Environmental Compliance activities;

(E) Public Information / Coordination – Design-Builder shall itemize this

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Section into construction Milestones relating to Public Information and Coordination activities;

(F) Construction Milestone 1 – Design-Builder shall itemize this Section into sequential construction activities by their associated Milestone. For example, Milestone 1 may consist of:

- (i) Site Preparation;
- (ii) Utility Relocations;
- (iii) Foundation below grade;
- (iv) Column(s);
- (v) Superstructure;
- (vi) Rail Installation; and
- (vii) Site Restoration.

(G) Construction Milestone 2;

(H) Construction Milestone 3; and

(I) Construction Milestone 4, and so on as defined by Design-Builder's Baseline Schedule.

(3) Pay item measurement and payment shall be based on lump sum values assigned to all SM pay items except for management and administration "level-of-effort" activities which are allowed to be by monthly allocation that total to the pay item value, refer to the sample that follows SP-6. ;

(4) Completion of Milestones, established for each pay item, shall serve as the basis of payment for Sections B, C, D and beyond. Those "level of effort" activities associated with management and administration in Section A shall be based on monthly fixed payments scheduled over the timeline of an active item. Do not describe SM pay items in terms of "percent complete." A date or days from NTP should be used to establish the planned completion date of the assigned value;

(5) The following restrictions are established for SM pay item values assigned to Section A activities:

(A) Mobilization shall not exceed a fixed total of six percent (6%) of the construction value and shall be made up of three partial installments, as follows:

- (i) When five percent (5%) of the total contract price is earned, fifty percent of the mobilization amount will be paid;
- (ii) When ten percent (10%) of the total contract price is earned, seventy-five percent of the mobilization amount will be paid; and
- (iii) When twenty percent (20%) of the total contract price is earned, one hundred percent of the mobilization amount will be paid.

(B) PM / CM shall not exceed a fixed total of ten percent (10%) of construction value, spread out over equal monthly installments.

(C) Quality management shall not to exceed a fixed total of five percent (5%) of construction value, spread out over equal monthly installments.

(D) Maintenance of traffic (MOT) shall not exceed a fixed total of two and a half percent (2.5%) of construction value, spread out over equal monthly installments.

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(E) Safety and security shall not exceed a fixed total of one and a half percent (1.5%) of construction value, spread by equal monthly installments.

(F) Environmental compliance shall not exceed a fixed total of three percent (3%) of construction value, spread out over equal monthly installments.

(G) Public information support and coordination shall not exceed a fixed total of one percent (1%) of construction value, spread out over equal monthly installments.

(H) Monthly installments for Section A activities exclude draft and final management plans required to be submitted for City review. Milestone Pay Items shall be established for these items using lump sum value.

(c) Request for Monthly Progress Payment. Design-Builder shall submit monthly progress pay estimates for the City to process. The request shall consist of the status of SM Pay Items for the current month and cumulative to date.

(d) City Processing Progress Payment Request. Design-Builder shall prepare and submit the SM for City review. Upon City-acceptance, the SM is then used for monthly progress payment requests. The payment request shall contain the update of the SM, Baseline Schedule, and a progress narrative addressing, at a minimum, areas of concern.

A sample "Schedule of Milestones" can be found in Section SP-6.17.

SP-6.2 Contract Periodic Payment Schedule

(a) Design-Builder shall provide a projection of the monthly payment schedule for the life of the Project, referred to here as the Contract Periodic Payment Schedule (PPS-C). The PPS-C should reflect the Project schedule and the calculated value from the Schedule of Milestones as planned to be completed on a monthly (periodic) basis. The table should also reflect the cumulative value which will equal the contract lump sum price at project end.

(b) Design-Builder shall develop and submit the PPS-C to the City within forty-five (45) Working Days of Notice to Proceed (NTP) for review and written acknowledgement. The PPS-C, upon written acceptance of the City, will be incorporated into the Contract.

(c) Revisions to the PPS-C shall be allowed only for authorized Change Orders. Design-Builder shall submit a revised PPS-C should there be significant schedule changes and/or Contract Price modifications to the City for Review and Comment. No other changes to the PPS-C will be accepted.

(d) A Proposed Periodic Payment Schedule (PPS-P) for the Work shall be submitted in the Price Proposal.

SP-6.3 Schedule of Milestones and Unit Prices

(a) The City may accept Exhibit 22, Schedule of Milestones. In accepting Exhibit 22, the City may delete, at its sole discretion, any items and their associated Unit Prices listed on Exhibit 17, Schedule of Values, and include the revised Exhibit 17 in the Contract.

(b) Exhibit 22 will be incorporated into the Contract when and if the City accepts it. The Unit Prices shown on Exhibit 17 will be the Unit Price for Change Orders for all additions or deletions of Work included in the items on Exhibit 22. The prices shown on Exhibit 17 will include the cost of all construction labor, Equipment, Material, project management, and Design-Builder and Subcontractor markups.

(c) The Unit Prices shown on Exhibit 17 do not include engineering or design costs.

(d) The purpose of the Schedule of Values is to implement a Contract change that places a portion of the Work on a "unit price" payment basis and/or track and pay for quantities installed. Force

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Account Work would be paid based on the Schedule of Values.

- (e) Revisions to the Schedule of Values, if utilized, will be made by Change Order.

SP-6.4 Allowance Items

(a) Payment for allowance items, if incorporated into the Work, shall be included in the Schedule of Milestones and the PPS-C as separate Pay Items. Unless otherwise specified in the RFP, Design-Builder shall be reimbursed from the allowance items as follows:

- (1) For utility-owner allowance, no markup of any kind will be allowed; and
- (2) For additional off-duty police officers, the reimbursement shall also include the administrative fees charged by the Honolulu Police Department, plus twenty percent (20%) inclusive of any administrative costs, overhead / profit, bond fee, and applicable taxes.

SP-6.5 Retention

Chapter 6, Section 6.5, of the GCDB is amended by adding the following as subparagraph (j):

(j) Prompt Payment of Retainage to Subcontractors upon Satisfactory Completion of Subcontractor Work. Upon satisfactory completion of accepted work by a subcontractor, the Design-Builder shall make a payment request for sums pursuant to subsection (f) that were withheld or retained from a Subcontractor and are due to the Subcontractor. The Design-Builder shall pay all retainage owed to the Subcontractor within ten (10) days after payment to the Design-Builder.

Chapter 6, Sections 6.8 through 6.9 of the GCDB is amended by being deleted in its entirety and replaced with the following SP-6.8 through SP-6.9.

SP-6.8 Contract Payments

(a) Payments to Design-Builder for Work satisfactorily performed will be made monthly:

(1) Scope of Payment. Design-Builder shall receive and accept compensation provided for in the Contract as full payment for furnishing all Material and for performing all Work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof.

(2) Payment Concept. Payment will be calculated using the SM Pay Item table and compared to the PPS-C.

(3) Payment does not imply acceptance of Work. The granting of any payment by the City, or the receipt thereof by Design-Builder, shall in no way imply acceptance of Work. The unsatisfactory character of such Work, Equipment, components or workmanship that do not conform to the requirements of this Contract may be rejected by the City and in such case must be replaced by Design-Builder without delay.

(b) Payment will be based on the Schedule of Milestones and the City-accepted PPS-C. No payment will be made based on the PPS-P:

(1) Progress Payments. No payment will be made for Work until its completion in accordance with the specifications; and

(2) No Payment on Design-Builder's Non-Compliance. Payments are subject to compliance with any lawful or proper direction to Design-Builder by the City or its Designee concerning the Work or Material (See also Section SP-6.1(B)).

(c) The City's obligation to make timely payment and the statutory interest that accrues to any

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late unpaid late balance shall be according to HAR § 103-10.

SP-6.9 Price Adjustments

(a) The Lump Sum Contract Price shall be increased or decreased only by Change Order issued in accordance with Chapter 5 of the GCDB and as supplemented by Chapter SP-5 of the Special Provisions. Each Change Order shall be reflected on the Schedule of Milestones as a separate line item. Payment against a Change Order will be made based on a mutually agreed upon method of progress measurement for the changed Work. In addition Design-Builder shall revise the PPS-C accordingly and any other table or schedule to reflect the authorized change.

(b) Any adjustments in Contract Price made pursuant to the Contract shall be determined in one or more of the following ways: [HRS 103D-501(b); HAR 3-125-13]

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance;

(2) By unit prices specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

(3) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, as specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

(4) In any other manner as the parties may mutually agree upon before commencement of the pertinent performance;

(5) In absence of agreement between the parties, the provisions of HRS 103D-501(b)(5), shall apply.

(c) Design-Builder shall be required to submit cost or pricing data if any adjustment in Contract Price as defined in SP-5.3. A Change Order or other documents permitting billing for the adjustment in price under any method listed above in this Section shall be executed by both parties.

(d) Price adjustment pertaining to material changes to the Geotechnical Baseline Report (GBR) and Differing Site Conditions in accordance with the provisions in, SP-4.19 and SP-9.6, shall be properly documented and agreed to by both parties. Upon construction completion of a particular Section, the net impact of foundation costs, due to differing site condition changes shall be determined. Design-Builder shall provide documented justification post-construction of the material differences between actual ground conditions and those established in the GBR incorporating those means and methods used during construction to mitigate impacts. Price adjustments (increase or decrease in firm price) will not be made singly for each subgrade foundation, but instead shall be made on a cumulative basis, using an average of impacts or price adjustments for work satisfactorily completed under the construction Section defined or set forth in the Schedule of Milestones.

SP-6.10 Force Account

Chapter 6, Section 6.10 first paragraph of the GCDB is amended by being deleted in its entirety and replaced with the following:

When the Design-Builder and the City cannot agree to the price adjustment of any change in Work, the City may, in accordance with section 6.9, "Price Adjustment," require that the Work be performed under force account until such time that an equitable adjustment can be agreed to by both parties, provided that the City promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. Procedures and payment for Work under force account shall be according to [HAR 3-125-4 and HRS 103D-501(b)(5)(A) and (B)].

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Chapter 6, Section 6.10(a)(6) of the GCDB is amended by being deleted in its entirety and replaced with the following SP6.10(a)6):

(6) Percentages for fee and overhead. Not more than three line item percentages for fee and overhead, not to exceed the twenty (20%) percent will be allowed regardless of the number of tier Subcontractors. [HAR 3-125-13]

Chapter 6, Sections 6.11 and 6.12, of the GCDB is amended by being deleted in their entirety and replaced with the following SP-6.11

SP-6.11 Prompt Payment by Design-Builder to Subcontractors

(a) Design-Builder shall maintain records and documents of payments to Subcontractors for three (3) years following the final inspection and acceptance of the Work. These records must be available for inspection upon request by any authorized representative of the City and the U.S. Department of Transportation (US DOT). This requirement also extends to any Subcontractor.

(b) Design-Builder shall pay each Subcontractor for satisfactory performance of the subcontract no later than ten (10) Days from the receipt of each payment Design-Builder receives from the City, and each Subcontractor shall in turn make payment to its Subcontractors within ten (10) Days of receipt of payment. This clause applies to both DBE and non-DBE subcontractors. The retention amount withheld by Design-Builder from its subcontractors of any tier shall not be more than the same percentage of retainage as that of Design-Builder (See GCDB 6.5). Late payments shall accrue interest at the rate noted in HRS § 103-10

(c) The City will review payments to DBE Subcontractors to ensure that the actual amount paid to Subcontractors is consistent with the dollar amounts stated in the schedule of DBE participation.

(d) The City will bring to the attention of the US DOT any false, fraudulent, or dishonest conduct by Design-Builder in connection with the Federal requirements and the DBE program, so that the US DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the US DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Subpart F of 2 CFR, Part 1200.

The City will consider action under its legal authorities, including responsibility determinations in future contracts, for any false, fraudulent, or dishonest conduct by Design-Builder in connection with the Subcontractor information or payments.

SP-6.14 Interest

Chapter 6, Section 6.14, of the GCDB is amended by being deleted in its entirety and replaced with the following:

Interest on amounts determined to be due to Design-Builder for payments deemed to be late payments for Work satisfactorily performed and accepted shall be payable at the applicable statutory rates.

Chapter 6 of the GCDB is amended by the following being added as new Sections SP-6.15 through SP-6.17

SP-6.15 Eliminated Items

(a) Should any Work required by the Contract be found unnecessary, the City may, upon written order to Design-Builder, eliminate such items from the Contract.

(b) When Design-Builder is notified of the elimination of Work, actual Work done and all costs incurred will be reimbursed, including mobilization of Materials before said notification. No

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allowance, except as provided herein, will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits claimed by Design-Builder resulting directly from such elimination.

(c) The Change Order authorizing reimbursements shall show how the reimbursements were derived. Except when otherwise authorized by the City, such derivation shall show breakdowns of costs as detailed in SP-5.

SP-6.16 Acceptance and Substantial Completion

(a) **Substantial Completion.** When Design-Builder considers that the Project is substantially complete, Design-Builder shall so notify the City in writing.

(1) Within fourteen (14) Calendar Days of receipt of Design-Builder's written application for a certificate of Substantial Completion, the City, in the company of Design-Builder, will inspect the Project covered by the notice. During the inspection, the Work will be examined and QC documentation will be reviewed. The City will prepare a written list of outstanding items, if any, to be completed or corrected before issuance of the certificate of Substantial Completion. The list shall be included in the QA/QC documentation with an agreed date of correction for each deficiency.

(2) Design-Builder shall complete or correct the outstanding items, if any, to be done before issuance of the certificate of Substantial Completion and request re-inspection by the City in writing.

(3) Within seven (7) Calendar Days of Design-Builder's request for re-inspections, the City will re-inspect the Project and issue notification of Substantial Completion if the outstanding items noted for Substantial Completion during the inspection are completed or corrected.

(b) **Final Acceptance.** Upon receipt of written notice from Design-Builder of the projected completion date of all of the requirements for the Project, the City will inspect or review any remaining portions of the Project not inspected at the time of issuance of the certificate of Substantial Completion and review any activities required under the Contract not completed at the time of Substantial Completion on the projected completion date to verify that all Work items, including surveys, As-Built Plans, and Design Acceptance, have been completed. Prior to receiving notification for Final Acceptance for the entire Project, Design-Builder must complete any specified training for City personnel.

Prepare and submit As-Built Plans of the following types in electronic format on Compact Disc – Read Only memory (CD-ROM) and one reproducible hard copy set:

- (1) Plan and profile sheets;
- (2) Signing and striping;
- (3) Pavement typical sections;
- (4) All Viaduct and Bridge plans;
- (5) Retaining Structure plans;
- (6) Utility relocation plans;
- (7) Drainage Structure plans;
- (8) Cross sections in areas with retaining structures and/or cuts and/or fills in excess of ten feet high; and
- (9) Plans of consolidated access points.

(c) Upon verification that all items have been completed, the final inspection by the City shall

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be scheduled and conducted within fourteen (14) Calendar Days. If the inspection discloses Work, in whole or in part, as being unsatisfactory, the City will give Design-Builder the necessary written instructions within the time limit set by the City. Upon correction of the Work, the City will make an additional inspection and notify Design-Builder accordingly as soon as reasonably possible thereafter.

(d) If there are no outstanding items to be completed or corrected before Final Acceptance of the Project, following inspection, Design-Builder shall:

- (1) Submit to the City special guarantees, warranties, maintenance agreements, final certifications, and similar documents required under the Contract;
- (2) Deliver tools, spare parts, instructions, and similar items required to operate and maintain the Work; and
- (3) Make changeover of locks to all Equipment and facilities and deliver keys and/or combinations to the City.

When in the opinion of the City Design-Builder has fully performed the Work under this Contract, the City shall recommend to the Contracting Officer the Final Acceptance of the Work so completed. If the Contracting Officer accepts the recommendation of the City, he/she shall thereupon by letter notify Design-Builder of such Final Acceptance, and copies of such Final Acceptance shall be sent to other interested parties.

Upon Final Acceptance of the Work, the Contracting Officer will execute a certificate that the Work required by the Contract has been completed and accepted under the terms of the Contract.

Chapter 6, of the GCDB is amended by adding a new section SP-6.17 to include the following:

SP-6.17 Schedule of Milestones, Sample

Following is a sample of the Schedule of Milestones. This form from ITPLO Exhibit 22 shall be submitted after Contract Execution and accepted prior to first Pay Request by the City.

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SCHEDULE OF MILESTONES (Provided by Design-Builder, Post-Award)

SAMPLE

PAY REQUEST No. _____

Each SM pay item must sum to a SP price item and total the contract price. Each Pay Item below is measured upon schedule completion.

SM	Pay Item	Description	Unit of Meas	SM Value [Dollar Amt]	Restrictions	Planned Achievement [Date]	Schedule Activity ID	Period Ending	
								Current Month Achievement [Actual \$\$ Amt]	Cumulative Achievement [Actual \$\$ Amt]
1	a	Mobilization @ 5% Complete	1 LS		See Note 1				
	b	Mobilization @ 10% Complete	1 LS						
	c	Mobilization @ 25% Complete	1 LS						
2	a	Design- Investigations	1 LS				Enter Act ID from the P6		
	b	Design- Site Development DD	1 LS				Baseline		
	c	Design- Site Development FD	1 LS				Schedule		
	d	Design- Building Systems DD	1 LS				(for cross referencing)		
	e	Design- Building Systems FD	1 LS						
	f	Design- Landscaping DD	1 LS						
	g	Design- Landscaping FD	1 LS						
	h	Design- MSF Trackwork DD	1 LS						
	i	Design- MSF Trackwork FD	1 LS						
	j	Design- OSB Foundation and Exterior DD	1 LS						
	k	Design- OSB Foundation and Exterior FD	1 LS						
	l	Design- OSB Interior DD	1 LS						
	m	Design- OSB Interior FD	1 LS						
	n	Design- MOW Foundation and Exterior DD	1 LS						
	o	Design- MOW Foundation and Exterior FD	1 LS						
	p	Design- MOW Interior DD	1 LS						
	q	Design- MOW Interior FD	1 LS						
	r	Design- TWF Foundation and Exterior DD	1 LS						
	s	Design- TWF Foundation and Exterior FD	1 LS						
t	Design- TWF Interior DD	1 LS							
u	Design- TWF Interior FD	1 LS							
v	Design- WTF Foundation and Exterior DD	1 LS							
w	Design- WTF Foundation and Exterior FD	1 LS							
x	Design- WTF Interior DD	1 LS							
y	Design- WTF Interior FD	1 LS							
z	Design- City Road DD	1 LS							
aa	Design- City Road FD	1 LS							
3	a	Quality Plan, Draft	1 LS						
	b	Quality Plan, Final	1 LS						
	c	Environmental Compliance Plan, Draft	1 LS						
	d	Environmental Compliance Plan, Final	1 LS						
	e	Safety & Security Plan, Draft	1 LS						
	f	Safety & Security Plan, Final	1 LS						
4	a	PM / CM	40 Mo		See Note 2	Starting Month			
	b	Quality Management	40 Mo		See Note 3	Starting Month			
	c	Coordination	40 Mo		See Note 4	Starting Month			
	d	Public Relations	40 Mo		See Note 5	Starting Month			
	e	Environmental Compliance	40 Mo		See Note 6	Starting Month			
5	a	Systemwide Track Supply- WOFH Section	1 LS						
	b	Systemwide Track Supply- Bal of System	1 LS						
6	a	Site Preparation, WP 1	1 LS						
	b	Site Preparation, WP 2	1 LS						
	c	Site Preparation, WP 3	1 LS						
	d	Site Preparation, WP 4	1 LS						
7	a	Yard Building Systems, WP1	1 LS						
	b	Yard Building Systems, WP2	1 LS						
	c	Yard Building Systems, WP3	1 LS						
	d	Yard Building Systems, WP4	1 LS						
8	a	OSB- Work Pkg 1	1 LS						
	b	OSB- Work Pkg 2	1 LS						
	c	OSB- Work Pkg 3	1 LS						
	d	OSB- Work Pkg 4	1 LS						
9	a	MOW- Work Pkg 1	1 LS						
	b	MOW- Work Pkg 2	1 LS						
	c	MOW- Work Pkg 3	1 LS						
	d	MOW- Work Pkg 4	1 LS						
10	a	Train Wash Facility- Work Pkg 1	1 LS						
	b	Train Wash Facility- Work Pkg 2	1 LS						
11	a	Wheel Truing Facility- Work Pkg 1	1 LS						
	b	Wheel Truing Facility- Work Pkg 2	1 LS						
12	a	Yard and Bldg Trackwork- Work Pkg 1	1 LS						
	b	Yard and Bldg Trackwork- Work Pkg 2	1 LS						
13	a	New City Road- Work Pkg 1	1 LS						
	b	New City Road- Work Pkg 2	1 LS						
14	a	Landscaping	1 LS						
TOTALS (Authorized CCOs should be listed item-by-item, prior to Total Line)									

THIS IS A SAMPLE "SM" TABLE THAT COULD BE FURTHER BROKEN DOWN TO REFLECT DESIGN-BUILDER'S SCHEDULE AND PAYMENT MILESTONES

Notes on SM Pay Items:

- (A) Items can be further broken down as long as they represent a verifiable portion of completed work.
- (B) Materials delivered to site may be listed as SM Pay Items.
- (C) Items listed as SM Pay Items must be included in Design-Builder's Baseline Schedule.
- (D) The SM Pay Items and Baseline Schedule shall utilize the Project WBS (provided by City at NTP).

Notes on Restrictions:

- (1) Total Mobilization NTE 6% of Construction Value
- (2) Total Payment NTE 10% of Construction Value
- (3) Total Payment NTE 5.0% of Construction Value
- (4) Total Payment NTE 2.5% of Construction Value
- (5) Total Payment NTE 1.0% of Construction Value
- (6) Total Payment NTE 2.5% of Construction Value

SPECIAL PROVISIONS

CHAPTER SP-7 DISPUTES AND REMEDIES

SP-7.2 Termination for Default for Nonperformance or Delay; Damages for Delay

Chapter 7, Section 7.2 of the GCDB is amended by being deleted in its entirety and replaced with the following:

(a) Termination for Default. If a petition in bankruptcy should be filed by the Design-Builder, or if the Design-Builder should make a general assignment for the benefit of creditors, or if a receiver should be appointed due to the insolvency of the Design-Builder, or if the Design-Builder should refuse or fail to supply enough properly skilled workmen or proper equipment, materials or services or should fail to make prompt payment to subcontractors, or to pay promptly for materials or labor, or disregard laws, ordinances or the instructions of the City, or if the Design-Builder should refuse or fail to abide by the Contract, the schedule requirements listed in the Contract Documents or otherwise violate any provisions of the Contract, unless the same is fully cured and corrected within fifteen (15) Days after the City gives notice thereof to the Design-Builder and does not recur or the Design-Builder submits a plan for cure which is approved by the City and the Design-Builder diligently commences implementation of the plan and continues the correction of the same within seven (7) Days after the City gives notice thereof to the Design-Builder if same cannot be corrected within the fifteen (15) day notice period, then the City, upon determination that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy available to it, terminate this Contract and take possession of the Work site. In the event of such a termination, the City may use all or part of the Design-Builder's equipment and materials and may finish the Work by whatever method the City may deem expedient. In such event, the Design-Builder shall not be entitled to receive any further payment hereunder until the Work is finished. If the expense of finishing the Work shall exceed the unpaid balance due to early termination of the Contract resulting from default of the Design-Builder, the Design-Builder shall pay the difference to the City within a reasonable time not to exceed forty-five (45) Days of receiving an invoice for same. The expenses incurred by the City herein, and the damage incurred through the Design-Builder's default, shall be determined by the City, at its sole discretion, which determination shall be binding between the parties subject to the procedures stated in the Contract Documents and pursuant to applicable law regarding the resolution of disputes.

(b) Without waiving any other right or remedy, the City may serve written notice upon Design-Builder and the Surety on its Performance Bond demanding satisfactory compliance with the Contract. Upon receipt of such demand, the Surety shall, with reasonable promptness, but in no event more than fifteen (15) Days elect to either:

(1) Assume the Contract by:

(A) Arranging for Design-Builder, with consent of the City, to perform and complete the Contract; or

(B) Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

(C) Obtain bids or negotiated proposals from qualified contractors acceptable to the City for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the City and said contractor (to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract) and pay to the City the amount of damages in excess of the balance of the Contract Price incurred by the City resulting from Design-Builder's default; or

(D) Waive its rights under (A), (B) and (C) above, and with reasonable promptness under the circumstances, determine the amount for which it may be liable to the

Honolulu High-Capacity Transit Corridor Project

City and, as soon as practicable after the amount is determined, tender payment therefore to the City, the acceptance of which shall not be deemed an acceptance by the City of the Surety's determination of the total amount due and payable by the Surety; or

(2) Deny liability in whole or in part and notify the City citing reasons therefore:

(A) If the Surety assumes the Contract, all money which may become due Design-Builder shall be payable to the Surety as the Work progresses, subject to the terms of the Contract; and

(B) If the Surety does not assume the Contract and commence performance of the Work within a reasonable time not to exceed fifteen (15) Days after receiving the City's notice and demand, or fails to continue to comply, the City may remove the Surety from the premises. The City may then take possession of all Material and Equipment and complete the Work by use of its own forces, by letting the unfinished Work to another contractor, or by a combination of such methods. In any event, the cost of completing the Work shall be charged against Design-Builder and its Surety and may be deducted from any money due or becoming due from Design-Builder. If the amount unpaid under the Contract is insufficient for completion, Design-Builder or Surety shall pay to the City within a reasonable time not to exceed thirty (30) Days after the completion and an itemized demand for payment from the City, all costs and damages incurred by the City in excess of the amount unpaid under the Contract.

(c) The Design-Builder, in having executed the Contract, shall be deemed to have waived any and all claims for damages because of Termination of Contract for any such reason, except to the extent that any termination has been found to be wrongful.

(d) In the event of a termination under the provisions of this Article, the Design-Builder shall transfer and assign to the City, in accordance with the City's instruction, all Work, all subcontracts, all construction records, reports, permits, data and information, other materials (including all City-supplied materials), supplies, Work in progress and other goods for which the Design-Builder is entitled to receive reimbursement hereunder, and any and all plans, drawings, sketches, specifications, and information prepared by the Design-Builder or others in connection with the Work, and shall take such action as may be necessary to secure to the City, at the City's sole election, the rights of the Design-Builder under any or all orders and subcontracts made in connection with the Work. All subcontracts and supplier contracts of any tier shall contain language permitting the City to assume that contract in the case of Termination for Default.

(e) In the event that the City so directs or authorizes, the Design-Builder shall sell at a price approved by the City, or retain with approval of the City at a mutually agreeable price, any such materials, supplies, Work in progress, or other goods as referred to in the preceding paragraph. In any event, the City shall retain any and all records, plans, drawings, data, permits, specifications, sketches, reports or other information relating to the Work.

(f) In the event that a Termination for Default is determined in subsequent proceedings to be improper, then any such termination shall be deemed as a Termination for Convenience.

(g) The City may exercise any and all remedies available at law or in equity, including recovery of damages to the extent provided by law, subject to the limitations set forth herein, and the exercise or beginning of the exercise by the City of any one or more rights or remedies under this Section shall not preclude the simultaneous or later exercise by the City of any or all other rights or remedies, each of which shall be cumulative.

SP-7.4 Authority to Resolve Contract and Breach of Contract Controversies

Chapter 7, Section 7.4, of the GCDB is amended by being deleted in its entirety and replaced with the following:

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(a) Decision by the Officer-in-Charge. Any question or dispute concerning any provision of the Contract which may arise during Design-Builder's performance shall be decided by the Officer-in-charge; provided, that decisions on questions or disputes relating to default or termination of the Contract, additional cost to the City where the cost is more than ten percent (10%) of the original Contract Price or twenty five thousand dollars (\$25,000) or more, and payment, shall be made only with the approval of the Contracting Officer.

(b) If Design-Builder does not agree with the decision of the Officer-in-Charge, Design-Builder and City agree that the matter will be submitted to mediation. The mediator shall be chosen by mutual agreement. The mediation fees shall be borne equally by the City and Design-Builder.

(c) All controversies between the Officer-in-Charge and Design-Builder that cannot be resolved by mediation shall be decided by the Contracting Officer in writing, within the time limitations below, after receipt of a written request from Design-Builder for a final decision:

(1) For controversies or for claims not exceeding fifty thousand dollars (\$50,000); ninety (90) Calendar Days after receipt of the claim.

(2) For claims exceeding fifty thousand dollars (\$50,000): ninety (90) Calendar Days after receipt of the claim; provided that if a decision is not issued within ninety (90) Calendar Days, the Contracting Officer shall notify Design-Builder of the time within which the Contracting Officer will make the decision. The reasonableness of this time period will depend on the size and complexity of the claim and the adequacy of Design-Builder's supporting data and other relevant factors.

(3) If a decision on a controversy or a claim not exceeding fifty thousand dollars (\$50,000) is not made within ninety (90) Calendar Days after receipt, or if a decision is not made within the time promised for a claim in excess of fifty thousand dollars (\$50,000), Design-Builder may proceed as if an adverse decision has been received.

The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting Design-Builder action concerning appeal. Such payments shall be without prejudice to the rights of either party and where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment. [HAR 3-126-28]

(d) Controversies involving City claims against Design-Builder. All controversies involving claims asserted by the City against a Design-Builder which cannot be resolved by mutual agreement shall be the subject of a decision by the Contracting Officer or the Officer-in-Charge as applicable. [HAR 3-126-29]

(e) Cost of dispute. Design-Builder shall pay to the City the amount of the City's costs to enforce the Contract, including but not limited to amounts for attorneys' fees, consultants' fees and expenses.

(f) Decision. The Contracting Officer shall immediately furnish a copy of the decision to Design-Builder, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. Any such decision shall be final and conclusive, unless fraudulent, or unless Design-Builder brings an action seeking judicial review of the decision in a circuit court of this State within the six (6) months from the date of receipt of the decision.

(1) Design-Builder shall comply with any decision of the Contracting Officer and proceed diligently with performance of the Contract pending final resolution by a circuit court of this State of any controversy arising under, or by virtue of, the Contract, except where there has been a material breach of contract by the City; provided that in any event Design-Builder shall proceed diligently with the performance of the Contract where the Contracting Officer has made a written determination that continuation of Work under the Contract is essential to the public health

and safety.

Chapter 7 of the GCDB is amended by adding the following new Sections SP-7.5 Reserved and SP-7.6 Project Partnering;

SP-7.5 Reserved

SP-7.6 Project Partnering

(a) The City encourages the formation of a cohesive partnership consisting of Design-Builder, their designers and representatives, and their contractors and major subcontractors with the objective of achieving completion of the Work on time, within budget, and in accordance with its intended purpose. This partnership is intended to draw on the strengths of each organization to help identify and achieve reciprocal goals. A primary consideration of the partnership is the prompt and equitable resolution of issues affecting the conduct of the Work under this Contract and the rights and responsibilities of the respective parties. The parties agree to use the principles of project partnering as identified below.

(b) To implement the partnering initiative, the Design-Builder shall organize a team-building or partnering workshop which will be held within forty-five (45) Days of Notice to Proceed or at a time mutually agreed upon. The workshop is expected to last approximately two (2) Days and will be held at a mutually agreed upon conference facility. The workshop should be attended by both Design-Builder's and the City's key staff responsible for the management and administration of the Contract. During the initial workshop, a program for the continuation and maintenance of the partnering initiative will be developed for use through the duration of the Project. The costs of the initial workshop will be paid by the Design-Builder. Design-Builder will also be responsible for the salaries, travel, and subsistence costs of its own attendees.

(c) Costs associated with implementing any follow-on programs will be the responsibility of the Design-Builder. There will be no change in Contract Price for costs associated with the partnering workshop or any subsequent partnering activities.

(d) Partnering Principles:

(1) Preventing Conflict. The parties agree to use the principles of project partnering that include: collaboration and cooperation to identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes, claims, or legal actions. Such measures should extend to all levels of the Work, including lower-tiered subcontractors, and may include the following:

(A) Conducting a workshop to "kick-off" the performance of the Work by introducing the concepts of project partnering and holding follow-up workshops at least annually.

(B) Developing and implementing a Partnering Action Plan devoted to developing and maintaining a collaborative atmosphere on the Project at all levels.

(C) Developing and implementing a Dispute Escalation Process.

(D) Conducting facilitated, Executive Partnering Sessions among the senior managers of each party to discuss issues related to potential conflicts and to engage in collaborative problem solving.

(E) Conducting training for all parties in teambuilding, collaborative problem solving and conflict resolution skills.

(F) Conducting evaluations of the Project's partnering efforts. Including language from this Section in contracts for subcontractors who become involved in the

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performance of the Work.

**ATTACHMENT TO
SPECIAL PROVISIONS SP-1**

ATTACHMENT A

**ABBREVIATED SCOPE OF WORK
AND
RESPONSIBILITIES BETWEEN THE
CITY AND THE DESIGN-BUILDER**

ATTACHMENT A

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A1.0 SCOPE OF WORK

The Scope of Work for the Project will include, but not be limited to, the following:

- a) The Design-Builder will design and construct approximately 3.89 miles of guideway, including the associated roadway modifications, utility relocations, and other infrastructure from approximately 400 feet east of the Pearl Highlands Station, to approximately 1,400 feet beyond Aloha Stadium Station. The Design-Builder will also design and construct the elevated portion of the Aloha Stadium third track. The Work will also include site improvements for traction power substations located along this section of the guideway, installing duct banks, and allowing for system elements/cable trays, necessary for installation of system elements under separate contracts.
- b) Most of the guideway in the second construction phase runs in the median of Kamehameha Highway. The alignment of the aerial guideway will start at a point approximately 400 feet east of the Pearl Highlands Station which is the east end of the first construction phase (East Kapolei Station to Pearl Highlands Station). It will run eastward on the south side of Kamehameha Highway for approximately 1,000 feet and then cross into the median of Kamehameha Highway. It continues running in the median of Kamehameha Highway crossing the H-1 freeway at approximately station 826+00. At approximately station 940+00, the guideway will cross Moanalua Freeway and at approximately station 961+00 cross the Aiea Access ramp. After crossing the Aiea Access ramp, the guideway will run on the north side of Kamehameha Highway crossing over Salt Lake Boulevard and ending at station 975+31.11.
- c) This construction phase includes two stations to be designed and constructed under separate contracts: the Pearlridge Station and the Aloha Stadium Station. The Design-Builder will be responsible for designing and constructing the guideway through these two station areas, including the structure beneath the guideway that will support the stations.
- d) Kamehameha Highway is nominally three lanes wide in each direction with a grassed median. Commercial, retail, and residential, properties border Kamehameha Highway. The guideway will cross over three major roadways (H-1, Moanalua Freeway and Aiea Access Ramp).
- e) The following surface and marine waters are within or adjacent to the DB Project's corridor: Waiawa Stream, Waiawa Springs, Pearl City Stream, Waimalu Stream, Waiuu Springs, Kalauao Springs, Kalauao Stream, 'Aiea Stream, 'Aiea Bay State Recreation Area/Wetland, and Pearl Harbor.
- f) It is anticipated that the guideway will be precast segmental box girder construction and the standard double-track guideway section will be a single-cell trapezoidal box girder. The Offeror may be permitted to propose an alternate configuration. Typical spans are anticipated to be approximately 120 to 150 feet long, constructed using span-by-span erection procedures. It is anticipated that longer spans along the alignment, such as those crossing major intersections, will utilize drop-in spans between hammerhead piers for spans ranging from 150 to 180 feet, or a balanced cantilever-type construction for spans 180 feet or longer, such as the span crossing the H-1 Freeway. A casting yard site will be the responsibility of the Design-Builder.
- g) It is anticipated that the majority of foundations for the guideway will be single-drilled shafts

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ranging in diameter from 6 to 10 feet. Various types of bents will be used along the alignment, including concentric bent, eccentric bent, and straddle bent, depending on geometric and soil conditions.

- h) The DB Project will include installation of guideway lighting, miscellaneous electrical/mechanical wayside equipment, switch machines, sound barrier walls, running rails and insulated third rail (contact rail). The trackwork materials (i.e. rail, third rail, turnouts, rail fasteners, insulators, coverboards, etc.) will be procured under a separate contract and the delivery site is anticipated to be at the future MSF. The Design-Builder will provide installation equipment and will obtain the track and installation materials from the City.
- i) The Design-Builder will be required to coordinate and interface with other contractors whose work on the project will be concurrent. These other contractors will, at a minimum include guideway construction, station design, station construction, MSF construction, and systems design/installation.

A2.0 RESPONSIBILITY OF THE DESIGN-BUILDER

The Design-Builder shall be responsible for:

- a) Final design, construction, procurement and/or installation of all Project components;
- b) Coordination with Project stakeholders, other contractors and utility owners;
- c) Design and construction quality control and quality assurance;
- d) Design and construction management;
- e) Long term warranty and/or limited maintenance after construction;
- f) Public information support to the City;
- g) Maintenance of traffic and access to properties;
- h) Project safety and security;
- i) ROW acquisition support;
- j) Acquisition of construction easements;
- k) Specified and/or required permits not furnished by the City;
- l) Compliance with applicable laws, ordinances, rules and regulations;
- m) Environmental mitigation;
- n) Interface management and systems integration, including integration of civil/systems components with the LRVs;
- o) Insurance not covered by the Owner Controlled Insurance Program;
- p) As-built drawings and documents;
- q) Temporary facilities (offices, work and layout areas, etc.); and
- r) Specified facilities and equipment for use by the City

A3.0 RESPONSIBILITY OF CITY

City agrees to do the following:

- a) Designate in writing a person to act as representative of the City with respect to the services to be rendered under this Contract. Such person shall have complete authority to transmit instructions, receive information, interpret and define City's policies, make decisions with respect to performance of the Work, and shall provide such other services as may be agreed upon;
- b) Make payments to Design-Builder promptly when they are due and Design-Builder provides acceptable documentation per the Contract;
- c) Furnish the Site, Right-of-Way, Environmental Permits, and City-supplied material as set forth in the Contract;
- d) Provide Review and Comment on Design-Builder work products as defined in the Contract;
- e) Provide information known to or in the possession of City relating to the presence of materials and substances at the Site which could create a Hazardous Materials condition; and
- f) Provide Quality Oversight as defined in the Contract.

A4.0 LIMITATIONS ON CITY'S RESPONSIBILITIES

Limitations on City's responsibilities include:

- a) City will not design the Work, nor supervise, direct, or have control or authority over, nor be responsible for, Design-Builder's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Design-Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Instead such actions are the responsibility of the Design-Builder; and
- b) City is not responsible for Design-Builder's failure to perform the Work in accordance with the Contract Documents.

**ATTACHMENT TO
SPECIAL PROVISIONS SP-1**

**ATTACHMENT B
FEDERAL CLAUSES**

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**SPECIAL PROVISIONS
ATTACHMENT B
FEDERAL CLAUSES**

B1.0 GENERAL

The Design-Builder understands that Federal laws, regulations, policies, and related administrative practices applicable to this Contract on the date signed may be modified from time to time. The Design-Builder agrees that the most recent of such Federal requirements will govern the administration of the Agreement at any particular point in time, except if the City issues a written determination otherwise. To achieve compliance with changing Federal requirements, the Design-Builder agrees to include notice in each subcontract that Federal requirements may change and that the changed requirements will apply to the subcontract as required.

B1.1 No Government Obligation to Third Parties

(a) The City and the Design-Builder acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the City, the Design-Builder, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

(b) The Design-Builder agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

B1.2 Program Fraud and False or Fraudulent Statements and Related Acts

(a) The Design-Builder acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Design-Builder certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Design-Builder further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Design-Builder to the extent the Federal Government deems appropriate.

(b) The Design-Builder also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Design-Builder, to the extent the Federal Government deems appropriate.

(c) The Design-Builder shall include the above two clauses in each subcontract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

B1.3 Access to Records and Reports

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(a) The Design-Builder shall provide the City, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Design-Builder which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Design-Builder shall, pursuant to 49 C.F.R. 633.17, provide the FTA Administrator or his authorized representatives, including any Project Management Oversight Contractor, access to the Design-Builder's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

(b) The Design-Builder shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) The Design-Builder shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Design-Builder shall maintain the same until the City, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

B1.4 Federal Changes

The Design-Builder shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. The Design-Builder's failure to so comply shall constitute a material breach of this Contract.

B1.5 Civil Rights Requirements

The Design-Builder shall comply with the following requirements and include the following requirements in each subcontract, modified only if necessary to identify the affected parties:

(a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Design-Builder shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Design-Builder shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying Contract:

(1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Design-Builder shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Design-Builder shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin,

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sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Design-Builder shall comply with any implementing requirements FTA may issue.

(2) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Design-Builder shall refrain from discrimination against present and prospective employees for reason of age. In addition, the Design-Builder shall comply with any implementing requirements FTA may issue.

(3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Design-Builder shall comply with the requirements of the U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Design-Builder shall comply with any implementing requirements FTA may issue.

(4) Access for Individuals with Disabilities. The Design-Builder shall comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities.

B1.6 Disadvantaged Business Enterprises (DBE)

(a) DBE Assurances. The Design-Builder and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Design-Builder shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the Design-Builder to carry out these requirements is a material breach of this Contract, which may result in termination of this Contract or such other remedy, as the City deems appropriate.

The above paragraph shall be included in each subcontract the Design-Builder signs with a subcontractor.

(b) Prompt Payment. The Design-Builder shall pay all subcontractors (DBEs and non-DBEs) for satisfactory performance of their subcontracts no later than ten (10) days from receipt of payment by the City. Full and prompt payment by the Design-Builder to all subcontractors shall include retainage, if applicable.

(c) DBE Goal. The City has established a race neutral DBE goal of 3.83% for Fiscal Year 2010. Although the City has not established a DBE contract goal for this contract, DBE firms and small businesses shall have an equal opportunity to participate in the Contract. The Design-Builder shall adhere to the following requirements:

(1) Take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 CFR 26.51(b) as practicable to afford opportunities to DBEs to participate in the Contract. A race-neutral measure is one that is, or can be, used to assist all small businesses.

(2) A DBE firm must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work; and

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(3) A DBE firm must be certified by the Hawai'i State Department of Transportation before its participation is reportable under paragraph (d) below;

(d) Reports to the City. The Design-Builder shall report its DBE participation obtained through race-neutral means throughout the period of performance. The Design-Builder shall submit the "DBE PARTICIPATION REPORT" reflecting payments made by the Design-Builder to DBE subcontractors. Payments to the Design-Builder will not be processed if the DBE PARTICIPATION REPORT is not properly completed and attached. The DBE PARTICIPATION REPORT shall be prepared in the format set forth in EXHIBIT B 1.5.

(e) Records. On request, the Design-Builder shall make available for inspection, and assure that its subcontractors make available for inspection:

- (1) Records of prompt payments made in accordance with Section 1.6(b), above;
- (2) The names and addresses of DBE subcontractors, vendors, and suppliers under this Contract;
- (3) The dollar amount and nature of work of each DBE subcontractor;
- (4) The social/economic disadvantaged category of the DBE firms, i.e. Black American, Hispanic American, Native American, Subcontinent Asian American, Asian Pacific American, Non-Minority Women, or Other; and
- (5) Other related materials and information.

(f) The Design-Builder shall promptly notify the City, whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work. The Design-Builder shall also promptly notify the City of a DBE subcontractor's inability or unwillingness to perform and provide reasonable documentation.

B1.7 Government-Wide Debarment and Suspension (Nonprocurement)

(a) This Contract is a covered transaction for purposes of 2 CFR 180.220(b) and 2 CFR 1200.220. As such, the Design-Builder is required to verify that none of the Design-Build Team, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935.

(b) The Design-Builder is required to comply with 2 CFR 180 Subpart C, as supplemented by 2 CFR 1200 Subpart C, and must include the requirement to comply with 2 CFR 180, Subpart C, as supplemented by 2 CFR 1200 Subpart C, in any lower tier covered transaction equal to or exceeding \$25,000 it enters into. By signing the Contract, the Design-Builder certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City and County of Honolulu (the City). If it is later determined that the Design-Builder knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Design-Builder agrees to comply with the requirements of 2 CFR 180, Subpart C, as supplemented by 2 CFR Subpart C, throughout the Contract period. The Design-Builder further agrees to include a provision requiring such compliance in its lower tier covered transactions equal to or exceeding \$25,000.

B1.8 Lobbying

The "CERTIFICATION REGARDING LOBBYING," as executed by the Design-Builder in Exhibit 8 of the Proposal is incorporated herein by reference. The Design-Builder and its subcontractors at every tier shall comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, which requires that no Federal appropriated funds shall be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant, or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to the City.

B1.9 Clean Air Requirements

(a) The Design-Builder shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Design-Builder shall report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The Design-Builder shall include the above clause in each subcontract exceeding \$100,000.

B1.10 Clean Water Requirements

(a) The Design-Builder shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The Design-Builder shall report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The Design-Builder shall include the above clause in each subcontract exceeding \$100,000.

B1.11 Fly America Requirements

(a) The Design-Builder shall comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. Parts 301-10, which provide that the City and sub-recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Design-Builder shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

(b) The Design-Builder shall include the requirements of this section in all subcontracts that may involve international air transportation.

B1.12 Buy America Requirements

The Design-Builder shall comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

B1.13 Cargo Preference Requirements

(a) The Design-Builder shall use privately owned United States-Flag commercial vessels to ship at

Honolulu High-Capacity Transit Corridor Project

least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

(b) The Design-Builder shall furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590 and to the City (through the Design-Builder in the case of a subcontractor's bill-of-lading).

(c) The Design-Builder shall include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

B1.14 Energy Conservation Requirements

(a) The Design-Builder shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

(b) The Design-Builder shall include the above clause in each subcontract at every tier. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

B1.15 Recycled Products

The Design-Builder agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

B1.16 Davis-Bacon and Copeland Anti-Kickback Acts

The following requirements of the Davis-Bacon and Copeland Anti-Kickback Acts are added to Section 4.10 of the GCDB:

(a) **Minimum wages**

(1) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or

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incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (i) Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2)(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(2)(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(2)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (2)(A)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CONTRACTOR shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe

Honolulu High-Capacity Transit Corridor Project

benefit or an hourly cash equivalent thereof.

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) Withholding. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the City may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(c) Payrolls and basic records.

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the

Honolulu High-Capacity Transit Corridor Project

submission of copies of payrolls by all subcontractors.

(2)(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5 and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(2)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(2)(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

(d) Apprentices and trainees.

(1) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or

Honolulu High-Capacity Transit Corridor Project

otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the CONTRACTOR will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) Trainees - Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) Equal employment opportunity – The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.

(e) Compliance with Copeland Act requirements – The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(f) Subcontracts – The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may

Honolulu High-Capacity Transit Corridor Project

by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. 5.5.

(g) Contract termination: debarment – A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. 5.12.

(h) Compliance with Davis-Bacon and Related Act requirements – All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in this contract.

(i) Disputes concerning labor standards – Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(j) Certification of eligibility

(1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

B1.17 Contract Work Hours and Safety Standards

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

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

(c) Withholding for unpaid wages and liquidated damages – The City shall upon its own action or upon written request of an authorized representative of the U.S. DOL withhold or cause to be withheld, from

Honolulu High-Capacity Transit Corridor Project

any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

(d) Subcontracts – The Design-Builder or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this section and also a clause requiring the subs to include these clauses in any lower tier subcontracts. The Design-Builder shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

B1.18 ADA Access

The Design-Builder shall comply with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the Design-Builder agrees to comply with all applicable implementing Federal regulations and directives and any subsequent amendments thereto.

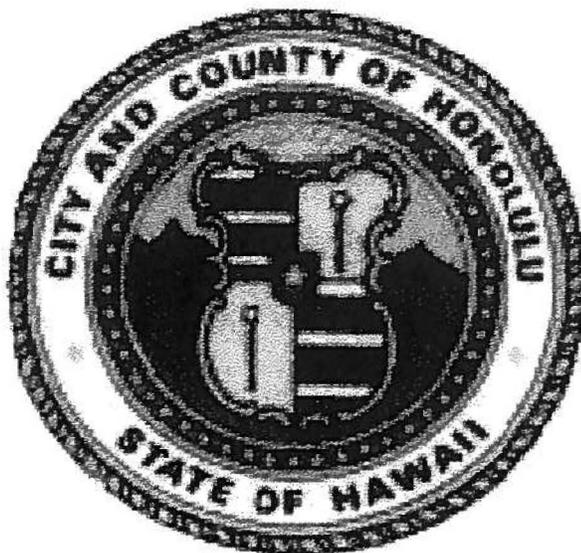
B1.19 Incorporation of FTA Terms.

(a) Attachment B of the Special Provisions includes, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Design-Builder shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

(b) The Design-Builder shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

EXHIBIT B1.5 to ATTACHMENT B - DBE PARTICIPATION REPORT

DBE PARTICIPATION REPORT				
Project Name:				
Contract No:		Contractor Name:		
Federal ID No.: (OWP WE #, FTA Grant #, FHWA Project #)		Contract Amount (including amendments):		\$
Period Covered By This Report:	Current (Invoice # _____)		Total to Date	
Total Invoice Amount		(A) \$	(B) \$	
Payment Requested:	DBE? (Yes/No) DBE Code (if "Yes")	Prior Amount	Current Amount	Total Amount to Date
Prime Contractor		\$	\$	\$
Subcontractors (attach additional sheets as needed):				
Name:				
Type of Work:		\$	\$	\$
Name:				
Type of Work:		\$	\$	\$
Name:				
Type of Work:		\$	\$	\$
Name:				
Type of Work:		\$	\$	\$
TOTALS		\$	\$	(C) \$
DBE Participation to Date (C/B)		%		



RAPID TRANSIT STABILIZATION AGREEMENT

For the

HONOLULU HIGH CAPACITY TRANSIT CORRIDOR PROJECT

NOVEMBER 17, 2009

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This Rapid Transit Stabilization Agreement ("RTSA") is entered into on the date hereinafter stated, by and between the City and County of Honolulu ("Owner"), the Unions that become signatories hereto ("Unions"), and Contractors with whom the Owner executes a construction contract for work to which this RTSA applies, hereinafter referred to as "Contractor-Employers."

Article 1 – Purpose and Findings

1.1 The successful and timely completion of the Project is of the utmost importance to the people of the City and County of Honolulu, who voted affirmatively in November 2008 to proceed with the construction of a fixed guideway system, and who have since 2007 been paying a local surcharge to support the financing of the Project. The Project, along with this RTSA, will also bring significant economic stimulus benefits to the local community through federal funding and the resulting creation of new jobs and increased commerce. The timely completion of the Project will allow development and increased commerce and mobility in the City and County of Honolulu.

The purpose of this RTSA is to promote efficiency of construction operations to ensure the successful and timely completion of the Project. This RTSA seeks to accomplish this in the following ways:

- Ensure that construction of the Project occurs without disruption due to labor disputes;
- Reducing the friction that may be caused when union and open shop employees of different employers are required to work together at a common job site.
- Ensure high quality, cost-effective and timely construction of the Project;
- Provide a large, dependable supply of skilled construction workers from various trades needed to complete a project of this magnitude, complexity and duration;
- Provide training opportunities for craft workers; and
- Ensure a safe workplace for the workers, contractors and the Owner through implementation of and compliance with health and safety policies and laws.

1.2 Large numbers of workers of various skills employed by contractors and subcontractors will be required in the performance of the construction work for the Project, including those to be represented by the Unions which become signatory to this RTSA. On a project of this magnitude, with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption would be substantial without any commitment to maintain continuity of the construction work.

1.3 It is in the best interest of the general public, the Owner, the Unions and the Contractor-Employers, defined herein, for the construction work to proceed in an orderly manner without Work Disruptions. Accordingly, the Unions and the Owner desire to mutually establish and stabilize the wages, hours and working conditions for the workers employed on the Project by Contractor-Employers.

1.4 The Owner remains committed to awarding contracts for each phase of the Project in accordance with the applicable provisions of federal and State law. The Owner has the absolute right to award contracts on this Project that provide bidding opportunities for all contractors and that promote an adequate supply of craft workers possessing the requisite skills and training in order to provide the taxpayers a project of the highest quality. Further, all parties agree to cooperate throughout the term of this RTSA to develop and utilize methods to reduce the Owner's construction and Project administration costs.

1.5 The Project depends upon federal and State funding, the receipt of which requires the satisfaction of applicable conditions and requirements of federal grants and regulations, including but not limited to the requirements of the United States Department of Transportation, Federal Transit Administration's Master Agreement (FTA Master Agreement). This RTSA shall be subordinate to any and all such requirements and conditions of federal or State funding.

Article 2 - Definitions

RTSA means this Agreement.

Artist means a person or firm developing aesthetic/artistic designs for the Project.

City means the City and County of Honolulu.

Construction Contract means, exclusively, the construction contracts for the completion of the Project. Specifically, Construction Contract does not include a contract between Owner or any of its contractors or consultants, and any firm or individual performing construction management, program management, project management, architectural or design services, engineering services, project inspection services, special inspection or testing services, landscape architectural services, or environmental evaluation services or any other services that are not "hands on" construction work on the Project.

Contractor-Employer means any individual firm, partnership, corporation, or any combination thereof, including but not limited to joint ventures, that has entered into a Construction Contract with the Owner or any of its contractors, at any tier, under contract terms and conditions approved by the Owner. The term Contractor-Employer as used in this RTSA shall therefore include any and all

subcontractors performing work on the Project pursuant to a Construction Contract.

Covered Employee means an employee who is working on the Project as an employee of a Contractor-Employer pursuant to a Construction Contract for this Project and whose work is covered by this RTSA, and further whose work is not excluded in Article 3.

Letter of Assent means the acceptance letter signed by each Contractor-Employer agreeing to be bound by the terms of this RTSA in the form attached hereto as Attachment "A".

Owner means the City and County of Honolulu or its assignee.

RTSA Administrator means the individual designated by the Owner to serve as the Owner's point of contact with the Unions and Contractor-Employers regarding the RTSA and who is authorized to appoint designee(s).

Project means the Owner's contracts for on-site construction of the 20 mile guideway transit system from East Kapolei to Ala Moana Center with future extensions planned for West Kapolei to East Kapolei, Salt Lake Boulevard and from Ala Moana Center to University of Hawaii at Manoa and to Waikiki, as described in the Final Environmental Impact Statement for the Honolulu High Capacity Transit Corridor Project, including the construction of 21 stations, and supporting facilities such as a vehicle maintenance and storage facility, transit centers, park-and-ride lots, traction power substations, a parking structure, and an access ramp from the H-2 Freeway to the Pearl Highlands park-and-ride. Any pre-cast concrete fabrication yard located in the State of Hawaii that is dedicated solely to the work for a Construction Contract for this Project is included. The Project also includes any subsequent replacement, addition and renovation of construction undertaken pursuant to a Construction Contract that occurs within five (5) years of the date of the completion of the last Construction Contract.

State means the State of Hawaii.

Steward means the employee of Contractor-Employer working on the Project who is designated as the Union's representative for all Covered Employees working on the Project in the craft represented by the Union.

Trust Fund Agreement means a trust fund established under a Collective Bargaining Agreement for the contribution of payments for employee benefits.

Union means any labor organization which is a signatory to this RTSA.

Work Disruption means any strike, lockout, sympathy strike, slowdown, work stoppage, boycotting, picketing or similar activity that interferes with work on the Project.

Article 3 – Scope of RTSA

3.1 (a) The Owner shall require all Contractor-Employers to agree to be bound by this RTSA by executing the Letter of Assent as a condition of any future request for proposal issued on or after the effective date of this RTSA.

(b) The Unions agree that this RTSA will be made available to, and will fully apply to, any successful bidder for the Project work who becomes signatory hereto, without regard to whether the successful bidder performs work at other sites as either a union or open shop contractor, and without regard to whether employees of such bidder are or are not members of any union.

3.2 This RTSA shall be limited to work under Construction Contracts on the Project performed by Covered Employees of Contractor-Employers of any tier, for the Construction Contract entered into on or after the effective date of this RTSA and where such work is traditionally covered by a collective bargaining agreement with a Union. This RTSA shall not apply to any work performed or contracts issued at any time prior to the effective date, or after expiration or termination of the RTSA, or on any other projects or activities of the Owner.

3.3 This RTSA shall not apply to the following:

(a) Work for any Contractor-Employer by an employee who is not a Covered Employee.

(b) Work by employees of a manufacturer or vendor necessary to maintain such manufacturer's or vendor's warranty or guarantee, including the on-site supervision of such work.

(c) All work by employees of the Owner, contract employees of the Owner and/or consultants of the Owner associated with the Project.

(d) All support services, contracted by the Owner or its Contractor-Employers of any tier that are unrelated to construction work, even if the support services are contracted for or in connection with the Project.

(e) All off-site manufacture of materials, equipment, or machinery, including handling and delivery of materials, equipment and machinery to the Project. This exclusion shall not apply to any pre-cast concrete fabrication

yard located in the State of Hawaii that is dedicated solely to the work for a Construction Contract for this Project.

- (f) Furniture, fixture, and equipment installers retained by the Owner, to perform work after a Contractor-Employer has completed construction of its work pursuant to Section 21.2.
- (g) Artists retained by the Owner during the course of the Project.
- (h) Employees engaged in any work performed on or near, or leading to or into, the Project site(s) by State, the Owner, or other governmental bodies or their contractors; or public utilities or their contractors; or other public agencies or their contractors.
- (i) Employees engaged in maintenance on leased equipment and on-site supervision of such work.
- (j) Startup, testing and commissioning personnel employed by the Contractor-Employer or the Owner, or laboratory for specialty testing or inspections not ordinarily performed by the Unions.
- (k) All employees, subconsultants and agents of the design teams or any other consultants of the Owner for specialty testing, architectural/engineering design and other professional services.

3.4 As areas and systems of the Project are inspected and tested by the Contractor-Employer and accepted by the Owner, the RTSA shall not have further force or effect on such items or areas, except when the Contractor-Employer is directed by the Owner to engage in repairs, modifications, checkout and/or warranty functions required by the Construction Contract.

3.5 It is understood that this RTSA constitutes a stand-alone agreement, and by virtue of executing a Letter of Assent, Contractor-Employer will not be obligated to sign any other collective bargaining agreement as a condition of performing work within the scope of this RTSA.

3.6 Each Contractor-Employer shall provide Unions and Owner with a fully executed copy of the Letter of Assent as applicable prior to execution of the Construction Contract for work on this Project.

3.7 It is understood that each party to this RTSA acts independently of the other, and this RTSA does not give rise to any joint and several liability between or amongst the parties. The Unions agree that this RTSA does not have the effect of creating any joint employment status between and among the Owner and any Contractor-Employer.

3.8 Any Union or Contractor-Employer may contact the RTSA Administrator with a complaint or issue regarding the administration of the RTSA. The RTSA Administrator shall appoint designee(s) as appropriate who will expeditiously respond to and resolve any issue raised by the Union or the Contractor-Employer. If any issue is not satisfactorily resolved, the Union or the Contractor-Employer may invoke the provisions of Article 14 or Article 15 as applicable.

3.9 The Owner may at its sole discretion and at any time modify, delete, add to, terminate, delay and/or suspend the scope of work defined as the Project above; provided, however, that no work under the scope of the Project will be performed outside of the terms of this RTSA.

3.10 The Unions acknowledge that the Owner has the right to select any qualified contractor and award contracts to construct the Project without regard to the Contractor-Employer being a signatory to any collective bargaining agreement with any Union, or any other union so long as such Contractor-Employer agrees to be bound by this RTSA.

Article 4 - Union Recognition, Union Security and Union Representation: Obligations of Contractor-Employer and Unions

4.1 Union Recognition

The Contractor-Employer recognizes the respective Unions as the sole and exclusive bargaining representatives of all Covered Employees within the Unions' respective jurisdictions.

4.2 Union Security

- (a) Any Covered Employee of a Contractor-Employer who is currently a member of a Union and who is working for a Contractor-Employer who is a signatory to a collective bargaining agreement other than this RTSA, shall remain a member in said Union so long as this RTSA is in effect.
- (b) The Contractor-Employer agrees to deduct dues and fees in the amount designated by a particular Union, subject to applicable law, provided that the Covered Employee has executed a written assignment calling for such a deduction, which is provided to the Contractor-Employer, and provided further that the form of the written assignment is that form that is used for all operations by the particular Union for its members in the State. The Contractor-Employer will remit to the Union once a month, the dues and fees deducted on or before the fifteenth (15th) day of each month following the month in which the deduction was made, as agreed upon between each Union and Contractor-Employer at the pre-job conference.

- (c) All Covered Employees of Contractor-Employer who are not members of any Union shall pay dues and uniform assessments in accordance with the requirements of the applicable Union and applicable law. Such dues and assessments shall be limited to fees necessary for the performance for the Union's representation duties. Any employee failing to meet the above condition of employment shall upon written notice by the Union be discharged by the Contractor-Employer within five (5) working days.
- (d) This RTSA shall not unlawfully deprive, nor shall it be construed to unlawfully deprive, any non-union or union employee of his or her rights under federal and State laws.

4.3 Union Representation

- (a) Authorized Union representatives shall have reasonable access to the Project, whenever work covered by this RTSA is being performed by Covered Employees working in the craft represented by the Union, provided that such representatives do not interfere with the work of the employees and are not disruptive to work on the Project or other work of Owner and further provided that such representatives fully comply with the visitor, safety and security rules established for the Project. At the pre-job conference the Union and the Contractor-Employer who has a Construction Contract with the Owner shall mutually agree on a reasonable number of Union representatives on whose behalf access will be sought.
- (b) Each Union shall have the right to designate for each Contractor-Employer one (1) Covered Employee per shift as Steward for the respective Union and the Steward shall be recognized as the Union's representative. Such designated Stewards shall be qualified workers assigned to a crew and shall perform the work of their trade. Under no circumstances shall there be a non-working Steward on the job.
- (c) The Steward shall not be subjected to discrimination or discharge on account of performing proper union business. The Unions agree that such activities shall not unreasonably interfere with the Steward's work for the Contractor-Employer.
- (d) The Contractor-Employer shall be notified in writing of the selection of each Union's Steward.
- (e) The Steward shall not cause or encourage any Work Disruption and, if determined to have instigated, encouraged or participated in any way in such action, notwithstanding the provisions of Section 4.3 (c), will be subject to disciplinary action by the Contractor-Employer, up to and including discharge.

Article 5 - Management Rights of Contractor-Employer

5.1 Contractor-Employer retains full and exclusive authority for the management of its respective operations except as specifically set forth in this RTSA. The Contractor-Employer shall have the right to direct its work forces at its sole discretion, including but not limited to hiring, promotion, determining competency to perform work, transfer, lay-off, discipline or discharge for just cause; the selection of foremen and general foreman; the assignment and scheduling of work; the requirement of overtime work; the determination of when work will be done; and the number and identity of employees engaged to perform such work.

5.2 The Contractor-Employer may, in its sole discretion, utilize the most efficient method or techniques of construction, tools, or other labor-saving devices.

5.3 Except as otherwise expressly stated in this RTSA, there shall be no limitation or restriction upon the Contractor-Employer's choice(s) of materials or design, nor upon the full use, and installation and utilization of equipment, machinery, package units, pre-casts, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices. If there is any disagreement between the Contractor-Employer and a Union, concerning the manner or implementation of such device or methods of work, the implementation shall proceed as directed by the Contractor-Employer and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article 14 of this RTSA.

Article 6 - Hiring Procedures, Referral and Employment: Obligations of the Contractor-Employer and Unions

6.1 Unless otherwise required by this RTSA, Contractor-Employer shall utilize the job referral system of the appropriate signatory Union to acquire employees to work on the Project. The job referral system will be operated in a non-discriminatory manner and in full compliance with federal, State, and local laws and regulations which require equal employment opportunities and non-discrimination.

A probationary period of ten (10) working days shall be established for all new employees; during such time period such named employees may be summarily discharged and such discharge is not subject to the grievance and arbitration process. Notwithstanding the above, the Contractor-Employer may reject any referral for any lawful nondiscriminatory reason provided it complies with this Article.

6.2 In the event that a Union is unable to fill a request for qualified employees within forty-eight (48) hours after such request is made by a Contractor-Employer (Saturdays, Sundays and Holidays excepted), the Contractor-Employer may employ applicants from any other available source. The Contractor-Employer shall inform the Union of the name and social security number of any applicant hired from the other sources and shall refer the applicant to the Union for dispatch to the Project within twenty-four (24) hours after hiring.

6.3 Except as required by law, the Unions shall not knowingly refer an employee currently employed by any Contractor-Employer working under this RTSA to any other Contractor-Employer. This provision shall not be applicable in any case in which the Covered Employee has given notice to the Contractor-Employer of his intent to quit.

6.4 The selection of craft foremen and/or general foreman and the number of such foremen and/or general foreman required shall be entirely the responsibility of the Contractor-Employer. Craft foremen shall be designated working foremen at the request of the Contractor-Employer and once so designated shall be allowed to perform work on the Project in their respective crafts.

6.5 The parties recognize the Owner's interest in providing opportunities to participate on the Project to emerging Contractor-Employers as well as other enterprises which may not have previously had a relationship with the Unions signatory to this RTSA. To ensure that Contractor-Employers will have an opportunity to employ their "core" employees on this Project, all "core" employees must register with the appropriate Union prior to employment. The parties agree that such Contractor-Employers may request by name, and the Union will honor, referral of such persons who have registered with the appropriate Union for Project work and who demonstrate the following qualifications:

- (a) possess any license required by State or federal law for the Project work to be performed;
- (b) have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;
- (c) were on the Contractor-Employer's active payroll for at least sixty (60) out of the one hundred eighty (180) calendar days prior to the contract award;
- (d) have the ability to perform safely the basic functions of the applicable trade.

The Union will refer to such Contractor-Employer one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer

one of such Contractor-Employer's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor-Employer's crew requirements are met or until such Contractor-Employer has hired seven (7) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor-Employer's work the ratio shall be maintained and when the Contractor-Employer's workforce is reduced, Covered Employees shall be reduced in the same ratio of "core" Covered Employees to hiring hall referrals as was applied in the initial hiring.

It is understood that Contractor-Employers that do not follow this process shall be subject to Article 14: Grievance Procedure of this RTSA. Further should a grievance be filed regarding Section 6.5, the fees and expenses of the Arbitrator shall be paid for by the losing party.

Article 7 - Apprenticeship Program: Obligations of Contractor-Employer and Unions

7.1 The Contractor-Employer shall employ apprentices in their respective craft to perform work customarily performed by the craft in which they are apprenticed and within their capabilities.

7.2 To promote training and employment opportunities for residents of Hawaii, the apprentices shall be given priority consideration for this training to the extent permitted by applicable laws and government regulations.

7.3 To promote training and employment opportunities for military veterans who are interested in careers in the building and construction trades, the Contractor-Employer and Unions agree, when appropriate, to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment and the Center's "Helmets to Hardhats" Program to serve as a resource for assessment of construction aptitude of the military veterans and for possible referral to apprenticeship programs.

7.4 Apprenticeship Goals. Consistent with any restriction contained in applicable federal and State law and regulations, including those governing equal employment opportunity, prevailing wage and apprenticeship requirements and limitations, the Contractor-Employer may employ registered apprentices. Apprentice pay scales and ratios on the Project shall be governed by the appropriate Union's joint apprenticeship program.

Article 8 - Work Stoppages and Lockouts: Obligations of Contractor-Employer and Unions

8.1 During the term of this RTSA there shall be no Work Disruption by any Union, any Covered Employee, or any Contractor-Employer. As soon as any Contractor-Employer or Union becomes aware of any such Work Disruption, the Contractor-Employer and Union shall immediately notify Owner, and RTSA Administrator in writing, regarding any such Work Disruption. Failure of any Union to cross any picket line established at the Project site is a violation of this Article.

8.2 The Union(s) shall not sanction, aid or abet, participate in, encourage or continue any violation of Section 8.1 at any Project site and shall undertake all reasonable means to prevent or terminate any such activity immediately upon being informed, in writing, of such activity or activities. No Covered Employee shall engage in activities which violate this Article. Any Covered Employee who participates in or encourages a violation of Section 8.1, including refusal to cross any picket line established at the Project site shall be subject to disciplinary action, up to and including discharge, at the discretion of the Contractor-Employer and shall not be eligible for rehire on the Project.

8.3 Immediately upon being informed in writing of a violation or a potential violation of this Article, the principal officer or officers of the Union shall immediately instruct, order and use any and all reasonable means and their individual best efforts to cause any and all of the Covered Employees that the Union represents to cease any violations of this Article. A Union deemed by the Owner to be in compliance with these obligations shall not be responsible for the unauthorized acts of Covered Employees it represents. The failure of the Contractor-Employer to exercise its rights in any instance shall not be deemed a waiver of its rights in any other instance.

8.4 In lieu of, or in addition to, any other action at law or equity, a Contractor-Employer may institute the following procedure when a breach of this Article is alleged, after the Union(s) has been notified in writing of the alleged breach.

(a) The party invoking this procedure shall notify, Clyde Matsui, who the parties agree shall be the permanent Arbitrator under this procedure. In the event the permanent Arbitrator is unavailable at any time, Patrick Yim, shall be the alternate Arbitrator. If neither the permanent Arbitrator nor the alternate Arbitrator is available, the permanent Arbitrator shall appoint an alternate. Notice to the Arbitrator shall be by the most expeditious means available, with notice by facsimile, telegram, electronic mail or any other effective written means, to the party alleged to be in violation and the Contractor-Employer.

- (b) Upon receipt of said notice, the Arbitrator named above shall set and hold a hearing within twenty-four (24) hours.
- (c) The Arbitrator shall notify the parties by facsimile, telegram, electronic mail or any other effective means, of the place and time he or she has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.
- (d) The only issues at the hearing shall be whether a violation of Section 8.1, 8.2 and/or 8.3 has in fact occurred, and if so, by whom. The award shall be issued in writing to the parties, and the Owner, within three (3) hours after the end of the hearing, and may be issued without an opinion. If any party desires an opinion, it may request one, and a written opinion shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of the award. The Arbitrator may order cessation of the violation of this Article, and such award shall be served on all parties, including Owner and Unions, by the Arbitrator by hand delivery, facsimile, or messenger service ensuring delivery no later than noon the following day, upon issuance.
- (e) Such award may be enforced in and by any court of competent jurisdiction in the State upon the filing of this RTSA and other relevant documents referred to hereinabove. Notice of the initiation of such enforcement proceedings shall be given to the other party by facsimile, messenger service, expedited mail or personal service. In the proceeding to obtain a temporary order enforcing the Arbitrator's award as issued under Section (d) above, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The court's order or orders enforcing the Arbitrator's award shall be served on the parties by hand or by delivery to their last known address by overnight mail.
- (f) To the extent permitted by law any right created by statute or law including but not limited to Chapter 658A of the Hawaii Revised Statutes, governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance therewith, is hereby waived by parties to whom such right accrues.
- (g) The fees and expenses of the Arbitrator shall be borne by the Union or Unions found in violation of this Article, or in the event no violation of this Article is found by the Arbitrator, such fees and expenses shall be borne by the Contractor-Employer. Each party to the procedure under this Section 8.4 will be responsible for its own legal fees and costs.

(h) If the Arbitrator determines in accordance with Section 8.4(d) above, that the Union has violated Section 8.1, 8.2 and/or 8.3 above, the Union shall pay as liquidated damages the sum of twenty-five thousand dollars (\$25,000) to the Contractor-Employer, and shall pay an additional twenty-five thousand dollars (\$25,000.00) per shift for each shift thereafter for which all Covered Employees of the Union have not returned to work. The Unions and the Contractor-Employer agree that twenty-five thousand dollars (\$25,000) per shift is an appropriate amount for liquidated damages because the Contractor-Employer's actual damages are not readily ascertainable, in advance, and the calculation of the its actual damages is difficult, and that this amount is not a penalty, but instead their reasonable calculation of the minimum of the damages that the Contractor-Employer will incur for the breach by that Union of its obligations under this RTSA. The Arbitrator shall retain jurisdiction to determine compliance with this Section and Article.

8.5 (a) If it is determined by the Arbitrator that a Union has violated the provision relating to Work Disruption, in violation of Section 8.1, 8.2 and/or 8.3 of this RTSA, the Union will be required to pay the Owner liquidated damages in the amount of \$50,000 per day until the breach is cured by the Union. The Unions and the Owner agree that \$50,000 per day is an appropriate amount of liquidated damages because the Owner's actual damages are not readily ascertainable, in advance, and the calculation of its actual damages is difficult, and that this amount is not a penalty, but instead their reasonable calculation of the minimum of the damages that the Owner will incur for the breach by that Union of its obligations under this RTSA.

(b) The payment of liquidated damages is due upon demand by the Owner, and, payment shall not be deemed to negatively affect in any way the rights of the Owner to all available forms of relief, including but not limited to injunctive relief, declaratory relief, and damages.

8.6 (a) In the event a Union accrues cumulated damages of \$250,000.00 or more in liquidated damages, pursuant to Sections 8.4(h) and 8.5(a), the Owner may, at its discretion, exercise its unilateral right to terminate this RTSA as to that Union for any Construction Contracts entered into thereafter and Union's name will be deleted from any Letter of Assent signed by the Contractor-Employer for such Construction Contracts.

(b) In the event the Unions collectively accrue cumulated damages of \$1,000,000.00 or more in liquidated damages, pursuant to Sections 8.4 (h) and 8.5 (a), the Unions will be in material breach of this RTSA, and the Owner may, in its discretion exercise its unilateral right to terminate this RTSA in its entirety.

8.7 The procedures contained in Section 8.1 through 8.4 shall be applicable to violations of this Article 8 only. Disputes alleging violation of any other provision of this RTSA, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved exclusively under the grievance adjudication procedures of Article 14.

8.8 The parties acknowledge that the Owner is a party in interest in all proceedings arising under this Article and shall be sent copies of all notifications required under this Article, and has the right, at its option, to initiate or participate as a full party in any proceeding initiated under this Article.

Article 9- Hours of Work, Overtime, Shifts and Holidays: Obligations of Contractor-Employer and Unions

9.1 **Workweek.** The standard workweek shall be Monday through Friday, inclusive. Variations to the standard work week are only permissible to ensure the Project is delivered on-time and on-budget. All variations to the standard work week shall comply with HRS Chapter 104 and Davis Bacon Act, 40 U.S.C. § 276a et seq. Acceptable alternatives to the standard work week when permissible, are limited to Sections 9.2 and 9.10.

9.2 **Compressed Work Week.** The Contractor-Employer, may establish a compressed work week as follows:

- (a) Four (4) consecutive ten (10) hour days during the period from Monday through Friday. Any hours worked before the regular established starting time or after the regular established quitting time, or hours over eight (8) consecutive hours, and any hours worked beyond the forty (40) hour workweek shall be compensated at the appropriate overtime rate.
- (b) Four (4) nine (9) hour days during the period from Monday through Thursday plus four (4) hours on Friday. Any hours worked before the regular established starting time or after the regular established quitting time, or hours over eight (8) consecutive hours, and any hours worked beyond the forty (40) hour workweek shall be compensated at the appropriate overtime rate.

The provisions of subsections (a) and (b) above are not intended to be implemented or administered in such a manner wherein the Covered Employees' work week schedule is revised on a daily basis.

9.3 **Workday.** Except where shift work or night work is scheduled, the normal workday for Covered Employees covered by this RTSA shall begin between the hours of 6:00 a.m. and 8:00 a.m. The starting time for the Construction Contract

work shall be established by the Contractor-Employer prior to the start of the Construction Contract work and, once established, shall not be changed except by written notification from the Contractor-Employer to the Covered Employees and Unions. All hours of work shall comply with the directive and requirements of the Contractor-Employer who has a Construction Contract with the Owner.

Notwithstanding the provisions of this RTSA, the Contractor-Employer may require work to be performed at alternate hours when required by the Owner. Written notice of the alternate work hours shall be provided to the Covered Employees and the Unions. Any overtime hours shall be compensated at the appropriate overtime rate.

9.4 Overtime. Overtime, at the rate of one-and-one-half (1-1/2) times the straight time hourly rate shall be paid for all hours worked under the following circumstances.

- (a) All hours worked in excess of the established eight (8);
- (b) All hours worked in excess of forty (40) hours in any one work week;
- (c) All hours worked by Covered Employees before their regularly scheduled starting time and after their regularly scheduled quitting time, provided the Covered Employee commenced work at the regularly scheduled starting time of the shift and worked the entire shift;
- (d) All work performed on Saturdays and Sundays; and
- (e) All work performed on Holidays described in this RTSA.

9.5 Calculation of Overtime Hours. Overtime hours shall be calculated at 1/10th of an hour, i.e., six (6) minute increments and otherwise comply with all applicable federal and State laws.

9.6 No Pyramiding. Whenever two or more overtime or premium rates are applicable to the same hour or hours worked, there shall be no pyramiding or adding together of such rates and only the higher of the applicable rates shall be applied.

9.7 Assignment of Overtime Work. If overtime work is to be assigned, the work shall be assigned to the members of the crew (to the extent needed) who, during the regular workday, have been performing the particular work involved, except that the Steward will be afforded the opportunity to be included in that work, provided the Steward is qualified to perform the work required. The Contractor-Employer will notify all members of the crew as early as reasonable possible of any overtime work.

9.8 Meal Period.

- (a) Covered-Employees shall be afforded a meal period of at least thirty (30) minutes, which will begin within the period from the third (3rd) through the fifth (5th) hour of a shift. Covered-Employees required to work more than five (5) hours without starting a meal period, shall be paid at the applicable overtime rate for all time worked after the fifth (5th) hour or until such time as Covered Employees are afforded the opportunity to eat.
- (b) Where Covered Employees are being paid the overtime rate by reason of Saturday, Sunday or holiday work, the aforementioned meal period premium shall be computed at two (2) times the regular rate for all hours worked after the fifth hour until such time as they are afforded the opportunity to eat.
- (c) Whenever overtime work exceeds two-and-one-half (2-1/2) hours past the quitting time of the shift, Covered Employees will be afforded a meal period of at least thirty (30) minutes at the conclusion of the two-and-one-half (2-1/2) hour period of overtime work. This meal period shall not be paid for or counted as time worked. If overtime work continues for four (4) hours after the conclusion of this meal period, Covered Employees will be afforded an additional unpaid meal period at the end of the each subsequent four (4) hour period.
- (d) If a Covered Employee qualifies for a meal period as provided in paragraph (c) of this Section 9.8, the Contractor-Employer shall provide a meal of suitable quality and nutrition.
- (e) Covered Employees not afforded a meal period as provided for in paragraph (c) of this Section 9.8, shall be paid at two (2) times the Covered Employee's regular straight time rate for all time worked after the applicable period of overtime work until such time as said Covered Employee is afforded the opportunity to eat.

9.9 Show-up Time. Covered Employees ordered to report to work at a job site at which no employment is provided shall be entitled to one (1) hour's pay unless prevented from working for reasons beyond the control of the Contractor-Employer (including inclement weather).

The Contractor-Employer may require or request a Covered Employee to remain on the job for up to thirty (30) minutes past the Covered Employee's normal starting time pending possible abatement or cessation of inclement weather, or other cause which is preventing work from starting, without paying show up time to the employee. Should such requirement or request extend beyond thirty (30) minutes past the Covered Employee's normal starting time, the Covered Employee shall be entitled to show up time pay equal to one (1) hour's pay,

unless such employee quits, voluntarily lays out, or is suspended or discharged prior to the completion of a one (1) hour period. If the Contractor-Employer causes the Covered Employee to start work pursuant to such requirement or request, the Covered Employee will be entitled to a minimum of one (1) hour show up time unless such employee quits, voluntarily lays out, or is suspended or discharged prior to the completion of the one (1) hour period.

Show-up time shall not be considered as hours worked for purposes of making the Contractor-Employer contributions to any applicable benefits program; provided however, that if, after remaining on the job as provided above, Covered Employees are then put to work, show-up time shall be counted as hours worked for the purpose of making Contractor- Employer contributions to any applicable benefits program.

9.10 Shift Work. Shift work may be utilized to meet the Construction Contract schedule, or otherwise to comply with the Construction Contract requirements or written directive from the Owner. Shift work options under this RTSA include the following:

- (a) Two-Shift Operation. Where a two-shift operation is scheduled, the first eight (8) hours of work per day (exclusive of no-paid meal period) shall be paid for at the Covered Employee's regular straight time rate of pay. Where a two-shift operation is scheduled on the basis of a workweek of four (4) consecutive ten (10) hour days, then the straight-time rate of pay shall prevail for the Covered Employee's first eight (8) hours of work (exclusive of non-paid meal period).
- (b) Three-Shift Operation. Where a three-shift operation is scheduled, the first eight (8) hours of work per day (exclusive of a non-paid meal period) shall be paid at the Covered Employee's regular straight-time rate of pay. The length and schedule of working hours on any of the three shifts (whether 8, 7-1/2, or 7 hours) shall be as determined and scheduled at the Contractor-Employer's sole discretion provided;

That on each shift (whether scheduled on a 8, 7-1/2, or 7 hour basis), the Contractor-Employer shall provide Covered Employees with eight (8) straight-time hours of work opportunity (exclusive of meal periods) or pay for same. This does not apply where the Covered Employee quits, voluntarily lays out, or is suspended or discharged prior to the completion of an eight (8) hour period, or the Contractor-Employer is unable to provide such work due to weather conditions, equipment breakdown, power failure, work stoppage, labor disputes, accident, or other circumstances beyond the control of the Contractor-Employer.

The Contractor-Employer may address additional shift work options and configurations to respond to unique jobsite conditions, work impediments or

Construction Contract schedule restraints. Such agreements shall be reduced to writing outlining the specific details and reviewed with the Unions and may become a memorandum of agreement to this RTSA.

9.11 Special Weekend Pay Provisions: On shift work, Covered Employees working a shift who come off work on Saturday morning are to be considered working Friday. Covered Employees working a shift coming off work on Sunday morning are to be considered working Saturday. Covered Employees working a shift coming off work on Monday morning are to be considered working Sunday. The principle that applies is that the rate of pay (straight-time or overtime) in effect at the start of the shift shall continue until the end of that shift, notwithstanding, the "face time on the clock". However, this Section shall comply with HRS Chapter 104 and Davis Bacon Act, 40 U.S.C. Sec. 276a et seq.

9.12 Night Work. When night work is scheduled Monday through Friday, the first eight (8) hours of work per day (exclusive of an unpaid meal period) shall be paid at the regular straight-time rate of pay.

On dewatering, concrete pours, concrete curing, temporary heat and protection of concrete operations, all overtime shall be at a rate of one and one-half (1-1/2) times as required by HRS Chapter 104 and Davis Bacon Act 40 U.S.C.

§ 276a et seq. When shift work is established for such work operations, the shift premiums shall apply.

9.13 Emergency Call-Out. Covered Employees called out to perform emergency work and who so report at the time specified, shall be paid at the applicable overtime rate for all hours worked on such emergency call-out. Such Covered Employees shall receive a minimum of two (2) hours work, or if two (2) hours work is not furnished, a minimum of two (2) hours pay.

The minimum pay requirement referenced herein, shall not apply if Covered Employees quit, voluntarily lay out or are suspended or discharged prior to the completion of the two (2) hour period. Also, the minimum pay requirement shall not apply if the emergency work for which Covered Employees are called out continues up to the Covered Employees' normal starting time. In such situations, Covered Employees shall be paid at the overtime rate only for the actual number of hours worked (excluding any applicable travel time) up to the Covered Employees' normal starting time.

In computing time spent on emergency call-out work, such time shall include time spent in traveling from the Covered Employee's home or the place from which the Covered Employee was called, as the case may be, directly to the job site, but shall not include the return trip.

The provisions of Sections 9.6 and 9.8 shall apply to Covered Employees who are performing emergency call-out work.

9.14 Nothing in this Article 9 shall be construed as guaranteeing any Covered Employee eight (8) hours of work per day or forty (40) hours of work per week.

9.15 Holidays. Holidays recognized on this Project shall be the holidays recognized by the State. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. In the event a holiday falls on Saturday, the preceding day, Friday, shall be observed as such holiday.

9.16 Reporting Pay. Any Covered Employee who reports for work and for whom no work is provided shall receive two (2) hours pay provided the Covered Employee remains available for work. Any Covered Employee who reports for work and for whom work is provided shall be paid for actual time worked but not less than four (4) hours provided the employee remains available for work. Procedures for prior notification of work cancellation shall be determined at the Contractor-Employer's pre-job conference.

9.17 Starting Time. The parties reaffirm their policy of a fair day's work for a fair day's wage. There shall be no pay for time not worked unless the Covered Employee is otherwise engaged at the direction of the Contractor-Employer. Covered Employees shall be at their place of work at the starting time and shall remain at their place of work, as designated by the Contractor-Employer, performing their assigned functions until the end of the Covered Employee's shift. The place of work shall be defined as the gang or tool box, or equipment at the Covered Employee's assigned work location or the place where the foreman gives instructions.

9.18 It shall not be a violation of this RTSA or a breach of any provision in the RTSA, when the Owner or Contractor-Employer determines it necessary to shut down work in whole or in part to avoid the possible loss of human life, because of an emergency situation that could endanger the life and safety of an employee. In such cases, Covered Employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Contractor-Employer requests Covered Employees to stand by, the Covered Employees will be compensated for the "stand by time".

9.19 In the event the Contractor-Employer deems it necessary, in keeping with Article 5, it may in its sole discretion develop systems for Covered Employees to check in and out of the Project.

9.20 Payment of Wages:

- (a) Covered Employees shall be paid not later than quitting time on Friday of each week; provided, however, that in no event shall more than one (1) calendar week's wages be withheld at any one time. In the event Friday falls on any holiday (whether recognized under this RTSA or not) on which

local banks will be closed, the Contractor-Employer will make every effort to provide the employees with their paychecks by Thursday of that week. Contractor-Employers will make arrangements for Covered Employees to cash payroll checks at a local Hawaii bank or financial institution.

- (b) Covered Employees discharged for cause shall be paid all wages due at the time of discharge. However, if the discharge occurs at a time and under conditions that prevent the Contractor Employer from making immediate payment, then all wages due must be paid to the Covered Employees no later than the working day following the discharge. Covered Employees who quit shall be paid all wages due no later than the next regular pay day, either through regular pay channels or, if requested by the Covered Employee, by mail. However, if a Covered Employee gives at least five (5) working days written notice of his intent to quit, the Employer shall pay all wages earned and due at the time of separation.

Article 10 - Wages and Benefits: Obligations of Contractor-Employer

10.1 Contractor-Employer shall comply with the following:

- (a) Contractor-Employer shall observe and comply with all applicable provisions of HRS Chapter 104 and Davis Bacon Act, 40 U.S.C. § 276a et seq. relating to wages and hours, including fringe benefits. The Contractor-Employer shall pay all Covered Employees, not less than the prevailing wage rate in conformance with applicable federal and State laws. Where rates differ for any class of Covered Employees, the higher rate shall apply.

- (1) The minimum federal wage rate applicable to each Construction Contract shall be those in the U.S. Department of Labor Wage Determination Decision and Modification in effect ten (10) days prior to the solicitation due date for that Construction Contract.

- (2) The minimum State wage rate applicable to each Construction Contract shall be periodically increased during the performance of each Construction Contract in an amount equal to the increase in the prevailing wages as periodically determined by the State Director of Labor and Industrial Relations. Notwithstanding the provisions of the Construction Contract entered into, if the Director of Labor and Industrial Relations determines that the prevailing wage has increased, the minimum State wage rate applicable to the Construction Contract shall be raised accordingly.

10.2 Contractor-Employers shall contribute fringe benefits pursuant to the applicable Trust Fund Agreements of the respective Unions, and shall adopt and agree to be bound by the written terms of such legally established Trust Fund Agreements specifying the detailed basis on which such contributions are to be made into, and benefits paid out of such trust funds on behalf of its Covered Employees. All Contractor-Employers required to make contributions pursuant to this RTSA authorize the parties to the applicable Trust Fund Agreements to appoint employer trustees and successor employer trustees to administer the trust funds and hereby ratify and accept the employer trustees so appointed as if made by the Contractor-Employers. All Contractor-Employers contributing to trust funds required by this RTSA, shall as a condition of making such contributions be required to sign appropriate participation agreements with such trust funds, provided that nothing contained in such participation agreements or this RTSA is intended to require any Contractor-Employer to become a party to, or to be bound by a collective bargaining agreement, nor is the Contractor-Employer required to become a member of any employer group or association as a condition for making such contributions, nor will the term "jurisdiction of the collective bargaining agreement" as specified in section 4203(b)(2)(B)(i) of the Employee Retirement Income Security Act be defined as anything other than the Scope of the RTSA as delineated in Article 3 herein.

10.3 Payments of fringe benefits specified in Section 10.1 shall be made for actual hours worked. Except as specifically provided for in Sections 9.9 and 9.13, time that is paid for but not worked shall not be counted as hours worked for purposes of making said payments. When calculating contributions for any overtime hours, all fringe benefit contributions shall be paid on the basis of "hours worked" and no overtime multiplier shall apply.

10.4 All references in this Agreement to the payment of wage rates and fringe benefits shall, in all instances, be in strict compliance with HRS Chapter 104 and the Davis Bacon Act, 40 U.S.C. § 276a et seq., and related statutes. The Owner's Contractor-Employer shall monitor Contractor-Employers for compliance with HRS Chapter 104 and the Davis Bacon Act, 40 U.S.C. § 276a et seq. requirements as may be applicable to such Contractor-Employers.

10.5 Wage premiums such as those based on height of work, type of work or material, special skills, etc., shall not be paid unless recognized by the appropriate HRS Chapter 104 or Davis Bacon Act, 40 U.S.C. § 276a et seq. prevailing wage rate or classification.

10.6 Under the terms of this RTSA, no per diem, subsistence, zone pay or zone rates shall apply unless so recognized in the appropriate HRS Chapter 104 or Davis Bacon Act, 40 U.S.C. § 276a et seq. prevailing wage rate determination for the appropriate Construction Contract.

Article 11 - Assignment

11.1 No Contractor-Employer or Union may assign its rights and obligations under this RTSA without the express written consent of the other parties and written notification to the Owner. Any assignment shall include the adoption of the RTSA by the assignee of the assigning party.

Article 12 – Subcontracting: Obligations of Contractor-Employer

12.1 Contractor-Employer agrees that it will not subcontract any work to be performed on the Project by Covered Employees except to an individual, firm, partnership, corporation or any combination thereof or joint venture that signs a Letter of Assent and thereby agrees to become a Contractor-Employer subject to this RTSA. Any Contractor-Employer working on the Project shall, as a condition to working on said Project, perform all work under the terms of this RTSA.

Article 13 - General Work Rules: Obligations of Contractor-Employer and Unions

13.1 Slowdowns, standby crews and featherbedding practices will not be tolerated.

13.2 It is understood that Owner may establish reasonable project rules that will be uniformly applied and adhered to by all Contractor-Employers, the Unions and all employees. These rules will be provided by the Owner to all Contractor-Employers for the Contractor-Employer's pre-job conference and made available in writing to their Covered Employees. These rules shall be provided to the Unions.

Further, Contractor-Employers may also establish reasonable work rules that will be uniformly applied and adhered to by all employees employed by the Contractor-Employer on the Project. These rules shall be provided by the Contractor-Employer at its pre-job conference, to the Unions and the Owner, and made available to the Covered Employees, in writing. If any rule or change in rules conflicts with the RTSA, the RTSA shall prevail. Any disputes regarding rules shall be subject to Article 14 herein.

13.3 Security procedures for the control of tools, equipment and materials are the responsibility of the Contractor-Employer. Covered Employees having in their possession without authorization any property of the Contractor-Employer or of another employee shall be subject to immediate discharge by the Contractor-Employer. The Contractor-Employer will be responsible for the establishment of reasonable security measures for the protection of personal, company and Owner property.

13.4 There shall be no restrictions on the use of any tools by any qualified employee in any emergency situation endangering life, limb or property; or on the use of any tools or equipment for the performance of work within the jurisdiction, provided the employee can safely use the tools and/or the equipment involved.

13.5 The selection of a craft foreman and general foreman and the number of same required shall be entirely the right and responsibility of the Contractor-Employer. It is understood that in the selection of such individuals the Contractor-Employer will give primary consideration to the qualified individuals available in the City and County of Honolulu. If none are available, the Contractor-Employer is free to pick foremen/general foreman from out of the area.

13.6 The Contractor-Employer has the sole and exclusive right to assign specific Covered Employees and/or crews to perform overtime work when such overtime work is necessary to accomplish the job. The overtime work shall be assigned to Covered Employees and/or crew(s), to the extent needed, who performed the work involved during the regular work day or work shift.

13.7 The Contractor-Employer shall provide a convenient and sanitary supply of drinking water, and sanitary drinking cups.

13.8 The Contractor-Employer shall provide adequate sanitary toilet facilities, water, and clean up facilities to Covered Employees.

13.9 The Contractor-Employer shall provide a safe and secure place for storage of tools.

13.10 All required safety equipment will be provided by the Contractor-Employer.

13.11 Contractor-Employer shall provide on-site parking at no cost to Covered Employees. If there is no free parking available within 2,000 feet of the job site, the Contractor-Employer shall reimburse Covered Employee at the lowest parking rate within the 2,000 foot area, upon presentation by the Covered Employee of signed and dated receipts for each parking expenditure. At its option, the Contractor-Employer may furnish transportation from a designated free parking area to and from the job site, in lieu of the above reimbursement.

The Unions and Contractor-Employer shall meet prior to the commencement of the Project to work out mutually agreed provisions to take care of parking expenses in the event receipts for such expenses are not available.

Article 14 - Grievance Procedure: Obligations of Contractor-Employer and Unions

14.1 This RTSA is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without Work Disruption.

14.2 Contractor-Employer, Unions and Covered Employees, collectively and individually, recognize the importance of maintaining continuous and uninterrupted performance of the construction work on the Project, and agree to resolve disputes, except those subject to Article 8 and Article 15, in accordance with the grievance-arbitration provisions in this Section 14.

14.3 Any complaint or dispute arising out of and during the term of this RTSA, other than those subject to Article 8, and those trade jurisdictional disputes subject to Article 15, shall be considered a grievance and subject to resolution in accordance with the grievance-arbitration provision of this Article 14.

14.4 Grievances under this Article shall be presented to the Contractor-Employer, or to the Union, as the case may be, allegedly at fault within seven (7) working days after the alleged violation occurred or first became known to the grieving party; provided, however, that in cases of discharge, the grievance shall be submitted within seven (7) working days of the discharge. The time limit for grievances involving discharge shall not commence until such time as the Contractor-Employer provides a written reason for the discharge. Failure to so present the grievance shall be deemed as a waiver of remedy.

14.5 Grievance Procedure shall be as follows:

- (a) First Step (Job Site Supervisor or Union Steward). A grievance shall first be presented to the job site supervisor or Union Steward who has authority to review and adjust grievances.
- (b) Second Step (Contractor-Employer's Authorized Representative or Authorized Union Representative). If the matter is not settled in the First Step within three (3) working days after presentation to the job site supervisor or Union Steward, the Union or Contractor-Employer, if it wishes to pursue the grievance further shall submit it to the Contractor-Employer's authorized representative or Union representative. Such submittal must be made in writing no later than five (5) working days after expiration of the initial three (3) working days. Such written submittal shall specify the nature of the grievance.
- (c) Third Step (Arbitration). If the matter is not settled in the Second Step within three (3) working days the matter shall be submitted to Arbitration.

14.6 Contractor-Employer and the Unions agree to the following permanent panel of five (5) arbitrators from which an Arbitrator shall be selected to hear and decide disputes arising under this Article 14. The members of the panel are:

R. Charles Bocken

E. John McConnell

Michael F. Nauyokas

Clyde Matsui

Patrick Yim

In the event any panel member is no longer available to serve under this RTSA, the Owner and the Unions collectively shall agree on a substitute panel member within thirty (30) calendar days of notification by the panel member of the member's unavailability to serve. If the parties cannot reach an agreement within the specified time, the remaining panel members shall establish a list of five (5) individuals from which the Owner and the Unions collectively shall select the substitute panel member by striking an individual from the list in an alternating and equal number of strikes. The remaining individual shall thereafter serve as the new panel member in substitution for the member who is no longer available to serve.

14.7 Selection of the Arbitrator from the panel shall be by mutual agreement of the Contractor-Employer and the Union(s) involved in the dispute. If an Arbitrator cannot be mutually agreed to by the parties, each party shall have an alternating and equal amount of strikes from the panel of five (5) and the remaining panel member shall serve in the dispute. The Contractor-Employer or Union(s) invoking this procedure shall notify the Arbitrator selected. In the event that the selected Arbitrator is unavailable, the Contractor-Employer and Union(s) shall mutually agree upon another Arbitrator.

14.8 The Arbitrator may consider and decide only the particular grievance presented to him/her by the Contractor-Employer and the Union, and the decision of the Arbitrator shall be based solely upon an interpretation of the provisions of this RTSA and the evidence presented at the hearing. The Arbitrator shall not have the right or authority to amend, take away, modify, add to, or change any of the provisions of this RTSA. In deciding the issue, the Arbitrator's decision shall be final and binding upon the parties provided it does not exceed the limitations contained herein.

14.9 Except as provided in Section 6.5 of Article 6 and Section 8.4(g) of Article 8, the parties will share, pro rata, the fees and expenses of the Arbitrator to hear

the dispute. Each party will be responsible for its own legal fees and costs. The Arbitrator shall conduct a hearing and issue a written decision resolving the grievance. The award by the Arbitrator shall be final and binding on the Parties to the Arbitration. Either party to the arbitration may elect to notify the Owner concerning the facts and content of the arbitration. If elected by the Owner, the parties agree that the Owner has the absolute right to attend and observe the arbitration.

Article 15 - Jurisdictional Disputes

15.1 The assignment of work will be solely the responsibility of the Contractor-Employer performing the work involved.

15.2 Any jurisdictional dispute between or among Unions party to this Agreement which is not resolved between the parties to the dispute within seven (7) working days of its presentation to the Contractor-Employer, shall be referred to a mutually agreed upon arbitrator. The Arbitrator shall conduct a hearing within twenty (20) working days, and render a decision within twenty (20) working days of the hearing. The Arbitrator shall apply local industry standards applicable to the type of work performed, to decide the classification of the work and the Union to whom the work in the classification belongs. The Arbitrator's decision shall be final and binding. The award of the Arbitrator shall decide which Union shall be deemed the representative of the Covered Employees performing the disputed work. Selection of the Arbitrator shall be by mutual agreement of the Unions involved in the dispute, from the panel of arbitrators listed below. If an Arbitrator cannot be mutually agreed to by the parties, each party shall have an alternating equal amount of strikes from the panel, and the remaining panel member shall serve in the dispute. The parties will share, pro rata, the fees and expenses of the Arbitrator to hear the dispute. Each party will be responsible for its own legal fees and costs. The panel of Arbitrators shall be:

Alvin Kobayashi

Glenn Kaneshige

Lance Wilhelm

Bill Wilson

Ken Kobatake

In the event any panel member is no longer available to serve under this RTSA, the Owner's Contractor-Employer and the Unions collectively shall agree on a substitute panel member within thirty (30) calendar days of notification by the

panel member of the member's unavailability to serve. If the parties cannot reach an agreement within the specified time, the remaining panel members shall establish a list of three (3) individuals from which the Contractor-Employer and the Unions collectively shall select the substitute panel member by striking an individual from the list in an alternating and equal number of strikes. The remaining individual shall thereafter serve as the new panel member in substitution for the member who is no longer available to serve.

15.3 Where any jurisdictional dispute between or among Unions party to this Agreement and unions that are not a party to this Agreement, is not resolved between the parties to the dispute within seven (7) working days of its presentation to the Contractor-Employer, the initial assignment of work by the Contractor-Employer shall remain in effect, and the dispute will not be subject to arbitration pursuant to Article 15.2 above

15.4 All jurisdictional disputes shall be resolved without the occurrence of a Work Disruption of any nature and the Contractor-Employer's assignment of work shall be adhered to until the dispute is resolved. Covered Employees violating this Section shall be subject to immediate discharge, and shall not be eligible for rehire on the Project by any Contractor-Employer.

15.5 Each Contractor-Employer will conduct a pre-job conference with the Unions prior to commencing the work. The Owner will be advised in advance of all such conferences and will attend and may participate in its sole discretion.

15.6 In accordance with Article 8 there shall be no Work Disruption of any kind, in protest of any such award or resolution of any jurisdictional dispute.

Article 16 - Safety, Environmental and Health

16.1 It shall be the responsibility of Contractor-Employer to ensure safe working conditions and employee compliance with any safety rules established by the Owner and the Owner's controlled insurance program (OCIP), if one is in place, and in accordance with applicable federal or State laws and regulations.

16.2 Covered Employees shall be bound by the safety, security and site access rules established by the Owner and Contractor-Employer for the Project. These rules will be published and given to each employee as part of their new-hire orientation, as well as posted throughout the Project. A violation of these rules shall constitute just cause subject to termination under this RTSA. If justifiably discharged for the above reason, the Covered Employee shall not be eligible for rehire on the project for a period of not less than ninety (90) days.

16.3 The Contractor-Employer shall conduct safety meetings at least once a week for all Covered Employees. Such mandatory meetings will be conducted on paid time. Attendance at such meetings is mandatory and employees who do not attend may be subject to disciplinary action.

16.4 Covered Employees shall use, maintain and care for personal protective equipment and other health and safety equipment issued or assigned them. Proper use of the equipment is mandatory, and failure to do so may result in disciplinary action up to and including discharge.

16.5 To further the health, safety and security of the work place, the Contractor-Employer and Unions agree to implement the policy covering drugs and other controlled substances pursuant to Article 17.

Article 17 – Substance Abuse Policy and Drug and Alcohol Testing Procedure

17.1 The Contractor-Employer and Unions shall implement the “Policy Covering Drugs and Other Controlled Substances For The Honolulu High-Capacity Transit Corridor Project” which is marked as Attachment C and which is in accordance with and in compliance with U.S. Department of Transportation Rules set forth in 49 CFR Part 40. The Contractor-Employer and the Unions shall agree to accept the Owner’s revisions to this Policy to comply with any changes in the U.S. Department of Transportation Rules.

Article 18 – Joint Administrative Committee

18.1 The parties to this RTSA shall establish a four (4) person Joint Administrative Committee (JAC). This JAC shall be comprised of a management party made up of one (1) representative selected by the Owner and one (1) representative from the construction manager; and a labor party made up of two (2) representatives from the Unions. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this RTSA.

18.2 The JAC shall not be involved in or rule upon any individual grievances. Outside of the context of an individual grievance, the JAC will resolve any interpretations or clarifications of this RTSA that may be required by the Unions and/or the Contractor-Employers by majority vote with such resolutions to be binding on all signatories of this RTSA as provided herein. Any question regarding the meaning, interpretation, or application of the provisions of this RTSA, except relating to Article 8, shall be referred directly to the JAC for resolution prior to such question being referred to arbitration in the event the JAC is unable to resolve the question. Such resolutions or clarifications shall be

reduced to writing, jointly signed by the JAC and distributed to the signatory parties to this RTSA. Labor and management shall each have one equal vote at JAC meetings regardless of the number of attendees. Labor and management shall jointly chair the JAC.

18.3 In addition to its charter to rule on interpretations or clarifications to this RTSA, the JAC shall annually review the effectiveness of the RTSA in meeting the RTSA goals of:

- (a) No construction Work Disruption on this Project.
- (b) Reducing friction that may arise when union and open shop employees are working at a common jobsite.
- (c) High quality, cost effective construction work.
- (d) Providing training opportunities for local craft workers.
- (e) Ensuring compliance with health and safety policies and laws.

The annual review shall be the basis for the JAC to determine the feasibility of a project labor agreement for yet to be determined mixed-use transit oriented development zones as defined by Ordinance No. 09-4. Should the City and County of Honolulu have an ownership interest in the transit oriented development, it will strongly consider the adoption of a similar project labor agreement for that project based upon the JAC's recommendation.

Article 19 - No Discrimination

19.1 The Contractor-Employer and Unions shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, sexual orientation, marital status, ancestry, arrest or court record or any other protected status pursuant to federal or State law or regulation.

19.2 The Unions acknowledge and agree to use their utmost efforts to assist the Contractor-Employer with any legally prescribed goals for employment of females and minorities on the Project.

19.3 Any complaint regarding the application of these provisions shall be brought to the immediate attention of the Contractor-Employer and the Owner, and shall be promptly considered and resolved by the Contractor-Employer.

19.4 The use of the masculine or feminine gender in this RTSA shall be construed as applying to both genders.

Article 20 - Savings Clause

20.1 If any Article or provision of this RTSA shall be declared invalid, inoperative or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the federal or State government, the Contractor-Employers and the Unions, shall suspend the operation of such Article or provision during the period of its invalidity. Following written notice of the invalidity of the Article or provision, the Owner and the Unions shall in good faith and within seven (7) calendar days, negotiate a substitute Article or provision to replace the Article or provision declared invalid. If the parties are unable to reach agreement within the specified time, the Owner shall adopt, to the extent feasible, a substitute Article or provision which will meet the objections to address the invalidity and which will be in accord with the intent and purpose of the invalidated Article or provision. The parties agree to implement and abide by the amended Article or provision, but the Unions may elect arbitration under Article 14, if they disagree with the Owner's adoption. The parties will give notice of the new provision to the Contractor-Employers.

20.2 If any Article or provision of this RTSA shall be held invalid, inoperative or unenforceable by operation of law or by any of the above mentioned tribunals of competent jurisdiction, the remainder of this RTSA shall not be affected thereby.

20.3 If the Federal Acquisition Regulatory Council adopts rules to implement the Executive Order 13502 relating to Use of Project Labor Agreement for Federal Construction Projects that impacts the rights and relationships of parties to this RTSA, Sections 20.1 and 20.2 shall apply.

20.4 If there is a change in law resulting in the possibility of this RTSA jeopardizing the receipt by the Owner of any federal grant-in-aid or other federal allotment of money for the Project, the conflicting or contrary provision shall be deemed struck from this RTSA and the Owner and the Unions will follow the procedures in Sections 20.1 to determine whether and what modification to this RTSA should be made.

20.5 If any provision in this RTSA conflicts with or is contrary to the requirements and conditions for the receipt of federal or State funding and jeopardizes the receipt by the Owner of federal or State funding for the Project, the conflicting or contrary provision will be deemed struck from this RTSA and the Owner and the Unions will follow the procedures in Sections 20.1 to determine whether and what modification to this RTSA should be made.

20.6 In the event the Owner is required to formalize a small business program or is required to implement a disadvantaged business enterprise program for the receipt of federal or State funding, this RTSA shall be amended to comply with

the goals of the program, and the Owner and the Unions may meet and confer for this purpose.

Article 21 – Duration

21.1 This RTSA shall be effective on the date hereinafter stated and shall continue in full force and effect for the duration of the Project construction work as described in Articles 2 and 3 of this RTSA, unless the Owner has elected to terminate this RTSA, in whole or in part, pursuant to Article 8.6 or as otherwise provided for by law.

21.2 Turnover. Construction of any phase, portion, section or segment of this Project shall be deemed complete when such phase, portion, section or segments has been turned over to the Owner by the Contractor-Employer as evidenced by the Owner's acceptance of such phase, portion, section or segment. As areas and systems of the Project are inspected and construction tested and/or approved and accepted by the Owner, the RTSA shall have no further force or effect on such items or areas, unless construction or renovation covered by this RTSA is subsequently performed.

21.3 Notice. Notice of each "acceptance" by the Owner will be provided to the Unions with a description of what portion, segment, etc., has been accepted. Final acceptance may be subject to a "punch list", and in such case, the RTSA will continue to apply to each such item on the list until it is completed to the satisfaction of the Owner, and Notice of Acceptance is given by the Owner to the Contractor-Employer(s).

21.4 Termination. Final termination of all obligations, rights and liabilities and disagreements shall occur, except for the processing and disposition of any then-pending grievances, upon delivery to Contractor-Employer and Union of a notice from the Owner stating that acceptance by the Owner has occurred for the Construction Contract for the Project.

Article 22 – Miscellaneous Provisions

22.1 Scheduled Re-Opening and Modification of this RTSA.

With respect to any Construction Contracts on the Project which are bid and awarded after the fifth anniversary of the effective date of this RTSA, and every five (5) years thereafter for the duration of this RTSA, the Owner and the Unions collectively may mutually agree to reopen specific provisions in the RTSA for such construction contracts.

If the Owner and the Unions feel that any provisions of this RTSA are not

meeting the needs of the Project, by mutual agreement, they may agree to specific modifications to such provisions.

Any changes or modifications agreed upon by the Owner and the Unions collectively shall be memorialized in writing, dated and signed, and thereafter shall be incorporated as an amendment to this RTSA. Any Construction Contracts bid and awarded thereafter shall require the Contractor-Employers, together with their subcontractors or whatever tier, to execute a Letter of Assent, binding them to the amended RTSA.

This Article does not in any way impact the Owner's rights under Article 20 – Savings Clause.

22.2 Construction.

- (a) Each party signatory to this RTSA has read, reviewed and fully understands the terms of this RTSA and agrees to be bound by this RTSA.
- (b) Each party to this RTSA has had the opportunity to have their legal counsel and/or advisors review this document.

22.3 Delivery of Notice

When notice to a party is required under this RTSA, notice in writing or as otherwise provided, shall be provided to the party at the address set forth herein, or in any executed Letter of Assent:

To the Owner: Managing Director
 City & County of Honolulu
 530 South King Street, Room 306
 Honolulu, Hawaii 96813

Director
Department of Transportation Services
City & County of Honolulu
650 South King Street, 3rd Floor
Honolulu, Hawaii 96813

RTSA Administrator
Department of Transportation Services
City & County of Honolulu
650 South King Street, 3rd Floor
Honolulu, Hawaii 96813

To the Contractor-Employer: (Letters of Assent shall set forth.)

To the Union: See Attachment B, attached.

Notice issued to each party at the address it provided shall satisfy the notice requirements of this RTSA unless the party prior thereto had notified all parties to this RTSA of any change to the party's address.

22.4 Applicable Law

Except to the extent controlled by federal law, this RTSA shall be construed in accordance with the laws of the State of Hawaii, without regard to its conflicts of laws provisions. Additionally, whenever state law is referred to in this RTSA, it is understood that the referenced state law is the law of the State of Hawaii.

22.5 Warranty of Authority

Each person signing this RTSA or a Letter of Assent warrants and represents that such person has the authority to sign on behalf of himself or herself or for the entity such person represents and that this RTSA has been validly authorized and constitutes a legally binding and enforceable obligation.

22.6 Entire Agreement.

This RTSA contains all of the agreements and terms agreed upon between and among the parties to this RTSA with regard to the matters set forth herein and supersedes and cancels each and every other prior conflicting agreement, promise and/or negotiation between any of the parties.

22.7 Counterparts.

Owner and Unions agree that this RTSA may be executed in any number of counterparts, and if executed in counterparts, said counterparts shall be transmitted to the Owner by the Unions by the most expeditious means available provided that if an original signature page is not initially provided, the Unions shall thereafter transmit the original signature page to the Owner as soon as practicable. Each of the counterpart signatures when taken together will constitute one and the same document.

This RTSA is entered into on this 17th day of November, 2009, Honolulu, Hawaii.

CITY AND COUNTY OF HONOLULU

Mufi Hannemann
Mayor

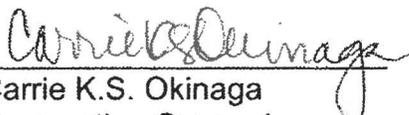
APPROVED:

Rix Maurer III
Director
Department of Budget and Fiscal Services

APPROVED:

Wayne Y. Yoshioka
Director
Department of Transportation Services

APPROVED AS TO
FORM AND LEGALITY:



Carrie K.S. Okinaga
Corporation Counsel

**United Brotherhood of Carpenters
and Joiners of America, Local 745**

Name: **Ronald I. Taketa**
Title: **Financial Secretary**
Business Manager

Operating Engineers Local 3

Name: **William K. Mahoe**
Title: **Treasurer**

**Carpet, Linoleum & Softile Local
1926**

Name: **Malcolm Ahlo**
Title: **Business Representative**

**Glaziers Architectural Metal &
Glass Workers Local 1889**

**Drywall, Tapers & Finishers Local
1944**

Name: **Joseph Bazemore**
Title: **Business Representative**

**International Union of Bricklayers
& Allied Craft Workers Local 1**

Name: **Richard Taggere**
Title: **Business Representative**

**International Union of Painters &
Allied Craft Workers Local 1791**

Name: **Nolan G. Moriwaki**
Title: **Business Manager**

Ironworkers Shopmen Local 803

Name: **Ronald Hayashi**
Title: **Business Representative**

Iron Workers Local 625

Name: **Eugene B. Paris**
Title: **Financial Secretary – Treasurer
Business Manager**

**Laborers' International Union of
North America, Local 368**

Name: **Joseph V. O'Donnell**
Title: **Financial Secretary – Treasurer
Business Manager**

**Operative Plasterer's & Cement
Masons International Association
Local 630**

Name: **Peter A. Ganaban**
Title: **Business Manager**

**Roofers, Waterproofers & Allied
Workers United Union of Roofers
Local 221**

Name: **Nolan G. Moriwaki**
Title: **Business Manager**

Name: **Vaughn Chong**
Title: **Business Manager**

ATTACHMENT "A"
LETTER OF ASSENT

Director, Department of Transportation Services
City and County of Honolulu
650 S. King Street, 3rd Floor
Honolulu, Hawaii 96813

RTSA Administrator, Department of Transportation Services
City and County of Honolulu
650 S. King Street, 3rd Floor
Honolulu, Hawaii 96813

Dear Sir or Madam,

Subject: Project Labor Agreement for the Honolulu High-Capacity
Transit Corridor Project
_____ RFP No. _____
(title of contract)

This is to certify that the undersigned Contractor-Employer has examined a copy of the Rapid Transit Stabilization Agreement (RTSA) dated November 17, 2009, between the City and County of Honolulu and the United Brotherhood of Carpenters and Joiners of America, Local 745; Operating Engineers Local 3; Carpet, Linoleum & Softile Local 1926; Drywall, Tapers & Finishers Local 1944; Glaziers Architectural Metal & Glass Workers Local 1889; International Union of Bricklayers & Allied Craft Workers Local 1; International Union of Painters & Allied Craft Workers Local 1791; Ironworkers Shopmen Local 803; Iron Workers Local 625; Laborers' International Union of North America, Local 368; Operative Plasterer's & Cement Masons International Association Local 630; Roofers, Waterproofers & Allied Workers United Union of Roofers Local 221. The undersigned Contractor-Employer hereby agrees to comply with all of the terms and conditions of the RTSA as such RTSA may, from time to time, be amended or interpreted pursuant to its terms.

It is understood that the signing of the Letter of Assent shall be as binding on the undersigned Contractor-Employer as though the undersigned Contractor-Employer had signed the above-referenced RTSA. The Contractor-Employer agrees that all its subcontractors, of whatever tier, shall execute the Letter of Assent and agree to be bound by the RTSA for all work within the scope of the Construction Contract covered under the Project definition in the RTSA.

ATTACHMENT "A"
LETTER OF ASSENT

This Letter of Assent shall become effective and binding upon the undersigned Contractor-Employer on this _____ day of _____, 20___, and shall remain in full force and effect until the completion of the above-identified Contractor-Employer's Construction Contract. Upon signing this Letter of Assent, Contractor-Employer shall issue notice to the parties to the RTSA in the form attached as Attachment B (Union Addresses), providing the Contractor-Employer's address at which notice is to be provided when notice to the Contractor-Employer is required under the provisions of the RTSA.

Sincerely,

Contractor-Employer

By: _____
Its: _____

ATTACHMENT "B" UNION ADDRESSES

**United Brotherhood of Carpenters
and Joiners of America, Local 745**

Name Ronald I. Taketa
Financial Secretary
Business Manager

Title
1311 Houghtailing Street

Address
Honolulu, Hawaii 96817

Address

Operating Engineers Local 3

Name William K. Mahoe
Treasurer

Title
1075 Oopakapaka Street

Address
Honolulu, Hawaii 96707

Address

ATTACHMENT "B" UNION ADDRESSES

**Carpet, Linoleum & Softile Local
1926**

Malcolm Ahlo
Name
Business Representative
Title
2240 Young Street
Address
Honolulu, Hawaii 96826
Address

**Glaziers Architectural Metal &
Glass Workers Local 1889**

Richard Taggere
Name
Business Representative
Title
2240 Young Street
Address
Honolulu, Hawaii 96826
Address

**International Union of Painters &
Allied Craft Workers Local 1791**

Ronald Hayashi
Name
Business Representative
Title
2240 Young Street
Address
Honolulu, Hawaii 96826
Address

**Drywall, Tapers & Finishers Local
1944**

Joseph Bazemore
Name
Business Representative
Title
2240 Young Street
Address
Honolulu, Hawaii 96826
Address

**International Union of Bricklayers
& Allied Craft Workers Local 1**

Nolan G. Moriwaki
Name
Business Manager
Title
2251 North School Street
Address
Honolulu, Hawaii 96819
Address

Ironworkers Shopmen Local 803

Eugene B. Paris
Name
Financial Secretary – Treasurer
Business Manager
Title
94-497 Ukee Street
Address
Waipahu, Hawaii 96797
Address

ATTACHMENT "B" UNION ADDRESSES

Iron Workers Local 625

Joseph V. O'Donnell

Name
Financial Secretary – Treasurer
Business Manager

Title
94-497 Ukee Street

Address
Waipahu, Hawaii 96797

Address

**Laborers' International Union of
North America, Local 368**

Peter A. Ganaban

Name
Business Manager

Title
1617 Palama Street

Address
Honolulu, Hawaii 96817

Address

**Operative Plasterer's & Cement
Masons International Association
Local 630**

Nolan G. Moriwaki

Name
Business Manager

Title
2251 North School Street

Address
Honolulu, Hawaii 96819

Address

**Roofers, Waterproofers & Allied
Workers United Union of Roofers
Local 221**

Vaughn Chong

Name
Business Manager

Title
2045 Kamehameha IV Road

Address
Honolulu, Hawaii 96819

Address

ATTACHMENT "C"

POLICY COVERING DRUGS AND OTHER CONTROLLED SUBSTANCES FOR THE HONOLULU HIGH CAPACITY TRANSIT CORRIDOR PROJECT

WHEREAS, the Unions and the Contractor-Employer recognize that drug and alcohol abuse is a problem that affects many employees, and wish to address this problem;

WHEREAS, especially in the construction industry, an employee who is under the influence of illegal drugs or alcohol while at the workplace or is abusing controlled substances while at the workplace is a danger not only to himself or herself but to his or her fellow employees;

WHEREAS, the Unions and the Contractor-Employer wish to make the workplace a better and safer place of employment by eliminating the danger that such employees create by being under the influence of drugs or alcohol at the workplace;

WHEREAS, such employees who are under the influence of drugs or alcohol have lower productivity than employees who are drug and alcohol free;

WHEREAS, the Unions and the Contractor-Employer wish to have Covered Employees working at normal capacity, doing an honest day's work for an honest day's pay;

WHEREAS, the Unions and the Contractor-Employer wish to comply with the Federal Law known as the "Drug-Free" Workplace Act of 1988," Public Law 100-690 in order to obtain a drug-free workplace.

A. Prohibition Against Alcohol and Controlled Substances At the Workplace

1. Every Covered Employee who is employed by the Contractor-Employer and who is covered by the Project Labor Agreement is prohibited from unlawfully manufacturing, distributing, dispensing, possessing, using or being under the influence of a controlled substance (paragraph J, below) or alcohol at the Contractor-Employer's workplace (paragraph O.5, below). Any Covered Employee who violates this prohibition shall be subject to immediate removal from the aforesaid workplace, as well as other disciplinary action, including discharge.

B. Use Of Over-The-Counter Medications Or Medications Prescribed By A Licensed Physician

1. Use of over-the-counter medications or of a medication prescribed by a licensed physician in accordance with the physician's orders, is NOT prohibited; but to avoid an unwarranted accusation and/or other misunderstanding, the Covered Employee is required to report the fact that he is taking such medication to his foreman and/or supervisor, prior to commencing work at the workplace.
2. Any Covered Employee who is lawfully using a controlled substance (paragraph O.4, below) at the workplace, i.e., taking prescription drugs (paragraph O.6, below) in accordance with a doctor's order, while not subject to disciplinary action, may nevertheless be required to leave the workplace, if consumption of that medication presents a safety hazard or prevents him from being able to properly perform his work.

C. Education and Awareness Program

To complement and foster the Joint Contractor-Employer and Unions Policy and Program of achieving a drug-free workplace and an alcohol-free workplace, the Contractor-Employer shall establish and implement a Drug Education And Awareness Program which shall include the following:

1. Dissemination of information to Covered Employees at least twice a year regarding the dangers of drugs in the workplace, the Contractor-Employer policy of maintaining a drug-free workplace; the penalties that may be imposed for drug or alcohol abuse violations; and any available substance counseling programs and services, substance abuse rehabilitation programs, employee assistance programs, and other community services that are available to those who have a drug or alcohol problem.

In connection with the above, Covered Employees will be encouraged to seek counseling and other assistance from these agencies on a self-referral basis if they feel they have a need for it. A Covered Employee who voluntarily seeks help and undergoes treatment for drug or alcohol abuse prior to being required to undergo testing will NOT be subject to disciplinary action because of admitted substance abuse, provided he or she thereafter remains drug and alcohol free after commencing treatment. Failure to remain drug or alcohol free shall be considered as that Covered Employee's First Offense and subject the Covered Employee to the actions set forth under paragraph G.1.(a), below.

2. Top management and supervisory employees will also be trained to assist in identifying and addressing the matter of unlawful use of alcohol or of a controlled substance by Covered Employees, including the making of referrals to appropriate agencies.

D. Pre-Employment Testing

1. Effective thirty (30) days after execution of the Project Labor Agreement all current employees on the Contractor-Employers' payroll will not be required to undergo a pre-employment substance abuse test. However, an employee/applicant who has been laid off for thirty (30) calendar days or more or a new employee will be required to undergo a pre-employment substance abuse test as a condition of consideration of employment with the Contractor-Employer or prior to being approved to work at any Contractor-Employer facility or work area.
2. Pre-employment testing must be in place and such testing must actually be conducted before the Contractor-Employer can conduct Periodic and Random Testing (paragraph G.I.(b) and (c), below).

E. Additional Considerations Applicable To Companies Regulated By The U.S Department Of Transportation

In the event the Contractor-Employer is required to comply with U.S. Department of Transportation regulations regarding workplace drug testing programs, the Contractor-Employer and the Unions agree to comply with those regulations. It is understood and agreed that compliance with the U.S. Department of Transportation regulations shall include:

1. Pre-employment and post-accident testing of applicants and Covered Employees subject to U.S. Department of Transportation regulation;
2. Appointment of a Medical Review Officer (MRO) who will be responsible for making the final decision to verify a positive test result after review of all relevant data on the testing and any explanations offered by the individual tested;
3. Prohibiting Covered Employees who are subject to U.S. Department of Transportation regulation and who have tested positive from returning to work unless they are released to return to work by the Medical Review Officer;
4. Requiring Covered Employees who are subject to U.S. Department of Transportation regulation and who have tested positive to undergo increased, unannounced testing for up to 60 months; and
5. Retention of all positive test results for 5 years and retention of all negative results for 12 months.

F. Immediate Removal From Job/Substance Abuse Testing

1. The Contractor-Employer shall have the authority to immediately remove any Covered Employee from the workplace and to require that Covered Employee to immediately undergo, at Contractor-Employer's expense, drug or alcohol testing, in the manner set forth below, under the following circumstances:

(a) For Cause. When a reasonable, objective basis exists to believe that a Covered Employee has engaged in the unlawful use of or is under the influence of a controlled substance or alcohol at the workplace as evidenced by such factors as, but not limited to, the following:

- (1) Unsafe work habits or practices that endanger the Covered Employee himself/herself and/or other employees;
- (2) Abnormal work performance;
- (3) Physical conditions and/or symptoms, such as unstable balance, alcohol on breath, glassy or reddened eyes;
- (4) Frequent or unexplained absence from the workplace or job site during the Covered Employee's shift;
- (5) Abnormal personal behavior and/or poor interpersonal relations on the job;
- (6) Discovery of controlled substances, alcohol, or controlled substances paraphernalia at the work area or on the job site, in the possession of or immediate proximity of a Covered Employee; and/or
- (7) Objective evidence of unlawful use of a controlled substance or unlawful sale of a controlled substance as provided by any Federal, State, or local enforcement agency.

In utilizing the foregoing criteria of a "reasonable, objective basis," the parties hereto expressly agree that the Federal or State Constitutional law standards of "probable cause" or "reasonable suspicion" are not applicable.

The Contractor-Employer shall complete the attached form (Appendix B) prior to sending a Covered Employee to be tested For Cause.

- (b) Periodic Testing. Periodic, routine or intermittent testing shall be conducted at different times and at different intervals for all Covered Employees on the Project to determine the use of any illegal or unauthorized drug, alcohol or other substances prohibited by this Policy.

Post-counseling/rehabilitation or return-to-work medical examinations may be required when a Covered Employee returns to work after a long illness, disabling injury, extended absence, reduction in force or as a result of a condition of reinstatement upon completion of a drug and alcohol treatment or counseling program.

As part of an annual physical the Contractor-Employer may require testing for those Covered Employees who are required to undergo medical examinations due to regulatory requirements of local, state or federal agencies (DOT, ICC, DOD, etc.).

- (c) Random Testing. Random Testing may be used at any time.

Workplace testing may be altered or changed whenever the Covered Employees' activities are regulated by either the Department of Transportation, Department of Defense or by contract with any other branch of government or private industry.

Random testing selection will be done on a fair and impartial basis.

2. Urine samples will be taken only under the direction of a licensed physician designated by a Contractor-Employer designated medical laboratory and the "Procedures For Medical Tests Of Urine Samples" as set forth in Appendix "A" as attached hereto shall be followed.
3. In addition, physicians and health care professionals who provide testing services for controlled substance and alcohol impairment shall adhere to the Code of Ethical Conduct For Physicians Providing Occupational Medical Services as adopted by the American Occupational Medical Association on July 23, 1976, as well as to the "Drug Screening In The Workplace Ethical Guidelines" as adopted by that same organization on July 25, 1986.
4. Refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union shall constitute an act of insubordination. This aforesaid insubordination shall be just and proper

cause for discharge. In addition, the refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union shall be considered a positive reading, as defined in Appendix "A" and subject to Section G.

- (a) A Covered Employee who refuses to sign an authorization to submit to a drug, controlled substance, or alcohol test, or refuses to undergo such a test, or refuses to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union shall be discharged unless the Covered Employee agrees to a two (2) week suspension from work without pay and without fringe benefits accruing and to sign Appendix G, Last Chance Agreement, whereby the Covered Employee agrees to resign from employment in the event of a positive drug, controlled substance, or alcohol test, or a second refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union, within three (3) years of the first Refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union. Violation of the Last Chance Agreement shall constitute just cause for discharge.
- (b) For purposes of this section, refusal to undergo such a test shall include the following:
 - (i) Fails to appear for any test within a reasonable time, as determined by the Contractor-Employer, after being directed to do so by the Contractor-Employer.
 - (i) Fails to remain at the testing site until the testing process is complete.
 - (iii) Fails to provide a urine specimen for any controlled substances test required by this agreement.
 - (iv) In the case of a directly observed or monitored collection in a controlled substances test, fails to permit the observation or monitoring of the specimen.

- (v) Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure. For the purposes of this Section, when a Covered Employee does not provide a sufficient quantity of urine and the applicable procedures are being followed, the following shall apply to the determination of the beginning of the three hour period within which the Covered Employee must provide a specimen after he/she has provided an insufficient specimen: The three hour time limit shall begin when the Covered Employee provides a specimen of insufficient quantity. The three hour time limit does NOT begin with a no temperature specimen of sufficient quantity.
- (vi) Fails to provide an adequate amount of breath for any alcohol test required by this agreement.
- (vii) Fails to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
- (viii) Fails or declines to take an additional drug test the Contractor-Employer or collector has directed the Covered Employee to take (for example, if the MRO directs the Contractor-Employer to conduct a recollection under direct observation).
- (ix) Fails to undergo a medical examination or evaluation as directed by the MRO as part of the verification process, or as directed by the Contractor-Employer in situations where an adequate specimen is not provided.
- (x) Fails to undergo a medical examination or evaluation as directed by the Contractor-Employer as part of the insufficient breath procedure.
- (xi) Fails to cooperate with any part of the alcohol testing process.
- (xii) Fails to cooperate in any part of the controlled substances testing process (for example, refusing to empty his/her pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process). A refusal includes, but is not limited to, situations in which a Covered Employee provides an adulterated and/or

substituted specimen (as defined in the U.S. DOT Rules, 49 CFR Part 40). Such action shall constitute a refusal to test, in violation of Section F.4 and the Covered Employee shall be discharged unless the Covered Employee agrees to sign Appendix G, Last Chance Agreement.

5. A Covered Employee shall complete the "Consent For The Release Of Confidential Information" form as set forth in Appendix "C" prior to undergoing a substance abuse test. When a Covered Employee is tested, the Covered Employee, the Contractor-Employer and the Union shall be notified of the test results. Action against the Covered Employee shall be taken in accord with the disciplinary section herein if the Covered Employee's drug or alcohol test results are positive, as defined in Appendix "A" hereto.
6. The medical laboratory shall retain all positive specimens, in a frozen state, for twelve (12) months; all negative specimens for two (2) weeks. A Covered Employee shall have the right to have his or her sample as originally collected independently retested at his/her expense by a National Institute On Drug Abuse certified laboratory. The Covered Employee must exercise this right within fourteen (14) days from the time of the original sample collection and the Covered Employee must select a laboratory among those listed in Appendix "D" to conduct such retesting except as may be otherwise provided for in the Owner's controlled insurance program (OCIP). If the independent drug or alcohol retest results are not positive under the criteria set forth in Appendix "A": (a) the Covered Employee shall be put back to work immediately with reimbursement of full pay and benefits and with a rescission of any discipline imposed by reason of a positive drug or alcohol test result, along with an explanation for such rescission, and (b) the Contractor-Employer shall also reimburse the Covered Employee for the cost of the retest as paid for by the Covered Employee.

Where the Covered Employee believes that the positive test result is not due to unlawful use of alcohol or a controlled substance, but due to exposure to a workplace substance, or that the accuracy of the test result was confounded by a workplace substance, he/she shall have the right, at the Contractor-Employer's expense to have an independent laboratory designated by the Contractor-Employer evaluate the specimen by mass spectrometry or other state-of-the-art technology. If the evaluation indicates that the positive test result was due to a workplace substance, or that a workplace substance confounded the accuracy of the test: (a) the Covered Employee will be put back to work immediately with full back pay and benefits, and with a rescission of any discipline imposed along with an explanation for

such rescission; and (b) the Contractor-Employer shall take immediate steps to insure that Covered Employees are not exposed to such substances at levels that may produce or cause such positive test results, or that may cause material impairment of health or functional capacity.

7. A Covered Employee who tests positive and is later allowed to return to work pursuant to paragraphs G.1.(a) or (b), below, shall be subject to unannounced testing by the Contractor-Employer until two (2) subsequent consecutive tests of this nature are negative. Such tests shall be conducted within twelve (12) months after the Covered Employee returns to work, and in any event shall cease after the expiration of the aforesaid time period.

G. Schedule Of Disciplinary Actions

The manufacture, distribution, dispensation, possession, use of, or being under the influence of alcohol or a controlled substance by a Covered Employee, the manufacture, distribution, dispensation, possession or use of the paraphernalia of a controlled substance by a Covered Employee, or the attempt to engage in any of the foregoing by a Covered Employee, is prohibited at the Contractor-Employer's workplace. The violation of this aforesaid prohibition by a Covered Employee shall constitute just and proper cause for discipline, including but not limited to discharge, as provided for in the Project Labor Agreement. In the event the Covered Employee engages in a separate act of misconduct, in addition to the violation of this Policy, (such as insubordination, fighting, etc.) or engages in conduct which results in physical injury or property damage, the Covered Employee may also be disciplined for such conduct or misconduct in addition to discipline for the drug or alcohol offense. Such discipline shall be in accord with principles of just and proper cause.

1. The following disciplinary actions shall be taken against a Covered Employee whose drug or alcohol test has a positive reading, as defined in Appendix "A" hereto, or who is guilty of using or being under the influence of a controlled substance or alcohol at the workplace, and hereinafter collectively referred to as an offense:

(a) First Offense

- (1) Covered Employee Option 1 -- The Covered Employee shall be afforded the opportunity to enroll in a substance abuse assistance or rehabilitation program. If the Covered Employee enters such a program, his or her status as a Covered Employee will not be affected and he/she will be allowed to return to work and to continue to work as long as

he/she remains drug free, as indicated by a negative drug or alcohol test result.

- (2) Covered Employee Option 2 -- A first-offense Covered Employee who does not choose to enroll in a substance abuse assistance or rehabilitation program shall be suspended for the length of time it takes to obtain a negative reading from a subsequent drug or alcohol test but in any case, no less than a two (2)-week suspension. The Covered Employee must make arrangements with his or her Contractor-Employer prior to undergoing drug or alcohol retesting. Should a subsequent drug or alcohol test fail to produce a negative reading within three (3) months after the first offense, then the Covered Employee shall be considered as having committed his or her second offense.
 - (b) Second Offense -- A suspension from work for the time it takes to obtain a negative reading from any subsequent drug or alcohol test but in any case, no less than a four (4)-week suspension from work. The Covered Employee must make arrangements with his or her Contractor-Employer prior to undergoing drug or alcohol retesting. Should a subsequent test fail to produce a negative reading within two (2) months after the beginning of such suspension, then the Covered Employee will be discharged and will not be eligible for re-employment by the Contractor-Employer until such time as the physician or medical laboratory that conducted the original test submits verification of a negative reading having been obtained from said person.
 - (c) Third Offense -- Any Covered Employee who tests positive for the third time shall be discharged and shall not be eligible for re-employment by the Contractor-Employer for a period of three years, unless the Covered Employee can establish through objective evidence that he or she is no longer a current alcohol or drug abuser whose current use of alcohol or drugs prevents such individual from doing his or her job, or would constitute a threat to property or the safety of others.
2. For purposes of administering this paragraph G (Schedule Of Disciplinary Actions), offenses shall be cumulative on a Contractor-Employer-wide basis. For example: A Covered Employee commits an offense while employed on Job A. Said Covered Employee is subsequently employed on Job B where he/she commits another offense. That offense shall be considered as his/her second offense.

H. Selling Of Controlled Substances

1. A Covered Employee who sells or attempts to sell a controlled substance and/or the paraphernalia of a controlled substance at the Contractor-Employer's workplace shall be immediately discharged from employment. In addition, any Covered Employee who engages in such conduct and is discharged for the same shall not be eligible for re-employment by the Contractor-Employer.
2. Any such incidents shall also be reported to appropriate enforcement agencies.

I. Additional Considerations Applicable To Work On Federal Construction Projects

The following additional provisions shall apply only to Covered Employees who are employed by the Contractor-Employer on a work project that constitutes a procurement by the Federal Government or a Federal Agency of any property or services of a value of twenty-five thousand dollars (\$25,000.00) or more.

1. As a condition of employment, any Covered Employee convicted of a violation of a criminal drug statute for a violation occurring in the workplace must, as required by the Federal Drug-Free Workplace Act, notify the Contractor-Employer within five (5) days of that conviction. Failure to do so will subject the Covered Employee to disciplinary action, including discharge.
2. As required by the Federal Drug-Free Workplace Act, any Covered Employee who is convicted of a violation of a criminal drug statute occurring in the workplace shall be disciplined by the Contractor-Employer or shall be required by the Contractor-Employer to participate in an approved drug abuse assistance or rehabilitation program.
3. As required by the Federal Drug-Free Workplace Act, the Contractor-Employer must and will notify any Federal Contracting Agency on whose projects it is working of a workplace drug conviction within ten (10) days after receiving notice from the convicted Covered Employee or other official source of such conviction.
4. In compliance with the U. S. Department Of Defense Drug Free Workforce Clause (September 1988), any Covered Employee who has been granted access to secret or classified information -- or whose position and work involves national security, health, or safety and/or a high degree of trust and confidence -- will, at Contractor-Employer

expense, be subject to testing for the unlawful use of controlled substances and alcohol.

5. The Contractor-Employer shall not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of any work or contract.

J. Controlled Substance

A "controlled substance" is defined as: any drug listed in Schedules I through V of the Controlled Substances Act, at Section 202 thereof, 21 U.S.C., Section 812. These controlled substances include, but are not limited to, marijuana, cocaine, opiates, amphetamines and phencyclidine.

K. Application Of Grievance Procedure And Arbitration Provisions

Grievances of Covered Employees covered by the Project Labor Agreement involving the application of the terms and conditions of employment set forth herein shall be subject to the grievance and arbitration provisions as set forth in the Project Labor Agreement, Article 14, with the results thereof being final and binding.

L. Inclusion of Substance Abuse Treatment Benefits Under The Health & Welfare Plan

Where applicable, and if not already included, the parties hereto will recommend to the trustees that substance abuse treatment benefits be included under any jointly administered health and welfare plan, created under Section 302 of the Taft-Hartley Act.

M. Apprenticeship Requirements

Where applicable, the parties hereto will also recommend that the passage of a drug test for unlawful use of controlled substances be a part of the eligibility requirements for entry into and indenture under the apprenticeship program maintained by the Contractor-Employer and the Union pursuant to a trust fund created under Section 302 of the Taft-Hartley Act.

N. Disclosure Of information

1. The Contractor-Employer and the Unions shall be required to disclose to one another any and all information in their possession that is necessary to enforce this Policy. The foregoing duty to disclose information is included herein in order for the Contractor-Employer and the Unions to comply with their respective duties to bargain in good

faith under Sections 8(a)(5) and 8(b)(3) respectively of the National Labor Relations Act, as amended.

2. The records maintained by the Contractor-Employer for its employee assistance program are confidential and protected by federal law and regulations. The Contractor-Employer cannot disclose information identifying an employee as a participant in its program except in the following limited circumstances:
 - (a) The Covered Employee participants consent to the disclosure in writing as set forth in Appendix "E" attached hereto and made a part hereof;
 - (b) The disclosure is required by a court order;
 - (c) The information is necessary to meet a medical emergency involving the Covered Employee-participant; or
 - (d) The information is required by qualified personnel for research, audit or program evaluation.
3. The Contractor-Employer will provide each Covered Employee who participates in the employee assistance program with a written summary, as requested, of the federal law and regulations governing disclosure as set forth in Appendix "F" attached hereto and made a part hereof.
4. A Covered Employee's participation in the employee assistance program will not prohibit the Contractor-Employer and/or employee assistance program provider from reporting any crimes committed by the Covered Employee-participant either at the program or against any person who works for the program or from reporting any threats to commit such crimes, to the appropriate federal, state or local authorities.
5. A Covered Employee's participation in the employee assistance program will not prohibit the Contractor-Employer and/or employee assistance plan provider from reporting any information about suspected child abuse or neglect under state law to the appropriate state or local authorities.

O. Additional Definitions

As utilized herein, the following terms have the following meanings:

1. The term "conviction" means the finding of guilt (including a plea of nolo contendere or no contest) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of Federal or State criminal drug statutes;
2. The term "criminal drug statute" means a criminal statute involving manufacture, distribution, dispensation, use, or possession of any controlled substance;
3. The term "Federal Agency" means an agency as that term is defined in Section 552(f) of Title 5, United States Code;
4. The terms "unlawful use of a controlled substance," "illegal use of a controlled substance," or "illegal use of drugs" means the use, consumption or ingestion of any controlled substance under any circumstances except when directed by a physician or dentist;
5. The term "workplace" means any site for the performance of the work of the Contractor-Employer or any location where the Covered Employee may be during paid Contractor-Employer time or when the Covered Employee is under the care, control, and custody of the Contractor-Employer; and
6. The terms "drug" or "drugs" mean a controlled substance as defined herein.

P. Entire Agreement

This document contains the entire agreement and no other substance abuse testing shall be allowed unless by mutual written agreement between the parties.

APPENDIX A

PROCEDURES FOR MEDICAL TESTS OF URINE SAMPLES

Urine samples shall be handled in the following manner:

- A. Collection shall be by a physician or health care professional. The presence of a Union representative is not necessary when the collection of urine is made. Specimen containers shall be labeled with a number, and if the Covered Employee chooses, the Covered Employee's signature, and shall be closed with a tamper-proof seal initialed by the Covered Employee and collecting agent. The labeling shall be done in the Covered Employee's presence and in the presence of a Union representative if the Covered Employee chooses.
- B. The specimen number and identifying information on the donor shall be entered on a log and signed by the collecting technician in the presence of the Covered Employee -- and in the presence of a Union representative if the Covered Employee chooses -- and the Covered Employee shall initial the proper line on the log entry.
- C. The volume of each sample shall be such that sufficient amounts of urine will exist for both initial tests, confirmation tests and independent testing.
- D. Samples shall be stored in a scientifically acceptable manner.
- E. All handlers and couriers of the sample must complete entries and identify themselves on a proper chain of custody form.
- F. Confirmation tests in accordance with the Guidelines as established by the National Institute On Drug Abuse (NIDA) must be performed. After testing and confirmation testing, the facility must retain a sufficient portion of the sample for independent retesting and store that portion in a scientifically acceptable, preserved manner for the period of time as set forth in the Guidelines as issued from time to time by the National Institute On Drug Abuse (NIDA) -- unless the Covered Employee or the Union requests of the facility that it retain the sample for a longer period of time.
- G. Results of the testing shall be communicated in writing to the Contractor-Employer, Union and the Covered Employee within seventy-two (72) hours after the results are determined. The laboratory may only report a positive drug or alcohol test result if the appropriate test indicates that the specimen contains levels of drugs or alcohol in excess of the following levels:
 1. Blood alcohol level in excess of the State of Hawaii Standard giving rise to a legal presumption of intoxication.

2. Drug levels in excess of those levels as set forth in the Guidelines as established by the National Institute On Drug Abuse (NIDA).
- H. Information on test results and the fact that testing was done shall be kept confidential by the Contractor-Employer, Union, and tester, and shall be communicated only to those who must know the information in order to ensure safety at the workplace and enforce the terms and conditions set forth in the Project Labor Agreement. Copies of all documents -- including but not limited to test results, computer printouts, graphs, interpretations, and chain of custody forms shall -- be delivered to the Covered Employee from whom the samples of the bodily fluids were taken.
 - I. On the day that the sample is taken when tested For Cause, the Contractor-Employer shall send the Covered Employee home for the remainder of the day, and shall arrange transportation home for that Covered Employee and not allow the Covered Employee to drive home. The Covered Employee shall not be allowed to return to work until his or her test results are known.
 - J. As utilized herein, the terms "drugs" or "drug" mean a controlled substance as defined in Attachment B, Policy Covering Drugs and Other Controlled Substances For the Honolulu High Capacity Transit Corridor Project, Paragraph J.

APPENDIX B

SUBSTANCE ABUSE TESTING

TYPE: _____

LOCATION
CODE: _____

SUBSTANCE ABUSE TESTING

TO: _____ DATE: _____

POSITION: _____ DEPT/PROJECT: _____

1. As a Covered Employee, you are ordered to be tested for substance abuse in accordance with Contractor-Employer policy and procedures, based on reasonable suspicion.

2. An appointment has been made for you to be tested at:

Date: _____

Time: _____

3. You will be escorted to the collection site by a Contractor-Employer official or representative. You will be provided transportation to the collection site and provided transportation to your residence upon completion of the specimen collection. Any costs accrued for transportation will be paid by the Contractor-Employer.

4. You will be required to sign a form voluntarily consenting to submit to testing to provide specimen(s) as part of testing and to release the test results to the Contractor-Employer and its Medical Review Officer. Failure to sign this form shall

result in disciplinary action as set forth in the program and procedures for disciplinary action.

5. You are hereby placed on indefinite suspension without pay pending the results of the substance abuse test. If the results are negative, you will be returned to work immediately and reimbursed for all lost time, and no record of the testing or indefinite suspension will be placed in your personnel file.

All substance abuse testing required by the Contractor-Employer will be in accordance with any applicable local, federal and state laws or regulations.

Unless you are advised otherwise in writing by the Contractor-Employer, substance abuse testing for cause shall be for the presence of alcohol in the system or for the following substances of abuse: marijuana, cocaine, amphetamines, opiates and phencyclidine.

You are advised that over-the-counter medications or prescribed drugs may result in a positive test result. For this reason, the Contractor-Employer's Medical Review Officer may need your assistance in identifying which medications or drugs you may be taking at the present time and may have taken within the past thirty (30) days to ensure accuracy of testing results.

If you would like to voluntarily disclose that you are currently taking any medication, please list them below:

***Please take a picture ID with you for identification at the time of testing.**

If you have any questions, please contact the undersigned. Failure to undergo substance abuse testing as required by the Contractor-Employer may result in disciplinary action.

Personnel Manager, or designee

cc: Medical Review Officer

APPENDIX C

CONSENT FOR THE RELEASE OF CONFIDENTIAL INFORMATION

I, _____,
(Name of patient)
authorize _____ to disclose to
(Name of Testing Facility)
_____ information
(Name of Contractor-Employer and Name of Union)

regarding the results of any substance abuse test taken by me under the Policy Covering Drugs and Other Controlled Substances For the Honolulu High Capacity Transit Corridor Project. The purpose of the disclosure authorized herein is to determine whether I have complied with the provision of the Policy.

I understand that my records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically upon my termination from employment with the above-referenced Contractor-Employer.

Signature of patient

Date

APPENDIX D

COLLECTION STATIONS FOR DRUG TESTING

LOCATION

CONTACT PERSON

Straub Occupational Health Services
845 S. Beretania Street
Honolulu, HI 96814

Dr. Michael Kusaka (MRO)
Ph: 522.-381 3

Reliable Drug Testing Services, Inc.
1524 Ala Puumalu Street
Honolulu, HI 96818-1547

Kalfreda Mae Wataoka
Ph: 833-5973

Concentra Medical Centers
545 Ohohia Street
Honolulu, HI 96819

Dr. Ronald Kienitz (DO)
Ph: 831-3000

Any facility that adheres to the Standard of Substance Abuse Testing established by the Department of Health and Human Services (DHHS) and Substance Abuse and Mental Health Services Administration ("SAMHSA") as set forth in 49 CFR Part 40 or Hawaii Revised Statutes Sections 329B-4, -5 and -6 may be used as a collection station for Substance Abuse Testing.

APPENDIX E

**WRITTEN CONSENT FOR DISCLOSURE OF INFORMATION CONTAINED IN THE
CONTRACTOR-EMPLOYER'S RECORDS CONCERNING PARTICIPATION
IN EMPLOYEE ASSISTANCE PROGRAM FOR ALCOHOL OR DRUG ABUSE**

I, _____ request/authorize
(Name of employee-patient)

_____ to disclose to _____
(Name of Contractor-Employer) (Name of party to receive information)

the following information: _____

_____ for the limited purpose of _____

I understand that this consent is subject to revocation at any time except to the extent that the Contractor-Employer has already disclosed such information in reliance upon this consent form. If not previously revoked, this consent will terminate upon

(Specific date, event or condition)

Signature of Employee

Date signed

Original to employee's file

APPENDIX F
MEMORANDUM

TO: _____

FROM: _____
(Name of Contractor-Employer)

DATE: _____

RE: CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS.

The records maintained by _____
(Name of Contractor-Employer)

("The Contractor-Employer") in relation to its employee assistance program for alcohol or drug abuse are protected by federal law and regulations.

("The Contractor-Employer") cannot disclose information identifying you as a patient or participant in such program except that in the following limited circumstances:

1. You (the participant) have consented in writing;
2. The disclosure is required by a court order;
3. The information is necessary to meet a medical emergency involving you;
4. The information is required by qualified personnel or research, audit or program evaluation.

Violation of the federal law and regulations by a program is a crime. Suspected violations may be reported to appropriate authorities in accordance with federal regulations.

Federal law and regulations do not protect any information about a crime committed by a patient either at the program or against any person who works for the program or about any threat to commit such a crime.

Federal law and regulations do not protect any information about suspected child abuse or neglect from being reported under state law to appropriate state or local authorities.

Original to employee's file

APPENDIX G

LAST CHANCE AGREEMENT

This Agreement entered into this _____ day of _____, 2009, by and between _____, the Covered Employee and _____, the Contractor-Employer.

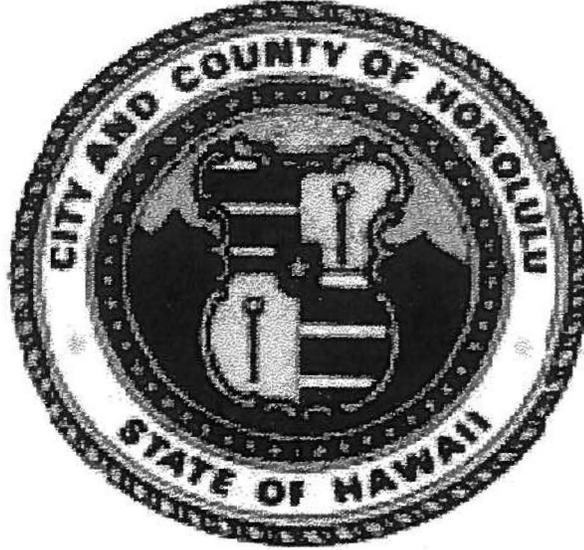
1. The Covered Employee has refused to sign an authorization to submit to a drug, controlled substance, or alcohol test, refused to undergo such a test, or refused to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union as provided in Section F.4.
2. The Covered Employee agrees to sign Appendix G, Last Chance Agreement instead of being discharged and whereby the Covered Employee agrees to resign from employment on a no-fault basis in the event of a positive drug, controlled substance or alcohol test occurring within three (3) years of the Covered Employee's refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, refusal to undergo such a test, or refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union as provided in Section F.4.
3. The Covered Employee agrees that when the Covered Employee signs Appendix G, Last Chance Agreement, the Employee shall be suspended for two (2) weeks from work without pay and without fringe benefits accruing workdays instead of being discharged.
4. Before being permitted to back to work, the Covered Employee shall have passed a return to duty test.
5. The Covered Employee agrees that Appendix G, Last Chance Agreement has been carefully read and voluntarily accepts Appendix G, Last Chance Agreement with full knowledge and understanding of its contents and meaning.
6. The Covered Employee agrees that a resignation from employment deprives the Covered Employee of the right to grieve as provided in Article 14 of the Project Labor Agreement or challenging the resignation.

7. Appendix G, Last Chance Agreement shall be confidential, except as may be necessary to ensure compliance with its terms.

Signature of Employee

Date signed

Original to employee's file



RAPID TRANSIT STABILIZATION AGREEMENT
Hawaii Building and Construction Trades Council Affiliates

For the

HONOLULU HIGH CAPACITY TRANSIT CORRIDOR PROJECT

NOVEMBER 17, 2009

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ATTACHMENT "A": LETTER OF ASSENT

ATTACHMENT "B": UNION ADDRESSES

ATTACHMENT "C": POLICY COVERING DRUGS AND OTHER CONTROLLED SUBSTANCES FOR THE HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT

This Rapid Transit Stabilization Agreement ("RTSA") is entered into on the date hereinafter stated, by and between the City and County of Honolulu ("Owner"), the Unions that become signatories hereto ("Unions"), and Contractors with whom the Owner executes a construction contract for work to which this RTSA applies, hereinafter referred to as "Contractor-Employers."

Article 1 – Purpose and Findings

1.1 The successful and timely completion of the Project is of the utmost importance to the people of the City and County of Honolulu, who voted affirmatively in November 2008 to proceed with the construction of a fixed guideway system, and who have since 2007 been paying a local surcharge to support the financing of the Project. The Project, along with this RTSA, will also bring significant economic stimulus benefits to the local community through federal funding and the resulting creation of new jobs and increased commerce. The timely completion of the Project will allow development and increased commerce and mobility in the City and County of Honolulu.

The purpose of this RTSA is to promote efficiency of construction operations to ensure the successful and timely completion of the Project. This RTSA seeks to accomplish this in the following ways:

- Ensure that construction of the Project occurs without disruption due to labor disputes;
- Reducing the friction that may be caused when union and open shop employees of different employers are required to work together at a common job site.
- Ensure high quality, cost-effective and timely construction of the Project;
- Provide a large, dependable supply of skilled construction workers from various trades needed to complete a project of this magnitude, complexity and duration;
- Provide training opportunities for craft workers; and
- Ensure a safe workplace for the workers, contractors and the Owner through implementation of and compliance with health and safety policies and laws.

1.2 Large numbers of workers of various skills employed by contractors and subcontractors will be required in the performance of the construction work for the Project, including those to be represented by the Unions which become signatory to this RTSA. On a project of this magnitude, with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption would be substantial without any commitment to maintain continuity of the construction work.

1.3 It is in the best interest of the general public, the Owner, the Unions and the Contractor-Employers, defined herein, for the construction work to proceed in an orderly manner without Work Disruptions. Accordingly, the Unions and the Owner desire to mutually establish and stabilize the wages, hours and working conditions for the workers employed on the Project by Contractor-Employers.

1.4 The Owner remains committed to awarding contracts for each phase of the Project in accordance with the applicable provisions of federal and State law. The Owner has the absolute right to award contracts on this Project that provide bidding opportunities for all contractors and that promote an adequate supply of craft workers possessing the requisite skills and training in order to provide the taxpayers a project of the highest quality. Further, all parties agree to cooperate throughout the term of this RTSA to develop and utilize methods to reduce the Owner's construction and Project administration costs.

1.5 The Project depends upon federal and State funding, the receipt of which requires the satisfaction of applicable conditions and requirements of federal grants and regulations, including but not limited to the requirements of the United States Department of Transportation, Federal Transit Administration's Master Agreement (FTA Master Agreement). This RTSA shall be subordinate to any and all such requirements and conditions of federal or State funding.

Article 2 - Definitions

RTSA means this Agreement.

Artist means a person or firm developing aesthetic/artistic designs for the Project.

City means the City and County of Honolulu.

Construction Contract means, exclusively, the construction contracts for the completion of the Project. Specifically, Construction Contract does not include a contract between Owner or any of its contractors or consultants, and any firm or individual performing construction management, program management, project management, architectural or design services, engineering services, project inspection services, special inspection or testing services, landscape architectural services, or environmental evaluation services or any other services that are not "hands on" construction work on the Project.

Contractor-Employer means any individual firm, partnership, corporation, or any combination thereof, including but not limited to joint ventures, that has entered into a Construction Contract with the Owner or any of its contractors, at any tier, under contract terms and conditions approved by the Owner. The term Contractor-Employer as used in this RTSA shall therefore include any and all

subcontractors performing work on the Project pursuant to a Construction Contract.

Covered Employee means an employee who is working on the Project as an employee of a Contractor-Employer pursuant to a Construction Contract for this Project and whose work is covered by this RTSA, and further whose work is not excluded in Article 3.

Letter of Assent means the acceptance letter signed by each Contractor-Employer agreeing to be bound by the terms of this RTSA in the form attached hereto as Attachment "A".

Owner means the City and County of Honolulu or its assignee.

RTSA Administrator means the individual designated by the Owner to serve as the Owner's point of contact with the Unions and Contractor-Employers regarding the RTSA and who is authorized to appoint designee(s).

Project means the Owner's contracts for on-site construction of the 20 mile guideway transit system from East Kapolei to Ala Moana Center with future extensions planned for West Kapolei to East Kapolei, Salt Lake Boulevard and from Ala Moana Center to University of Hawaii at Manoa and to Waikiki, as described in the Final Environmental Impact Statement for the Honolulu High Capacity Transit Corridor Project, including the construction of 21 stations, and supporting facilities such as a vehicle maintenance and storage facility, transit centers, park-and-ride lots, traction power substations, a parking structure, and an access ramp from the H-2 Freeway to the Pearl Highlands park-and ride. Any pre-cast concrete fabrication yard located in the State of Hawaii that is dedicated solely to the work for a Construction Contract for this Project is included. The Project also includes any subsequent replacement, addition and renovation of construction undertaken pursuant to a Construction Contract that occurs within five (5) years of the date of the completion of the last Construction Contract.

State means the State of Hawaii.

Steward means the employee of Contractor-Employer working on the Project who is designated as the Union's representative for all Covered Employees working on the Project in the craft represented by the Union.

Trust Fund Agreement means a trust fund established under a Collective Bargaining Agreement for the contribution of payments for employee benefits.

Union means any labor organization which is a signatory to this RTSA.

Work Disruption means any strike, lockout, sympathy strike, slowdown, work stoppage, boycotting, picketing or similar activity that interferes with work on the Project.

Article 3 – Scope of RTSA

3.1 (a) The Owner shall require all Contractor-Employers to agree to be bound by this RTSA by executing the Letter of Assent as a condition of any future request for proposal issued on or after the effective date of this RTSA.

(b) The Unions agree that this RTSA will be made available to, and will fully apply to, any successful bidder for the Project work who becomes signatory hereto, without regard to whether the successful bidder performs work at other sites as either a union or open shop contractor, and without regard to whether employees of such bidder are or are not members of any union.

3.2 This RTSA shall be limited to work under Construction Contracts on the Project performed by Covered Employees of Contractor-Employers of any tier, for the Construction Contract entered into on or after the effective date of this RTSA and where such work is traditionally covered by a collective bargaining agreement with a Union. This RTSA shall not apply to any work performed or contracts issued at any time prior to the effective date, or after expiration or termination of the RTSA, or on any other projects or activities of the Owner.

3.3 This RTSA shall not apply to the following:

(a) Work for any Contractor-Employer by an employee who is not a Covered Employee.

(b) Work by employees of a manufacturer or vendor necessary to maintain such manufacturer's or vendor's warranty or guarantee, including the on-site supervision of such work.

(c) All work by employees of the Owner, contract employees of the Owner and/or consultants of the Owner associated with the Project.

(d) All support services, contracted by the Owner or its Contractor-Employers of any tier that are unrelated to construction work, even if the support services are contracted for or in connection with the Project.

(e) All off-site manufacture of materials, equipment, or machinery, including handling and delivery of materials, equipment and machinery to the Project. This exclusion shall not apply to any pre-cast concrete fabrication

yard located in the State of Hawaii that is dedicated solely to the work for a Construction Contract for this Project.

- (f) Furniture, fixture, and equipment installers retained by the Owner, to perform work after a Contractor-Employer has completed construction of its work pursuant to Section 21.2.
- (g) Artists retained by the Owner during the course of the Project.
- (h) Employees engaged in any work performed on or near, or leading to or into, the Project site(s) by State, the Owner, or other governmental bodies or their contractors; or public utilities or their contractors; or other public agencies or their contractors.
- (i) Employees engaged in maintenance on leased equipment and on-site supervision of such work.
- (j) Startup, testing and commissioning personnel employed by the Contractor-Employer or the Owner, or laboratory for specialty testing or inspections not ordinarily performed by the Unions.
- (k) All employees, subconsultants and agents of the design teams or any other consultants of the Owner for specialty testing, architectural/engineering design and other professional services.

3.4 As areas and systems of the Project are inspected and tested by the Contractor-Employer and accepted by the Owner, the RTSA shall not have further force or effect on such items or areas, except when the Contractor-Employer is directed by the Owner to engage in repairs, modifications, checkout and/or warranty functions required by the Construction Contract.

3.5 It is understood that this RTSA constitutes a stand-alone agreement, and by virtue of executing a Letter of Assent, Contractor-Employer will not be obligated to sign any other collective bargaining agreement as a condition of performing work within the scope of this RTSA.

3.6 Each Contractor-Employer shall provide Unions and Owner with a fully executed copy of the Letter of Assent as applicable prior to execution of the Construction Contract for work on this Project.

3.7 It is understood that each party to this RTSA acts independently of the other, and this RTSA does not give rise to any joint and several liability between or amongst the parties. The Unions agree that this RTSA does not have the effect of creating any joint employment status between and among the Owner and any Contractor-Employer.

3.8 Any Union or Contractor-Employer may contact the RTSA Administrator with a complaint or issue regarding the administration of the RTSA. The RTSA Administrator shall appoint designee(s) as appropriate who will expeditiously respond to and resolve any issue raised by the Union or the Contractor-Employer. If any issue is not satisfactorily resolved, the Union or the Contractor-Employer may invoke the provisions of Article 14 or Article 15 as applicable.

3.9 The Owner may at its sole discretion and at any time modify, delete, add to, terminate, delay and/or suspend the scope of work defined as the Project above; provided, however, that no work under the scope of the Project will be performed outside of the terms of this RTSA.

3.10 The Unions acknowledge that the Owner has the right to select any qualified contractor and award contracts to construct the Project without regard to the Contractor-Employer being a signatory to any collective bargaining agreement with any Union, or any other union so long as such Contractor-Employer agrees to be bound by this RTSA.

Article 4 - Union Recognition, Union Security and Union Representation: Obligations of Contractor-Employer and Unions

4.1 Union Recognition

The Contractor-Employer recognizes the respective Unions as the sole and exclusive bargaining representatives of all Covered Employees within the Unions' respective jurisdictions.

4.2 Union Security

- (a) Any Covered Employee of a Contractor-Employer who is currently a member of a Union and who is working for a Contractor-Employer who is a signatory to a collective bargaining agreement other than this RTSA, shall remain a member in said Union so long as this RTSA is in effect.
- (b) The Contractor-Employer agrees to deduct dues and fees in the amount designated by a particular Union, subject to applicable law, provided that the Covered Employee has executed a written assignment calling for such a deduction, which is provided to the Contractor-Employer, and provided further that the form of the written assignment is that form that is used for all operations by the particular Union for its members in the State. The Contractor-Employer will remit to the Union once a month, the dues and fees deducted on or before the fifteenth (15th) day of each month following the month in which the deduction was made, as agreed upon between each Union and Contractor-Employer at the pre-job conference.

- (c) All Covered Employees of Contractor-Employer who are not members of any Union shall pay dues and uniform assessments in accordance with the requirements of the applicable Union and applicable law. Such dues and assessments shall be limited to fees necessary for the performance for the Union's representation duties. Any employee failing to meet the above condition of employment shall upon written notice by the Union be discharged by the Contractor-Employer within five (5) working days.
- (d) This RTSA shall not unlawfully deprive, nor shall it be construed to unlawfully deprive, any non-union or union employee of his or her rights under federal and State laws.

4.3 Union Representation

- (a) Authorized Union representatives shall have reasonable access to the Project, whenever work covered by this RTSA is being performed by Covered Employees working in the craft represented by the Union, provided that such representatives do not interfere with the work of the employees and are not disruptive to work on the Project or other work of Owner and further provided that such representatives fully comply with the visitor, safety and security rules established for the Project. At the pre-job conference the Union and the Contractor-Employer who has a Construction Contract with the Owner shall mutually agree on a reasonable number of Union representatives on whose behalf access will be sought.
- (b) Each Union shall have the right to designate for each Contractor-Employer one (1) Covered Employee per shift as Steward for the respective Union and the Steward shall be recognized as the Union's representative. Such designated Stewards shall be qualified workers assigned to a crew and shall perform the work of their trade. Under no circumstances shall there be a non-working Steward on the job.
- (c) The Steward shall not be subjected to discrimination or discharge on account of performing proper union business. The Unions agree that such activities shall not unreasonably interfere with the Steward's work for the Contractor-Employer.
- (d) The Contractor-Employer shall be notified in writing of the selection of each Union's Steward.
- (e) The Steward shall not cause or encourage any Work Disruption and, if determined to have instigated, encouraged or participated in any way in such action, notwithstanding the provisions of Section 4.3 (c), will be subject to disciplinary action by the Contractor-Employer, up to and including discharge.

Article 5 - Management Rights of Contractor-Employer

5.1 Contractor-Employer retains full and exclusive authority for the management of its respective operations except as specifically set forth in this RTSA. The Contractor-Employer shall have the right to direct its work forces at its sole discretion, including but not limited to hiring, promotion, determining competency to perform work, transfer, lay-off, discipline or discharge for just cause; the selection of foremen and general foreman; the assignment and scheduling of work; the requirement of overtime work; the determination of when work will be done; and the number and identity of employees engaged to perform such work.

5.2 The Contractor-Employer may, in its sole discretion, utilize the most efficient method or techniques of construction, tools, or other labor-saving devices.

5.3 Except as otherwise expressly stated in this RTSA, there shall be no limitation or restriction upon the Contractor-Employer's choice(s) of materials or design, nor upon the full use, and installation and utilization of equipment, machinery, package units, pre-casts, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices. If there is any disagreement between the Contractor-Employer and a Union, concerning the manner or implementation of such device or methods of work, the implementation shall proceed as directed by the Contractor-Employer and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article 14 of this RTSA.

Article 6 - Hiring Procedures, Referral and Employment: Obligations of the Contractor-Employer and Unions

6.1 Unless otherwise required by this RTSA, Contractor-Employer shall utilize the job referral system of the appropriate signatory Union to acquire employees to work on the Project. The job referral system will be operated in a non-discriminatory manner and in full compliance with federal, State, and local laws and regulations which require equal employment opportunities and non-discrimination.

A probationary period of ten (10) working days shall be established for all new employees; during such time period such named employees may be summarily discharged and such discharge is not subject to the grievance and arbitration process. Notwithstanding the above, the Contractor-Employer may reject any referral for any lawful nondiscriminatory reason provided it complies with this Article.

6.2 In the event that a Union is unable to fill a request for qualified employees within forty-eight (48) hours after such request is made by a Contractor-Employer (Saturdays, Sundays and Holidays excepted), the Contractor-Employer may employ applicants from any other available source. The Contractor-Employer shall inform the Union of the name and social security number of any applicant hired from the other sources and shall refer the applicant to the Union for dispatch to the Project within twenty-four (24) hours after hiring.

6.3 Except as required by law, the Unions shall not knowingly refer an employee currently employed by any Contractor-Employer working under this RTSA to any other Contractor-Employer. This provision shall not be applicable in any case in which the Covered Employee has given notice to the Contractor-Employer of his intent to quit.

6.4 The selection of craft foremen and/or general foreman and the number of such foremen and/or general foreman required shall be entirely the responsibility of the Contractor-Employer. Craft foremen shall be designated working foremen at the request of the Contractor-Employer and once so designated shall be allowed to perform work on the Project in their respective crafts.

6.5 The parties recognize the Owner's interest in providing opportunities to participate on the Project to emerging Contractor-Employers as well as other enterprises which may not have previously had a relationship with the Unions signatory to this RTSA. To ensure that Contractor-Employers will have an opportunity to employ their "core" employees on this Project, all "core" employees must register with the appropriate Union prior to employment. The parties agree that such Contractor-Employers may request by name, and the Union will honor, referral of such persons who have registered with the appropriate Union for Project work and who demonstrate the following qualifications:

- (a) possess any license required by State or federal law for the Project work to be performed;
- (b) have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;
- (c) were on the Contractor-Employer's active payroll for at least sixty (60) out of the one hundred eighty (180) calendar days prior to the contract award;
- (d) have the ability to perform safely the basic functions of the applicable trade.

The Union will refer to such Contractor-Employer one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer

one of such Contractor-Employer's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor-Employer's crew requirements are met or until such Contractor-Employer has hired seven (7) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor-Employer's work the ratio shall be maintained and when the Contractor-Employer's workforce is reduced, Covered Employees shall be reduced in the same ratio of "core" Covered Employees to hiring hall referrals as was applied in the initial hiring.

It is understood that Contractor-Employers that do not follow this process shall be subject to Article 14: Grievance Procedure of this RTSA. Further should a grievance be filed regarding Section 6.5, the fees and expenses of the Arbitrator shall be paid for by the losing party.

Article 7 - Apprenticeship Program: Obligations of Contractor-Employer and Unions

7.1 The Contractor-Employer shall employ apprentices in their respective craft to perform work customarily performed by the craft in which they are apprenticed and within their capabilities.

7.2 To promote training and employment opportunities for residents of Hawaii, the apprentices shall be given priority consideration for this training to the extent permitted by applicable laws and government regulations.

7.3 To promote training and employment opportunities for military veterans who are interested in careers in the building and construction trades, the Contractor-Employer and Unions agree, when appropriate, to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment and the Center's "Helmets to Hardhats" Program to serve as a resource for assessment of construction aptitude of the military veterans and for possible referral to apprenticeship programs.

7.4 Apprenticeship Goals. Consistent with any restriction contained in applicable federal and State law and regulations, including those governing equal employment opportunity, prevailing wage and apprenticeship requirements and limitations, the Contractor-Employer may employ registered apprentices. Apprentice pay scales and ratios on the Project shall be governed by the appropriate Union's joint apprenticeship program.

Article 8 - Work Stoppages and Lockouts: Obligations of Contractor-Employer and Unions

8.1 During the term of this RTSA there shall be no Work Disruption by any Union, any Covered Employee, or any Contractor-Employer. As soon as any Contractor-Employer or Union becomes aware of any such Work Disruption, the Contractor-Employer and Union shall immediately notify Owner, and RTSA Administrator in writing, regarding any such Work Disruption. Failure of any Union to cross any picket line established at the Project site is a violation of this Article.

8.2 The Union(s) shall not sanction, aid or abet, participate in, encourage or continue any violation of Section 8.1 at any Project site and shall undertake all reasonable means to prevent or terminate any such activity immediately upon being informed, in writing, of such activity or activities. No Covered Employee shall engage in activities which violate this Article. Any Covered Employee who participates in or encourages a violation of Section 8.1, including refusal to cross any picket line established at the Project site shall be subject to disciplinary action, up to and including discharge, at the discretion of the Contractor-Employer and shall not be eligible for rehire on the Project.

8.3 Immediately upon being informed in writing of a violation or a potential violation of this Article, the principal officer or officers of the Union shall immediately instruct, order and use any and all reasonable means and their individual best efforts to cause any and all of the Covered Employees that the Union represents to cease any violations of this Article. A Union deemed by the Owner to be in compliance with these obligations shall not be responsible for the unauthorized acts of Covered Employees it represents. The failure of the Contractor-Employer to exercise its rights in any instance shall not be deemed a waiver of its rights in any other instance.

8.4 In lieu of, or in addition to, any other action at law or equity, a Contractor-Employer may institute the following procedure when a breach of this Article is alleged, after the Union(s) has been notified in writing of the alleged breach.

(a) The party invoking this procedure shall notify, Clyde Matsui, who the parties agree shall be the permanent Arbitrator under this procedure. In the event the permanent Arbitrator is unavailable at any time, Patrick Yim, shall be the alternate Arbitrator. If neither the permanent Arbitrator nor the alternate Arbitrator is available, the permanent Arbitrator shall appoint an alternate. Notice to the Arbitrator shall be by the most expeditious means available, with notice by facsimile, telegram, electronic mail or any other effective written means, to the party alleged to be in violation and the Contractor-Employer.

- (b) Upon receipt of said notice, the Arbitrator named above shall set and hold a hearing within twenty-four (24) hours.
- (c) The Arbitrator shall notify the parties by facsimile, telegram, electronic mail or any other effective means, of the place and time he or she has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an Award by the Arbitrator.
- (d) The only issues at the hearing shall be whether a violation of Section 8.1, 8.2 and/or 8.3 has in fact occurred, and if so, by whom. The award shall be issued in writing to the parties, and the Owner, within three (3) hours after the end of the hearing, and may be issued without an opinion. If any party desires an opinion, it may request one, and a written opinion shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of the award. The Arbitrator may order cessation of the violation of this Article, and such award shall be served on all parties, including Owner and Unions, by the Arbitrator by hand delivery, facsimile, or messenger service ensuring delivery no later than noon the following day, upon issuance.
- (e) Such award may be enforced in and by any court of competent jurisdiction in the State upon the filing of this RTSA and other relevant documents referred to hereinabove. Notice of the initiation of such enforcement proceedings shall be given to the other party by facsimile, messenger service, expedited mail or personal service. In the proceeding to obtain a temporary order enforcing the Arbitrator's award as issued under Section (d) above, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The court's order or orders enforcing the Arbitrator's award shall be served on the parties by hand or by delivery to their last known address by overnight mail.
- (f) To the extent permitted by law any right created by statute or law including but not limited to Chapter 658A of the Hawaii Revised Statutes, governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance therewith, is hereby waived by parties to whom such right accrues.
- (g) The fees and expenses of the Arbitrator shall be borne by the Union or Unions found in violation of this Article, or in the event no violation of this Article is found by the Arbitrator, such fees and expenses shall be borne by the Contractor-Employer. Each party to the procedure under this Section 8.4 will be responsible for its own legal fees and costs.

(h) If the Arbitrator determines in accordance with Section 8.4(d) above, that the Union has violated Section 8.1, 8.2 and/or 8.3 above, the Union shall pay as liquidated damages the sum of twenty-five thousand dollars (\$25,000) to the Contractor-Employer, and shall pay an additional twenty-five thousand dollars (\$25,000.00) per shift for each shift thereafter for which all Covered Employees of the Union have not returned to work. The Unions and the Contractor-Employer agree that twenty-five thousand dollars (\$25,000) per shift is an appropriate amount for liquidated damages because the Contractor-Employer's actual damages are not readily ascertainable, in advance, and the calculation of the its actual damages is difficult, and that this amount is not a penalty, but instead their reasonable calculation of the minimum of the damages that the Contractor-Employer will incur for the breach by that Union of its obligations under this RTSA. The Arbitrator shall retain jurisdiction to determine compliance with this Section and Article.

8.5 (a) If it is determined by the Arbitrator that a Union has violated the provision relating to Work Disruption, in violation of Section 8.1, 8.2 and/or 8.3 of this RTSA, the Union will be required to pay the Owner liquidated damages in the amount of \$50,000 per day until the breach is cured by the Union. The Unions and the Owner agree that \$50,000 per day is an appropriate amount of liquidated damages because the Owner's actual damages are not readily ascertainable, in advance, and the calculation of its actual damages is difficult, and that this amount is not a penalty, but instead their reasonable calculation of the minimum of the damages that the Owner will incur for the breach by that Union of its obligations under this RTSA.

(b) The payment of liquidated damages is due upon demand by the Owner, and, payment shall not be deemed to negatively affect in any way the rights of the Owner to all available forms of relief, including but not limited to injunctive relief, declaratory relief, and damages.

8.6 (a) In the event a Union accrues cumulated damages of \$250,000.00 or more in liquidated damages, pursuant to Sections 8.4(h) and 8.5(a), the Owner may, at its discretion, exercise its unilateral right to terminate this RTSA as to that Union for any Construction Contracts entered into thereafter and Union's name will be deleted from any Letter of Assent signed by the Contractor-Employer for such Construction Contracts.

(b) In the event the Unions collectively accrue cumulated damages of \$1,000,000.00 or more in liquidated damages, pursuant to Sections 8.4 (h) and 8.5 (a), the Unions will be in material breach of this RTSA, and the Owner may, in its discretion exercise its unilateral right to terminate this RTSA in its entirety.

8.7 The procedures contained in Section 8.1 through 8.4 shall be applicable to violations of this Article 8 only. Disputes alleging violation of any other provision of this RTSA, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of this Article, shall be resolved exclusively under the grievance adjudication procedures of Article 14.

8.8 The parties acknowledge that the Owner is a party in interest in all proceedings arising under this Article and shall be sent copies of all notifications required under this Article, and has the right, at its option, to initiate or participate as a full party in any proceeding initiated under this Article.

Article 9- Hours of Work, Overtime, Shifts and Holidays: Obligations of Contractor-Employer and Unions

9.1 **Workweek.** The standard workweek shall be Monday through Friday, inclusive. Variations to the standard work week are only permissible to ensure the Project is delivered on-time and on-budget. All variations to the standard work week shall comply with HRS Chapter 104 and Davis Bacon Act, 40 U.S.C. § 276a et seq. Acceptable alternatives to the standard work week when permissible, are limited to Sections 9.2 and 9.10.

9.2 **Compressed Work Week.** The Contractor-Employer, may establish a compressed work week as follows:

- (a) Four (4) consecutive ten (10) hour days during the period from Monday through Friday. Any hours worked before the regular established starting time or after the regular established quitting time, or hours over eight (8) consecutive hours, and any hours worked beyond the forty (40) hour workweek shall be compensated at the appropriate overtime rate.
- (b) Four (4) nine (9) hour days during the period from Monday through Thursday plus four (4) hours on Friday. Any hours worked before the regular established starting time or after the regular established quitting time, or hours over eight (8) consecutive hours, and any hours worked beyond the forty (40) hour workweek shall be compensated at the appropriate overtime rate.

The provisions of subsections (a) and (b) above are not intended to be implemented or administered in such a manner wherein the Covered Employees' work week schedule is revised on a daily basis.

9.3 **Workday.** Except where shift work or night work is scheduled, the normal workday for Covered Employees covered by this RTSA shall begin between the hours of 6:00 a.m. and 8:00 a.m. The starting time for the Construction Contract

work shall be established by the Contractor-Employer prior to the start of the Construction Contract work and, once established, shall not be changed except by written notification from the Contractor-Employer to the Covered Employees and Unions. All hours of work shall comply with the directive and requirements of the Contractor-Employer who has a Construction Contract with the Owner.

Notwithstanding the provisions of this RTSA, the Contractor-Employer may require work to be performed at alternate hours when required by the Owner. Written notice of the alternate work hours shall be provided to the Covered Employees and the Unions. Any overtime hours shall be compensated at the appropriate overtime rate.

9.4 Overtime. Overtime, at the rate of one-and-one-half (1-1/2) times the straight time hourly rate shall be paid for all hours worked under the following circumstances.

- (a) All hours worked in excess of the established eight (8);
- (b) All hours worked in excess of forty (40) hours in any one work week;
- (c) All hours worked by Covered Employees before their regularly scheduled starting time and after their regularly scheduled quitting time, provided the Covered Employee commenced work at the regularly scheduled starting time of the shift and worked the entire shift;
- (d) All work performed on Saturdays and Sundays; and
- (e) All work performed on Holidays described in this RTSA.

9.5 Calculation of Overtime Hours. Overtime hours shall be calculated at 1/10th of an hour, i.e., six (6) minute increments and otherwise comply with all applicable federal and State laws.

9.6 No Pyramiding. Whenever two or more overtime or premium rates are applicable to the same hour or hours worked, there shall be no pyramiding or adding together of such rates and only the higher of the applicable rates shall be applied.

9.7 Assignment of Overtime Work. If overtime work is to be assigned, the work shall be assigned to the members of the crew (to the extent needed) who, during the regular workday, have been performing the particular work involved, except that the Steward will be afforded the opportunity to be included in that work, provided the Steward is qualified to perform the work required. The Contractor-Employer will notify all members of the crew as early as reasonable possible of any overtime work.

9.8 Meal Period.

- (a) Covered-Employees shall be afforded a meal period of at least thirty (30) minutes, which will begin within the period from the third (3rd) through the fifth (5th) hour of a shift. Covered-Employees required to work more than five (5) hours without starting a meal period, shall be paid at the applicable overtime rate for all time worked after the fifth (5th) hour or until such time as Covered Employees are afforded the opportunity to eat.
- (b) Where Covered Employees are being paid the overtime rate by reason of Saturday, Sunday or holiday work, the aforementioned meal period premium shall be computed at two (2) times the regular rate for all hours worked after the fifth hour until such time as they are afforded the opportunity to eat.
- (c) Whenever overtime work exceeds two-and-one-half (2-1/2) hours past the quitting time of the shift, Covered Employees will be afforded a meal period of at least thirty (30) minutes at the conclusion of the two-and-one-half (2-1/2) hour period of overtime work. This meal period shall not be paid for or counted as time worked. If overtime work continues for four (4) hours after the conclusion of this meal period, Covered Employees will be afforded an additional unpaid meal period at the end of the each subsequent four (4) hour period.
- (d) If a Covered Employee qualifies for a meal period as provided in paragraph (c) of this Section 9.8, the Contractor-Employer shall provide a meal of suitable quality and nutrition.
- (e) Covered Employees not afforded a meal period as provided for in paragraph (c) of this Section 9.8, shall be paid at two (2) times the Covered Employee's regular straight time rate for all time worked after the applicable period of overtime work until such time as said Covered Employee is afforded the opportunity to eat.

9.9 Show-up Time. Covered Employees ordered to report to work at a job site at which no employment is provided shall be entitled to one (1) hour's pay unless prevented from working for reasons beyond the control of the Contractor-Employer (including inclement weather).

The Contractor-Employer may require or request a Covered Employee to remain on the job for up to thirty (30) minutes past the Covered Employee's normal starting time pending possible abatement or cessation of inclement weather, or other cause which is preventing work from starting, without paying show up time to the employee. Should such requirement or request extend beyond thirty (30) minutes past the Covered Employee's normal starting time, the Covered Employee shall be entitled to show up time pay equal to one (1) hour's pay,

unless such employee quits, voluntarily lays out, or is suspended or discharged prior to the completion of a one (1) hour period. If the Contractor-Employer causes the Covered Employee to start work pursuant to such requirement or request, the Covered Employee will be entitled to a minimum of one (1) hour show up time unless such employee quits, voluntarily lays out, or is suspended or discharged prior to the completion of the one (1) hour period.

Show-up time shall not be considered as hours worked for purposes of making the Contractor-Employer contributions to any applicable benefits program; provided however, that if, after remaining on the job as provided above, Covered Employees are then put to work, show-up time shall be counted as hours worked for the purpose of making Contractor- Employer contributions to any applicable benefits program.

9.10 Shift Work. Shift work may be utilized to meet the Construction Contract schedule, or otherwise to comply with the Construction Contract requirements or written directive from the Owner. Shift work options under this RTSA include the following:

- (a) Two-Shift Operation. Where a two-shift operation is scheduled, the first eight (8) hours of work per day (exclusive of no-paid meal period) shall be paid for at the Covered Employee's regular straight time rate of pay. Where a two-shift operation is scheduled on the basis of a workweek of four (4) consecutive ten (10) hour days, then the straight-time rate of pay shall prevail for the Covered Employee's first eight (8) hours of work (exclusive of non-paid meal period).
- (b) Three-Shift Operation. Where a three-shift operation is scheduled, the first eight (8) hours of work per day (exclusive of a non-paid meal period) shall be paid at the Covered Employee's regular straight-time rate of pay. The length and schedule of working hours on any of the three shifts (whether 8, 7-1/2, or 7 hours) shall be as determined and scheduled at the Contractor-Employer's sole discretion provided;

That on each shift (whether scheduled on a 8, 7-1/2, or 7 hour basis), the Contractor-Employer shall provide Covered Employees with eight (8) straight-time hours of work opportunity (exclusive of meal periods) or pay for same. This does not apply where the Covered Employee quits, voluntarily lays out, or is suspended or discharged prior to the completion of an eight (8) hour period, or the Contractor-Employer is unable to provide such work due to weather conditions, equipment breakdown, power failure, work stoppage, labor disputes, accident, or other circumstances beyond the control of the Contractor-Employer.

The Contractor-Employer may address additional shift work options and configurations to respond to unique jobsite conditions, work impediments or

Construction Contract schedule restraints. Such agreements shall be reduced to writing outlining the specific details and reviewed with the Unions and may become a memorandum of agreement to this RTSA.

9.11 Special Weekend Pay Provisions: On shift work, Covered Employees working a shift who come off work on Saturday morning are to be considered working Friday. Covered Employees working a shift coming off work on Sunday morning are to be considered working Saturday. Covered Employees working a shift coming off work on Monday morning are to be considered working Sunday. The principle that applies is that the rate of pay (straight-time or overtime) in effect at the start of the shift shall continue until the end of that shift, notwithstanding, the "face time on the clock". However, this Section shall comply with HRS Chapter 104 and Davis Bacon Act, 40 U.S.C. Sec. 276a et seq.

9.12 Night Work. When night work is scheduled Monday through Friday, the first eight (8) hours of work per day (exclusive of an unpaid meal period) shall be paid at the regular straight-time rate of pay.

On dewatering, concrete pours, concrete curing, temporary heat and protection of concrete operations, all overtime shall be at a rate of one and one-half (1-1/2) times as required by HRS Chapter 104 and Davis Bacon Act 40 U.S.C.

§ 276a et seq. When shift work is established for such work operations, the shift premiums shall apply.

9.13 Emergency Call-Out. Covered Employees called out to perform emergency work and who so report at the time specified, shall be paid at the applicable overtime rate for all hours worked on such emergency call-out. Such Covered Employees shall receive a minimum of two (2) hours work, or if two (2) hours work is not furnished, a minimum of two (2) hours pay.

The minimum pay requirement referenced herein, shall not apply if Covered Employees quit, voluntarily lay out or are suspended or discharged prior to the completion of the two (2) hour period. Also, the minimum pay requirement shall not apply if the emergency work for which Covered Employees are called out continues up to the Covered Employees' normal starting time. In such situations, Covered Employees shall be paid at the overtime rate only for the actual number of hours worked (excluding any applicable travel time) up to the Covered Employees' normal starting time.

In computing time spent on emergency call-out work, such time shall include time spent in traveling from the Covered Employee's home or the place from which the Covered Employee was called, as the case may be, directly to the job site, but shall not include the return trip.

The provisions of Sections 9.6 and 9.8 shall apply to Covered Employees who are performing emergency call-out work.

9.14 Nothing in this Article 9 shall be construed as guaranteeing any Covered Employee eight (8) hours of work per day or forty (40) hours of work per week.

9.15 Holidays. Holidays recognized on this Project shall be the holidays recognized by the State. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. In the event a holiday falls on Saturday, the preceding day, Friday, shall be observed as such holiday.

9.16 Reporting Pay. Any Covered Employee who reports for work and for whom no work is provided shall receive two (2) hours pay provided the Covered Employee remains available for work. Any Covered Employee who reports for work and for whom work is provided shall be paid for actual time worked but not less than four (4) hours provided the employee remains available for work. Procedures for prior notification of work cancellation shall be determined at the Contractor-Employer's pre-job conference.

9.17 Starting Time. The parties reaffirm their policy of a fair day's work for a fair day's wage. There shall be no pay for time not worked unless the Covered Employee is otherwise engaged at the direction of the Contractor-Employer. Covered Employees shall be at their place of work at the starting time and shall remain at their place of work, as designated by the Contractor-Employer, performing their assigned functions until the end of the Covered Employee's shift. The place of work shall be defined as the gang or tool box, or equipment at the Covered Employee's assigned work location or the place where the foreman gives instructions.

9.18 It shall not be a violation of this RTSA or a breach of any provision in the RTSA, when the Owner or Contractor-Employer determines it necessary to shut down work in whole or in part to avoid the possible loss of human life, because of an emergency situation that could endanger the life and safety of an employee. In such cases, Covered Employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Contractor-Employer requests Covered Employees to stand by, the Covered Employees will be compensated for the "stand by time".

9.19 In the event the Contractor-Employer deems it necessary, in keeping with Article 5, it may in its sole discretion develop systems for Covered Employees to check in and out of the Project.

9.20 Payment of Wages:

- (a) Covered Employees shall be paid not later than quitting time on Friday of each week; provided, however, that in no event shall more than one (1) calendar week's wages be withheld at any one time. In the event Friday falls on any holiday (whether recognized under this RTSA or not) on which

local banks will be closed, the Contractor-Employer will make every effort to provide the employees with their paychecks by Thursday of that week. Contractor-Employers will make arrangements for Covered Employees to cash payroll checks at a local Hawaii bank or financial institution.

- (b) Covered Employees discharged for cause shall be paid all wages due at the time of discharge. However, if the discharge occurs at a time and under conditions that prevent the Contractor Employer from making immediate payment, then all wages due must be paid to the Covered Employees no later than the working day following the discharge. Covered Employees who quit shall be paid all wages due no later than the next regular pay day, either through regular pay channels or, if requested by the Covered Employee, by mail. However, if a Covered Employee gives at least five (5) working days written notice of his intent to quit, the Employer shall pay all wages earned and due at the time of separation.

Article 10 - Wages and Benefits: Obligations of Contractor-Employer

10.1 Contractor-Employer shall comply with the following:

- (a) Contractor-Employer shall observe and comply with all applicable provisions of HRS Chapter 104 and Davis Bacon Act, 40 U.S.C. § 276a et seq. relating to wages and hours, including fringe benefits. The Contractor-Employer shall pay all Covered Employees, not less than the prevailing wage rate in conformance with applicable federal and State laws. Where rates differ for any class of Covered Employees, the higher rate shall apply.
 - (1) The minimum federal wage rate applicable to each Construction Contract shall be those in the U.S. Department of Labor Wage Determination Decision and Modification in effect ten (10) days prior to the solicitation due date for that Construction Contract.
 - (2) The minimum State wage rate applicable to each Construction Contract shall be periodically increased during the performance of each Construction Contract in an amount equal to the increase in the prevailing wages as periodically determined by the State Director of Labor and Industrial Relations. Notwithstanding the provisions of the Construction Contract entered into, if the Director of Labor and Industrial Relations determines that the prevailing wage has increased, the minimum State wage rate applicable to the Construction Contract shall be raised accordingly.

10.2 Contractor-Employers shall contribute fringe benefits pursuant to the applicable Trust Fund Agreements of the respective Unions, and shall adopt and agree to be bound by the written terms of such legally established Trust Fund Agreements specifying the detailed basis on which such contributions are to be made into, and benefits paid out of such trust funds on behalf of its Covered Employees. All Contractor-Employers required to make contributions pursuant to this RTSA authorize the parties to the applicable Trust Fund Agreements to appoint employer trustees and successor employer trustees to administer the trust funds and hereby ratify and accept the employer trustees so appointed as if made by the Contractor-Employers. All Contractor-Employers contributing to trust funds required by this RTSA, shall as a condition of making such contributions be required to sign appropriate participation agreements with such trust funds, provided that nothing contained in such participation agreements or this RTSA is intended to require any Contractor-Employer to become a party to, or to be bound by a collective bargaining agreement, nor is the Contractor-Employer required to become a member of any employer group or association as a condition for making such contributions, nor will the term "jurisdiction of the collective bargaining agreement" as specified in section 4203(b)(2)(B)(i) of the Employee Retirement Income Security Act be defined as anything other than the Scope of the RTSA as delineated in Article 3 herein.

10.3 Payments of fringe benefits specified in Section 10.1 shall be made for actual hours worked. Except as specifically provided for in Sections 9.9 and 9.13, time that is paid for but not worked shall not be counted as hours worked for purposes of making said payments. When calculating contributions for any overtime hours, all fringe benefit contributions shall be paid on the basis of "hours worked" and no overtime multiplier shall apply.

10.4 All references in this Agreement to the payment of wage rates and fringe benefits shall, in all instances, be in strict compliance with HRS Chapter 104 and the Davis Bacon Act, 40 U.S.C. § 276a et seq., and related statutes. The Owner's Contractor-Employer shall monitor Contractor-Employers for compliance with HRS Chapter 104 and the Davis Bacon Act, 40 U.S.C. § 276a et seq. requirements as may be applicable to such Contractor-Employers.

10.5 Wage premiums such as those based on height of work, type of work or material, special skills, etc., shall not be paid unless recognized by the appropriate HRS Chapter 104 or Davis Bacon Act, 40 U.S.C. § 276a et seq. prevailing wage rate or classification.

10.6 Under the terms of this RTSA, no per diem, subsistence, zone pay or zone rates shall apply unless so recognized in the appropriate HRS Chapter 104 or Davis Bacon Act, 40 U.S.C. § 276a et seq. prevailing wage rate determination for the appropriate Construction Contract.

Article 11 - Assignment

11.1 No Contractor-Employer or Union may assign its rights and obligations under this RTSA without the express written consent of the other parties and written notification to the Owner. Any assignment shall include the adoption of the RTSA by the assignee of the assigning party.

Article 12 – Subcontracting: Obligations of Contractor-Employer

12.1 Contractor-Employer agrees that it will not subcontract any work to be performed on the Project by Covered Employees except to an individual, firm, partnership, corporation or any combination thereof or joint venture that signs a Letter of Assent and thereby agrees to become a Contractor-Employer subject to this RTSA. Any Contractor-Employer working on the Project shall, as a condition to working on said Project, perform all work under the terms of this RTSA.

Article 13 - General Work Rules: Obligations of Contractor-Employer and Unions

13.1 Slowdowns, standby crews and featherbedding practices will not be tolerated.

13.2 It is understood that Owner may establish reasonable project rules that will be uniformly applied and adhered to by all Contractor-Employers, the Unions and all employees. These rules will be provided by the Owner to all Contractor-Employers for the Contractor-Employer's pre-job conference and made available in writing to their Covered Employees. These rules shall be provided to the Unions.

Further, Contractor-Employers may also establish reasonable work rules that will be uniformly applied and adhered to by all employees employed by the Contractor-Employer on the Project. These rules shall be provided by the Contractor-Employer at its pre-job conference, to the Unions and the Owner, and made available to the Covered Employees, in writing. If any rule or change in rules conflicts with the RTSA, the RTSA shall prevail. Any disputes regarding rules shall be subject to Article 14 herein.

13.3 Security procedures for the control of tools, equipment and materials are the responsibility of the Contractor-Employer. Covered Employees having in their possession without authorization any property of the Contractor-Employer or of another employee shall be subject to immediate discharge by the Contractor-Employer. The Contractor-Employer will be responsible for the establishment of reasonable security measures for the protection of personal, company and Owner property.

13.4 There shall be no restrictions on the use of any tools by any qualified employee in any emergency situation endangering life, limb or property; or on the use of any tools or equipment for the performance of work within the jurisdiction, provided the employee can safely use the tools and/or the equipment involved.

13.5 The selection of a craft foreman and general foreman and the number of same required shall be entirely the right and responsibility of the Contractor-Employer. It is understood that in the selection of such individuals the Contractor-Employer will give primary consideration to the qualified individuals available in the City and County of Honolulu. If none are available, the Contractor-Employer is free to pick foremen/general foreman from out of the area.

13.6 The Contractor-Employer has the sole and exclusive right to assign specific Covered Employees and/or crews to perform overtime work when such overtime work is necessary to accomplish the job. The overtime work shall be assigned to Covered Employees and/or crew(s), to the extent needed, who performed the work involved during the regular work day or work shift.

13.7 The Contractor-Employer shall provide a convenient and sanitary supply of drinking water, and sanitary drinking cups.

13.8 The Contractor-Employer shall provide adequate sanitary toilet facilities, water, and clean up facilities to Covered Employees.

13.9 The Contractor-Employer shall provide a safe and secure place for storage of tools.

13.10 All required safety equipment will be provided by the Contractor-Employer.

13.11 Contractor-Employer shall provide on-site parking at no cost to Covered Employees. If there is no free parking available within 2,000 feet of the job site, the Contractor-Employer shall reimburse Covered Employee at the lowest parking rate within the 2,000 foot area, upon presentation by the Covered Employee of signed and dated receipts for each parking expenditure. At its option, the Contractor-Employer may furnish transportation from a designated free parking area to and from the job site, in lieu of the above reimbursement.

The Unions and Contractor-Employer shall meet prior to the commencement of the Project to work out mutually agreed provisions to take care of parking expenses in the event receipts for such expenses are not available.

Article 14 - Grievance Procedure: Obligations of Contractor-Employer and Unions

14.1 This RTSA is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without Work Disruption.

14.2 Contractor-Employer, Unions and Covered Employees, collectively and individually, recognize the importance of maintaining continuous and uninterrupted performance of the construction work on the Project, and agree to resolve disputes, except those subject to Article 8 and Article 15, in accordance with the grievance-arbitration provisions in this Section 14.

14.3 Any complaint or dispute arising out of and during the term of this RTSA, other than those subject to Article 8, and those trade jurisdictional disputes subject to Article 15, shall be considered a grievance and subject to resolution in accordance with the grievance-arbitration provision of this Article 14.

14.4 Grievances under this Article shall be presented to the Contractor-Employer, or to the Union, as the case may be, allegedly at fault within seven (7) working days after the alleged violation occurred or first became known to the grieving party; provided, however, that in cases of discharge, the grievance shall be submitted within seven (7) working days of the discharge. The time limit for grievances involving discharge shall not commence until such time as the Contractor-Employer provides a written reason for the discharge. Failure to so present the grievance shall be deemed as a waiver of remedy.

14.5 Grievance Procedure shall be as follows:

- (a) **First Step (Job Site Supervisor or Union Steward).** A grievance shall first be presented to the job site supervisor or Union Steward who has authority to review and adjust grievances.
- (b) **Second Step (Contractor-Employer's Authorized Representative or Authorized Union Representative).** If the matter is not settled in the First Step within three (3) working days after presentation to the job site supervisor or Union Steward, the Union or Contractor-Employer, if it wishes to pursue the grievance further shall submit it to the Contractor-Employer's authorized representative or Union representative. Such submittal must be made in writing no later than five (5) working days after expiration of the initial three (3) working days. Such written submittal shall specify the nature of the grievance.
- (c) **Third Step (Arbitration).** If the matter is not settled in the Second Step within three (3) working days the matter shall be submitted to Arbitration.

14.6 Contractor-Employer and the Unions agree to the following permanent panel of five (5) arbitrators from which an Arbitrator shall be selected to hear and decide disputes arising under this Article 14. The members of the panel are:

R. Charles Bocken

E. John McConnell

Michael F. Nauyokas

Clyde Matsui

Patrick Yim

In the event any panel member is no longer available to serve under this RTSA, the Owner and the Unions collectively shall agree on a substitute panel member within thirty (30) calendar days of notification by the panel member of the member's unavailability to serve. If the parties cannot reach an agreement within the specified time, the remaining panel members shall establish a list of five (5) individuals from which the Owner and the Unions collectively shall select the substitute panel member by striking an individual from the list in an alternating and equal number of strikes. The remaining individual shall thereafter serve as the new panel member in substitution for the member who is no longer available to serve.

14.7 Selection of the Arbitrator from the panel shall be by mutual agreement of the Contractor-Employer and the Union(s) involved in the dispute. If an Arbitrator cannot be mutually agreed to by the parties, each party shall have an alternating and equal amount of strikes from the panel of five (5) and the remaining panel member shall serve in the dispute. The Contractor-Employer or Union(s) invoking this procedure shall notify the Arbitrator selected. In the event that the selected Arbitrator is unavailable, the Contractor-Employer and Union(s) shall mutually agree upon another Arbitrator.

14.8 The Arbitrator may consider and decide only the particular grievance presented to him/her by the Contractor-Employer and the Union, and the decision of the Arbitrator shall be based solely upon an interpretation of the provisions of this RTSA and the evidence presented at the hearing. The Arbitrator shall not have the right or authority to amend, take away, modify, add to, or change any of the provisions of this RTSA. In deciding the issue, the Arbitrator's decision shall be final and binding upon the parties provided it does not exceed the limitations contained herein.

14.9 Except as provided in Section 6.5 of Article 6 and Section 8.4(g) of Article 8, the parties will share, pro rata, the fees and expenses of the Arbitrator to hear

the dispute. Each party will be responsible for its own legal fees and costs. The Arbitrator shall conduct a hearing and issue a written decision resolving the grievance. The award by the Arbitrator shall be final and binding on the Parties to the Arbitration. Either party to the arbitration may elect to notify the Owner concerning the facts and content of the arbitration. If elected by the Owner, the parties agree that the Owner has the absolute right to attend and observe the arbitration.

Article 15 - Jurisdictional Disputes

15.1 The assignment of work will be solely the responsibility of the Contractor-Employer performing the work involved. Such work assignments will be in accordance with the plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

15.2 All Jurisdictional disputes on this Project, between or among Building and Construction Trades Unions and Contractor-Employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other Plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decision rendered shall be final, binding and conclusive on the Contractor-Employers and Unions.

15.3 All jurisdictional disputes shall be resolved without the occurrence of a Work Disruption of any nature and the Contractor-Employer's assignment of work shall be adhered to until the dispute is resolved. Covered Employees violating this Section shall be subject to immediate discharge, and shall not be eligible for rehire on the Project by any Contractor-Employer.

15.4 Each Contractor-Employer will conduct a pre-job conference with the Unions prior to commencing the work. The Owner will be advised in advance of all such conferences and will attend and may participate in its sole discretion.

15.5 In accordance with Article 8 there shall be no Work Disruption of any kind, in protest of any such award or resolution of any jurisdictional dispute.

Article 16 - Safety, Environmental and Health

16.1 It shall be the responsibility of Contractor-Employer to ensure safe working conditions and employee compliance with any safety rules established by the Owner and the Owner's controlled insurance program (OCIP), if one is in place, and in accordance with applicable federal or State laws and regulations.

16.2 Covered Employees shall be bound by the safety, security and site access rules established by the Owner and Contractor-Employer for the Project. These rules will be published and given to each employee as part of their new-hire orientation, as well as posted throughout the Project. A violation of these rules shall constitute just cause subject to termination under this RTSA. If justifiably discharged for the above reason, the Covered Employee shall not be eligible for rehire on the project for a period of not less than ninety (90) days.

16.3 The Contractor-Employer shall conduct safety meetings at least once a week for all Covered Employees. Such mandatory meetings will be conducted on paid time. Attendance at such meetings is mandatory and employees who do not attend may be subject to disciplinary action.

16.4 Covered Employees shall use, maintain and care for personal protective equipment and other health and safety equipment issued or assigned them. Proper use of the equipment is mandatory, and failure to do so may result in disciplinary action up to and including discharge.

16.5 To further the health, safety and security of the work place, the Contractor-Employer and Unions agree to implement the policy covering drugs and other controlled substances pursuant to Article 17.

Article 17 – Substance Abuse Policy and Drug and Alcohol Testing Procedure

17.1 The Contractor-Employer and Unions shall implement the “Policy Covering Drugs and Other Controlled Substances For The Honolulu High-Capacity Transit Corridor Project” which is marked as Attachment C and which is in accordance with and in compliance with U.S. Department of Transportation Rules set forth in 49 CFR Part 40. The Contractor-Employer and the Unions shall agree to accept the Owner’s revisions to this Policy to comply with any changes in the U.S. Department of Transportation Rules.

Article 18 – Joint Administrative Committee

18.1 The parties to this RTSA shall establish a four (4) person Joint Administrative Committee (JAC). This JAC shall be comprised of a management party made up of one (1) representative selected by the Owner and one (1) representative from the construction manager; and a labor party made up of two (2) representatives from the Unions. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this RTSA.

18.2 The JAC shall not be involved in or rule upon any individual grievances. Outside of the context of an individual grievance, the JAC will resolve any interpretations or clarifications of this RTSA that may be required by the Unions and/or the Contractor-Employers by majority vote with such resolutions to be binding on all signatories of this RTSA as provided herein. Any question regarding the meaning, interpretation, or application of the provisions of this RTSA, except relating to Article 8, shall be referred directly to the JAC for resolution prior to such question being referred to arbitration in the event the JAC is unable to resolve the question. Such resolutions or clarifications shall be reduced to writing, jointly signed by the JAC and distributed to the signatory parties to this RTSA. Labor and management shall each have one equal vote at JAC meetings regardless of the number of attendees. Labor and management shall jointly chair the JAC.

18.3 In addition to its charter to rule on interpretations or clarifications to this RTSA, the JAC shall annually review the effectiveness of the RTSA in meeting the RTSA goals of:

- (a) No construction Work Disruption on this Project.
- (b) Reducing friction that may arise when union and open shop employees are working at a common jobsite.
- (c) High quality, cost effective construction work.
- (d) Providing training opportunities for local craft workers.
- (e) Ensuring compliance with health and safety policies and laws.

The annual review shall be the basis for the JAC to determine the feasibility of a project labor agreement for yet to be determined mixed-use transit oriented development zones as defined by Ordinance No. 09-4. Should the City and County of Honolulu have an ownership interest in the transit oriented development, it will strongly consider the adoption of a similar project labor agreement for that project based upon the JAC's recommendation.

Article 19 - No Discrimination

19.1 The Contractor-Employer and Unions shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, sexual orientation, marital status, ancestry, arrest or court record or any other protected status pursuant to federal or State law or regulation.

19.2 The Unions acknowledge and agree to use their utmost efforts to assist the Contractor-Employer with any legally prescribed goals for employment of females and minorities on the Project.

19.3 Any complaint regarding the application of these provisions shall be brought to the immediate attention of the Contractor-Employer and the Owner, and shall be promptly considered and resolved by the Contractor-Employer.

19.4 The use of the masculine or feminine gender in this RTSA shall be construed as applying to both genders.

Article 20 - Savings Clause

20.1 If any Article or provision of this RTSA shall be declared invalid, inoperative or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the federal or State government, the Contractor-Employers and the Unions, shall suspend the operation of such Article or provision during the period of its invalidity. Following written notice of the invalidity of the Article or provision, the Owner and the Unions shall in good faith and within seven (7) calendar days, negotiate a substitute Article or provision to replace the Article or provision declared invalid. If the parties are unable to reach agreement within the specified time, the Owner shall adopt, to the extent feasible, a substitute Article or provision which will meet the objections to address the invalidity and which will be in accord with the intent and purpose of the invalidated Article or provision. The parties agree to implement and abide by the amended Article or provision, but the Unions may elect arbitration under Article 14, if they disagree with the Owner's adoption. The parties will give notice of the new provision to the Contractor-Employers.

20.2 If any Article or provision of this RTSA shall be held invalid, inoperative or unenforceable by operation of law or by any of the above mentioned tribunals of competent jurisdiction, the remainder of this RTSA shall not be affected thereby.

20.3 If the Federal Acquisition Regulatory Council adopts rules to implement the Executive Order 13502 relating to Use of Project Labor Agreement for Federal Construction Projects that impacts the rights and relationships of parties to this RTSA, Sections 20.1 and 20.2 shall apply.

20.4 If there is a change in law resulting in the possibility of this RTSA jeopardizing the receipt by the Owner of any federal grant-in-aid or other federal allotment of money for the Project, the conflicting or contrary provision shall be deemed struck from this RTSA and the Owner and the Unions will follow the procedures in Sections 20.1 to determine whether and what modification to this RTSA should be made.

20.5 If any provision in this RTSA conflicts with or is contrary to the requirements and conditions for the receipt of federal or State funding and jeopardizes the receipt by the Owner of federal or State funding for the Project, the conflicting or contrary provision will be deemed struck from this RTSA and the Owner and the Unions will follow the procedures in Sections 20.1 to determine whether and what modification to this RTSA should be made.

20.6 In the event the Owner is required to formalize a small business program or is required to implement a disadvantaged business enterprise program for the receipt of federal or State funding, this RTSA shall be amended to comply with the goals of the program, and the Owner and the Unions may meet and confer for this purpose.

Article 21 – Duration

21.1 This RTSA shall be effective on the date hereinafter stated and shall continue in full force and effect for the duration of the Project construction work as described in Articles 2 and 3 of this RTSA, unless the Owner has elected to terminate this RTSA, in whole or in part, pursuant to Article 8.6 or as otherwise provided for by law.

21.2 Turnover. Construction of any phase, portion, section or segment of this Project shall be deemed complete when such phase, portion, section or segments has been turned over to the Owner by the Contractor-Employer as evidenced by the Owner's acceptance of such phase, portion, section or segment. As areas and systems of the Project are inspected and construction tested and/or approved and accepted by the Owner, the RTSA shall have no further force or effect on such items or areas, unless construction or renovation covered by this RTSA is subsequently performed.

21.3 Notice. Notice of each "acceptance" by the Owner will be provided to the Unions with a description of what portion, segment, etc., has been accepted. Final acceptance may be subject to a "punch list", and in such case, the RTSA will continue to apply to each such item on the list until it is completed to the satisfaction of the Owner, and Notice of Acceptance is given by the Owner to the Contractor-Employer(s).

21.4 Termination. Final termination of all obligations, rights and liabilities and disagreements shall occur, except for the processing and disposition of any then-pending grievances, upon delivery to Contractor-Employer and Union of a notice from the Owner stating that acceptance by the Owner has occurred for the Construction Contract for the Project.

Article 22 – Miscellaneous Provisions

22.1 Scheduled Re-Opening and Modification of this RTSA.

With respect to any Construction Contracts on the Project which are bid and awarded after the fifth anniversary of the effective date of this RTSA, and every five (5) years thereafter for the duration of this RTSA, the Owner and the Unions collectively may mutually agree to reopen specific provisions in the RTSA for such construction contracts.

If the Owner and the Unions feel that any provisions of this RTSA are not meeting the needs of the Project, by mutual agreement, they may agree to specific modifications to such provisions.

Any changes or modifications agreed upon by the Owner and the Unions collectively shall be memorialized in writing, dated and signed, and thereafter shall be incorporated as an amendment to this RTSA. Any Construction Contracts bid and awarded thereafter shall require the Contractor-Employers, together with their subcontractors or whatever tier, to execute a Letter of Assent, binding them to the amended RTSA.

This Article does not in any way impact the Owner's rights under Article 20 – Savings Clause.

22.2 Construction.

- (a) Each party signatory to this RTSA has read, reviewed and fully understands the terms of this RTSA and agrees to be bound by this RTSA.
- (b) Each party to this RTSA has had the opportunity to have their legal counsel and/or advisors review this document.

22.3 Delivery of Notice

When notice to a party is required under this RTSA, notice in writing or as otherwise provided, shall be provided to the party at the address set forth herein, or in any executed Letter of Assent:

To the Owner: Managing Director
 City & County of Honolulu
 530 South King Street, Room 306
 Honolulu, Hawaii 96813

Director
Department of Transportation Services
City & County of Honolulu
650 South King Street, 3rd Floor
Honolulu, Hawaii 96813

RTSA Administrator
Department of Transportation Services
City & County of Honolulu
650 South King Street, 3rd Floor
Honolulu, Hawaii 96813

To the Contractor-Employer: (Letters of Assent shall set forth.)

To the Union: See Attachment B, attached.

Notice issued to each party at the address it provided shall satisfy the notice requirements of this RTSA unless the party prior thereto had notified all parties to this RTSA of any change to the party's address.

22.4 Applicable Law

Except to the extent controlled by federal law, this RTSA shall be construed in accordance with the laws of the State of Hawaii, without regard to its conflicts of laws provisions. Additionally, whenever state law is referred to in this RTSA, it is understood that the referenced state law is the law of the State of Hawaii.

22.5 Warranty of Authority

Each person signing this RTSA or a Letter of Assent warrants and represents that such person has the authority to sign on behalf of himself or herself or for the entity such person represents and that this RTSA has been validly authorized and constitutes a legally binding and enforceable obligation.

22.6 Entire Agreement.

This RTSA contains all of the agreements and terms agreed upon between and among the parties to this RTSA with regard to the matters set forth herein and supersedes and cancels each and every other prior conflicting agreement, promise and/or negotiation between any of the parties.

22.7 Counterparts.

Owner and Unions agree that this RTSA may be executed in any number of counterparts, and if executed in counterparts, said counterparts shall be

transmitted to the Owner by the Unions by the most expeditious means available provided that if an original signature page is not initially provided, the Unions shall thereafter transmit the original signature page to the Owner as soon as practicable. Each of the counterpart signatures when taken together will constitute one and the same document.

This RTSA is entered into on this 17th day of November, 2009, Honolulu, Hawaii.

CITY AND COUNTY OF HONOLULU

Mufi Hannemann
Mayor

APPROVED:

Rix Maurer III
Director
Department of Budget and Fiscal Services

APPROVED:

Wayne Y. Yoshioka
Director
Department of Transportation Services

APPROVED AS TO
FORM AND LEGALITY:


Carrie K.S. Okinaga
Corporation Counsel

**Carpet, Linoleum & Softile Local
1926**

Name: **Malcolm Ahlo**
Title: **Business Representative**

**Glaziers Architectural Metal &
Glass Workers Local 1889**

Name: **Richard Tagere**
Title: **Business Representative**

**International Union of Painters &
Allied Craft Workers Local 1791**

Name: **Ronald Hayashi**
Title: **Business Representative**

Iron Workers Local 625

Name: **Joseph V. O'Donnell**
Title: **Financial Secretary – Treasurer
Business Manager**

**Operative Plasterer's & Cement
Masons International Association
Local 630**

Name: **Nolan G. Moriwaki**
Title: **Business Manager**

**Drywall, Tapers & Finishers Local
1944**

Name: **Joseph Bazemore**
Title: **Business Representative**

**International Union of Bricklayers
& Allied Craft Workers Local 1**

Name: **Nolan G. Moriwaki**
Title: **Business Manager**

Ironworkers Shopmen Local 803

Name: **Eugene B. Paris**
Title: **Financial Secretary – Treasurer
Business Manager**

**Laborers' International Union of
North America, Local 368**

Name: **Peter A. Ganaban**
Title: **Business Manager**

**Roofers, Waterproofers & Allied
Workers United Union of Roofers
Local 221**

Name: **Vaughn Chong**
Title: **Business Manager**

ATTACHMENT "A"
LETTER OF ASSENT

Director, Department of Transportation Services
City and County of Honolulu
650 S. King Street, 3rd Floor
Honolulu, Hawaii 96813

RTSA Administrator, Department of Transportation Services
City and County of Honolulu
650 S. King Street, 3rd Floor
Honolulu, Hawaii 96813

Dear Sir or Madam,

Subject: Project Labor Agreement for the Honolulu High-Capacity
Transit Corridor Project

_____ RFP No. _____
(title of contract)

This is to certify that the undersigned Contractor-Employer has examined a copy of the Rapid Transit Stabilization Agreement (RTSA) dated November 17, 2009, between the City and County of Honolulu and the Carpet, Linoleum & Softile Local 1926; Drywall, Tapers & Finishers Local 1944; Glaziers Architectural Metal & Glass Workers Local 1889; International Union of Bricklayers & Allied Craft Workers Local 1; International Union of Painters & Allied Craft Workers Local 1791; Ironworkers Shopmen Local 803; Iron Workers Local 625; Laborers' International Union of North America, Local 368; Operative Plasterer's & Cement Masons International Association Local 630; Roofers, Waterproofers & Allied Workers United Union of Roofers Local 221. The undersigned Contractor-Employer hereby agrees to comply with all of the terms and conditions of the RTSA as such RTSA may, from time to time, be amended or interpreted pursuant to its terms.

It is understood that the signing of the Letter of Assent shall be as binding on the undersigned Contractor-Employer as though the undersigned Contractor-Employer had signed the above-referenced RTSA. The Contractor-Employer agrees that all its subcontractors, of whatever tier, shall execute the Letter of Assent and agree to be bound by the RTSA for all work within the scope of the Construction Contract covered under the Project definition in the RTSA.

This Letter of Assent shall become effective and binding upon the undersigned Contractor-Employer on this _____ day of _____, 20___, and shall

ATTACHMENT "A"
LETTER OF ASSENT

remain in full force and effect until the completion of the above-identified Contractor-Employer's Construction Contract. Upon signing this Letter of Assent, Contractor-Employer shall issue notice to the parties to the RTSA in the form attached as Attachment B (Union Addresses), providing the Contractor-Employer's address at which notice is to be provided when notice to the Contractor-Employer is required under the provisions of the RTSA.

Sincerely,

Contractor-Employer

By: _____
Its: _____

ATTACHMENT "B" UNION ADDRESSES

**Carpet, Linoleum & Softile Local
1926**

Malcolm Ahlo
Name
Business Representative
Title
2240 Young Street
Address
Honolulu, Hawaii 96826
Address

**Glaziers Architectural Metal &
Glass Workers Local 1889**

Richard Tacgere
Name
Business Representative
Title
2240 Young Street
Address
Honolulu, Hawaii 96826
Address

**International Union of Painters &
Allied Craft Workers Local 1791**

Ronald Hayashi
Name
Business Representative
Title
2240 Young Street
Address
Honolulu, Hawaii 96826
Address

**Drywall, Tapers & Finishers Local
1944**

Joseph Bazemore
Name
Business Representative
Title
2240 Young Street
Address
Honolulu, Hawaii 96826
Address

**International Union of Bricklayers
& Allied Craft Workers Local 1**

Nolan G. Moriwaki
Name
Business Manager
Title
2251 North School Street
Address
Honolulu, Hawaii 96819
Address

Ironworkers Shopmen Local 803

Eugene B. Paris
Name
Financial Secretary – Treasurer
Business Manager
Title
94-497 Ukee Street
Address
Waipahu, Hawaii 96797
Address

ATTACHMENT "B" UNION ADDRESSES

Iron Workers Local 625

Joseph V. O'Donnell
Name
Financial Secretary – Treasurer
Business Manager
Title
94-497 Ukee Street
Address
Waipahu, Hawaii 96797
Address

**Laborers' International Union of
North America, Local 368**

Peter A. Ganaban
Name
Business Manager
Title
1617 Palama Street
Address
Honolulu, Hawaii 96817
Address

**Operative Plasterer's & Cement
Masons International Association
Local 630**

Nolan G. Moriwaki
Name
Business Manager
Title
2251 North School Street
Address
Honolulu, Hawaii 96819
Address

**Roofers, Waterproofers & Allied
Workers United Union of Roofers
Local 221**

Vaughn Chong
Name
Business Manager
Title
2045 Kamehameha IV Road
Address
Honolulu, Hawaii 96819
Address

ATTACHMENT "C"

POLICY COVERING DRUGS AND OTHER CONTROLLED SUBSTANCES FOR THE HONOLULU HIGH CAPACITY TRANSIT CORRIDOR PROJECT

WHEREAS, the Unions and the Contractor-Employer recognize that drug and alcohol abuse is a problem that affects many employees, and wish to address this problem;

WHEREAS, especially in the construction industry, an employee who is under the influence of illegal drugs or alcohol while at the workplace or is abusing controlled substances while at the workplace is a danger not only to himself or herself but to his or her fellow employees;

WHEREAS, the Unions and the Contractor-Employer wish to make the workplace a better and safer place of employment by eliminating the danger that such employees create by being under the influence of drugs or alcohol at the workplace;

WHEREAS, such employees who are under the influence of drugs or alcohol have lower productivity than employees who are drug and alcohol free;

WHEREAS, the Unions and the Contractor-Employer wish to have Covered Employees working at normal capacity, doing an honest day's work for an honest day's pay;

WHEREAS, the Unions and the Contractor-Employer wish to comply with the Federal Law known as the "Drug-Free" Workplace Act of 1988," Public Law 100-690 in order to obtain a drug-free workplace.

A. Prohibition Against Alcohol and Controlled Substances At the Workplace

1. Every Covered Employee who is employed by the Contractor-Employer and who is covered by the Project Labor Agreement is prohibited from unlawfully manufacturing, distributing, dispensing, possessing, using or being under the influence of a controlled substance (paragraph J, below) or alcohol at the Contractor-Employer's workplace (paragraph O.5, below). Any Covered Employee who violates this prohibition shall be subject to immediate removal from the aforesaid workplace, as well as other disciplinary action, including discharge.

B. Use Of Over-The-Counter Medications Or Medications Prescribed By A Licensed Physician

1. Use of over-the-counter medications or of a medication prescribed by a licensed physician in accordance with the physician's orders, is NOT prohibited; but to avoid an unwarranted accusation and/or other misunderstanding, the Covered Employee is required to report the fact that he is taking such medication to his foreman and/or supervisor, prior to commencing work at the workplace.
2. Any Covered Employee who is lawfully using a controlled substance (paragraph O.4, below) at the workplace, i.e., taking prescription drugs (paragraph O.6, below) in accordance with a doctor's order, while not subject to disciplinary action, may nevertheless be required to leave the workplace, if consumption of that medication presents a safety hazard or prevents him from being able to properly perform his work.

C. Education and Awareness Program

To complement and foster the Joint Contractor-Employer and Unions Policy and Program of achieving a drug-free workplace and an alcohol-free workplace, the Contractor-Employer shall establish and implement a Drug Education And Awareness Program which shall include the following:

1. Dissemination of information to Covered Employees at least twice a year regarding the dangers of drugs in the workplace, the Contractor-Employer policy of maintaining a drug-free workplace; the penalties that may be imposed for drug or alcohol abuse violations; and any available substance counseling programs and services, substance abuse rehabilitation programs, employee assistance programs, and other community services that are available to those who have a drug or alcohol problem.

In connection with the above, Covered Employees will be encouraged to seek counseling and other assistance from these agencies on a self-referral basis if they feel they have a need for it. A Covered Employee who voluntarily seeks help and undergoes treatment for drug or alcohol abuse prior to being required to undergo testing will NOT be subject to disciplinary action because of admitted substance abuse, provided he or she thereafter remains drug and alcohol free after commencing treatment. Failure to remain drug or alcohol free shall be considered as that Covered Employee's First Offense and subject the Covered Employee to the actions set forth under paragraph G.1.(a), below.

2. Top management and supervisory employees will also be trained to assist in identifying and addressing the matter of unlawful use of alcohol or of a controlled substance by Covered Employees, including the making of referrals to appropriate agencies.

D. Pre-Employment Testing

1. Effective thirty (30) days after execution of the Project Labor Agreement all current employees on the Contractor-Employers' payroll will not be required to undergo a pre-employment substance abuse test. However, an employee/applicant who has been laid off for thirty (30) calendar days or more or a new employee will be required to undergo a pre-employment substance abuse test as a condition of consideration of employment with the Contractor-Employer or prior to being approved to work at any Contractor-Employer facility or work area.
2. Pre-employment testing must be in place and such testing must actually be conducted before the Contractor-Employer can conduct Periodic and Random Testing (paragraph G.I.(b) and (c), below).

E. Additional Considerations Applicable To Companies Regulated By The U.S Department Of Transportation

In the event the Contractor-Employer is required to comply with U.S. Department of Transportation regulations regarding workplace drug testing programs, the Contractor-Employer and the Unions agree to comply with those regulations. It is understood and agreed that compliance with the U.S. Department of Transportation regulations shall include:

1. Pre-employment and post-accident testing of applicants and Covered Employees subject to U.S. Department of Transportation regulation;
2. Appointment of a Medical Review Officer (MRO) who will be responsible for making the final decision to verify a positive test result after review of all relevant data on the testing and any explanations offered by the individual tested;
3. Prohibiting Covered Employees who are subject to U.S. Department of Transportation regulation and who have tested positive from returning to work unless they are released to return to work by the Medical Review Officer;
4. Requiring Covered Employees who are subject to U.S. Department of Transportation regulation and who have tested positive to undergo increased, unannounced testing for up to 60 months; and
5. Retention of all positive test results for 5 years and retention of all negative results for 12 months.

F. Immediate Removal From Job/Substance Abuse Testing

1. The Contractor-Employer shall have the authority to immediately remove any Covered Employee from the workplace and to require that Covered Employee to immediately undergo, at Contractor-Employer's expense, drug or alcohol testing, in the manner set forth below, under the following circumstances:

(a) For Cause. When a reasonable, objective basis exists to believe that a Covered Employee has engaged in the unlawful use of or is under the influence of a controlled substance or alcohol at the workplace as evidenced by such factors as, but not limited to, the following:

- (1) Unsafe work habits or practices that endanger the Covered Employee himself/herself and/or other employees;
- (2) Abnormal work performance;
- (3) Physical conditions and/or symptoms, such as unstable balance, alcohol on breath, glassy or reddened eyes;
- (4) Frequent or unexplained absence from the workplace or job site during the Covered Employee's shift;
- (5) Abnormal personal behavior and/or poor interpersonal relations on the job;
- (6) Discovery of controlled substances, alcohol, or controlled substances paraphernalia at the work area or on the job site, in the possession of or immediate proximity of a Covered Employee; and/or
- (7) Objective evidence of unlawful use of a controlled substance or unlawful sale of a controlled substance as provided by any Federal, State, or local enforcement agency.

In utilizing the foregoing criteria of a "reasonable, objective basis," the parties hereto expressly agree that the Federal or State Constitutional law standards of "probable cause" or "reasonable suspicion" are not applicable.

The Contractor-Employer shall complete the attached form (Appendix B) prior to sending a Covered Employee to be tested For Cause.

- (b) Periodic Testing. Periodic, routine or intermittent testing shall be conducted at different times and at different intervals for all Covered Employees on the Project to determine the use of any illegal or unauthorized drug, alcohol or other substances prohibited by this Policy.

Post-counseling/rehabilitation or return-to-work medical examinations may be required when a Covered Employee returns to work after a long illness, disabling injury, extended absence, reduction in force or as a result of a condition of reinstatement upon completion of a drug and alcohol treatment or counseling program.

As part of an annual physical the Contractor-Employer may require testing for those Covered Employees who are required to undergo medical examinations due to regulatory requirements of local, state or federal agencies (DOT, ICC, DOD, etc.).

- (c) Random Testing. Random Testing may be used at any time.

Workplace testing may be altered or changed whenever the Covered Employees' activities are regulated by either the Department of Transportation, Department of Defense or by contract with any other branch of government or private industry.

Random testing selection will be done on a fair and impartial basis.

2. Urine samples will be taken only under the direction of a licensed physician designated by a Contractor-Employer designated medical laboratory and the "Procedures For Medical Tests Of Urine Samples" as set forth in Appendix "A" as attached hereto shall be followed.
3. In addition, physicians and health care professionals who provide testing services for controlled substance and alcohol impairment shall adhere to the Code of Ethical Conduct For Physicians Providing Occupational Medical Services as adopted by the American Occupational Medical Association on July 23, 1976, as well as to the "Drug Screening In The Workplace Ethical Guidelines" as adopted by that same organization on July 25, 1986.
4. Refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union shall constitute an act of insubordination. This aforesaid insubordination shall be just and proper

cause for discharge. In addition, the refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union shall be considered a positive reading, as defined in Appendix "A" and subject to Section G.

- (a) A Covered Employee who refuses to sign an authorization to submit to a drug, controlled substance, or alcohol test, or refuses to undergo such a test, or refuses to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union shall be discharged unless the Covered Employee agrees to a two (2) week suspension from work without pay and without fringe benefits accruing and to sign Appendix G, Last Chance Agreement, whereby the Covered Employee agrees to resign from employment in the event of a positive drug, controlled substance, or alcohol test, or a second refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union, within three (3) years of the first Refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, the refusal to undergo such a test, or the refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union. Violation of the Last Chance Agreement shall constitute just cause for discharge.
- (b) For purposes of this section, refusal to undergo such a test shall include the following:
 - (i) Fails to appear for any test within a reasonable time, as determined by the Contractor-Employer, after being directed to do so by the Contractor-Employer.
 - (i) Fails to remain at the testing site until the testing process is complete.
 - (iii) Fails to provide a urine specimen for any controlled substances test required by this agreement.
 - (iv) In the case of a directly observed or monitored collection in a controlled substances test, fails to permit the observation or monitoring of the specimen.

- (v) Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure. For the purposes of this Section, when a Covered Employee does not provide a sufficient quantity of urine and the applicable procedures are being followed, the following shall apply to the determination of the beginning of the three hour period within which the Covered Employee must provide a specimen after he/she has provided an insufficient specimen: The three hour time limit shall begin when the Covered Employee provides a specimen of insufficient quantity. The three hour time limit does NOT begin with a no temperature specimen of sufficient quantity.
- (vi) Fails to provide an adequate amount of breath for any alcohol test required by this agreement.
- (vii) Fails to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
- (viii) Fails or declines to take an additional drug test the Contractor-Employer or collector has directed the Covered Employee to take (for example, if the MRO directs the Contractor-Employer to conduct a recollection under direct observation).
- (ix) Fails to undergo a medical examination or evaluation as directed by the MRO as part of the verification process, or as directed by the Contractor-Employer in situations where an adequate specimen is not provided.
- (x) Fails to undergo a medical examination or evaluation as directed by the Contractor-Employer as part of the insufficient breath procedure.
- (xi) Fails to cooperate with any part of the alcohol testing process.
- (xii) Fails to cooperate in any part of the controlled substances testing process (for example, refusing to empty his/her pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process). A refusal includes, but is not limited to, situations in which a Covered Employee provides an adulterated and/or

substituted specimen (as defined in the U.S. DOT Rules, 49 CFR Part 40). Such action shall constitute a refusal to test, in violation of Section F.4 and the Covered Employee shall be discharged unless the Covered Employee agrees to sign Appendix G, Last Chance Agreement.

5. A Covered Employee shall complete the "Consent For The Release Of Confidential Information" form as set forth in Appendix "C" prior to undergoing a substance abuse test. When a Covered Employee is tested, the Covered Employee, the Contractor-Employer and the Union shall be notified of the test results. Action against the Covered Employee shall be taken in accord with the disciplinary section herein if the Covered Employee's drug or alcohol test results are positive, as defined in Appendix "A" hereto.
6. The medical laboratory shall retain all positive specimens, in a frozen state, for twelve (12) months; all negative specimens for two (2) weeks. A Covered Employee shall have the right to have his or her sample as originally collected independently retested at his/her expense by a National Institute On Drug Abuse certified laboratory. The Covered Employee must exercise this right within fourteen (14) days from the time of the original sample collection and the Covered Employee must select a laboratory among those listed in Appendix "D" to conduct such retesting except as may be otherwise provided for in the Owner's controlled insurance program (OCIP). If the independent drug or alcohol retest results are not positive under the criteria set forth in Appendix "A": (a) the Covered Employee shall be put back to work immediately with reimbursement of full pay and benefits and with a rescission of any discipline imposed by reason of a positive drug or alcohol test result, along with an explanation for such rescission, and (b) the Contractor-Employer shall also reimburse the Covered Employee for the cost of the retest as paid for by the Covered Employee.

Where the Covered Employee believes that the positive test result is not due to unlawful use of alcohol or a controlled substance, but due to exposure to a workplace substance, or that the accuracy of the test result was confounded by a workplace substance, he/she shall have the right, at the Contractor-Employer's expense to have an independent laboratory designated by the Contractor-Employer evaluate the specimen by mass spectrometry or other state-of-the-art technology. If the evaluation indicates that the positive test result was due to a workplace substance, or that a workplace substance confounded the accuracy of the test: (a) the Covered Employee will be put back to work immediately with full back pay and benefits, and with a rescission of any discipline imposed along with an explanation for

such rescission; and (b) the Contractor-Employer shall take immediate steps to insure that Covered Employees are not exposed to such substances at levels that may produce or cause such positive test results, or that may cause material impairment of health or functional capacity.

7. A Covered Employee who tests positive and is later allowed to return to work pursuant to paragraphs G.1.(a) or (b), below, shall be subject to unannounced testing by the Contractor-Employer until two (2) subsequent consecutive tests of this nature are negative. Such tests shall be conducted within twelve (12) months after the Covered Employee returns to work, and in any event shall cease after the expiration of the aforesaid time period.

G. Schedule Of Disciplinary Actions

The manufacture, distribution, dispensation, possession, use of, or being under the influence of alcohol or a controlled substance by a Covered Employee, the manufacture, distribution, dispensation, possession or use of the paraphernalia of a controlled substance by a Covered Employee, or the attempt to engage in any of the foregoing by a Covered Employee, is prohibited at the Contractor-Employer's workplace. The violation of this aforesaid prohibition by a Covered Employee shall constitute just and proper cause for discipline, including but not limited to discharge, as provided for in the Project Labor Agreement. In the event the Covered Employee engages in a separate act of misconduct, in addition to the violation of this Policy, (such as insubordination, fighting, etc.) or engages in conduct which results in physical injury or property damage, the Covered Employee may also be disciplined for such conduct or misconduct in addition to discipline for the drug or alcohol offense. Such discipline shall be in accord with principles of just and proper cause.

1. The following disciplinary actions shall be taken against a Covered Employee whose drug or alcohol test has a positive reading, as defined in Appendix "A" hereto, or who is guilty of using or being under the influence of a controlled substance or alcohol at the workplace, and hereinafter collectively referred to as an offense:

(a) First Offense

- (1) Covered Employee Option 1 -- The Covered Employee shall be afforded the opportunity to enroll in a substance abuse assistance or rehabilitation program. If the Covered Employee enters such a program, his or her status as a Covered Employee will not be affected and he/she will be allowed to return to work and to continue to work as long as

he/she remains drug free, as indicated by a negative drug or alcohol test result.

- (2) Covered Employee Option 2 -- A first-offense Covered Employee who does not choose to enroll in a substance abuse assistance or rehabilitation program shall be suspended for the length of time it takes to obtain a negative reading from a subsequent drug or alcohol test but in any case, no less than a two (2)-week suspension. The Covered Employee must make arrangements with his or her Contractor-Employer prior to undergoing drug or alcohol retesting. Should a subsequent drug or alcohol test fail to produce a negative reading within three (3) months after the first offense, then the Covered Employee shall be considered as having committed his or her second offense.
 - (b) Second Offense -- A suspension from work for the time it takes to obtain a negative reading from any subsequent drug or alcohol test but in any case, no less than a four (4)-week suspension from work. The Covered Employee must make arrangements with his or her Contractor-Employer prior to undergoing drug or alcohol retesting. Should a subsequent test fail to produce a negative reading within two (2) months after the beginning of such suspension, then the Covered Employee will be discharged and will not be eligible for re-employment by the Contractor-Employer until such time as the physician or medical laboratory that conducted the original test submits verification of a negative reading having been obtained from said person.
 - (c) Third Offense -- Any Covered Employee who tests positive for the third time shall be discharged and shall not be eligible for re-employment by the Contractor-Employer for a period of three years, unless the Covered Employee can establish through objective evidence that he or she is no longer a current alcohol or drug abuser whose current use of alcohol or drugs prevents such individual from doing his or her job, or would constitute a threat to property or the safety of others.
2. For purposes of administering this paragraph G (Schedule Of Disciplinary Actions), offenses shall be cumulative on a Contractor-Employer-wide basis. For example: A Covered Employee commits an offense while employed on Job A. Said Covered Employee is subsequently employed on Job B where he/she commits another offense. That offense shall be considered as his/her second offense.

H. Selling Of Controlled Substances

1. A Covered Employee who sells or attempts to sell a controlled substance and/or the paraphernalia of a controlled substance at the Contractor-Employer's workplace shall be immediately discharged from employment. In addition, any Covered Employee who engages in such conduct and is discharged for the same shall not be eligible for re-employment by the Contractor-Employer.
2. Any such incidents shall also be reported to appropriate enforcement agencies.

I. Additional Considerations Applicable To Work On Federal Construction Projects

The following additional provisions shall apply only to Covered Employees who are employed by the Contractor-Employer on a work project that constitutes a procurement by the Federal Government or a Federal Agency of any property or services of a value of twenty-five thousand dollars (\$25,000.00) or more.

1. As a condition of employment, any Covered Employee convicted of a violation of a criminal drug statute for a violation occurring in the workplace must, as required by the Federal Drug-Free Workplace Act, notify the Contractor-Employer within five (5) days of that conviction. Failure to do so will subject the Covered Employee to disciplinary action, including discharge.
2. As required by the Federal Drug-Free Workplace Act, any Covered Employee who is convicted of a violation of a criminal drug statute occurring in the workplace shall be disciplined by the Contractor-Employer or shall be required by the Contractor-Employer to participate in an approved drug abuse assistance or rehabilitation program.
3. As required by the Federal Drug-Free Workplace Act, the Contractor-Employer must and will notify any Federal Contracting Agency on whose projects it is working of a workplace drug conviction within ten (10) days after receiving notice from the convicted Covered Employee or other official source of such conviction.
4. In compliance with the U. S. Department Of Defense Drug Free Workforce Clause (September 1988), any Covered Employee who has been granted access to secret or classified information -- or whose position and work involves national security, health, or safety and/or a high degree of trust and confidence -- will, at Contractor-Employer

expense, be subject to testing for the unlawful use of controlled substances and alcohol.

5. The Contractor-Employer shall not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of any work or contract.

J. Controlled Substance

A "controlled substance" is defined as: any drug listed in Schedules I through V of the Controlled Substances Act, at Section 202 thereof, 21 U.S.C., Section 812. These controlled substances include, but are not limited to, marijuana, cocaine, opiates, amphetamines and phencyclidine.

K. Application Of Grievance Procedure And Arbitration Provisions

Grievances of Covered Employees covered by the Project Labor Agreement involving the application of the terms and conditions of employment set forth herein shall be subject to the grievance and arbitration provisions as set forth in the Project Labor Agreement, Article 14, with the results thereof being final and binding.

L. Inclusion of Substance Abuse Treatment Benefits Under The Health & Welfare Plan

Where applicable, and if not already included, the parties hereto will recommend to the trustees that substance abuse treatment benefits be included under any jointly administered health and welfare plan, created under Section 302 of the Taft-Hartley Act.

M. Apprenticeship Requirements

Where applicable, the parties hereto will also recommend that the passage of a drug test for unlawful use of controlled substances be a part of the eligibility requirements for entry into and indenture under the apprenticeship program maintained by the Contractor-Employer and the Union pursuant to a trust fund created under Section 302 of the Taft-Hartley Act.

N. Disclosure Of information

1. The Contractor-Employer and the Unions shall be required to disclose to one another any and all information in their possession that is necessary to enforce this Policy. The foregoing duty to disclose information is included herein in order for the Contractor-Employer and the Unions to comply with their respective duties to bargain in good

faith under Sections 8(a)(5) and 8(b)(3) respectively of the National Labor Relations Act, as amended.

2. The records maintained by the Contractor-Employer for its employee assistance program are confidential and protected by federal law and regulations. The Contractor-Employer cannot disclose information identifying an employee as a participant in its program except in the following limited circumstances:
 - (a) The Covered Employee participants consent to the disclosure in writing as set forth in Appendix "E" attached hereto and made a part hereof;
 - (b) The disclosure is required by a court order;
 - (c) The information is necessary to meet a medical emergency involving the Covered Employee-participant; or
 - (d) The information is required by qualified personnel for research, audit or program evaluation.
3. The Contractor-Employer will provide each Covered Employee who participates in the employee assistance program with a written summary, as requested, of the federal law and regulations governing disclosure as set forth in Appendix "F" attached hereto and made a part hereof.
4. A Covered Employee's participation in the employee assistance program will not prohibit the Contractor-Employer and/or employee assistance program provider from reporting any crimes committed by the Covered Employee-participant either at the program or against any person who works for the program or from reporting any threats to commit such crimes, to the appropriate federal, state or local authorities.
5. A Covered Employee's participation in the employee assistance program will not prohibit the Contractor-Employer and/or employee assistance plan provider from reporting any information about suspected child abuse or neglect under state law to the appropriate state or local authorities.

O. Additional Definitions

As utilized herein, the following terms have the following meanings:

1. The term "conviction" means the finding of guilt (including a plea of nolo contendere or no contest) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of Federal or State criminal drug statutes;
2. The term "criminal drug statute" means a criminal statute involving manufacture, distribution, dispensation, use, or possession of any controlled substance;
3. The term "Federal Agency" means an agency as that term is defined in Section 552(f) of Title 5, United States Code;
4. The terms "unlawful use of a controlled substance," "illegal use of a controlled substance," or "illegal use of drugs" means the use, consumption or ingestion of any controlled substance under any circumstances except when directed by a physician or dentist;
5. The term "workplace" means any site for the performance of the work of the Contractor-Employer or any location where the Covered Employee may be during paid Contractor-Employer time or when the Covered Employee is under the care, control, and custody of the Contractor-Employer; and
6. The terms "drug" or "drugs" mean a controlled substance as defined herein.

P. Entire Agreement

This document contains the entire agreement and no other substance abuse testing shall be allowed unless by mutual written agreement between the parties.

APPENDIX A

PROCEDURES FOR MEDICAL TESTS OF URINE SAMPLES

Urine samples shall be handled in the following manner:

- A. Collection shall be by a physician or health care professional. The presence of a Union representative is not necessary when the collection of urine is made. Specimen containers shall be labeled with a number, and if the Covered Employee chooses, the Covered Employee's signature, and shall be closed with a tamper-proof seal initialed by the Covered Employee and collecting agent. The labeling shall be done in the Covered Employee's presence and in the presence of a Union representative if the Covered Employee chooses.
- B. The specimen number and identifying information on the donor shall be entered on a log and signed by the collecting technician in the presence of the Covered Employee -- and in the presence of a Union representative if the Covered Employee chooses -- and the Covered Employee shall initial the proper line on the log entry.
- C. The volume of each sample shall be such that sufficient amounts of urine will exist for both initial tests, confirmation tests and independent testing.
- D. Samples shall be stored in a scientifically acceptable manner.
- E. All handlers and couriers of the sample must complete entries and identify themselves on a proper chain of custody form.
- F. Confirmation tests in accordance with the Guidelines as established by the National Institute On Drug Abuse (NIDA) must be performed. After testing and confirmation testing, the facility must retain a sufficient portion of the sample for independent retesting and store that portion in a scientifically acceptable, preserved manner for the period of time as set forth in the Guidelines as issued from time to time by the National Institute On Drug Abuse (NIDA) -- unless the Covered Employee or the Union requests of the facility that it retain the sample for a longer period of time.
- G. Results of the testing shall be communicated in writing to the Contractor-Employer, Union and the Covered Employee within seventy-two (72) hours after the results are determined. The laboratory may only report a positive drug or alcohol test result if the appropriate test indicates that the specimen contains levels of drugs or alcohol in excess of the following levels:
 1. Blood alcohol level in excess of the State of Hawaii Standard giving rise to a legal presumption of intoxication.

2. Drug levels in excess of those levels as set forth in the Guidelines as established by the National Institute On Drug Abuse (NIDA).
- H. Information on test results and the fact that testing was done shall be kept confidential by the Contractor-Employer, Union, and tester, and shall be communicated only to those who must know the information in order to ensure safety at the workplace and enforce the terms and conditions set forth in the Project Labor Agreement. Copies of all documents -- including but not limited to test results, computer printouts, graphs, interpretations, and chain of custody forms shall -- be delivered to the Covered Employee from whom the samples of the bodily fluids were taken.
 - I. On the day that the sample is taken when tested For Cause, the Contractor-Employer shall send the Covered Employee home for the remainder of the day, and shall arrange transportation home for that Covered Employee and not allow the Covered Employee to drive home. The Covered Employee shall not be allowed to return to work until his or her test results are known.
 - J. As utilized herein, the terms "drugs" or "drug" mean a controlled substance as defined in Attachment B, Policy Covering Drugs and Other Controlled Substances For the Honolulu High Capacity Transit Corridor Project, Paragraph J.

APPENDIX B

SUBSTANCE ABUSE TESTING

TYPE: _____

LOCATION
CODE: _____

SUBSTANCE ABUSE TESTING

TO: _____ DATE: _____

POSITION: _____ DEPT/PROJECT: _____

1. As a Covered Employee, you are ordered to be tested for substance abuse in accordance with Contractor-Employer policy and procedures, based on reasonable suspicion.
2. An appointment has been made for you to be tested at:

Date: _____

Time: _____

3. You will be escorted to the collection site by a Contractor-Employer official or representative. You will be provided transportation to the collection site and provided transportation to your residence upon completion of the specimen collection. Any costs accrued for transportation will be paid by the Contractor-Employer.
4. You will be required to sign a form voluntarily consenting to submit to testing to provide specimen(s) as part of testing and to release the test results to the Contractor-Employer and its Medical Review Officer. Failure to sign this form shall

result in disciplinary action as set forth in the program and procedures for disciplinary action.

5. You are hereby placed on indefinite suspension without pay pending the results of the substance abuse test. If the results are negative, you will be returned to work immediately and reimbursed for all lost time, and no record of the testing or indefinite suspension will be placed in your personnel file.

All substance abuse testing required by the Contractor-Employer will be in accordance with any applicable local, federal and state laws or regulations.

Unless you are advised otherwise in writing by the Contractor-Employer, substance abuse testing for cause shall be for the presence of alcohol in the system or for the following substances of abuse: marijuana, cocaine, amphetamines, opiates and phencyclidine.

You are advised that over-the-counter medications or prescribed drugs may result in a positive test result. For this reason, the Contractor-Employer's Medical Review Officer may need your assistance in identifying which medications or drugs you may be taking at the present time and may have taken within the past thirty (30) days to ensure accuracy of testing results.

If you would like to voluntarily disclose that you are currently taking any medication, please list them below:

***Please take a picture ID with you for identification at the time of testing.**

If you have any questions, please contact the undersigned. Failure to undergo substance abuse testing as required by the Contractor-Employer may result in disciplinary action.

Personnel Manager, or designee

cc: Medical Review Officer

APPENDIX C

CONSENT FOR THE RELEASE OF CONFIDENTIAL INFORMATION

I, _____,
(Name of patient)
authorize _____ to disclose to
(Name of Testing Facility)
_____ information
(Name of Contractor-Employer and Name of Union)

regarding the results of any substance abuse test taken by me under the Policy Covering Drugs and Other Controlled Substances For the Honolulu High Capacity Transit Corridor Project. The purpose of the disclosure authorized herein is to determine whether I have complied with the provision of the Policy.

I understand that my records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically upon my termination from employment with the above-referenced Contractor-Employer.

Signature of patient

Date

APPENDIX D

COLLECTION STATIONS FOR DRUG TESTING

LOCATION

CONTACT PERSON

Straub Occupational Health Services
845 S. Beretania Street
Honolulu, HI 96814

Dr. Michael Kusaka (MRO)
Ph: 522.-381 3

Reliable Drug Testing Services, Inc.
1524 Ala Puumalu Street
Honolulu, HI 96818-1547

Kalfreda Mae Wataoka
Ph: 833-5973

Concentra Medical Centers
545 Ohohia Street
Honolulu, HI 96819

Dr. Ronald Kienitz (DO)
Ph: 831-3000

Any facility that adheres to the Standard of Substance Abuse Testing established by the Department of Health and Human Services (DHHS) and Substance Abuse and Mental Health Services Administration ("SAMHSA") as set forth in 49 CFR Part 40 or Hawaii Revised Statutes Sections 329B-4, -5 and -6 may be used as a collection station for Substance Abuse Testing.

APPENDIX E

**WRITTEN CONSENT FOR DISCLOSURE OF INFORMATION CONTAINED IN THE
CONTRACTOR-EMPLOYER'S RECORDS CONCERNING PARTICIPATION
IN EMPLOYEE ASSISTANCE PROGRAM FOR ALCOHOL OR DRUG ABUSE**

I, _____ request/authorize
(Name of employee-patient)

_____ to disclose to _____
(Name of Contractor-Employer) (Name of party to receive information)

the following information: _____

for the limited purpose of _____

I understand that this consent is subject to revocation at any time except to the extent that the Contractor-Employer has already disclosed such information in reliance upon this consent form. If not previously revoked, this consent will terminate upon _____.

(Specific date, event or condition)

Signature of Employee

Date signed

Original to employee's file

APPENDIX F
MEMORANDUM

TO: _____

FROM: _____
(Name of Contractor-Employer)

DATE: _____

RE: CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS.

The records maintained by _____
(Name of Contractor-Employer)

("The Contractor-Employer") in relation to its employee assistance program for alcohol or drug abuse are protected by federal law and regulations.

("The Contractor-Employer") cannot disclose information identifying you as a patient or participant in such program except that in the following limited circumstances:

1. You (the participant) have consented in writing;
2. The disclosure is required by a court order;
3. The information is necessary to meet a medical emergency involving you;
4. The information is required by qualified personnel or research, audit or program evaluation.

Violation of the federal law and regulations by a program is a crime. Suspected violations may be reported to appropriate authorities in accordance with federal regulations.

Federal law and regulations do not protect any information about a crime committed by a patient either at the program or against any person who works for the program or about any threat to commit such a crime.

Federal law and regulations do not protect any information about suspected child abuse or neglect from being reported under state law to appropriate state or local authorities.

Original to employee's file

APPENDIX G

LAST CHANCE AGREEMENT

This Agreement entered into this _____ day of _____, 2009, by and between _____, the Covered Employee and _____, the Contractor-Employer.

1. The Covered Employee has refused to sign an authorization to submit to a drug, controlled substance, or alcohol test, refused to undergo such a test, or refused to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union as provided in Section F.4.
2. The Covered Employee agrees to sign Appendix G, Last Chance Agreement instead of being discharged and whereby the Covered Employee agrees to resign from employment on a no-fault basis in the event of a positive drug, controlled substance or alcohol test occurring within three (3) years of the Covered Employee's refusal to sign an authorization to submit to a drug, controlled substance, or alcohol test, refusal to undergo such a test, or refusal to permit the physician or medical laboratory to provide the test results to the Contractor-Employer and Union as provided in Section F.4.
3. The Covered Employee agrees that when the Covered Employee signs Appendix G, Last Chance Agreement, the Employee shall be suspended for two (2) weeks from work without pay and without fringe benefits accruing workdays instead of being discharged.
4. Before being permitted to back to work, the Covered Employee shall have passed a return to duty test.
5. The Covered Employee agrees that Appendix G, Last Chance Agreement has been carefully read and voluntarily accepts Appendix G, Last Chance Agreement with full knowledge and understanding of its contents and meaning.
6. The Covered Employee agrees that a resignation from employment deprives the Covered Employee of the right to grieve as provided in Article 14 of the Project Labor Agreement or challenging the resignation.

7. Appendix G, Last Chance Agreement shall be confidential, except as may be necessary to ensure compliance with its terms.

Signature of Employee

Date signed

Original to employee's file



CITY AND COUNTY OF HONOLULU
HONOLULU HIGH-CAPACITY TRANSIT
CORRIDOR PROJECT

NO. RFP-DTS-261611

KAMEHAMEHA HIGHWAY GUIDEWAY
DESIGN-BUILD CONTRACT

REQUEST FOR PROPOSALS
(PART 2)

SPECIAL PROVISIONS (8-27)

ADDENDUM NO. 17

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SPECIAL PROVISION

CHAPTER SP-8 PUBLIC AWARENESS AND COMMUNITY RELATIONS

SP-8.1 GENERAL

Communications, community involvement, and minimizing impacts to businesses, residents and traffic are critical components to the successful development of the Honolulu High-Capacity Transit Corridor Project (HHCTCP). The city has developed a system-wide set of goals and objectives related to construction related activities, including community relations (with specific outreach to impacted businesses), construction and traffic mitigation, public information and responsiveness to public concerns.

Based on these goals and objectives the Design-Builder will develop a contract-specific Public Awareness and Community Relations (PA/CR) Program for all construction related activities to facilitate management of community issues and mitigation of construction impacts on the community and neighborhoods adjacent to the construction work sites. It will include, at a minimum, an ongoing public information program which identifies public meetings, construction advisories, newsletters, and other community outreach plans to effectively communicate the activities of construction. The PA/CR Program will also include a Business and Residential Impact Mitigation Plan. The Design-Builder will manage the community advisory plan for construction related activities and work closely with the City regarding community issues. The Design-Builder will also work with other City departments and the State Department of Transportation to provide construction advisories and current construction related traffic information to the public.

Developing and implementing an effective PA/CR will require a team effort involving the HHCTCP team comprised of the City, stakeholders' representatives of each construction segment, and the Design-Builder. Working together as a communications team, the City, the stakeholders, and the Design-Builder must be prepared to:

- (a) Build a positive image for the Contract;
- (b) Provide regular reports on the Contract's progress;
- (c) Provide meaningful mechanisms for community outreach and responding to project area concerns; and
- (d) Mitigate construction impacts for Contract's area residents, business owners, and commuters.

Above all, this communications team must place a high priority on being responsive to the concerns of the public, neighborhoods, and business owners throughout the life of the Contract.

SP-8.2 ROLES AND RESPONSIBILITIES

- (a) **City's Role.** The City will maintain overall responsibility for public involvement and information for the entire HHCTCP from East Kapolei to Ala Moana. The Design-Builder will be responsible for implementing the PA/CR Program for this specific Contract. The City's responsibilities will include:
 - (1) Providing leadership in establishing the Project's communications policy and strategic direction;
 - (2) Providing the Design-Builder with communications goals and objectives;

- (3) Ensuring that the Design-Builders' communications programs and products are consistent system wide and in line with the City's overall public information and involvement efforts;
- (4) Conducting City-sponsored public relations activities targeted to the general public;
- (5) Monitoring the Design-Builder's performance for compliance with the Design-Builder's PA/CR Program; and
- (6) Identifying stakeholder representatives in each construction segment.

(b) Design-Builder's Role. The Design-Builder will be the focal point for the public awareness and community relations effort to prepare affected neighborhoods for construction and to minimize the actual impact of construction. The Design-Builder shall have primary responsibility for performing the project-specific PA/CR activities. The Design-Builder shall be responsible for day-to-day PA/CR and mitigating the impact of construction for businesses and residents in the project area, as defined in the Contract Documents, including the Design-Builder's Proposal Documents.

SP-8.3 DESIGN-BUILDER'S RESPONSIBILITIES

(a) Design-Builder's Public Awareness and Community Relations Plan. Within thirty (30) Days of any Notice to Proceed (NTP), the Design-Builder shall complete and submit to the City for Review and Comment, its PA/CR Program Plan based on the summary submitted with its Proposal Documents and the other Contract Documents. The Business and Residential Impact Mitigation Plan defined in this Section must be included as a subset of the PA/CR Program Plan. The PA/CR Program Plan must reflect the City's communications goals and objectives and must target PA/CR activities to those most affected by the construction of the project. The Design-Builder's PA/CR Program must include, at a minimum, the items described in these Special Provisions. The cost of all PA/CR work shall be included as an individual line item in the Schedule of Prices.

The official project logo must be used on all communications products. The Design-Builder may identify itself and use its logo, as approved by the City. The City must approve all deliverables before final production. The City will respond to all requests for approval within ten (10) Working Days of receipt.

The Design-Builder shall update the PA/CR Program Plan at least semi-annually, soliciting input from the businesses and residents along the corridor, the stakeholders representatives, and using the results of market research described later in this section. A copy of each update shall be submitted to the City for Review and Comment.

The Design-Builder must provide monthly reports of activities undertaken to implement the PA/CR Program. The monthly report must be submitted in a format agreed upon by the City on or before the 10th day of the month for activities undertaken during the previous month.

The Design-Builder will be responsible for assessing the effectiveness of the PA/CR Program. Working in conjunction with City's public involvement team, the Design-Builder will use market research techniques semi-annually to provide information to the City that will be used to determine if any course corrections are needed in the delivery of information and interaction activities with project area residents, businesses, and commuters.

The Design-Builder will also be responsible for coordinating all PA/CR issues directly with the City that arise within and adjacent to the geographical limits of this Contract during the time this Contract is in force. This includes PA/CR issues that may be attributed to other concurrent contracts including:

- (1) West O`ahu /Farrington Highway and Salt Lake Guideway Segments;

- (2) Pearlridge and Aloha Stadium Stations;
- (3) Utility Relocations being performed by others; and
- (4) Systems Installation Contracts.

The City will be responsible for contacting the party responsible for addressing the issues.

(b) **Staff Requirements.** The Design-Builder shall provide, at a minimum, a full-time Public Involvement Manager responsible for managing its PA/CR Program and other staff as needed to accomplish specified tasks.

The Public Involvement Manager shall be designated on the Design-Builder’s list of Key Personnel.

The Design-Builder’s Public Involvement Manager shall have “real-time” access to all project details that may be relevant to the public, public agencies, emergency service providers, businesses, etc. The Public Involvement Manager must provide information to the City on an “as requested” basis.

The Design-Builder’s PA/CR team shall be the primary interface between the public and the Design-Builder’s organization.

(c) **Public Interaction.** The Design-Builder shall maintain day-to-day contact with the affected Project area residents, businesses, and commuters.

It is essential that the Design-Builder provide “coping” information to all parties impacted by the Project. If a resident, business, commuter, or other member of the public has a question or comment related to construction or preparation for construction, the first and preferred point-of-contact should be the Design-Builder. The Design-Builder will take necessary steps to foster these contacts, including continuous interaction with the affected residents, businesses, and commuters.

(d) **Public Notifications.** The Design-Builder shall notify the public and community in general and specifically affected businesses and residents along the project through personal contact of construction progress and upcoming events. The Design-Builder will provide information to mitigate impacts that have immediate and long term results.

The Design-Builder shall provide the specific notifications specified in the Table of Notifications in this section.

Utility shut-off/diversion announcements shall be made in the form of a personal contact by the Design-Builder’s Public Information Specialist, or designated member of the Design-Builder’s PA/CR staff, that shall include a written notice to the affected parties.

TABLE 8.1: TABLE OF NOTIFICATIONS

NOTICE	REQUIREMENT
30-Day Heavy Construction Notification	Written notification of Heavy Construction shall be given thirty (30) Days prior to construction. Access maps shall be provided per the Maintenance of Traffic Plan.
3-Day Light Construction Notification	Written notification of Light Construction shall be given three (3) Days prior to construction. Access maps shall be provided per the Maintenance of Traffic Plan.
Critical Utility Shut-off/Diversion	Written notice of at least 72-hours in advance of, but not more than 96 hours before, shut-off and/or diversions.
72-hour Business/Commercial Utility Shutdown	Written notification of utility shutdown for businesses and

TABLE 8.1: TABLE OF NOTIFICATIONS

NOTICE	REQUIREMENT
	commercial property.
48-hour Residential Utility Shutdown	Written notification of utility shutdown for residential property.
Weekly Heavy Construction Updates	A construction update will be provided to each business or resident fronting a Heavy Construction Zone. The update shall be a personal visit from the Public Involvement Team.
Emergency Unforeseen Utility Disruptions, Hazardous Conditions, Traffic Signal Emergencies, Security and Loss of Access	See GCDB 4.11 and MOT for more detail.
Road and Driveway Closures	Written notice and personal contact at least 72-hours in advance of, but no sooner than, seven (7) Days prior to closure.
Construction Schedule	One (1) month prior to start of construction.

(e) 24-Hour Public Information Hotline. The City will establish a 24-hour public information hotline for the Project. The Design-Builder shall assist by ensuring that a project representative is available at all times to respond to inquiries and reports generated via the hotline and reported by the City. The Design-Builder will develop a handbook for the hotline staff, approved by the City, containing the necessary guidance needed to address any number of issues called into the hotline, including basic project information, procedures for handling situations, a prioritized call-tree, the types of notification to use in specific incidences, emergency phone procedures, and any other applicable information. The Design-Builder must update the handbook to ensure that the information it contains is current.

The Design-Builder is required to provide a weekly written report to the City, in a format agreed upon by the City, identifying the nature of public contacts and Design-Builder responses for the preceding week. The Design-Builder is also required to be available at the request of the City to discuss the report.

Database. All contacts made by the Design-Builder shall be logged into a database that is capable of tracking all contacts made with the public. While the database will be designed and maintained by the City, the Design-Builder shall log all contact with the public and ensure entry into the database.

The Design-Builder's entries, at a minimum, shall list:

- (1) Contact name, business name, address, phone number, home phone for business owners;
- (2) When the contact was made;
- (3) Who accepted/responded to the contact;
- (4) How the contact was made (in person, phone, e-mail, facsimile);
- (5) A brief description of the nature of the contact; and
- (6) A brief description of handouts.

A referencing system shall be developed to track the distribution of handouts and mass mailings in order to minimize the amount of hard copy information filed.

A standardized form shall be developed to log contact information. This form will become the hard copy of all contacts. Handouts shall be attached to this form. The contact information shall include the information provided for the database as well as a description of what was discussed. The database shall document all

contact with the public and be capable of recreating what transpired during the project.

The City will provide the Design-Builder with contact forms for use in documenting contacts consistent with the database. All contact information shall be entered into the database within three (3) Days of contact by the recipient.

(f) **Complaint/Comment Forms.** The Design-Builder shall provide complaint/comment forms to businesses and residents along the project as a method for the public to express project concerns. These forms shall provide all information needed for entry into the database. The forms shall indicate the business address, web site address, and fax number where the forms can be sent and show the 24-hour public information hotline number.

(g) **Responses to the Hotline Calls and Complaint/Comment Forms.** Complaints received shall be responded to within five (5) Days of receipt for non-emergency issues and within 24 hours for emergency issues.

Emergency calls relating to hazardous conditions, diminished security or loss of access or utility services shall be evaluated on a case by case basis. Verification calls shall be provided on all calls to inform the callers that their calls have been addressed.

(h) **Emergency, Unforeseen Utility Disruptions, Hazardous Conditions, Traffic Signal Emergencies, Security and Loss of Access Notifications.** The Design-Builder shall initiate immediate response to emergencies by trained personnel from an incident response team within thirty (30) minutes of receiving notification from the City, a utility owner, a City official, and/or affected business(es) and/or resident(s).

All emergency and/or unforeseen disruptions shall be explained to the public immediately by a personal contact from the Design-Builder's Public Information Specialist or designated member of the Design-Builder's public information staff. The person making the contact shall provide to the affected party(ies) information such as:

- (1) Cause of disruption (i.e., whether it is construction oriented or not);
- (2) Actions being taken to alleviate the problem; and
- (3) Anticipated duration of the disruption.

(i) **Construction Schedule/Maintenance of Traffic and Access.** The Design-Builder shall notify businesses and residents along the project and shall publicize commencement of construction in accordance with the "Table of Notifications". The notices must provide, at a minimum, information addressing public safety, business impact mitigation and proposed alternative routes and detours. This notification shall indicate the projected dates for the construction by individual notices to stakeholders, community groups, businesses, and residents along the corridor as well as along alternative routes. The Design-Builder shall provide all relevant information concerning the construction schedule to the City who will then publicize such information to appropriate media outlets.

SP-8.4 BUSINESS AND RESIDENTIAL IMPACT MITIGATION

Business and Residential Impact Mitigation Plan. The Design-Builder shall complete, update, and submit its Business and Residential Impact Mitigation Plan based on the summary submitted with its Proposal Documents.

(a) **Door Hangers.** The Design-Builder may use door hangers to inform particular property owners/residents about day to day construction progress and disruption.

(b) Access Maps. The Design-Builder shall develop access plans with businesses and residents on each block and shall provide maps showing existing and planned patron, and delivery and residential access during any construction period. The map(s) shall identify times of business operation and deliveries. The Design-Builder may show the utilization of alleys and or adjacent driveways upon receiving written permission from the City or owner having jurisdiction over such driveways and/or alleys. Individual business and residential access shall be recorded in the database. The access maps shall be made available at least seven (7) Days prior to construction where a business or residence is impacted.

(c) Changes to Access. The Design-Builder shall inform businesses and residents in writing and by personal contact, of any changes to access that may impact them, at least two (2) weeks prior to start of construction. Changes in access, along with an access map, shall be submitted to the City for Review and Comment at least three weeks prior to start of construction.

(d) Garbage and Recycling Removal. Design-Builder shall provide adequate access for all garbage and recycling removal. The Design-Builder shall negotiate with public and private garbage and recycling removal services and provide them access at agreed times.

(e) Construction Kiosks. On blocks that are undergoing construction, the Design-Builder shall maintain signage at each intersection on both sides of the street that lists all businesses that face on the block or use the block for access. This signage must be maintained throughout the duration of construction in any area affected.

SP-8.5 COMMUNITY UPDATES/NEIGHBORHOOD BOARDS

Besides the daily contacts made, the Design-Builder shall conduct community updates to give the public the opportunity to discuss the project. All neighborhood meetings must be advertised in neighborhood and community newsletters. At a minimum, community updates must be hosted once per month starting one month prior to construction. The Design-Builder will be responsible for selecting an appropriate, easily accessed venue and for convening the updates at a convenient time for maximum attendance. The information displayed or discussed shall include schedule, staging, maintenance of traffic and access, and any other project information. The stakeholders will be provided the opportunity to participate in all community updates, which are to be advertised no less than ten (10) Working Days before the event.

Additionally, the Design-Builder shall accompany City representatives to all Neighborhood Board meetings to serve as a resource when City representatives present project updates.

SP-8.6 CONSTRUCTION TOURS

City will manage and handle all requests for construction tours in consultation with the Design-Builder, including scheduling tours and requiring tour participants to observe Design-Builder's reasonable safety program guidelines, such as the wearing of protective equipment and waiver of liabilities. The Design-Builder shall participate in tours as requested to provide construction information.

SP-8.7 PROJECT IDENTIFICATION BOARDS

The Design-Builder will install signs throughout the project to be placed in prominent auto traffic zones where construction is occurring and at Design-Builder's main office and at all field offices. The signs will identify the rail transit project and will comply with Federal Transit Administration (FTA) requirements. The signs will also identify the Design-Builder's name, the project 24-hour public information hotline number and the participating agencies. A sample of the Project Identification Board shall be submitted to the City, and shall be subject to the City's Review and comment. Signs and lettering shall be sized appropriate for the speed limit in the area using the Manual on Uniform Traffic Control Devices (MUTCD) size guidelines and be consistent with applicable City sign ordinance(s).

SP-8.8 INCIDENT NOTIFICATION

The Design-Builder shall establish and manage an emergency response telephone tree. All appropriate stakeholder personnel shall be included on this telephone tree for immediate response in the event of an emergency. The telephone tree shall be divided into areas of expertise so the proper people are called for specific emergency situations. The Design-Builder's first point of contact will be a representative of the City.

SP-8.9 MEDIA RELATIONS

An ongoing media relations campaign will be implemented and managed by the City. The Design-Builder shall not meet with the media without the City's authorization and shall direct all questions from the media to the City. The Design-Builder will give timely information to the City regarding construction activities for use in media events.

The Design-Builder will develop press releases for the City as needed to keep the public informed of the project. All press releases must receive prior approval from the City before distribution to media outlets. The Design-Builder will develop a process to ensure that official stakeholders and elected officials will receive press releases before or at the same time as the media.

Radio and television traffic reporters will receive appropriate and timely updates on construction activity and traffic management information. Public service announcements will be developed as part of the Design-Builder's traffic management information.

Neither the Design-Builder nor any Subcontractor nor their employees shall conduct or participate in media interviews or events, radio or television broadcasts relating to the project, without the written consent of the City, except in emergencies. In emergency situations, the Design-Builder will immediately notify the City of any situation that may involve the media.

SP-8.10 PUBLIC NOTICES

Prepare public notices for radio, broadcast and cable television and for the Honolulutransit.org web site to notify the public of inconveniences caused by the project works, including but not limited to traffic and utility disruptions. Public notices for scheduled disruptions shall be submitted to the City fifteen (15) Days in advance of the event. Inconveniences caused by unpredictable events (e.g. damage to utility lines, extended street closures) will be communicated to the public as expeditiously as possible.

The Design-Builder will provide a monthly project update for posting on the project website, publication in print outlets and broadcast on radio, television and cable television. Required media outlets are major daily newspapers, four major broadcast stations and top five rated radio stations. Costs associated with production and publication/airing of these updates will be borne by the Design-Builder

The City will approve all final copy within one (1) working day of submittal for scheduled events and two (2) hours for unscheduled events.

SP-8.11 SPECIAL EVENTS

The Design-Builder will assist the City as needed with the planning and implementation of special events that recognize significant project milestone achievements such as groundbreaking.

SP-8.12 WEB SITE

The Design-Builder shall recommend and provide adequate project updates (weekly, monthly, or quarterly) for the existing Honolulutransit.org web site. Web site information to be submitted by the Design-Builder includes

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but is not limited to information to prepare project area residents and business owners for construction and to mitigate the impact of construction, public notifications, neighborhood meetings, the dates and location of scheduled construction, detours and alternative routes, and promotion of the 24-hour information hotline. The City has final approval on content. The Design-Builder will submit information to the City within two (2) Working Days prior to scheduled updates in electronic formats that facilitate website posting. The City will maintain web site links to other appropriate sites that convey facts and benefits of the rail project to the O`ahu general public, the business community, elected and appointed government officials.

SPECIAL PROVISION

CHAPTER SP-9 FACILITIES DESIGN

SP-9.1 RESERVED

SP-9.2 RESERVED

SP-9.3 DEMOLITION OF EXISTING STRUCTURES AND TEMPORARY LANDSCAPING

(a) Temporary Landscaping. Existing public area landscape medians will be disturbed by guideway construction. The Design-Builder shall install and maintain tree protection, salvage designated existing trees and deliver to the City's project nursery, except as noted. The Design-Builder shall then install irrigation and hydroseed as specified in the Standard Specifications to mitigate impact until final planting and irrigation are installed by others. Irrigation will serve during the temporary condition and in the final landscape design.

(b) All temporary landscaping work shall be performed in accordance with all Standard Specifications, applicable laws, codes, and regulations required by authorities having jurisdiction over such Work. Provide for all fees, inspections, and permits required by local authorities in furnishing, transporting, and installing Materials.

(c) The Design-Builder shall provide a licensed landscape subcontractor with arborist to perform Work on any plant Material designated to be protected in place or salvaged and transplanted, as referenced in the RFP Drawings.

(d) The Design-Builder shall maintain temporary landscaping for the life of the Contract. The City will provide a project nursery for the storage of salvaged trees. The Design-Builder shall transport salvaged Material to the City's project nursery except as noted. The Design-Builder shall maintain containerized plants at the project nursery for sixty (60) Days. Trees shall be guaranteed to be in vigorous growing condition for one (1) calendar year after delivery to nursery. If a tree fails to survive by the end of this period, and if proper maintenance has been exercised by the City, Design-Builder shall replace it with a healthy tree of the same size at no cost to the City.

SP-9.4 GUIDEWAY AESTHETIC TREATMENT

(a) The aerial guideway will be a highly visible structure. Care must be taken to create a structure that is aesthetically pleasing from all angles of public view. The entire guideway structure shall have a high quality of finish for all visible surfaces, joints and edges.

(b) The Design-Builder shall submit detailed drawings for aesthetic treatment for the superstructure guideway, sound barrier railings, guideway columns, and surface treatment of columns and pier caps for the City's Review and Comment during the development of final design drawings. The Design-Builder shall apply special aesthetic treatment as indicated on the RFP Drawings for a minimum of six (6) guideway columns in the station area. The overall form of the guideway columns and pier caps should be consistent with the shapes indicated on the RFP Drawings. Presentation of the proposed concepts shall include visual aids and presentation quality material suitable for public meetings.

(c) The design of the guideway elements shall be considered as integrated components to establish an overall aesthetic theme consistent with the design guidelines established by the Design Language Pattern Book. The Design-Builder shall use scale, shape and texture, and the effects of light and shadow to create a guideway design that minimizes the visual impact of the structure. Control joints shall be an integral part of the design. Surface treatment shall be designed to work with areas that will have anti-graffiti coating so as to create an integrated design.

SP-9.5 GUIDEWAY SUPERSTRUCTURE CLEARANCE REQUIREMENTS

(a) The clearance distance to adjacent structures or appurtenances shall include dimensional variances in the structural member or appurtenances, design deflections, construction tolerances from the designed position, and the effects of chord construction techniques relative to the curve alignment.

(b) The minimum horizontal clearance between the outside of guideway, including sound walls and other mitigation installations, to adjacent structures is five (5) feet.

(c) Future HDOT construction projects are described in the Oahu Regional Transportation Plan (ORTP) and include projects that propose to widen Interstate H-1 in each direction. The Design-Builder shall review this plan and coordinate these requirements with HDOT. The minimum horizontal clearance between the edge of the guideway columns and HDOT proposed and existing roadway viaduct facilities shall be five (5) feet. The minimum vertical clearance of the guideway shall be per the design criteria and shall take into account any proposed future HDOT plans.

(d) Clearance to power lines shall be in conformance with the requirements of Hawaiian Electric Company (HECO).

SP-9.6 FOUNDATION DESIGN AND CONSTRUCTION

(a) The City has completed an initial subsurface investigation at widely spaced locations along the guideway alignment. Data and information generated from this investigation have been summarized and findings from field and laboratory testing presented in a Geotechnical Data Report (GDR-City), which is provided as Engineering Data. The City has also provided a project-specific Geotechnical Baseline Report (GBR) which presents contractual baselines for comparison with actual subsurface conditions encountered during foundation Final Design and construction.

(1) Based on the above noted data and baseline conditions, the Contract alignment is broken down into Reaches for comparison of actual subsurface conditions to the baselines;

(2) The Reaches are defined in Table 2, Section 5.1 of the GBR. Reaches may not be revised except by mutual agreement between the City and the Design-Builder, with documentation in writing.

(A) The Design-Builder is required to complete at least fifty percent (50%) of the required investigations within the affected Reach(es) before requesting any changes to the Reach limits as defined in Table 2, Section 5.1 of the GBR; and

(B) Under no circumstance will a Reach in excess of five-thousand (5,000) feet be allowed.

(b) Prior to the start of any field investigations, Design-Builder shall provide City with a Geotechnical Planning Report (GPR) defining the project geotechnical engineer's Contract-wide investigation and design approach.

(1) The GPR, in accordance with Design Criteria §9.6.2, shall define the engineering and design approach for developing the necessary geotechnical information for the Contract in accordance with Contract requirements, and

(2) In addition to the requirements of Design Criteria §9.6.2, the GPR shall also specifically address the frequency of strength testing planned. City requires that strength testing be performed over the full extent of alignment for the various soils and rock strata that will be relied upon for support of guideway foundations.

(A) Strength testing shall be representative of the various soil strata across the entire alignment and extending down below foundation base elevation to a depth of at least two drilled shaft diameters or pile group minimum dimension below tip elevation.

(B) Acceptable strength testing is defined in the GBR by stratigraphic unit.

(C) Design-Builder shall perform strength testing in cohesive soil and rock at each load test location. Frequency of shear strength testing at each load test location shall be not less than one test per ten (10) feet of foundation depth plus two diameters. Shear strength testing performed at load test locations is in addition to the requirements of subsections (D) through (F) listed below.

(D) Soil strength testing within each soil stratum supporting aerial guideway foundations shall be at least five (5) tests per One-Thousand (1,000) lineal feet of alignment. The number of tests required shall be increased proportionately for average stratum thickness exceeding forty (40) ft.

(E) Rock strength testing shall be not less than one test per twenty (20) feet of rock cored.

(F) Testing shall be evenly distributed across the length of the alignment.

(c) The Design-Builder, in conformance with the Project's Design Criteria shall perform additional geotechnical investigations to support geotechnical interpretations and Final Design considering Contractor's proposed construction methods.

(1) Data and information generated from the ensuing investigations shall be summarized and findings (from field and laboratory testing) presented in a stand-alone Geotechnical Data Report (GDR-DB). To the extent permitted by Design Criteria §9.6.3, data from the GDR-City may be used to fulfill Design Criteria investigation location requirements. The GDR-DB is required to provide all the subsurface data supporting Design-Builder's Final Design.

(2) As required by Design Criteria §9.6.4.1, the Design-Builder shall also submit a geotechnical report which documents geotechnical interpretations, analyses, and recommendations. Stand-alone reports may be submitted for the aerial guideway Station Reaches and non-aerial guideway project elements. This report or reports shall be based on the information and data presented in the GDR-DB.

(3) The GDR-DB and geotechnical reports (SP-9.6 (c) (1) and (2)) shall be broken down by specific Reaches, per Table 2, Section 5.1 of the GBR, or alternative station limits, such as defined "Sites," as mutually agreed to by the Design-Builder and the City and documented in writing.

(4) The Design-Builder is responsible for defining "Sites" in accordance with Design Criteria §9.6.1 B, and the "Sites" will not necessarily correspond to Reaches as defined in the GBR. Prior to defining the limits of "Sites" and prior to performing foundation load tests for the "Sites", the Design-Builder shall complete at least fifty percent (50%) of the required geotechnical investigations, including testing within the "Site" limits.

(d) As applicable, following submittal of the GDR-DB and geotechnical report, the Design-Builder shall prepare and submit a Geotechnical & Foundation Design Differences Report (GFDDR). The GFDDR documents the Design-Builder's assessment of the variations and differences from the baselines established in the GBR, and provides a summary of the Design Builder's assessment of impacts to the foundation design and construction. At a minimum, the GFDDR shall include the following elements:

(1) A summary by Reach and stations where the Design-Builder asserts that subsurface conditions vary from the GBR baselines with details of the variation from the baseline and supporting documentation.

(2) Subsurface conditions shall be evaluated for the Reaches defined within this SP-9.6. Include details of the asserted difference and basis for the assessment.

(3) Details of the impacts in comparison to Design-Builder's bid basis, required per the Instructions to Priority-Listed Offerors, paragraph C of Article §4.6.1.8 Geotechnical.

(4) For each Reach where the Design-Builder asserts that subsurface conditions vary from the baseline, summarize the following:

(A) Elevations of soil strata, top of rock, and groundwater at each foundation location within the Reach with a tabulation comparing the elevations as documented in the GDR-DB with those baselined in the GBR. If not already included in the GDR-DB, the Design-Builder is explicitly required to include data from the GDR-City in its tabulation.

(B) Differing properties (averages or other baselined distributions) calculated in accordance with the provisions of the GBR and a detailed comparison to the applicable baselines in the GBR. If not already included, the City will also include data from GDR-City in its evaluation.

(C) An explanation of how these changes affect the Design-Builder's foundation type, size or length, and equipment means and methods.

(D) A summary of the cumulative effect of variations within the Reach, including those variations which decrease, as well those which increase, foundation size and/or length, and those which positively as well as adversely impact cost or schedule associated with equipment, means and methods.

(E) Update Table 9.6-2, List of Aerial Guideway Foundations, based on the Design-Builder's Final Design.

SP-9.7 RESERVED

SP-9.8 GUIDEWAY LIGHTING

Design-Builder shall design, furnish and install guideway lighting in accordance with the Electrical Directive Drawings. Lighting shall be installed to a junction box at each end of each station on the guideway and tested for functional operation. Continuation of lighting beyond junction box shall be by others.

SP-9.9 RESERVED

SP-9.10 ACACIA ROAD IMPROVEMENTS

The RFP drawings reflect a right turn lane at Acacia Road to be completed by the Design-Builder. The ROW required for this right turn lane will be acquired by others. The Design-Builder shall coordinate with HDOT as to the timing and the availability of this ROW. The ROW shown by others on the RFP Drawings is approximate. The Design-Builder shall obtain the final surveyed ROW line by others prior to construction.

SPECIAL PROVISION

CHAPTER SP-10 INTERFACE MANAGEMENT AND COORDINATION

SP-10.1 RESERVED

SP-10.2 RESERVED

SP-10.3 RESERVED

SP-10.4 RESERVED

SP-10.5 GENERAL

This Section addresses the interface management and coordination processes between the KHG elements provided by the Design-Builder, the Core Systems Design-Builder, the West O`ahu /Farrington Highway (WOFH) Design-Builder, the Airport Segment and Passenger Stations Designers and Contractors, and any infrastructure, facilities, services, data or other work provided by others. These processes apply at the onset of final design and continue throughout the life of the Contract. The Design-Builder shall identify and produce a comprehensive interface plan and procedures document as it pertains to the KHG Work and share this information with the City. The Design-Builder shall also review documentation and drawings provided by the City, and coordinate with the City to identify and successfully comply with all interface requirements in order to perform all Work required to complete the KHG that fulfills the provisions of the Contract.

SP-10.6 INTERFACE MANAGEMENT COMMITTEE

The City will assemble and facilitate an Interface Management Committee (IMC). The IMC shall consist of representatives from the following Design-Build and Design-Bid-Build contracts:

- (a) Core Systems DBOM;
- (b) West O`ahu /Farrington Highway Guideway Design-Build;
- (c) Airport Segment Designer and Contractor;
- (d) Kamehameha Highway Passenger Stations;
- (e) Pearl Highlands Station and Garage Design; and
- (f) Pearl Highlands H-2 Ramps Design

Initially, the IMC will consist of the Interface Managers and select staff from each of these contracts and will be facilitated by the City. The Core Systems Contractor shall have a lead role on the Committee given the system-wide interface management responsibilities assigned. The Design-Builder shall serve an active role on the IMC as well as coordinate all KHG related design, construction and testing activities with the Core Systems Contractor, given the integrated nature of the Work. Additional members will be added to the committee as the HHCTCP project progresses. Any issues that impact the system-wide interfaces between contracts shall be raised at the periodic and ad hoc meetings. Action plans shall be prepared that define interface management responsibilities between the members of the IMC.

SP-10.7 SYSTEMWIDE INTERFACES

System-wide interfaces that may affect the KHG Work shall be addressed by the IMC and include, but are not limited to:

(a) Configuration Control issues based on City-provided plans and contract requirements, designs that progress through Definitive to Final design, and construction planning means and methods. Changes and/or impacts to the HHCTCP configuration shall be discussed in the IMC, and if determined to be significant, brought to the appropriate person(s) for resolution following the City's configuration control process;

(b) Design issues affecting the contract interfaces from City-performed Review and Comment, shall be brought to the IMC for discussion and possible resolution. For example, design treatment of common areas, signage, graphics and landscaping should be discussed at the IMC. Should these issues become so significant that they impact Design-Builder's Contract performance, they are to be brought to the appropriate Person(s) following the change process defined in Section SP-5, with corrective actions to minimize impacts to all parties;

(c) Procurement of materials and equipment that affect the Design-Builder's Work. Items that require input from other Design-Builders, contractors or designers should be identified and be part of the IMC discussions and actions;

(d) Construction planning, staging and sequencing that may require coordination and work by others should be part of the IMC discussions and actions;

(e) Testing and turnover of systems and facilities that require other Design-Builder participation and/or input should be part of the IMC discussions and actions; and

(f) Routinely scheduled meetings shall be established by the City and attendance of the IMC members is mandatory. Ad hoc meetings to resolve interface conflicts or actions of the affected parties, if necessary and appropriate, shall be attended by the Design-Builder.

(g) Any access to the KHG guideway shall be coordinated with the Work Site Controller. See SP-1 for the definition of Work Site Controller. After the substantial completion date of the KHG contract, the Work Site Controller will become the Core Systems Contractor and the Design-Builder will need to coordinate accordingly to gain access to perform any additional, close out or punch list work items.

SP-10.8 INTERFACES SPECIFIC TO THE KAMEHAMEHA HIGHWAY GUIDEWAY CONTRACT

(a) The interfaces and integration of work between the Design-Builder, the Core Systems Contractor, WOFH Design-Builder and others shall require a detailed Interface Control Manual that includes all interfaces as they pertain to design, procurement of Equipment and Materials, construction, and testing / turnover. The Systems Interface Control Manual is a work product of the Core Systems Contractor and will require the Design-Builder to provide input and coordination with KHG-specific design and construction. The Design-Builder shall prepare an Interface Control Manual that reflects all Work associated with completing the KHG and supporting the transit operations that follow. This interface document shall include work and input from other designers and contractors that impact the KHG Work.

(b) Enclosed with the Reference Documents is a system-wide Draft Interface Control Manual that is provided to serve as guidance to the Design-Builder and to illustrate the extent of detail that the Design-Builder shall include in its interface plan and procedures document. The Design-Builder may design its interface document according to the organization of the Work, technologies, design, and business practices, provided that the interface document includes the same or greater levels of detail and breakdowns

indicated in the City-provided document. It is neither intended nor implied that the items indicated in the City-provided document are complete or that it contains every item that may be included in the Design-Builder's interface plan and procedures document.

(c) The Design-Builder shall coordinate and obtain written confirmation from the Core Systems Contractor prior to Final Design, that the equipment listed below are suitable for the on-going operations and maintenance of the Core Systems:

- (1) Trackwork and Turnouts;
- (2) Switch Machines;
- (3) Contact Rail Layouts;
- (4) Raceway requirements inside of invert and on guideway and columns;
- (5) Cable insert design and locations for deck penetrations; and
- (6) All other equipment required to be procured by the Design-Builder for installation in the KHG construction limits.

The Design-Builder shall provide the Core Systems Contractor a minimum of fourteen (14) Days to review the procurement documents. The Interface Control Manual and contract-specific interface plan and procedure documents are meant to be "living documents" that are to be updated periodically by the responsible fixed facility or Core Systems Contractor, as the designs of the Design-Builder and Core System Contractor progress. Copies of the updated information are to be distributed to the appropriate entities to insure that the latest information is being used to assure the facilities and systems interfaced elements are compatible, coordinated, and consistent with the intended use and function.

(d) This process is intended to be a "proactive" effort by the Design-Builder, the Core Systems Contractor, and the City such that all design efforts can progress as efficiently as possible.

SP-10.9 MATERIAL STORAGE AND TRANSFER OF MATERIALS

(a) The Design-Builder is responsible for the receipt of materials, acceptance, inspection, material handling, storage, security and inventory control of all trackwork, special trackwork w/switch machines, contact rail, and associated fasteners and insulators for the System work once received from the MSF Design-Builder.

(b) The Design-Builder will maintain accurate and detailed inventory for all materials. The Design-Builder may store these materials at alternative site(s).

(c) The MSF Design-Builder will coordinate the transfer of materials to the KHG Design-Builder, recording the transfer and obtaining written acceptance of the materials transferred.

(d) The Design-Builder shall be responsible for any loss or damage to the material in inventory due to the actions of the Design-Builder or any third party.

(e) Rail and contact rail scrap generated by normal fabrication and installation practices shall be collected and inventoried by the Design-Builder. The City will have ownership of all rail and contact rail scrap generated by the Project. The City may dispose of the scrap materials during the life of the Contract.

SP-10.10 PASSENGER STATION INTERFACE

The KHG consists of building the guideway through Passenger Stations locations. Listed below are examples of Passenger Station interfaces. This does not represent an all inclusive list:

- (a) Platform height/clearance to Passenger Vehicle with reference to Trackwork;
- (b) Interface with power and conduits for Emergency Guideway Lighting;
- (c) Structural interface for Passenger Station support systems;
- (d) End of Platform Emergency Walkway and Crosswalks; and
- (e) Interface between with Guideway and Passenger Station conduits.

SP-10.11 CORE SYSTEMS INTERFACE

The Design-Builder is responsible for designing, procuring, installing and constructing duct banks, embedded conduits and raceways that house the Core Systems cables. The Design-Builder is also responsible for designing, procuring, installing and constructing foundations, ground grids and other infrastructure required to support Core Systems installations. This requires design input from the Core Systems Contractor. As part of the Interface Management process, the Design-Builder is required to meet with the Core Systems Contractor and coordinate the design development such that all systems are integrated with appropriate work responsibilities.

The Core Systems Design-Builder defines the requirements for the particular system and designs, furnishes and installs each system in the facility. The Design-Builder will incorporate the requirements for each system element in the facility design, including conduits, pull boxes and support devices in accordance with the Draft Interface Control Document for the Project.

SP-10.12 COORDINATION AND COLLABORATION OF KHG DESIGN-BUILDER WITH OTHERS

Close coordination and collaboration shall be provided by the Design-Builder throughout the project delivery. The following design input shall be provided by others:

- (a) Vehicles and Systems Structural Design;
- (b) Vehicles and Systems Embeds and M/E Design;
- (c) Pearlridge and Aloha Stadium Structural Design;
- (d) Pearlridge and Aloha Stadium Embeds and M/E Design; and
- (e) WOFH Guideway Structural Design.

SP-10.13 SEPARATION OF OPERATING SEGMENT FROM ACTIVE CONSTRUCTION

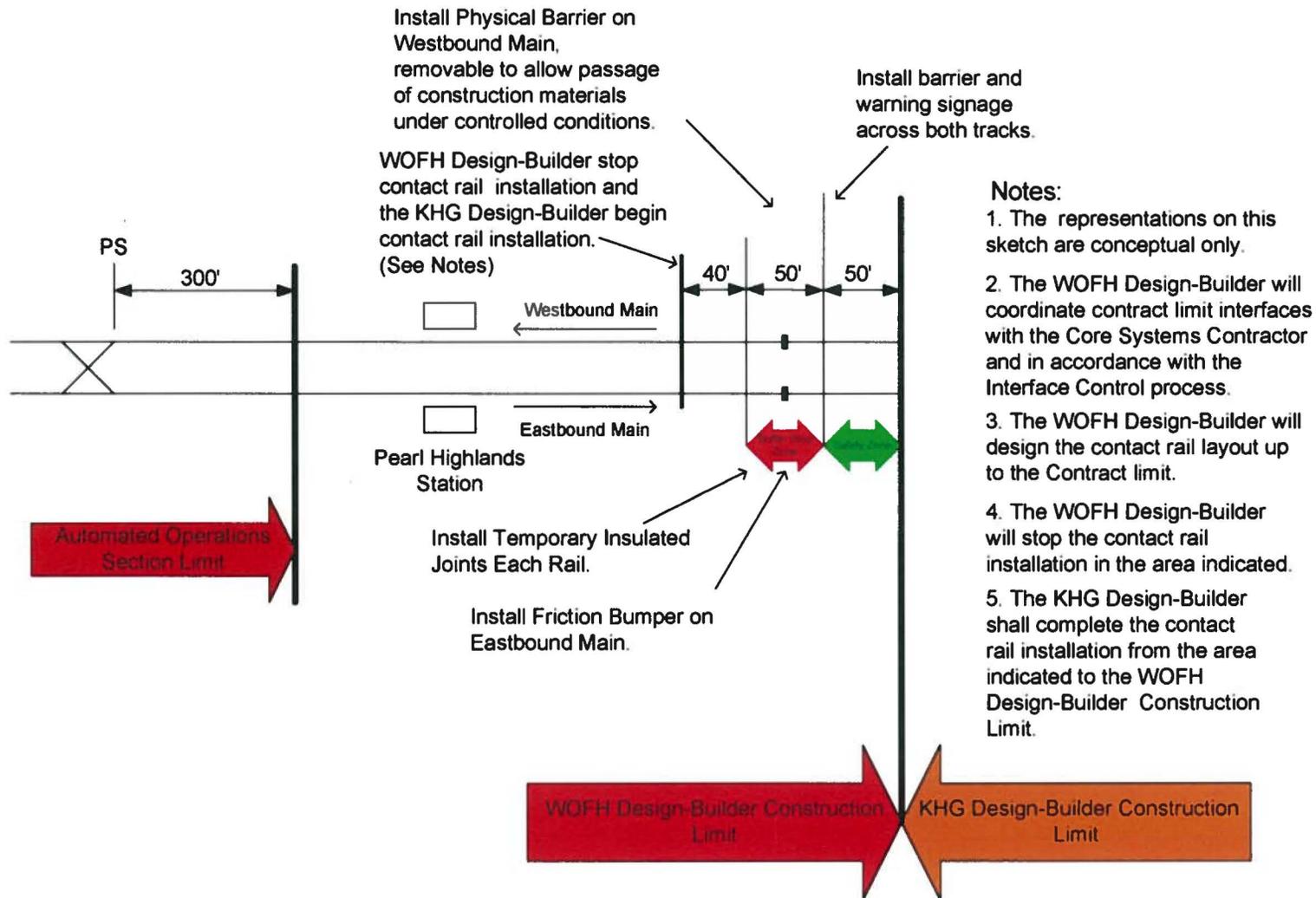
The "First Project", 20.5-mile transit guideway project, has been split into four (4) separate guideway construction segments along with other separate packages for stations, utilities, landscape, systems, and services. As portions of the "First Project" are advanced, completed, and placed into operating service, it will be necessary to separate the completed guideway segment from the segment that is currently under construction. This "line of demarcation" separates and protects the operations from the adjoining construction and protects the adjoining construction from operations. At the appropriate times, protocols will allow for the contractor to bring material into the construction zone through the adjoining operating zone. Protocols will be established by the Core System Contract requiring the Design-Builder to obtain approval from the Core System Contractor for track allocation. Later when construction is nearing completion protocols will also allow for Core System Contractor to enter the construction zone for testing the new construction prior to turn over.

Figure 10.13-1 shows the barrier system that provides the separation of operations from construction at the `Ewa end of the KHG Segment. The Core System Contractor has control of all tracks `Ewa of the barrier system. As construction nears completion, the Design-Builder shall move this barrier system from the

adjoining active end of operations to the other end of his segment near Aloha Stadium Station. Design-Builder shall complete the missing portions of the contact rail on all tracks that were protecting his construction from operations in the previously constructed guideway segment.

The Design-Builder shall purchase and install a second friction bumper to be placed Koko Head side of Aloha Stadium Station due to the three (3) track configuration in this location. Two (2) tracks will be eventually used by operations and the third track will provide access to the follow-on guideway contractor, "The Airport Segment". Figure 10.13-2 shows the barrier system set up at the Aloha Stadium end of the segment.

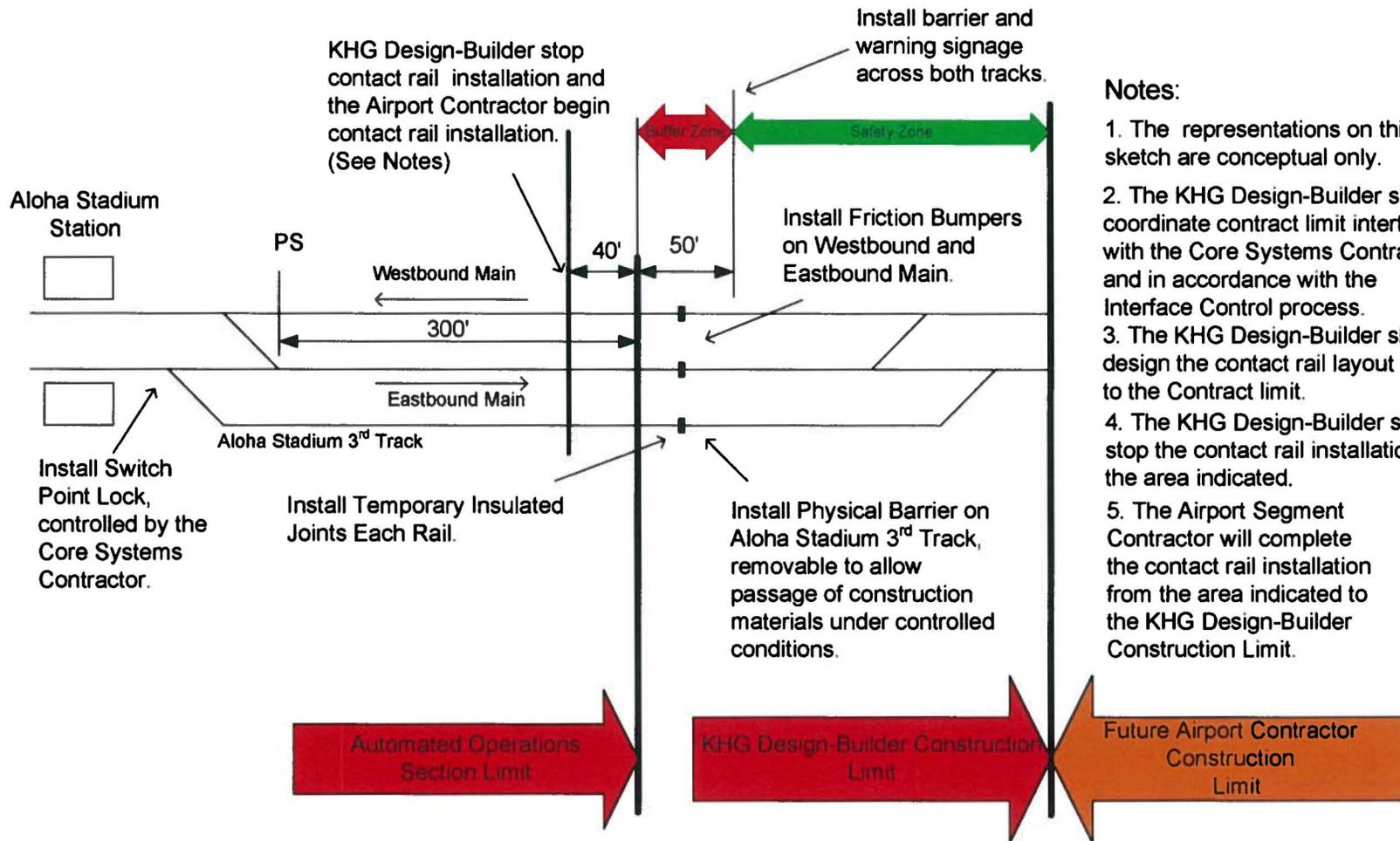
FIGURE 10.13-1: CONSTRUCTION LIMITS



Notes:

1. The representations on this sketch are conceptual only.
2. The WOFH Design-Builder will coordinate contract limit interfaces with the Core Systems Contractor and in accordance with the Interface Control process.
3. The WOFH Design-Builder will design the contact rail layout up to the Contract limit.
4. The WOFH Design-Builder will stop the contact rail installation in the area indicated.
5. The KHG Design-Builder shall complete the contact rail installation from the area indicated to the WOFH Design-Builder Construction Limit.

FIGURE 10.13-2: ALOHA STADIUM CONSTRUCTION LIMITS



SPECIAL PROVISION

CHAPTER SP-11 UTILITIES

SP-11.1 GENERAL

The following special provisions are in addition to the coordination requirements contained in GCDB, SPs, Standard Specifications Division 33, and the utility notes on the RFP Drawings.

Utilities covered under Standard Specifications Division 33 include: telephone, communication, fiber optics, power, storm drain, sanitary sewer, water, gas and fuel lines. Traffic signal, street lighting and irrigation systems are covered under other sections of the Standard Specifications.

SP-11.2 RESPONSIBILITIES / AGREEMENTS

(a) The City has entered, or will be entering, into Agreements with each of the utility owners to address how relocations will be handled including responsibilities for design and construction. Executed Utility Agreements will be provided as they are completed.

(b) The Agreements can be identified by the following categories relating to who is responsible for the performance of the Work:

- (1) Category A/A - Relocation Design by Utility / Relocation by Utility;
- (2) Category A/B - Relocation Design by Utility / Relocation by Design-Builder;
- (3) Category B/A - Relocation Design by Design-Builder / Relocation by Utility;
- (4) Category B/B - Relocation Design by Design-Builder / Relocation by Design-Builder;

and

(5) Note A + B indicates split of responsibility.

(c) Refer to RFP Drawings and Standard Specifications for breakdown of responsibilities.

(d) The utility owners listed in Table 11.2-1 in this section, may have facilities located within the construction zone of this Project that will require coordination and/or relocation. Contact information is provided for each utility.

(e) The Agreement Category as defined above is indicated for each utility.

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TABLE 11.2-1: HHCTCP UTILITY RELOCATION CONTACTS AND RESPONSIBILITY AGREEMENT CATEGORY

Agency/Company Name	Official Mailing Address	Type of Utility	Type of Services	Responsibility Agreement Category*	Utility Agency/Company Relocation Contacts			
					Office or Person Name	Telephone Number	Fax Number	Email Address if Applicable
Directorate of Information Management (now known as Network Enterprise Center, a.k.a Army Signal Corps)	148 Curtis Loop, Room 157, WAAF, Schofield Barracks, HI 96857	Communication	Army Telephone	B / B	Walter Selders	(808) 656-8066	(808) 656-8069	walter.selders@us.army.mil
Navy	400 Marshall Road Pearl Harbor, HI 96860-3139	Multiple	Navy Water / Sewer / Telephone / Power	B / B	James Ebsu (NAVFAC Hawaii)	(808) 474-3726		james.ebsu@navy.mil
Navy	400 Marshall Road Pearl Harbor, HI 96860-3139	Petroleum	Navy Fuel	B / B	John F. Montgomery (NAVFAC Hawaii)	(808) 330-9811 (808) 471-1171 x 300		john.f.montgomery@navy.mil
Air Force	15 CES/CER, 75 H Street Hickam AFB, HI 96853-5233	Petroleum	Air Force Fuel	B / B	John A. Camara (Civ USAF PACAF 15 CES/CER)	(808) 448-2740		John.Camara@hickam.af.mil
HDOT Highway Division	727 Kakoi Street Honolulu, HI 96819	Street Lighting	State Hwy Lights	B / B	Victor Chan (HWY-OL)	(808) 831-6886		Victor.Chan@hawaii.gov
C & C Department of Design and Construction	650 South King St, 9th Floor Honolulu, HI 96813	Street Lighting	C & C Street Lights	B / B	Mechanical/ Electrical Division	808-768-8431		
C & C Board of Water Supply	630 South Beretania Street Honolulu, HI 96843	Water	C & C Water	B / B	Engineering Construction	(808) 748-5730		
C & C Department of Design and Construction	650 South King Street, 14th Floor Honolulu, HI 96813	Sewerage	C & C Sanitary Sewer	B / B	Wastewater Division	(808) 768-8746		
HDOT Highway Division	601 Kamokila Blvd, Rm 636 Kapolei, HI 96707	Drainage	State Storm Drain	B / B	Robert Shin	(808) 489-0639 cell	(808) 483-7295	robert.shin@hawaii.gov
C & C Department of Design and Construction	650 South King St, 15th Floor Honolulu, HI 96813	Drainage	C & C Storm Drain	B / B	Civil Division	(808) 768-8836		
HDOT Highway Division	Design and construction coordination have been entrusted to C & C Dept. of Transportation Services		Traffic Signaling	State Traffic Signal	B / B	Ty Fukumitsu	(808) 768-8388	tfukumitsu@honolulu.gov
C & C Department of Transportation Services	Traffic Signal & Technology Division 650 So. King St., Honolulu, HI 96813		Traffic Signaling	C & C Traffic Signal	B / B	Ty Fukumitsu	(808) 768-8388	tfukumitsu@honolulu.gov
HDOT Highway Division	727 Kakoi Street Honolulu, HI 96819	Irrigation	State Landscape	B / B	O'ahu District Office	(808) 831-6703	(808) 831-6725	
DPP Urban Design Branch	650 So. King Street Honolulu, HI 96813	Irrigation	Street Trees	B / B	Tony Ching	808-768-8028		
Hawaiian Electric Company, Inc.	P O Box 2750 Honolulu, HI 96840	Electrical	Power	A+B / A+B	Norman Nakagawa	(808) 543-7944	(808) 203-1704	norman.nakagawa@heco.com
Hawaiian Electric Company, Inc.	P O Box 2750 Honolulu, HI 96840	Petroleum	Power	B / B	Cynl Ontar	(808) 543-4396 (808) 690-0669 cell		cynl.ontar@heco.com
Hawaiian Telecom, Inc.	P O Box 2200MC, A-4 Honolulu, HI 96841	Communication	Telephone (voice and data)	B / A+B	Lynette Yoshida	(808) 546-8889		Lynette.Yoshida@hawaiiantel.com
Oceanic Time Warner Cable	200 Akamānui Street Mililani, HI 96789	Communication	Cable (voice, data, and video)	B / A+B	Lance Uno	(808) 625-8370		lance.uno@twcable.com
TW Telecom, Inc.	2669 Kihau Street Honolulu, HI 96819	Communication	Telephone (voice and data)	B / A+B	Mitchell Myoshi	(808) 441-8520		mitch.myoshi@twtelecom.com
Sandwich Isles Communications, Inc.	1003 Bishop Street, Suite 2700 Honolulu, HI 96813	Communication	Telephone (voice and data)	B / A+B	Rodney Kautupali	(808) 540-5751		rodneyt@sandwichisles.com
AT&T Corporation	P O Box 898 Waiānae, HI 96792	Communication	Telephone (voice and data)	B / A+B	Alex Viray & Rosemary Hamill	(808) 455-1010 (825) 977-2413	(808) 455-7026 (281) 664-5685	aviray@att.com & rhamill@att.com
Pacific LightNet, Inc. (doing business as Wavecom Solutions)	1132 Bishop Street, Suite #800 Honolulu, HI 96813	Communication	Telephone (voice and data)	B / A+B	Steve Brock	(808) 791-3046	(808) 447-0346	steve.brock@wavecomsolutions.com
Chevron Products Company	91-480 Māhalele Street Kapolei, HI 96707	Petroleum	Fuel	B / A+B	Matt Hammer	(808) 682-3105	(808) 682-2304	mhamm@chevron.com
Tesoro Hawaii Corporation	431 Kūwili Street, 2nd floor Honolulu HI 96817	Petroleum	Fuel	B / A	Wade K. Nakashima	(808) 547-3830	(808) 873-3451	wnakashima@tsocorp.com
The Gas Company	P O Box 3000 Honolulu, HI 96802	Gas	Gas	B / A+B	Keith Yamamoto	(808) 594-5574	(808) 594-5521	kyamamoto@hawaiigas.com

*A = Utility Owner B = Design-Builder See SP-11.2 For Category Description.

SP-11.3 COORDINATION

The Design-Builder shall be responsible to coordinate its Work with the utility Companies.

(a) If the Work requires removing or relocating a utility, the Design-Builder shall make all arrangements with the utility owner to coordinate the relocation before the Design-Builder begins Work in that area.

(b) Any authorized agent of the City or utility owner may enter the Work site to repair, rearrange, alter, or connect its utility and the Design-Builder shall cooperate with such efforts and shall avoid creating delays or hindrances to those doing the Work. As needed, the Design-Builder shall arrange to coordinate Work interfaces and schedules.

(c) To ease or streamline the Work, the Design-Builder may ask utility owner to move, remove, or alter their facilities in ways other than those identified in the RFP Drawings to accommodate the final design of the Design-Builder, subject to acceptance by the City.

(d) The utility notes on the RFP Drawings represent general requirements provided by the utility owners to the HHCTCP Project relating to coordination and relocation of utilities. The Design-Builder shall coordinate with each utility owner to confirm the actual required durations for specific relocations and the applicable notice requirements for each relocation activity and schedule associated Work activities accordingly.

(e) All Work shall be performed and completed in accordance with the Utility Standards of the jurisdiction in which the utilities are being constructed. The Design-Builder shall be responsible for obtaining all such standards and for compliance with such standards as applicable.

(f) Electrical service connections to transit facilities (stations, traction power substations and gap breaker stations) have been preliminarily coordinated with HECO and shown on the utility relocation RFP Drawings. The Design-Builder shall further coordinate with Station and Systems designers and also HECO for final design.

(g) In the event a utility is uncovered or damaged that was not shown on the RFP Drawings or the Design-Builder's final design plans, the following shall occur:

- (1) Notify the City in a timely fashion with action plan; and
- (2) Aggressively pursue remediation with utility owner.

(h) Design-Builder shall coordinate its Work with the State Department of Health Disability and Communications Access Board to ensure that all utility installations comply with ADAAG and ADA requirements.

(i) It is the Design-Builder's responsibility to coordinate its work with any future utility projects being proposed or planned by the various Utility entities.

SP-11.4 MAINTENANCE OF TRAFFIC (MOT) PLANS FOR UTILITY WORK

A MOT concept has been included in the RFP Drawings for guideway foundation and column construction only. No conceptual MOT plans are included in the RFP Documents for the maintenance of traffic associated with any utility relocation. MOT plans for all project work shall be prepared by the Design-Builder or its utility Subcontractor and submitted to the City for Review and Comment. MOT plans affecting HDOT facilities shall be submitted to HDOT in addition to the City.

SP-11.5 UTILITY SERVICES REQUIRED FOR CONSTRUCTION

The Design-Builder shall make arrangements for utilities such as electricity, water, sewer, etc., required for their operations and all costs for these utilities shall be borne by the Design-Builder.

SP-11.6 RESERVED

SP-11.7 IN-SITU SOIL THERMAL RESISTIVITY TESTING

The Design-Builder is alerted to the requirement for in-situ soil thermal resistivity testing at sites where 46kV or 138kV underground conduits are required. Typical mix designs are provided in the RFP Drawings. Actual mix designs for thermal concrete and Fluidized Thermal Backfill (FTB) will be dependent on in-situ soil resistivity testing and subject to review and acceptance by HECO. The Design-Builder shall include time in his schedule for testing and development of mix designs.

SP-11.8 HIGH VOLTAGE LINES

The guideway alignment passes beneath 138kV and 46kV overhead lines at four locations; the first location is near HHCTCP Systems Site #10, the second location is in front of HECO Waiiau Substation, the third location is at the west frontage of Aloha Stadium, and the fourth location is at the intersection of Salt Lake Blvd and Kamehameha Highway. The 46kV lines are to be relocated underground as shown on the RFP Drawings. The 138kV lines are not anticipated to be relocated and no outages have been planned. The lowest 138kV conductor of the lines near HHCTCP Systems Site #10 is at an elevation approximately 32.3 feet above top of rail (TOR) at its maximum design sag. The lowest 138kV conductors of the line in front of HECO Waiiau Substation are at an elevation approximately thirty-three (33) feet above TOR per the LiDAR information. The lowest 138kV conductor of the line at the west frontage of Aloha Stadium is at an elevation approximately forty-one (41) feet above TOR per the LiDAR information. The lowest 138kV conductor of the line at the intersection of Salt Lake Blvd and Kamehameha Highway is at an elevation approximately thirty-four (34) feet above TOR per the LiDAR information. The maximum design sag information for the last three (3) locations is not available. The Design-Builder shall take the proximity of these lines into account when developing its construction methods for the foundations, substructure and superstructure elements at these locations and coordinate all Work activities and schedule with HECO.

SP-11.9 ABANDONED UTILITIES

Utilities which are abandoned from the construction of HHCTCP facilities shall be dealt with as described below. With the exception of fuel lines, abandoned utilities may remain in place. The Design-Builder is required to obtain a waiver from HDOT to abandon utilities in place. Existing in-service fuel lines that are to be relocated shall not be abandoned in place and must be removed. Existing abandoned fuel lines that are impacted are to be removed to the extent practical and the ends of the remaining abandoned fuel lines are to be capped. It is the Design-Builder's responsibility to coordinate requirements for abandoned utilities with each utility owner.

SP-11.10 PAYMENT FOR UTILITY PERFORMED WORK

The cost of all utility coordination shall be included in the Design-Builder's Proposal. The cost of utility relocation design and construction to be undertaken by the Design-Builder shall be included in the Design-Builder's Proposal. Utility relocation design and/or construction identified in the RFP Drawings to be performed by the utility owner shall be paid directly by the City to the utility owner and shall not be included in the Design-Builder's Proposal.

SP-11.11 ASSUMED UTILITY REVIEW CYCLE TIME

For schedule purposes the Design-Builder shall assume the Design Review Cycle Times listed in Table 11.11-1, for each submittal to public and private utilities. The Design-Builder is encouraged to work with the individual utilities during the Final Design process to assure the completeness of their design to limit the number of formal review cycles required.

SP-11.12 UTILITY RELOCATION SCHEDULE

The Design-Builder shall work with the individual utilities responsible for design and/or relocation activities to determine a mutually acceptable schedule. The Design-Builder, working with the utility, shall identify long lead activities early in the Project to assure adequate schedule is allowed. The work task resources of the individual utilities shall be considered in the development of the schedule. The Design-Builder shall notify the City immediately of any anticipated delay due to utility's performance or unplanned events that could impact the Design-Builder's Baseline Schedule.

SP-11.13 WATER MAIN CLEARANCE

The minimum clearance referenced in the Standard Specifications Section 33 10 00, Section 1.03 A. City and County of Honolulu Water System Standards, Division 100, Table 100-1 Water Main Clearances, subscript (c) shall read: *For O`ahu only: 10 feet for water mains 16 inches or larger.*

In addition, the Design-Builder shall minimize the number of connections between existing and relocated mains, including extending the relocated mains through intersections. The Design-Builder shall coordinate with the BWS for routing and termination points for the relocated water mains during design.

SP-11.14 NAVY WATERMAIN

The Navy 24-inch waterline proposed for realignment shown on RFP Drawings UP136 and UP137 is the sole transmission main for the Navy's Halawa Housing area and Camp Smith. Service outages are not allowed. The Design-Builder shall coordinate with NAVFAC Hawaii with regards to any work affecting the Navy water system.

SP-11.15 MILITARY COMMUNICATION UTILITIES

The requirements for relocation of existing Directorate of Information Management (DOIM) facilities referenced in the Standard Specifications Section 33 80 00 shall be extended to cover all military communication utilities.

Honolulu High-Capacity Transit Corridor Project

TABLE 11.11-1: HHCTCP UTILITY RELOCATION DESIGN REVIEW

Utility Agencies/Companies		Type of Utility	Type of Services	Responsibility Agreement Category *	Utility Owner Review Cycle (Days)
Agency/Company Name	Official Mailing Address				
Directorate of Information Management (Network Enterprise Center, a.k.a. Army Signal Corps)	148 Curtis Loop, Room 157, WAAF, Schofield Barracks, HI 96657	Communication	Army Telephone	B / B	60
Navy	400 Marshall Road Pearl Harbor, HI 96860-3139	Multiple	Navy Water / Sewer / Telephone / Power	B / B	60
Navy	400 Marshall Road Pearl Harbor, HI 96860-3139	Petroleum	Navy Fuel	B / B	60
Air Force	15 CES/CER, 75 H Street, Hickam AFB, HI 96853-5233	Petroleum	Air Force Fuel	B / B	60
HDOT Highway Division	727 Kakoi Street, Honolulu, HI 96819	Street Lighting	State Hwy Lights	B / B	60
C & C Department of Design and Construction	650 South King St, 9th Floor, Honolulu, HI 96813	Street Lighting	C & C Street Lights	B / B	60
C & C Board of Water Supply	630 South Beretania Street, Honolulu, HI 96843	Water	C & C Water	B / B	60
C & C Department of Design and Construction	650 South King St, 14th Floor, Honolulu, HI 96813	Sewerage	C & C Sanitary Sewer	B / B	60
HDOT Highway Division	601 Kamokila Blvd, Rm 636, Kapolei, HI 96707	Drainage	State Storm Drain	B / B	60
C & C Department of Design and Construction	650 South King St, 15th Floor, Honolulu, HI 96813	Drainage	C & C Storm Drain	B / B	60
HDOT Highway Division	Design and construction coordination have been entrusted to C & C Dept. of Transportation Services	Traffic Signaling	State Traffic Signal	B / B	60
C & C Department of Transportation Services	Traffic Signal & Technology Division 650 South King Street, Honolulu, HI 96813	Traffic Signaling	C & C Traffic Signal	B / B	60
HDOT Highway Division	727 Kakoi Street, Honolulu, HI 96819	Irrigation	State Landscape	B / B	60
DPP Urban Design Branch	650 So. King St, Honolulu, HI 96813	Irrigation	Street Trees	B / B	60
Hawaiian Electric Company, Inc.	P.O. Box 2750, Honolulu, HI 96840	Electrical	Power	A+B / A+B	60
Hawaiian Electric Company, Inc.	P.O. Box 2750, Honolulu, HI 96840	Petroleum	Power	B / B	60
Hawaiian Telcom, Inc.	P.O. Box 2200MC: A-4. Honolulu, HI 96841	Communication	Telephone (voice and data)	B / A+B	60
Oceanic Time Warner Cable	200 Akamainui Street, Milliani, HI 96789	Communication	Cable (voice, data, and video)	B / A+B	60
TW Telecom, Inc.	2669 Kilihaui Street, Honolulu, HI 96819	Communication	Telephone (voice and data)	B / A+B	60
Sandwich Isles Communications, Inc.	1003 Bishop Street, Suite 2700, Honolulu, HI 96813	Communication	Telephone (voice and data)	B / A+B	60
AT&T Corporation	P.O. Box 898, Waianae, HI 96792	Communication	Telephone (voice and data)	B / A+B	60
Pacific LightNet, Inc. (doing business as Wavcom Solutions)	1132 Bishop Street, Suite #800, Honolulu HI 96813	Communication	Telephone (voice and data)	B / A+B	60
Chevron Products Company	91-480 Malakole Street, Kapolei, HI 96707	Petroleum	Fuel	B / A+B	60
Tesoro Hawaii Corporation	431 Kuwili Street, 2nd floor, Honolulu HI 96817	Petroleum	Fuel	B / A	60
The Gas Company	P.O. Box 3000, Honolulu, HI 96802	Gas	Gas	B / A+B	60

*A = UTILITY OWNER

*B = DESIGN-BUILDER

SEE SP-11.2 FOR CATEGORY DESCRIPTION

SPECIAL PROVISION

CHAPTER SP-12 RIGHT-OF-WAY

SP-12.1 GENERAL

This section addresses the City provided Right-of-Way (ROW) to the Design-Builder and addresses additional ROW needs, easements and premises.

SP-12.2 CONSTRUCTION ACTIVITIES

The Design-Builder shall confine construction activities within property lines, ROW, limits of easements and limits of Construction Permits as shown or specified in the Permit unless arrangements are made with owner(s) of adjacent private property. If additional space or property is needed to accommodate the Design-Builder's method of construction of the Work or for the convenience of the Design-Builder, the Design-Builder shall acquire the right to temporarily use such additional space and shall bear all related costs and responsibilities. Prior to the temporary use of any private property outside the specified limits, Design-Builder shall file with the City written permission from the property owner(s).

Should the Design-Builder modify the design from the RFP drawings which subsequently results in additional permanent ROW needed, the Design-Builder shall bear the full cost and responsibility related to the additional ROW. The Design-Builder shall go through the City to acquire the property. No time extensions or Change Orders will be allowed for property acquisition not identified in the RFP.

Properties will be in "as is" condition. Any demolition, site work, remediation and any other site improvements will be the responsibility of the Design-Builder.

SP-12.3 ROW SCHEDULE

The Design-Builder shall review the available Right-of-Way Plans in coordination with the following schedule of expected right-of-way availability and develop construction staging and phasing plans to utilize available ROW to the greatest extent possible. Once the property is obtained by the City, the Design-Builder shall take responsibility for the property at that time.

TABLE 12.3-1: RIGHT-OF-WAY ACQUISITION SCHEDULE

TYPE OF FACILITY	TMK	TAKE	EXPECTED DAYS AFTER NTP
Straddle bents	1-9-7-024-045	partial	270
GW	1-9-7-023-003	partial	180
GW	1-9-7-023-008	partial	170
GW	1-9-7-022-008	partial	170
GW	1-9-7-022-021	partial	170
GW	1-9-9-003-061	partial	180
GW, Sta & P&R	1-9-9-003-071	full	180
GW & TPSS	1-9-9-003-070	full	180
GW	1-9-9-003-068	full	170

SPECIAL PROVISION

CHAPTER SP-13 SPECIAL EVENTS

SP-13.1 GENERAL

This Section includes general requirements for adjusting temporary traffic controls to accommodate special events and non-working periods.

SP-13.2 NOTIFICATION

The Design-Builder will contact the City, HDOT, Neighborhood Boards, schools, and community associations to obtain information concerning special events occurring during the life of the Contract. Special events may include but are not limited to cultural festivals, fairs, concerts, athletic events, parades, etc., which will increase traffic volumes on the roadway during the allowable Work times.

SP-13.3 IMPACT

The communities and neighborhoods throughout the Work site have a number of events scheduled during the period of the Contract. These events will impact deliveries, hauling and all surface activities, specifically street work. While in most cases, not all construction activity will need to cease during these events, coordination through the City with local communities and institutions will be required to minimize effects of construction on these events.

SP-13.4 SCHEDULE

For the purposes of the Baseline Schedule, the Design-Builder shall take into consideration the events indicated below that may impact or prohibit Work at the site or in the right-of-way or impact or prohibit the hauling of Materials to and/or from the Work site. The Design-Builder will not be provided any schedule relief for delays or impacts resulting from the events noted below or other community events that are not listed.

SP-13.5 RESPONSIBILITY

While the listing below provides information on currently known events, it is not exhaustive. It is the Design-Builder's responsibility to verify with the City, as well as the communities surrounding the project to determine if there are additional events that will impact Work on the Project. It is also the Design-Builder's responsibility to understand the event routings and traffic restrictions associated with these events and account for the potential impact on construction activities. Known one day events include the following:

- (a) Great Aloha Run (Mid February);
- (b) Dick Evans Memorial Road Race (Late August – Early September);
- (c) Pearl City Shopping Center Christmas Parade (Mid December);
- (d) 'Aiea Community Association Christmas Parade (Mid December);
- (e) Leeward Community College Spring Commencement Exercises (Mid May); and
- (f) Snow Days in Hawai'i Nei at Pearl Highlands Shopping Center.

SPECIAL PROVISION

CHAPTER SP-14 PERMITS

SP-14.1 COMPLIANCE

The Design-Builder shall comply with all permit requirements and conditions of local authorities as though they were specified herein, at no additional cost to the City or said authorities. It is the responsibility of the Design-Builder to obtain these permits in a timely manner such that obtaining these permits is not a cause for claim for delay due to impacts to Baseline Schedule. In the event of a conflict between the Contract Documents and any permit requirement, the more stringent shall prevail. Local codes and permit conditions are incorporated by reference herein.

SP-14.2 CITY PROVIDED PERMITS

The City will furnish the permits listed in Table 14.2-1, titled “City Provided Permits,” within the time frame noted in the table. The start of construction is sensitive to obtaining the noted permits; as such the Design-Builder shall support the City’s efforts to secure all of the City provided permits. All permits listed as being obtained by the City in Table 14.2-1 are based on conceptual design provided in the RFP. Should the permitting authority require the Design-Builder’s means and methods to facilitate issuance of the permit, the Design-Builder shall provide technical support. If the Design-Builder modified the design such that it triggers new permit requirements, the Design-Builder will be responsible for obtaining those permits in consultation with the City.

TABLE 14.2-1: CITY PROVIDED PERMITS

Permit Or Agency Submittal	Agency	Days from NTP 1
Clean Water Act (CWA) Section 404/Section 10 -- Department of the Army (DA) Permit - General Nationwide (NWP)	U.S. Army Corps of Engineers (USACE), Regulatory Branch; Environmental Protection Agency (EPA)	180-Days following NTP 1
Section 401 Water Quality Certification (WQC)	State of Hawai'i Dept. of Health (DOH), Clean Water Branch (CWB)	180-Days following NTP 1
Stream Channel Alteration Permit (SCAP)	State of Hawai'i Dept. of Land and Natural Resources (DLNR), Commission on Water Resource Management (Water Commission)	180-Days following NTP 1
Section 10 Bridge Permit	U.S. Coast Guard; US Army Corps of Engineers	180-Days following NTP 1
CWA Section 402 -- National Pollutant Discharge Elimination System (NPDES) for Stormwater Associated with Construction Activity - Notice of General Permit Coverage (NGPC)	State of Hawai'i Dept. of Health (DOH), Clean Water Branch (CWB)	NGPC 180-Days following NTP 1
Community Noise Permit	State of Hawai'i Dept. of Health (DOH), Environmental Health Service Division; Noise, Radiation, & Indoor Air Quality Branch	60-Days following NTP 1

TABLE 14.2-1: CITY PROVIDED PERMITS

Permit Or Agency Submittal	Agency	Days from NTP 1
Community Noise Variance	State of Hawai'i Dept. of Health (DOH), Environmental Health Service Division; Noise, Radiation, & Indoor Air Quality Branch	60-Days following NTP 1
Hawai'i Coastal Zone Management (CZM) Program Certification for Section 404/Section 10 Department of Army Permit	State of Hawai'i Dept. of Business, Economic Development and Tourism (DBEDT), Office of Planning (OP)	180-Days following NTP 1
Special Management Area Use Permit (SMAUP)	City and County of Honolulu, DPP-LUPD	120-Days following NTP 1
Subdivision/Easement Land Use Waivers (Structures in Yard, Height Limit, Signs, Parking, Floor Area, etc.)	City and County of Honolulu, DPP-SDD/Subdivisions	This will occur as part of the land acquisition process; refer to SP-12 for ROW specific property acquisition schedule.
Flood Hazard Variance	City and County of Honolulu, DPP-SDD/Subdivisions	After Final Design

SP-14.3 DESIGN-BUILDER PROVIDED PERMITS AND REQUIREMENTS

The Design-Builder shall obtain all other permits required for the performance of the Work. There are conditions in the City provided permits that may require additional submittals to the permitting agencies. The Design-Builder shall be responsible to provide any additional requirements to the City provided permit.

SPECIAL PROVISION

CHAPTER SP-15 OUTSIDE AGENCY AND BOARD OF WATER SUPPLY AGREEMENTS

The City is in the process of negotiating and obtaining agreements with the agencies listed below. Copies of the draft agreements with Federal, State, City and Utility providers will be provided as they become available.

SP-15.1 FEDERAL

- (a) US Postal Service.

SP-15.2 STATE

- (a) HDOT – Highways Division;
- (b) DAGS – Department of Accounting and General Services;
- (c) U of H – University of Hawai`i;
- (d) Aloha Stadium Board / State Comptroller; and
- (e) DLNR – Department of Land and Natural Resources.

SP-15.3 CITY

- (a) Board of Water Supply.

SPECIAL PROVISION

CHAPTER SP-16 SAFETY AND SECURITY

SP-16.1 GENERAL

The Design-Builder shall comply with the City's Project Safety and Security Program. The City has developed a Safety and Security Management Plan (SSMP). The SSMP, in accordance with Federal Transit Administration (FTA) requirements, sets up the formal mechanisms used to establish and manage safety and security activities intended to minimize risk of injury and property damage, and to maximize the safety and security for passengers, employees, contractors and the general public throughout all phases of the Project. The Design-Builder shall refer to Engineering Data for a copy of the Project SSMP.

Safety and security management for the Project is organized into two primary program disciplines:

- (a) Safety and Security Certification Program; defined by the FTA as the series of processes that collectively verify the safety and security readiness of the Project for public use.
- (b) Construction Safety and Security Program; activities carried out to prevent injuries and illnesses to persons and damage to property and equipment during the construction phase of the Project.

SP-16.2 SAFETY AND SECURITY CERTIFICATION PROGRAM

The purpose of the Project Safety and Security Certification Program is to ensure that:

- (a) The design, construction, fabrication, installation, testing, and commissioning of all safety and security certifiable elements (civil, structural, and systems) have been evaluated for conformance with the safety and security design criteria and specification requirements and to verify their readiness for operational use;
- (b) The rail system is operationally safe and secure for customers, employees, emergency responders, and the general public; and
- (c) The objective is to achieve an acceptable level of risk through a systematic approach to safety hazard and security vulnerability management, criteria adherence, specification and construction compliance, and testing and commissioning verification. This is accomplished through documentation and verification.

The Design-Builder shall:

- (a) Implement and complete the safety and security certification process for all Certifiable Elements relating to the scope of the Contract, in accordance with the FTA Handbook for Transit Safety and Security Certification. The City has developed a Project Safety and Security Certification Plan (SSCP) based on these FTA guidelines to describe how these activities will be implemented for the Project.
- (b) Participate in safety and security certification activities carried out by the Project's Safety and Security Oversight and Review Committee (SSORC) and Safety and Security Certification Review Committee (SSCRC).
- (c) Demonstrate within its schedule the integration and completion of safety and security certification activities, including the development and completion of Conformance Checklists, Certificates of Conformance, and Issuance of Project Safety and Security Certificates.
- (d) Perform hazard analyses and security assessments, and develop mitigation measures for safety and security certifiable elements.

(e) Submit supporting verification documentation as requested to demonstrate that the Design-Builder has incorporated and complies with safety- and security-related design criteria and contract requirements.

(f) Conduct tests and inspections to demonstrate that the Design-Builder has incorporated and complies with the safety- and security-related design criteria and contract requirements.

(g) Maintain a document management system that enables retrieval of Certification Program documentation that demonstrates that design approvals, construction approvals, fabrication approvals, inspections, tests, Conformance Checklists, and Certificates of Conformance have been successfully completed for all Certifiable Elements.

(h) Identify on its organization chart the representative assigned to manage and facilitate the Design-Builder's implementation of the safety and security certification process. (See SP-4.8)

The Design-Builder's implementation and completion of the safety and security certification process is not limited to the aforementioned requirements. Additional Design-Builder requirements are further defined in the SSCP. The Design-Builder shall refer to Engineering Data for a copy of the SSCP.

SP-16.3 CONSTRUCTION SAFETY AND SECURITY PROGRAM

The Design-Builder shall have the primary responsibility for maintaining the safety of motorists, pedestrians, bicyclists, and workers in the vicinity of construction and maintenance areas at all times.

The Design-Builder shall submit a Construction Health and Safety Plan (CHASP) to the City for review and acceptance. The City's Project SSMP and Construction Safety and Security Plan (CSSP) describe the minimum requirements for the Design-Builder's CHASP. The Design-Builder's CHASP shall demonstrate its compliance with the City's Project SSMP, CSSP, and all applicable federal, state and local regulations.

The City's Construction Safety and Security Program requirements do not release the Design-Builder from any additional safety and security requirements or conditions contained in other sections of the Contract. The purpose of this program is to establish a practical and effective program for the prevention of and response to accidents, incidents, illnesses and injuries, and to assign specific responsibilities to Design-Builders for program development and compliance. The Design-Builder shall refer to Engineering Data for a copy of the City's Project CSSP.

SPECIAL PROVISION

CHAPTER SP-17 ENVIRONMENTAL COMPLIANCE

SP-17.1 GENERAL

The Design-Builder shall design and construct the Work in accordance with the Contract, industry practices, and the specific permit conditions for the Project. Design-Builder shall identify and conduct any additional studies and inventories needed to identify environmental impacts and issues pertinent, if the Design-Builder is going to work outside of the environmental constraints specified by the permits in place between the City and regulatory authorities. Design-Builder shall identify and be responsible for securing any additional and applicable environmental permits, clearances, and approvals and mitigate impacts to environmentally sensitive areas and resources where Work is to be performed outside the limits, clearances, approvals and conditions in the permits in place between the City and regulatory authorities. The Design-Builder shall prepare the design and conduct construction activities such that no action or inaction on the part of the Design-Builder shall result in non-compliance with the requirements of laws applicable to the Project. The Design-Builder shall follow all of the HHCTCP FEIS and ROD mitigation requirements. The FEIS with the mitigation requirements will be released when it is available.

If there is a conflict among the requirements cited herein, or in a permit or order, issued by a regulatory agency, then the requirement that provides the most environmental protection and broadest coverage shall govern. It is the Design-Builder's responsibility to obtain clarification of any ambiguity within the environmental documents or this Section prior to proceeding with design or construction.

SP-17.2 PERMITS

See SP-14 Permits. Completion of applications for all required environmental permits to be obtained by the Design-Builder, and accumulation of all documentation required for environmental clearances, and authorizations shall be the responsibility of the Design-Builder and shall be included in the Environmental Compliance Plan as described in this Section.

SP-17.3 ENVIRONMENTAL COMPLIANCE PLAN (ECP)

The Design-Builder shall prepare an ECP based on the EIS commitments and mitigation and pertinent permit conditions. The ECP shall be updated as necessary, and when new or modified mitigation or environmental compliance strategies are developed throughout the term of the Contract. The ECP shall be part of the Design-Builder's Quality Plan and at a minimum shall include:

- (a) Environmental inspection and investigations to determine the direct and indirect effects of the Project (design elements and construction activities) on terrestrial and aquatic biological resources, threatened and endangered species, fish, cultural resources, visual and aesthetic conditions, water quality, and other issues present in the Project area.
- (b) Environmental constraints maps, including but not limited to location and extent of wetlands, waterways, floodplains, habitats, historical, archaeological and cultural resources, ordinary high water mark, and other sensitive environmental resources. The environmental constraints map shall be in a format acceptable to the City and included in the Design Submittals as requested by the City.
- (c) Plan for implementation of all actions required under environmental permits, orders, and authorizations obtained by the City.
- (d) Plan for mitigating and remediating impacts on wetlands, wildlife and wildlife habitat, fish and fish habitat, vegetation, historic, archaeological, cultural, scenic, and other resources.

(e) Identification of environmental compliance team roles, responsibilities and authority, and communication protocol for environmental matters.

(f) Identification of all required environmental permits and approvals includes the following:

(1) List of all environmental permits, and approvals obtained or to be obtained (including those obtained by the City) identifying the issuing regulatory authority, dates of anticipated issuance by regulatory authorities, and authority contact information;

(2) Date and duration of approval and any conditions stipulated in each environmental permit; and

(3) Key restrictions or limitations (e.g., limit of wetland fill, dates of in-water work activities, mitigation requirements).

(g) Procedures for plan implementation include the following:

(1) Implementation schedule, including key construction dates;

(2) Estimated dates and length of construction activities in or near environmental, historical, archaeological, and cultural features; and

(3) Procedures to avoid or minimize adverse effects during temporary water management activities (dewatering, flow diversion, etc.).

(h) Level of anticipated regulatory authority participation in project activities, includes the following:

(1) Description of required regulatory authority involvement, if any, including attendance at project meetings;

(2) List of regulatory authorities to receive monitoring reports, newsletters, or project updates; and

(3) Identification of technical lead responsible for substantive contacts with regulatory/resource agencies.

(i) Design-Builder's Organization - Levels of responsibility and authority of:

(1) On-site staff (e.g., Project Manager, Project Quality Manager, Construction Manager, Environmental Compliance Monitors);

(2) Other local office staff;

(3) Environmental Manager; and

(4) Environmental Team (reports to the Design-Builder's Environmental Manager).

(j) Identification of Specific Controls and Methods to be addressed in the ECP, these shall include, but are not limited to:

(1) Environmental controls and mitigation methods such as:

(A) Sediment/erosion control and water quality;

(B) Dust control and air quality;

(C) Lead paint containment and recovery (if applicable);

(D) Wetland and wildlife protection;

(E) Waterway and fish protection;

- (F) Cultural resources protection;
 - (G) Archaeological Sites and Iwi Kupuna protection;
 - (H) Noise control;
 - (I) Hazardous material/waste management; and
 - (J) Prevention of Invasive Species
- (2) Procedures for inspection, monitoring, corrective, and preventative actions include the following:
- (A) A compliance monitoring and reporting program that identifies frequency of monitoring, reporting format, and personnel responsible for monitoring;
 - (B) Procedures for reporting and record-keeping;
 - (C) Procedures for reporting and handling noncompliance, including names of regulatory authority contacts to be notified, the means by which notification to is be accomplished, and the timeframe for notification;
 - (D) Names of Key Personnel responsible for implementing corrective or preventive action; and
 - (E) Follow-up procedures and documentation of implementation of corrective action.
- (3) Procedures for environmental emergency response include the following:
- (A) Names of contacts in project team and regulatory authorities, office, 24-hour and mobile telephone numbers, e-mail address, and work address; and
 - (B) Actions to be taken during an environmental emergency situation.
- (4) Environmental training program (Employee Awareness Training) processes, include the following:
- (A) Description of any special training needs; and
 - (B) Schedule for orientation meetings and project team field meetings required to inform key staff of the environmental compliance issues associated with the Project.
- (k) Reports and meetings as described later in this section.

SP-17.4 REPORTS AND MEETINGS

Reports and meetings are the responsibility of the Design-Builder. Compliance coordination meetings are also the responsibility of the Design-Builder and are to be performed after submittal of the draft Environmental Compliance Plan (ECP) and for any modifications to the ECP.

(a) Status Reports and Meetings – The Design-Builder shall provide bi-weekly environmental status and compliance reports to the City. In addition, the Design-Builder shall hold weekly or bi-weekly meetings, depending on the level of permitting and construction activity in or adjacent to environmentally sensitive areas with the City to review project compliance with permits and approvals. The Design-Builder shall prepare and distribute meeting minutes within five (5) Days of the meeting:

(b) Design Review Meetings. During design review, the Design-Builder shall meet with the City at both Definitive Design Review and Final Design Review to review the design submittals. The Design-Builder will present the design that either incorporates the environmental compliance requirements and permit conditions or will present a design Deviation request for environmental compliance

requirements and permit conditions. During the design review meetings, the City will review the design to determine if environmental compliance requirements, permit conditions and approvals, and environmental controls and mitigation methods have been incorporated into the design.

(c) Compliance Coordination Meetings. The Design-Builder shall coordinate with the City and regulatory/resource authorities to ensure adequacy of submittal materials. Coordination efforts shall include a mandatory ECP review meeting and pre-application submittal meetings, as necessary.

(d) The Design-Builder shall schedule a meeting with the City for the purpose of presenting the overall environmental compliance strategy contained within the draft ECP or contained within any revisions to the ECP after City's acceptance. The meeting shall be held within ten (10) Working Days of draft ECP (or ECP revision) submittal. The Design-Builder shall ensure that the following Design-Builder team members participate in the meeting:

- (1) Project Manager;
- (2) Design Manager;
- (3) Construction Manager;
- (4) Environmental Manager; and
- (5) Quality Manager.

SP-17.5 PRE-CONSTRUCTION ASSESSMENT (PCA)

The Design-Builder shall prepare a Pre-Construction Assessment (PCA) to identify means of compliance with the permits, and authorizations as applicable to the Project. The Environmental Manager and environmental team shall carefully examine each Work location to gain an understanding of the conditions to be encountered and to determine the presence and location of historical, archaeological, cultural and sensitive natural features.

The PCA will be performed prior to construction being initiated in regulated Work areas to ensure that all environmental compliance requirements are transferred from the designer and design team to the builder and the construction team. The PCA shall be based on site inspection, analysis of potential impacts of the Work, additional studies needed to refine environmental resource or impact information, a review of environmental permits, regulations and relevant existing background reports and studies.

All questions and communication regarding environmental permit, order, opinion, clearance, and authorization issues shall be directed to the City. Draft and final PCAs shall be submitted to the City upon their completion for review and comment.

SP-17.6 ENVIRONMENTAL COMPLIANCE MONITORING AND REPORTING PROGRAM

Design-Builder shall be responsible for an Environmental Compliance Monitoring and Reporting Program both during a) construction and b) post construction.

(a) Environmental Compliance Monitoring and Reporting Program during Construction will include the following:

- (1) The Environmental Manager, with support from the environmental team, shall monitor the Project throughout the construction phase to confirm adherence to regulations, approvals, and environmental performance standards. Monitoring shall be conducted during all periods of construction mobilization, active construction, construction demobilization, and final project restoration. Incidents of non-compliance noted during monitoring conducted by the Environmental Manager or a member of the environmental team shall be field-reviewed by the Construction Manager.

(2) The Environmental Manager shall determine the frequency of monitoring depending upon the level of construction activity, proximity of activity to sensitive resources, and the environmental issues associated with the Work location. Monitoring is to occur at a frequency adequate to confirm ongoing compliance with the Contract requirements.

(3) During the construction phase, the Environmental Manager shall maintain an Environmental Logbook and a photographic record of the Project. The Environmental Logbook shall be maintained at the Design-Builder's construction office at the Project Site and shall contain copies of the monitoring reports, photographs, and all applicable environmental permits, programmatic agreements, orders, opinions, clearances, and authorizations. All photograph files shall be maintained in .jpg or .tiff format.

(4) Environmental Construction Monitoring Report shall contain the following elements at a minimum:

- (A) Project identification;
- (B) Project location;
- (C) Date of site visit (include arrival and departure times);
- (D) Purpose of site visit;
- (E) Names and responsibility of persons present during monitoring;
- (F) Summary of general site conditions (describe general environmental condition and character of Project Site);
- (G) Summary of current construction activities (e.g., describe location of Work, type of Work, Equipment on site);
- (H) Evaluation of compliance for each relevant environmental permit condition;
- (I) Problem areas and deficiencies (e.g., active soil erosion, unauthorized filling of wetlands/streams, improper stockpiling of construction Materials);
- (J) Describe corrective actions taken to resolve problems or deficiencies. Summarize discussions and decisions to resolve issues with on-site responsible party;
- (K) Note and describe active restoration or mitigation operations that are occurring (if applicable);
- (L) Provide general comments;
- (M) Describe actions taken that promote environmental excellence;
- (N) Timing of environmentally sensitive activities;
- (O) Photo documentation of sensitive site conditions within the Project area meeting the following requirements;
- (P) Digital photographs shall be files in .jpg or .tiff formats;
- (Q) Establish photo points as appropriate;
- (R) Include general project area views (e.g., staging areas, geographic constraints);
- (S) Include detail views (e.g., vegetation feature); and
- (T) Label each photo with date, time, project name, photographer's name, and subject comment.

In the event an incident of noncompliance is noted, the Environmental Manager shall immediately bring the deficiency to the attention of the Design-Builder's Project Manager, Construction Manager, Design-Builder's senior management, and the City. The Environmental Manager shall work with the Design-Builder's Project Manager and Construction Manager to determine corrective measures and to establish the earliest feasible time frame for implementation of the corrective measures. Implementation of the corrective measures is to be documented during subsequent inspections. Monitoring reports are to be completed within fourteen (14) Days of each monitoring inspection.

(b) Environmental Post-Construction Monitoring and Reporting. Post Construction, the Design-Builder shall ensure that disturbed areas are restored to their preconstruction contours and revegetated as soon as possible following Project completion.

(1) The Environmental Manager shall conduct final monitoring inspections to assess compliance with permit requirements. Inspections may be required during the de-mobilization and final trimming and clean-up phases at each Work location. Inspections should also address the success, failures, and remedial actions for site restoration and compensatory mitigation sites.

(2) After completion of inspections, the Environmental Manager shall prepare an Environmental Post-Construction Monitoring Report. The report will summarize the construction history of the Work location, including significant deficiencies or incidents that may have occurred during the life of the Project and the corrective actions taken. The report shall also provide a general assessment of the overall compliance of the Work location with the Environmental Compliance Performance Standard and the requirements of the various environmental permits, orders, opinions, clearances, and authorizations for the Project. The report is to be completed within thirty (30) Days after the final inspection and submitted to the City.

SP-17.7 SUBMITTALS

The Design-Builder shall submit the following to the City and appropriate regulatory agencies as needed:

- (a) Environmental Compliance Plan (draft) – by date required in the Baseline Schedule but no later than forty-five (45) Days prior to start of construction;
- (b) Environmental Compliance Plan (final) – finalize and accepted by the City prior to start of construction;
- (c) Permit applications – ten (10) Days prior to submittal to permitting agency;
- (d) Environmental permits and authorizations – upon receipt;
- (e) Draft Pre-Construction Assessment (PCA) – at least thirty (30) Days prior to start of construction;
- (f) Final Pre-Construction Assessment (PCA) – prior to construction;
- (g) Bi-weekly Status/Compliance Reports – Bi-weekly;
- (h) Environmental Construction Monitoring Report(s), frequency and content as determined in the Environmental Compliance Plan; and
- (i) Environmental Post-Construction Monitoring Report, by Work location – thirty (30) Days after the final inspection.

SPECIAL PROVISION

CHAPTER SP-18 SUSTAINABLE PRACTICES

SP-18.1 SUSTAINABLE DESIGN

The Design-Builder shall include sustainable strategies for the Project design and construction with the goals of achieving sustainable principles of resource conservation, energy efficiency and reduction of environmental impacts. The Design-Builder shall provide a qualified Sustainability Coordinator to manage the development of a Sustainability Action Plan and coordinate the program implementation. This individual, which may be assigned other duties, must be a LEED Accredited Professional or equivalent experience and training and have a full understanding of sustainability construction processes and programs.

SP-18.2 SUSTAINABILITY ACTION PLAN

The Design-Builder is responsible for developing a Sustainability Action Plan for City Review and Comment prior to submittal of final design. The Plan shall:

- (a) Comply with the HHCTCP Compendium of Design Criteria;
- (b) Describe how the Project's sustainability goals and sustainability principles are incorporated into the project design and construction;
- (c) Address how components of the "HHCTCP – Systemwide Sustainability Report" are to be incorporated; and
- (d) Include a Construction Waste Management Plan as referenced in the Systemwide Sustainability Report. It shall include the following scope:
 - (1) Describe the procedures and actions that will be employed to reduce and recycle waste and to reuse resources and materials during construction.
 - (2) Provide a list of specific performance requirements for waste reuse, salvaging, recycling and/or reduction.

SPECIAL PROVISION

CHAPTER SP-19 CONSTRUCTION PARKING & WORKER TRANSPORTATION

SP-19.1 GENERAL

The Design-Builder shall provide parking for all of its employees and Subcontractors. The City will make no provisions for construction parking other than allowing it within the designated Design-Builder staging areas pursuant to the City's approved permits.

SP-19.2 RESTRICTIONS

Due to the limited amount of parking available to residents and businesses in and around the locations of the Work, the Design-Builder and its Subcontractor personnel shall not park their personal vehicles in the public right-of-way or in commercial areas where general parking has been prohibited for construction or safety purposes. The Design-Builder shall not allow personnel to park their personal vehicles in private business parking lots without prior approval from the business owners.

On-street parking by Design-Builder employees will not be permitted within vicinity of Work site. During the actual hours of Work, only construction vehicles absolutely necessary to construction shall be allowed within the safety zone or allowed to stop or park on the shoulder of the roadway with the approval of the City.

Employees will not be allowed to utilize commercial parking facilities as that reduces/eliminates the available parking for the customers/employees of the local businesses.

SP-19.3 PROXIMITY

It is the Design-Builder's responsibility to identify specific off-site and off-street area(s) or portion(s) of lots for the use of construction employees during the working day in close proximity to the Project Site to serve construction Work adequately and result in minimum interference with performance of Work. The City will make no provisions for construction parking or worker transportation.

SP-19.4 ENFORCEMENT

The Design-Builder shall ensure that employees of the Design-Builder and its Subcontractors are prohibited from parking anywhere other than the Design-Builder furnished parking area.

SPECIAL PROVISION

CHAPTER SP-20 DESIGN-BUILDER STAGING AREAS

SP-20.1 GENERAL REQUIREMENTS

This Section includes general requirements for locating, permitting, establishing, operating and restoring Design-Builder Staging Areas where field offices, Materials and construction Equipment are temporarily located for convenient access to the Work site. The Design-Builder shall perform all Work in accordance with all Federal, State and local laws and regulations regarding air pollution and quality and shall control dust to ensure that excessive dust is not transported beyond the limits of construction and does not interfere with normal traffic operations or adjacent properties.

The Design-Builder will be responsible for determining staging area requirements for the Project. No staging areas will be provided by the City. The Design-Builder shall make all necessary agreements with property owners for staging areas and will be responsible for acquiring any permits necessary for that use.

In selecting the location of staging areas, the Design-Builder's attention is drawn to haul routes which the Design-Builder shall submit for Review and Comment by the City. Residential neighborhoods should be avoided.

The Design-Builder shall clearly indicate the staging area for the Project by providing appropriate signage for visitors and deliveries, including one sign at each access location.

Staging areas shall be fenced to deter unauthorized entry. Perimeter fencing shall be maintained in good working order throughout the duration of the Project or as directed by the City.

The protection of stored Materials is the Design-Builder's responsibility. The City is not liable for any loss of Materials, by theft or otherwise, or for any damage to stored Materials.

The Design-Builder shall be responsible for maintaining staging areas. Waste materials, debris, and rubbish from the site shall be removed as soon as such materials become unfit for use.

Restoration of Staging Area. Upon completion of the Work, the Design-Builder shall restore the staging area to a condition equal to or better than existing. All damages shall be repaired by the Design-Builder at no cost to the City.

SP-20.2 USE

Staging areas shall be primarily used for field offices, Equipment and Materials storage, temporary soil stockpiling; with secondary use, as space allows, for employee parking.

The Design-Builder shall be responsible for coordinating use of public/private areas with the owners, acquiring temporary property rights, and obtaining all required permits and clearances approved for use by all concerned regulatory agencies including City owned property, property owned by other government agencies and private property.

Storage of Materials. The Design-Builder shall store articles or Materials to be incorporated into the Work in such a manner as to preserve their quality and fitness for the Work and to facilitate inspection.

SP-20.3 PERMITS

Clearance and Permits. The Design-Builder shall assess each staging area and obtain clearance, approval and permitted use for storage areas by all concerned regulatory agencies for archeological, wetland, biological, and other issues (i.e., land use, noise, hazmat) prior to construction.

SP-20.4 ACCESS

Access and Maintenance of Staging Areas. The Design-Builder shall keep access to staging areas and other construction access-ways and thoroughfares serving the public clear at all times (except as approved by the City). The Design-Builder shall coordinate any special delivery needs with the City.

SP-20.5 PROJECT MAINTENANCE AND STORAGE FACILITY

The project Maintenance and Storage Facility (MSF) will be under construction by a different contractor. It is anticipated that the rail and accessories provided by the City to the Design-Builder will be stored at the Maintenance and Storage Facility as indicated in the RFP drawings.

The Design-Builder shall obtain approval and coordinate entry into the site with the operator of the MSF site to pick up the City furnished materials from the site. The Design-Builder will be responsible for the security, handling, and also transport of the materials to the Work Site upon the transfer of the Material from the control of the MSF Design-Builder.

SP-20.6 RAIL WELDING SITE

The area bordering the mauka side of the Leeward Community College (LCC) Station and makai side of the H-1 ramp is available to the Design-Builder to set up a facility to perform rail welding and supply rail strings onto the guideway. The Core System Contractor has control of the guideway all the way to the beginning of the KHG Segment at all times. The Design-Builder's access to the guideway will have to be approved and coordinated with the Core System Contractor's operations. Initial transit operating segment will be from Waipahu transit site to LCC with a limited time and service operation. As operations service and times expands, guideway access from LCC Station to Pearl Highlands Station will become more restrictive to the Design-Builder. The Design-Builder will have to obtain track allocation time from the Core System Contractor to use this section of the guideway for material delivery. The Design-Builder will be responsible for submitting a work plan that is acceptable to the Core Systems Contractor and the City that addresses any concerns about safety to operations and damage prevention to existing facilities. The Design-Builder would be responsible for any damages associated with his work.

SPECIAL PROVISION

CHAPTER SP-21 PRECAST YARD

SP-21.1 GENERAL REQUIREMENTS

This Section includes general requirements for locating, permitting, establishing, operating and restoring the Design-Builder Precast Yard for precasting concrete elements for the Project and is applicable to both off island facilities as well as facilities on O`ahu .

The Design-Builder shall allow for temporary office space of up to three (3) City QA/QC staff. This space is in addition to the field office space defined in section SP-4.2.

The Design-Builder will be responsible for determining Precast Yard requirements for the Project. No areas will be provided by the City for the Precast Yard and it will be at the Design-Builder's discretion where the Precast Yard shall be sited, subject to compliance with all other Contract provisions. In the event that this may be a new precasting facility, the Design-Builder will be responsible to make all necessary agreements with property owners for the Precast Yard and will be responsible for acquiring any permits necessary for that use.

In selecting the location for the Precast Yard, the Design-Builder's attention is drawn to haul routes which the Design-Builder shall submit for approval by the City. Residential neighborhoods should be avoided. The Design-Builder shall submit to the City a site plan for the Precast Yard it proposes to use. The site plan shall include locations of perimeter fencing, gates, and access points and proposed means of handling and transporting precast elements from the Precast Yard to the Project Site including haul routes. The Precast Yard, if located in the State of Hawai`i, shall be dedicated solely to Work on the Honolulu High-Capacity Transit Corridor Project.

The Design-Builder shall clearly indicate the Precast Yard for the Project by providing appropriate signage for visitors and deliveries, including one sign at each access location.

The Precast Yard Staging shall be fenced to deter unauthorized entry. Perimeter fencing shall be maintained in good working order throughout the duration of the Project or as directed by the City.

The Design-Builder shall be responsible for maintaining the Precast Yard. Waste materials, debris, and rubbish from the site shall be removed as soon as such materials become unfit for use.

The Design-Builder shall perform all Work in accordance with all Federal, State and local laws and regulations regarding air pollution and quality and shall control dust to ensure that excessive dust is not transported beyond the limits of the Precast Yard and does not interfere with normal traffic operations or adjacent properties.

Restoration of the Precast Yard. Unless otherwise specifically agreed upon with the property owner, upon completion of the Work, the Design-Builder shall restore the Precast Yard to a condition equal to or better than existing. All damages shall be repaired by the Design-Builder at no cost to the City.

SP-21.2 PERMITS

Clearance and Permits for the Precast Yard. The Design-Builder shall assess the proposed Precast Yard and obtain clearance, approval and permitted use for the proposed precast operations by all concerned regulatory agencies for archeological, wetland, and biological issues prior to construction.

SP-21.3 USE

The Design-Builder shall be responsible for coordinating use of public/private areas with the owners, acquiring temporary property rights, and obtaining all required permits and clearances approved for use by all concerned regulatory agencies including State owned property, property owned by other government agencies and private property.

Storage of Materials and Precast Elements. The Design-Builder shall store all Materials and precast elements to be incorporated into the Work in such a manner as to preserve their quality and fitness for the Work and to facilitate inspection.

The protection of all stored Materials and precast elements is the Design-Builder's responsibility. The City is not liable for any loss of Materials, by theft or otherwise, or for any damage to stored Materials or precast elements.

SP-21.4 ACCESS

Access and Maintenance of the Precast Yard. The Design-Builder shall keep access to the Precast Yard and other construction access-ways and thoroughfares serving the public clear at all times. The Design-Builder shall coordinate any special delivery needs with the City.

SPECIAL PROVISION

CHAPTER SP-22 HDOT TRAFFIC SIGNAL SPECS

SP-22.1 GENERAL REQUIREMENTS

This Chapter includes two HDOT Special Provisions sections which amend HDOT's Standard Specifications.

These are Sections 623 Traffic Signal Systems and 770 Traffic Signal Materials. These specifications are not incorporated as part of HDOT standard specs as they apply to the island of O'ahu only. These specs are provided below in their original formatting.

SECTION 623 - TRAFFIC SIGNAL SYSTEM

Make the following amendments to said Section:

(1) *Amend 623.01 Description to read as follows:*

"623.01 Description. This work includes furnishing labor, materials, tools, machinery, and equipment necessary to modify or install and construct an operating traffic signal system complete in place according to the contract.

The traffic signal system includes:

- (1) *Installing the electrical service and metering facilities and paying for the electric company's charges;*
- (2) *Trenching, structural excavating, backfilling, restoring work, and installing pullboxes;*
- (3) *providing a complete and operating traffic signal system with controller, cabinet, auxiliary and support equipment, vehicle detectors, signal standards, traffic signals and appurtenances, signal head mounting, concrete foundations, cables, wiring, cleaning and adjusting signal heads, painting and restoration work.*
- (4) *Coordinating work and arranging for inspection of work with the Engineer and other agencies as required.*
- (5) *Turning over to the Department a complete and operating traffic signal system according to the contract.*
- (6) *Furnish and install the incidental parts that the contract does not show and that are necessary to complete the traffic signal system as though such parts were in the contract.*
- (7) *Electrical equipment shall conform to the NEMA Standards and this contract. Material and workmanship shall conform to the "National Electric Code", (the Code); General Order Nos. 6 and 10 of the Hawai'i Public Utilities Commission; the standards of the ASTM; the ANSI; Local Joint Pole Agreement; local power company rules; and local ordinances that may apply.*

Definitions.

- (1) *Actuation - Operation of any type of detector.*

- (2) *Clearance Interval* - Length of time of display of signal indication following right-of-way interval.
- (3) *Detector for Traffic Actuation* - Device that pedestrians or vehicles can register their presence with traffic-actuated controller.
- (4) *Extendible Portion* - That part of green interval that follows initial portion.
- (5) *Extension Limit* - Maximum time that traffic phase may retain right-of-way after actuation on another traffic phase, after timing out initial portion.
- (6) *Flashing Feature* - Feature incorporated to stop normal signal operation and cause flashing of predetermined combination of signal lights.
- (7) *Initial Portion* - Part of green interval that is timed-out or separately controlled by traffic-actuated controller before extendible portion of interval takes effect.
- (8) *Interval* - Several divisions of time cycle during which signal indications do not change.
- (9) *Interval Sequence* - Order of appearance of signal indications during successive intervals of time cycle.
- (10) *Magnetic Vehicle Detector* - Detector actuated by movement of vehicle passing through magnetic field.
- (11) *Major Street* - Roadway approach or approaches at intersection normally carrying greater volume of vehicular traffic.
- (12) *Manual Operation* - Operation of signal controller by hand- operated switch.
- (13) *Minimum Period* - In semi-traffic-actuated controllers, shortest time for which right-of-way will be given to approaches not having detectors.
- (14) *Minor Movement Interval* - Auxiliary phase added to controller phase (parent phase) and modified by auxiliary movement controller.
- (15) *Minor Street* - Roadway approach or approaches at intersection normally carrying smaller volume of vehicular traffic.
- (16) *Non-Parent Phase* - Controller phase not modified by auxiliary control unit.
- (17) *Parent Phase* - Controller phase modified by auxiliary control unit.
- (18) *Passage Period* - Time allowed for vehicle to travel at selected speed from detector to nearest point of conflicting traffic.
- (19) *Pedestrian Detector* - Detector, usually of push-button type, installed near roadway and operated by hand.
- (20) *Pressure-Sensitive Vehicle Detector* - Detector installed in roadway, actuated by pressure of vehicle

passing over its surface.

(21) *Pre-Timed Controller - Automatic control device for supervising operation of traffic control signals in accordance with pre-timed cycle and divisions.*

(22) *Recall Switch - Manually operated switch in actuated controller to provide for automatic return of right-of-way to street.*

(23) *Right-of-Way - Privilege of immediate use of highway.*

(24) *Signal Indication - Illumination of traffic signal lens or equivalent device, or of combination of several lenses or equivalent devices.*

(25) *Time Cycle - Number of seconds required for one complete revolution of timing dial or complete sequence of signal indications.*

(26) *Traffic-Actuated Controller - Digital control device for supervising operation of traffic control signals in accordance with varying demands of traffic as registered with controller by loop detectors or pedestrian push buttons.*

(27) *Traffic Phase - Part of cycle allocated to traffic movements receiving right-of-way or to combinations of traffic movements receiving right-of-way simultaneously during one or more intervals.*

(28) *Unit Extension - Minimum time, during extendible portion, for which right-of-way must remain on traffic phases following actuation on that phase, subject to extension limit*

(II) *Amend 623.02 Materials by adding the following after line 132:*

“Pedestrian Signal Push Button with Integral Sign 770.12

Interconnect/Fiber Optic Subduct 770.13”

(III) *Amend Subsection 623.03(C)(7) by revising lines 255 to 258 to read as follows:*

“(7) Conduits. Lay polyvinyl chloride (PVC) conduits carefully in trenches prepared to receive conduits. Concrete encase PVC Schedule 40 conduits.”

END OF SECTION 623

SECTION 770 – TRAFFIC SIGNAL MATERIALS

Make the following amendments to said Section:

(I) *Amend Subsection 770.02(A)(1)(b) – Traffic Signal Heads by revising the first paragraph from line 211 to 216 to read:*

“(b) To ensure quality and performance, LED head shall have prior history of testing and use by CALTRANS and shall exceed ITE standards. Failure on one LED shall not affect other LED’s. LED head

shall have fully-encapsulated electronic circuitry and configuration for 12-inch ball.”

(II) Amend Subsection 770.04 – Pedestrian Signal from line 444 to 600 to read:

“(A) Purpose.

The purpose of this specification is to provide the minimum requirements for the LED “walking person” and “hand” icon pedestrian signal modules with countdown. This specification is only for the nominal overall message-bearing surface of 16 x 18 in. This specification is not intended to impose restrictions upon specific designs and materials that conform to the purpose and the intent of this specification. This specification refers to definitions and practices described in “Pedestrian Traffic Control Signal Indications” published in the Equipment and Materials Standards of the Institute of Transportation Engineers, (referred to in this document as “PTCSI”) and in the Applicable Sections of Manual on Uniform Traffic Control Devices (MUTCD) 2003 Section 4E.

Physical and Mechanical Requirements.

The modules shall fit into existing pedestrian signal housings built for the PTCSI sizes stated in Section 1 of the “walking person” and “hand” icon pedestrian signal indication Standard without modification to the housing and shall not require special tools for installation.

Installation of a retrofit replacement module into existing pedestrian signal housing shall only require the removal of the existing optical unit components, shall be weather tight and fit securely in the housing, and shall connect directly to existing electrical wiring. The LED module shall have a visual appearance similar to that of an incandescent lamp (i.e.: Smooth and non-pixelated). Screwed on lenses are not allowed. Only modules with internal mask shall be utilized. No external silk-screen shall be permitted.

When not illuminated, the WALKING PERSON, UPRAISED HAND, and COUNTDOWN DIGITS shall not be readily visible. The countdown digits of the pedestrian signal module shall be located to the right of the associated UPRAISED HAND. The display of the number of remaining seconds shall begin only at the beginning of the pedestrian change interval. After the countdown displays zero, the display shall remain dark until the beginning of the next countdown. The walking person, hand icons and countdown digits shall be incandescent looking.

The units shall not have any external attachments, dip switches, toggle switches or options that will allow the mode to be changed from counting the clearance cycle, to the full walk/don’t walk cycle or any other modification to the icons or digits.

For each nominal module, use the corresponding minimum H (height) and W (width) measurements:

<i>Module Size</i>	<i>Icon Height</i>	<i>Icon Width</i>	<i>Countdown Height</i>	<i>Countdown Width</i>	<i>Countdown Segment Width</i>
<i>(16 x 18 in)</i>	<i>11 in</i>	<i>7 in</i>	<i>9 in</i>	<i>7 in</i>	<i>0.7 in</i>

All exposed components of a module shall be suitable for prolonged exposure to the environment. As a minimum, the module shall be rated for use in the ambient operating temperature range, measured at the exposed rear of the module, of -40° C to +74° C (-40° F to +165° F).

The module shall be a single, self-contained device, not requiring on-site assembly for installation into an existing pedestrian signal housing. The power supply shall be located inside the pedestrian signal module.

The assembly and manufacturing process for the module shall be designed to assure all internal LED and electronic components are adequately supported to withstand mechanical shock and vibration from high winds and other sources.

The front window shall be a transparent polycarbonate material with internal masking to prevent the icons and digits from being visible when not in operation. External masking or silk-screen technology shall not be permitted.

Each module shall be identified on the backside with the manufacturer's name, model, serial number and operating characteristics. The operating characteristics shall include the nominal operating voltage and stabilized power consumption, in watts and/or Volt-Amperes.

Photometric Requirements

For a minimum period of 60 months, the maintained minimum luminance values for the modules under operating conditions, when measured normal to the plane of the icon surface, shall not be less than:

- Walking person: 2,200 cd/m²;*
- Hand: 1,400 cd/m².*
- Countdown digits: 1,400 cd/m²;*

The luminance of the emitting surface, measured at angles from the normal of the surface, may decrease linearly to a value of 50% of the values listed above at an angle of 15 degrees. The LED module shall have a visual appearance similar to that of an incandescent lamp (i.e.: Smooth and non-pixelated).

Maximum permissible luminance: When operated within the temperature range, the actual luminance for a module shall not exceed three times the required peak value of the minimum maintained luminance. Luminance uniformity: The uniformity of the signal output across the emitting section of the module lens (i.e. the hand, person or countdown icon) shall not exceed a ratio of 5 to 1 between the maximum and minimum luminance values (cd/m²).

The standard colors for the LED Pedestrian Signal Module shall be White for the walking person and Portland Orange for the hand icon and the countdown digits.

Electrical Requirements

All wiring and terminal blocks shall meet the requirements of Section 13.02 of the VTCSH Standard. Maximum of three secured, color coded, 1 meter (39 in) long 600 V, 16 AWG minimum, jacketed wires, conforming to the National Electrical Code, rated for service at +105° C, are to be provided for electrical connection. The conductors shall be color coded with orange for the hand, blue for the walking person and white as the common lead.

LED modules shall operate from a 60 ± 3 Hertz AC line power over a voltage range from 80 to 135 VAC RMS. Nominal operating voltage for all measurements shall be 120 ± 3 VAC RMS. Fluctuations in line voltage over the range of 80 to 135 VAC RMS shall not affect luminous intensity by more than ± 10 %. To prevent the appearance of flicker, the module circuitry shall drive the LEDs at frequencies greater than 100 Hz when modulated, or at DC, over the voltage range specified.

Low Voltage Turn Off: There should be no illumination of the module when the applied voltage is less than 35 VAC RMS. To test for this condition, each icon must first be fully illuminated at the nominal operating voltage. The applied voltage shall then be reduced to the point where there is no illumination. This point must

be greater than 35 VAC RMS.

Turn-ON and Turn-OFF Time: A module shall reach 90% of full illumination (turn-ON) within 75 msec of the application of the nominal operating voltage. The signal shall cease emitting visible illumination (turn-OFF) within 75 msec of the removal of the nominal operating voltage.

Default Condition: For abnormal conditions when nominal voltage is applied to the unit across the two-phase wires (rather than being applied to the phase wire and the neutral wire) the pedestrian signal unit shall default to the hand symbol. The on-board circuitry of a module shall include voltage surge protection:

To withstand high-repetition noise transients and low-repetition high-energy transients as specified in NEMA Standard TS-2 2003; Section 2.1.8

Section 8.2 IEC 1000-4-5 & Section 6.1.2 ANSI/IEEE C62.41.2-2002, 3kV, 2 ohm

Section 8.0 IEC 1000-4-12 & Section 6.1.1 ANSI/IEEE C62.41.2-2002, 6kV, 30 ohm

The LED signal and associated on-board circuitry shall meet the requirements of the Federal Communications Commission (FCC) Title 47, Subpart B, Section 15 regulations concerning the emission of electronic noise by Class A digital devices. The modules shall provide a power factor of 0.90 or greater when operated at nominal operating voltage and 25° C (77° F). Total harmonic distortion induced into an AC power line by the module, operated at nominal operating voltage, and at 25° C (77° F) shall not exceed 20%.

The current draw shall be sufficient to ensure compatibility and proper triggering and operation of load current switches and conflict monitors in signal controller units. Off State Voltage Decay: When the module is switched from the On state to the Off state the terminal voltage shall decay to a value less than 10 VAC RMS in less than 100 milliseconds when driven by a maximum allowed load switch leakage current of 10 milliamps peak (7.1 milliamps AC).

Module Functions

The module shall operate in one mode: Clearance Cycle Countdown Mode Only. The module shall start counting when the flashing don't walk turns on and will countdown to "0" and turn off when the steady "Don't Walk" signal turns on. The module shall not have user accessible switches or controls for the purpose of modifying the cycle, icons or digits. At power on, the module enters a single automatic learning cycle. During the automatic learning cycle, the countdown display shall remain dark. The unit shall re-program its self if it detects any increase or decrease of Pedestrian Timing. The digits shall go blank once a change is detected and then take one complete pedestrian cycle (with no counter during this cycle) to adjust its buffer timer.

The module shall allow for consecutive cycles without displaying the steady Hand icon ("Don't Walk"). The module shall recognize preemption events and temporarily modify the crossing cycle accordingly. If the controller preempts during the walking man, the countdown shall follow the controller's directions and shall adjust from walking man to flashing hand. It shall start to count down during the flashing hand. If the controller preempts during the flashing hand, the countdown shall continue to count down without interruption. The next cycle, following the preemption event, shall use the correct, initially programmed values. This specification is worded such that the flashing don't walk time is not modified.

If the controller output displays 'Don't Walk' steady condition or if both the hand/person go dark and the unit has not arrived to zero, the unit suspends any timing and the digits shall go dark.

Warranty

Manufacturers will provide the following warranty provisions. Replacement or repair of an LED signal module that fails to function as intended due to workmanship or material defects within the first 5 years (60 months) from the date of delivery.”

(III) Amend Subsection 770.05(A)(2)- Controller Equipment, Controller Assembly by replacing Table 770.05-1 – Controller Assembly Requirements with the following:

<i>TABLE 770.05-1 – CONTROLLER ASSEMBLY</i>	
<i>REQUIREMENTS</i>	
<i>Item</i>	<i>Quantity</i>
<i>Model 170 Controller</i>	<i>1</i>
<i>Model 412C Prom Module</i>	<i>1</i>
<i>Model 400 Modem</i>	<i>1</i>
<i>332A Aluminum Cabinet</i>	<i>1</i>
<i>Model 200 Load Switches</i>	<i>12</i>
<i>Model 204 Flasher</i>	<i>All</i>
<i>Model 242 Isolators</i>	<i>2</i>
<i>Model FS/ST Isolator</i>	<i>All</i>
<i>Flash Transfer Relays</i>	<i>All</i>
<i>Model 210 Conflict Monitor</i>	<i>1</i>
<i>Model 262C Detector Amplifiers (Rotary Sw Type)</i>	<i>8</i>
<i>Model M752 Preempt. Car (Non-QPL)</i>	<i>2</i>
<i>Model GPS Time Source (Non-QPL)</i>	<i>1</i>

(IV) Amend Subsection 770.05(B)(6)- Controller Equipment, Model 170E Controller by deleting line 643.

(V) Amend Subsection 770.05(C)(5)- Controller Equipment, Cabinet by deleting lines 660 to 665.

(VI) Amend Subsection 770.05(D)(2) – Controller Equipment Auxiliary Equipment from line 712 to 741 to read:

(2) Security Tumbler for Signal Cabinet. The signal control cabinet door locks (2 locks for each cabinet) are keyed to take Best Lock Series tumblers. The contractor shall furnish and install 2 lock cylinders that will fit in the current locks on the signal cabinet. The lock cylinders keys shall be one of a kind, licensed to the City and County of Honolulu, and each cylinder shall have 1 set of keys with “do not duplicate” stamped on each key.

(3) GPS Time Source. The GPS time source unit shall be a precision Time Standard for use on 170 Traffic Signal Controllers. It utilizes time signals broadcast from the GPS satellite network and is traceable to the National Institute of Standards and Technology (NIST). The unit incorporates a precision GPS receiver and a microprocessor to decode the time signals and interface to the traffic control equipment.

The standard features of the GSP unit shall include, but not limited to, time and date information including Year, Month, Day, Hour, Minute, and Second, all functions are automatic, no jumpers or switches to set, time zone, baud rate, and daylight savings operation set with dumb terminal, user set parameters stored in non-

volatile EEPROM, 24 hour backup for time keeping, standard 3 wire RS232 interface, automatic daylight savings and leap second time corrections, LED status indicator, operates on controller +5 Volts from communications port, antenna mounts to top of cabinet, and no external wires to run.

(VII) Add Subsection 770.12 – Pedestrian Signal Push Button with Integral Sign to read:

“(A) Description. The pedestrian push button unit shall consist of an assembly that can be secured to traffic poles with standard screws, be tamper proof, weatherproof, and constructed so that electrical shocks are impossible to receive.

(B) Materials.

The housing for the push button assembly shall be of cast and/or machined aluminum. The push button assembly shall be weatherproof with a water diverting groove set in the outside diameter of the actuator button receptor. The housing shall be designed to reduce vandalism and shall mount on the side or top of a pole with a minimum 2-inch diameter button. The push button housing shall be capable of mounting in an ‘up button’ or ‘down button’ configuration. All wire connections shall be accessible from the back of the assembly.

An ADA acceptable raised directional sign shall be installed with stainless steel fasteners to the housing. The sign shall consist of a raised walking person and a raised arrow indication. Paint the unit black and paint the raised walking person and arrow white. The sign shall be capable of mounting in an ‘up button’ or ‘down button’ configuration. The raised walking person and arrows shall be directional and match the indication as shown in the plans.

The pushbutton shall extend from the sign faceplate approximately three inches. The pushbutton actuator shall be convex in design having a flat area on the face for uses of a stylus, ADA acceptable, two inches in diameter, and have a tension of less than five pounds when pressed. The button shall be manufactured in a way that it cannot be stuck in a closed (constant call) position.

The pedestrian push button shall be a piezo electric type and be UL listed. The button shall have a stainless steel actuator and shall be mounted within the housing with stainless steel, non-corrosive, tamper proof fasteners. The unit shall operate between 12-24V DC or AC, 3 inch round mounts with 4 mounting bolts. The pedestrian button shall give an audio and visual signal each time the pedestrian button is activated.

(VIII) Add Subsection 770.13 – Interconnect/Fiber optic Subduct to read:

“770.13 Interconnect/Fiber optic Subduct.

(A) Description. A non-metallic flexible textile raceway known as subduct, which is placed within PVC conduits. The subduct allows for the future communication upgrades, including transitioning from multipair copper cables to fiber optic media. To further that effort and achieve maximum conduit utilization, the interconnect/fiber optic conduits shall contain a subduct. The subduct shall consist of flexible, textile material, sometimes referred to as “fabric duct”. The subduct shall be installed in the interconnect/fiber optic conduits as indicated on the plans.

(B) Textile Subduct. The subduct shall consist of the following:

A. Standard Outdoor Textile subduct: Micro (33 mm), 2-inch, 3-inch and 4-inch single or multi-cell polyester/nylon textile subduct containing 1250 lb polyester flat woven pull tape.

B. Conduit Plugs: Compression-type conduit plugs with locking nuts for sealing and securing one or more textile subducts within a conduit.

C. Pull Tape. The subduct pull tape shall be constructed of synthetic fiber, printed with accurate sequential footage marks and color-coded.

D. Duct Water Seal: products suitable for closing underground and entrance conduit openings where subduct is installed, to prevent entry of gases, liquids, or rodents into the structure.

(C) Installation. The contractor shall protect the subduct from the effects of moisture, UV exposure, corrosion and physical damage during installation. The contractor shall install the subduct prior to installing the new interconnect and fiber optic cables.

The contractor shall provide textile subduct in conduits using continuous unspliced lengths of textile subduct between pull boxes, and/or termination points as indicated on the drawings.

The contractor shall make a 2" incision, approximately 18" from the end of textile subduct. Pull out and cut off approximately 2 feet of pull-tape. Thus allowing the pull tape ends to retract back into the cells. Using approximately 6 feet of pull tape, tie a non-slip knot to the incision. Then tie 3 to 6 half-hitch knots down to the end of textile subduct. Apply black vinyl tape over all knots and the end of textile subduct. Using a Bow Line knot tie a swivel to the end of 3 feet pull tape. For multi-pack installations one swivel is sufficient, but stagger each textile subduct.

*Using a Bow Line knot, attach the pull rope located in the rigid conduit to the other end of the swivel. Install textile subduct - ensuring that no twist is introduced to the subduct
Provide suitable textile subduct slack in the pull boxes, and at turns to ensure there is no kinking or binding of the product.*

*At locations where textile subduct will be continuous through a pullbox, allow sufficient slack so that the subduct may be secured to the side of the pullbox maintaining the minimum bending radius.
At pullboxes serving as the junction location, pull the exposed end of the subduct to the far end of the pullbox, install termination bag, and secure to the pullbox.*

Seal all conduit and textile subduct entering the pullboxes to prevent entrance into the pullboxes of gases, liquids or rodents."

END OF SECTION 770

SPECIAL PROVISION

CHAPTER SP-23 INVASIVE SPECIES MANAGEMENT

SP-23.1 GENERAL

This section describes the best management practices for the prevention, identification and reporting of noxious and invasive plants.

Weeds are opportunistic species and have adapted to establish in disturbed soils rapidly. Vehicles and construction equipment associated with construction activities can introduce seeds and/or rhizomes (horizontal stems) of noxious weeds to the Site. Educating construction workers about the importance of weed management, and implementation of preventative measures to control the spread of noxious weeds, are the most cost-effective management approaches.

The Design-Builder shall be solely responsible for the cost for prevention and complete eradication of all noxious and invasive weeds not confirmed in the ROW prior to construction that are listed in State of Hawai'i Department of Agriculture administrative rules HRS 4:6:68, "Noxious Weed Rules" and the following high priority invasive plants: Fountain Grass (*Pennisetum setaceum*), Bush Beardgrass (*Schizachyrium condensatum*), Pampas grass (*Cortaderia selloana* and *C. jubata*), Fireweed (*Senecio madagascariensis*), and Long Thorn Kiawe (*Prosopis juliflora*).

The Design-Builder shall be responsible for obtaining all necessary licenses and permits from applicable regulatory agencies for the specific methods proposed for clearing and removal of noxious invasive weeds species.

SP-23.2 INVENTORY AND ERADICATION OF NOXIOUS WEEDS AND INVASIVE SPECIES

Before and after completion of construction work, conduct a right-of-way (ROW) inventory of all existing Noxious Weeds and Invasive Species listed in State of Hawai'i Department of Agriculture administrative rules HRS 4:6:68, "Noxious Weed Rules" and the following high priority invasive plants: Fountain Grass (*Pennisetum setaceum*), Bush Beardgrass (*Schizachyrium condensatum*), Pampas grass (*Cortaderia selloana* and *C. jubata*), Fireweed (*Senecio madagascariensis*), and Long Thorn Kiawe (*Prosopis juliflora*). Survey shall be performed by a qualified independent botanist. Noxious weed monitoring and management will continue for the duration of the project.

Surround areas of all noxious/invasive plants with a protective 4-foot-high, orange, plastic mesh or equivalent fence accepted by the Engineer, supported on minimum 6-foot-long steel T-post. Provide signage on fence not to disturb or work within the fenced area. Fences shall be erected prior to the commencement of any work and shall not be removed until eradication work is completed. For trees or shrubs flagging tape can be used to mark the plants. Design-Builders and botanists shall send information about the presence and treatment of weeds and invasive plant species to the City for their records- GPS points (northing and easting) with species names.

Design-Builder shall submit eradication plan, to include species, flowering or immature, GPS location (NAD 83), area covered, and number of plants.

The Design-Builder will quarterly inspect borrow areas within the Site. If the borrow area is infested with noxious weeds, the area will be treated.

If herbicides are proposed for use in the Plan, the Design-Builder must insure that it is applied by a licensed commercial applicator. The label for herbicides being used must be in their possession; the applicator must have proper safety equipment, and be prepared to handle chemical spills before they occur. If an herbicide spill occurs, the City must be notified so that the proper contacts can be made. A record of herbicide application will be kept by the commercial applicator, and submitted to the City.

All noxious/invasive plants not contained within the Inventory report conducted before construction and discovered on the site after the Plan is reviewed and accepted by the City, shall be deemed to have been introduced by the Design-Builder and shall solely be the responsibility of the Design-Builder for all costs for the complete eradication of the discovered noxious and invasive weed. Identified noxious/invasive weeds must not be allowed to reach the flowering or seed dispersal stage.

SP-23.3 EQUIPMENT CLEANING

The Design-Builder will use wash stations to remove seeds, roots, and rhizomes from the equipment prior to transport from the site. All earthwork equipment shall be pressure cleaned and be completely free of soil, seeds, vegetative matter, or other debris that could contain or hold seeds prior to the initial arrival to the construction site. Drainage from the wash stations will be controlled at all wash station locations.

Upon request, Design-Builder may arrange for engineer to inspect each piece of earthwork equipment prior to arrival to the construction site. Equipment shall be considered free of soil, seeds, and other such debris when a visual inspection by the engineer does not disclose such material. Visual inspection shall include the complete exterior including but not limited to undercarriages, tires, wheel wells and grill works. Disassembly of equipment components or specialized inspection tools is not required. The Design-Builder shall maintain a log of vehicle inspections.

All Design-Builder Equipment will arrive at the Work Site clean and weed-free. The Design-Builder will periodically inspect and verify that Equipment is arriving free of soil and debris capable of transporting noxious weed seeds, roots, or rhizomes.

Equipment will not be sprayed with herbicide chemicals as a preventative measure. Spraying equipment with herbicides is not consistent with label specifications. Additionally, many herbicides target a wide range of vegetation and using herbicides in this way may harm desirable vegetation.

The Design-Builder will thoroughly inspect seeding equipment prior to conducting seeding activities.

SP-23.4 RECORD KEEPING OF DESTINATION OF MATERIALS REMOVED FROM SITE

Maintain records during the entire period of construction of the destination of all earth, fill or debris removed from the site. Report shall include type of material, approximate quantity, and address of delivery location. The Design-Builder will compile data for monthly reports and submit the reports to the City. Provide a summary report to the City at final project acceptance or upon request anytime during construction.

SP-23.5 CONSTRUCTION SITE INFORMATIONAL SIGNAGE

Invasive/noxious plant signage to be prominently posted at the Design-Builder's trailer at the construction site. Signage shall include one laminated 8.5" by 11" color for each for the following high priority invasive plants: Fountain Grass (*Pennisetum setaceum*), Bush Beardgrass (*Schizachyrium condensatum*), Pampas grass (*Cortaderia selloana* and *Cortaderia jubata*), Fireweed (*Senecio madagascariensis*), and Long Thorn Kiawe (*Prosopis juliflora*).

Obtain free laminated signage from the O`ahu Invasive Species Committee (OISC), 2551 Waimano Home Road, Pearl City, HI 96782, (808) 286-4616, Fax (808) 453-6113, E-mail: oisc@hawaii.edu.

SP-23.6 TRAINING

Prior to commencement of clearing and grubbing activities, Design-Builder shall have all equipment operators attend training on the identification of weeds to be avoided and reporting procedures. Training shall be conducted onsite free-of-charge by the OISC, 2551 Waimano Home Road, Pearl City, HI 96782, (808) 286-4616, Fax (808) 453-6113, E-mail:oisc@hawaii.edu.

SP-23.7 UNANNOUNCED INSPECTIONS

Design-Builder shall provide access to OISC and Department of Agriculture staff for the purpose of site inspection for noxious or invasive plant detection or monitoring.

SP-23.8 NEW PLANTING REQUIREMENTS

Refer to Chapter 11 of the HHCTCP Compendium of Design Criteria for additional requirements on Invasive Species.

SPECIAL PROVISION

CHAPTER SP-24 ADDITIONAL TRAFFIC CONTROL REQUIREMENTS

SP-24.1 GENERAL TRAFFIC CONTROL AND LANE CLOSURES REQUIREMENTS

(a) A traffic analysis evaluation study shall be performed by Design-Builder to determine the proper deployment of traffic control schemes and lane closure schedules that would minimize traffic disruption. The decision to use a particular traffic control device at a particular location shall be made on the basis of an engineering study.

(b) Design-Builder shall prepare Final Design Plans, including temporary traffic control and final MOT plans, and submit the design documents to the City and HDOT O`ahu District for review and approval.

(c) Design-Builder shall obtain a permit to perform work upon State Highways from O`ahu District Engineer, State Highways, at 727 Kakoi Street, prior to commencement of work within the State's Highway Right-of-Way.

(d) Intelligent Transportation System. As part of the TMP, Design-Builder shall design, procure, install, and maintain Intelligent Transportation System (ITS) equipment along Kamehameha Highway that integrates information into the City and State's ITS system.

(e) Construction and restoration of all existing highway facilities within the State's Right-of-Way, including legal relations and responsibility to the public, shall be in accordance with the current Standard Specifications for Road, Bridge and Public Works Construction, and the Specifications for Installation of Miscellaneous Improvements within State Highways, of the State Highways Division.

(f) The Design-Builder shall provide, install and maintain all necessary signs, lights, flares, barricades, markers, cones, and other protective facilities, and shall take all necessary precautions for the protection, convenience, and safety of public traffic. All such protective facilities and precautions to be taken shall conform with the "Administrative Rules of Hawai'i Governing the Use of Traffic Control Devices at Work Sites on or Adjacent to Public Street and Highways," adopted by the Director of Transportation, and the Current U.S. Federal Highways Administration "Manual on Uniform Traffic Control Devices, Part VI – Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility and Incident Management Operations."

(g) All regulatory, guide, and construction signs and barricades shall have a high-intensity reflective background.

(h) The Design-Builder shall inform the State Highways' Permit Office (831-6712) at least two (2) Days prior to closing any lanes.

(i) Design-Builder shall coordinate work with HDOT throughout the alignment on a daily basis. Design-Builder shall use the details contained therein as templates to develop traffic plans for specific construction operations in accordance with the following:

(1) Provide a thirty (30)-Day advance notice to HDOT for any and all traffic restrictions on a State Highway lane or ramp.

(2) Coordinate with HDOT on all details of access and egress to the Work Site from HDOT Right-of-Way, and all details of construction staging areas within HDOT Right-of-Way.

(3) Submit all construction Work plans and erection procedures to the City and HDOT sixty (60) Days in advance of scheduled Work for safety review and to verify clearance envelopes,

access for HDOT personnel including maintenance personnel, and special procedures for all erection equipment movements adjacent to Kamehameha Highway.

(4) Approval for all lane closures or restrictions on all HDOT State Highways, lanes, or ramps proposed by Design-Builder shall be obtained by Design-Builder from HDOT.

(5) When Work extends beyond authorized lane closures, the Design-Builder shall be charged a lane rental fee. The lane rental fee applies to violations of HDOT traffic restrictions and will be assessed based on HDOT Special Provision section 108.09 of the State of Hawaii Department of Transportation Standard Specifications.

(j) Design-Builder shall arrange for and pay for all services required by the City and County of Honolulu Police Department during construction operations on all roads.

(k) Portable Changeable Message Signs (PCMS) shall be placed and operated as needed to inform motorists of lane closures and restricted movements. PMCS's shall be equipped with a continuous data management connection to display real-time messages.

(l) Design-Builder shall provide towing services up to seven (7) miles to remove stranded vehicles within the work zone at no charge to the motorist.

(m) All longitudinal barriers, terminals, and crash cushions shall satisfy NCHRP Report 350, with Test Level as indicated in the contract documents and have been previously approved by FHWA and HDOT.

SP-24.2 TRAFFIC CONTROL REQUIREMENTS FOR CONSTRUCTION OF GUIDEWAY FOUNDATION AND COLUMNS

(a) **Traffic Analysis Evaluation Study.** The City will provide a Maintenance of Traffic (MOT) concept and preliminary Transportation Management Plan (TMP) for the construction of guideway foundations and columns. Design-Builder shall prepare final MOT plans including signage, phasing, ITS and public involvement, and final TMP to be submitted to the City and HDOT for final approval. Design-Builder shall comply with the conditions of the MOT concept and the preliminary TMP to maintain acceptable levels of traffic service and safety during all Work activities on the roadway system. Design-Builder shall prepare a separate TMP report for roadway widening, utility relocation, and geotechnical work that is conducted prior to guideway construction.

(b) **Lane Closure Requirements.** As part of the MOT concept, the following summarizes some of the design features during construction of guideway foundations and installation of columns along Kamehameha Highway.

(1) Design-Builder shall maintain the minimum number of through traffic lanes shown on Table 24.2-1 along Kamehameha Highway during the “peak” traffic periods noted, except in the eastbound direction for the segment east of the Kamehameha Highway-Moanalua Freeway divergence, where the Design-Builder shall maintain one (1) through lane.

TABLE 24.2-1: MINIMUM NUMBER OF THROUGH LANES REQUIRED FOR PEAK HOURS

Day of the Week	Time of Day		Minimum # of eastbound through lanes required	Minimum # of westbound through lanes required
	Start	End		
Weekday AM Peak Hours	5:30 AM	8:30 AM	2	2
Weekday Midday and PM Peak Hours	10:00 AM	8:00 PM	2	3
Weekend Peak Hours	10:00 AM	8:00 PM	2	3

(2) Design-Builder shall be allowed to close the inner-left turn lane where double left turns are currently provided. Signalized Single left turn lanes shall remain open at all times, except in the westbound direction at Neal S. Blaisdell Park and Lipoa Place and in the eastbound direction at Honomanu Street.

(3) In cases where the Design-Builder closes the eastbound and westbound left turn lanes at the same intersection simultaneously, all other left turn lanes at adjacent signalized intersections shall remain open.

(4) Design-Builder may close the following median openings during construction to allow right-in/right-out only privileges: west median opening between Pu'u Momi Street and Pu'u Poni Street, east median opening between Pu'u Momi Street and Pu'u Poni Street, HECO driveway median opening between Pu'u Poni Street and Kuleana Road, median opening slightly west of Kaluamoi Drive, median opening at Kaluamoi Drive, median opening at Aiea Kai Place, and median opening at Pearl Harbor Boathouse Entrance.

(5) During non-peak traffic periods, Design-Builder may close additional lanes, left turn movements, and cross street movements with prior approval from the City and HDOT.

(6) Design-Builder may have up to four (4) Work Zones in operation on Kamehameha Highway at any one time. The maximum length of the Work Zone is anticipated to extend from one traffic signal to the next traffic signal (one block).

(7) Minimum through lane widths of ten (10)-feet shall be maintained throughout the Work Zone unless otherwise approved in writing by the City and HDOT.

(8) Design-Builder shall be allowed to close left-turn lane(s) by implementing detour routes as shown in the MOT concept. Design-Builder shall not close two consecutive signalized left turn lanes in the same direction.

(9) Design-Builder shall closely monitor traffic conditions and signal operation during construction. Should conditions warrant, the Design-Builder shall take appropriate action as defined in the Design-Builder's Traffic Contingency Plan.

(c) Additional details of the MOT concept are shown on the RFP Drawings.

SP-24.3 TEMPORARY TRAFFIC CONTROL REQUIREMENTS FOR ROADWAY WIDENING, UTILITY RELOCATION, AND INCIDENTAL CONSTRUCTION

Design-Builder shall prepare temporary work zone traffic control plans for construction of road work, utility relocation, and other incidental construction for submittal to the City and HDOT for approval.

SP-24.4 POST-CONSTRUCTION (PERMANENT) LANE CONFIGURATION

Widening the median to accommodate column placement may require reducing lane widths at selected locations and/or eliminating left-turn movements. The following table summarizes the minimum acceptable post-construction lane widths and closure of left turn lanes at selected locations.

TABLE 24.4-1:7 - POST-CONSTRUCTION (PERMANENT) LANE CONFIGURATION

Street/Intersection	Summary of Effect
Kamehameha Highway from Acacia Road to Boathouse Entrance	Expand median. Reduce through lanes to 11 feet and left turn lanes to 10 feet. May restrict left turns at certain driveways.
Kamehameha Highway—left turns on Kamehameha Highway midblock between Pu`u Momi Street and Pu`u Poni Street	Will eliminate left turns with the exception of the Westbound Kamehameha Highway left turn in movement for the Western median opening.
Kamehameha Highway—left turn on Kamehameha Highway midblock between Kuleana Road and Kaluamoi Drive	Will eliminate left turns.
Kamehameha Highway and Lipoa Place	Columns will not fit in existing median. Median will need to be expanded. Reduce through lanes to 11 feet.
Kamehameha Highway and Entrance to Boathouse	Eliminate left turn onto Kamehameha Highway.

SP-24.5 NEW TRAFFIC SIGNAL

A new traffic signal system is proposed at the Kamehameha Highway and Kuleana Road intersection. The Design-Builder shall prepare a traffic signal warrant analysis and coordinate with HDOT and DTS.

SPECIAL PROVISION

CHAPTER SP-25 ADDITIONAL WATER POLLUTION AND EROSION CONTROL REQUIREMENTS FOR WORK ON STATE HIGHWAYS

SP-25.1 GENERAL REQUIREMENTS

(a) In addition to the water pollution and erosion control requirements specified elsewhere in the Contract Documents, the Design-Builder will be responsible for the maintenance, inspection, cleaning and reporting requirements outlined in the Consent Decree, the MS4 permit and the State of Hawai'i Department of Transportation Highways Division (March 2007) *O'ahu Storm Water Management Program Plan (SWMPP)*.

(b) The Design-Builder shall comply with the requirements pursuant to Consent Decree Civil Action No. CV05-00636-HG-KSC (Consent Decree) and the State of Hawai'i Department of Transportation Highways Division Municipal Separate Storm Sewer System (MS4) NPDES Permit No. HI S000001 (HDOT MS4 Permit). HDOT's MS4 Permit, designated as Permit No. HI0021245 and reissued as Permit No. HIS000001 on February 28, 2006, effective March 31, 2006, expired at midnight on September 8, 2009 and has been administratively extended indefinitely. Design-Builder shall comply with the most current permit. The Consent Decree and MS4 Permit are provided in Engineering Data.

SP-25.2 POLLUTION PREVENTION/GOOD HOUSEKEEPING

(a) Debris Removal Best Management Practices Program

(1) Street Sweeping. The Design-Builder shall sweep Kamehameha Highway including shoulders and medians, for the limits of contract, in compliance with Consent Decree Injunctive Relief Item No. V.9.a.(1) and HDOT MS4 Permit Inspection/Maintenance Schedule.

(2) Storm Drainage Structure Inspection and Cleaning. The Design-Builder shall inspect and clean HDOT storm drain system gutters, swales, open channels/ditches, culverts, drain inlets, catch basins, manholes, outfalls, and other accessible discharge points within the Kamehameha Highway Right-of-Way for the limits of the contract in compliance with Consent Decree Injunctive Relief Item No. V.9.a.(2) and HDOT MS4 Permit Inspection/Maintenance Schedule.

(3) Reporting. The Design-Builder shall coordinate debris removal BMP reporting requirements with HDOT Storm Water Manager prior to initiating street sweeping, storm drainage structure inspection and cleaning operations.

SP-25.3 CONSTRUCTION SITE RUNOFF CONTROL

Construction Activities BMP Program:

(a) Prior to the initiation of ground-disturbing activities at any site, except for activities associated with the installation of BMPs at the site, a qualified inspector employed or retained by HDOT who reviews and becomes familiar with the BMP Plan, shall inspect the site to document whether the BMPs required by the BMP Plan have been installed correctly and in the correct locations prior to the commencement of ground-disturbing activity.

(b) Design-Builder shall install a rain gage prior to any field work including the installation of any site-specific BMPs. The rain gage shall have a tolerance of at least 0.05 inches of rainfall and an opening of at least one-inch in diameter. Install the rain gage in a secure location on the project site in an

area that will not deter rainfall from entering the gage opening. The rain gage installation shall be stable and plumbed.

(c) Design-Builder shall properly maintain all BMP features. Design-Builder shall inspect all control measures at least once each week and within 24 hours of any rainfall event of 0.5 inches or greater within a 24 hour period. If repairs to BMP measures are necessary, it shall be initiated within 24 hours after the inspection.

(d) Design-Builder shall assume the role of spill prevention and cleanup coordinator. Design-Builder shall designate at least three site personnel who shall receive spill prevention and cleanup training. These individuals shall each become responsible for a particular phase of prevention and cleanup.

SP-25.4 INFORMATION COLLECTION AND RETENTION

The Design-Builder shall comply with the information retention requirement specified in Consent Decree Information Collection and Retention Item No. XI.52.

**CHAPTER SP-26 MAINTENANCE, OPERATION, INSPECTION AND REPAIR
REQUIREMENTS WITHIN THE HDOT RIGHT OF WAY**

SP-26.1 GENERAL REQUIREMENTS

(a) The Design-Builder will be responsible for the maintenance, operation, inspection and repair within the State of Hawaii Department of Transportation Highway ROW, for the limits of this project. The limits of the project are from Kamehameha Highway Guideway Design-Build Stationing EB STA 770+00 to Sta 974+94. The Design-Builder will not only be responsible for work directly related to the KHG Design-Build project, but also for the general maintenance, operation and repair of the highway not related to the KHG Work.

(b) There will be a Master Agreement between the City and County of Honolulu and the State of Hawai'i for the HHCTCP KHG section. The Master Agreement will be provided when it becomes available.

(c) The Design-Builder shall perform the maintenance, operation, and repair in accordance with current State policies, standards and guidelines. HDOT Maintenance Guidelines are attached in the Reference Documents.

(d) Design-Builder shall perform a pre-construction survey of existing ROW conditions with photos and field notes indicating visual identification of existing conditions.

(e) Maintenance and repair work will be logged and reported to HDOT on a regular basis. HDOT or their consultant shall have the right to conduct audits or quality assurance inspections of the maintenance work in concert with RTD oversight personnel.

(f) Maintenance and repair work within the State ROW, affected by the KHG contract shall be according to applicable HDOT Standards. Should work not affected by the KHG contract work, including but not limited to road sub-grade replacement or below grade improvements, be brought up to the HDOT Standards, these items shall be separately identified and quantified by the Design-Builder. The change order process will be followed.

(g) Upon turnover of the assigned State ROW, the Design-Builder shall provide all maintenance records and a close-out survey that returns the roadway condition in similar condition as was initially documented in the Pre-construction survey. If improvements were authorized by the City through change orders, those improvements will be so noted.

(h) Notwithstanding the above, any work included in the Design-Builder's scope that improves the HDOT ROW, including but not limited to, drainage, signs, roadway surfacing, lighting, signing and striping, traffic signals and the ITS systems shall carry applicable agency, HDOT and City warranties / guarantees. The Design-Builder's guarantee shall extend for a period of two years upon final acceptance of the HDOT ROW Work by the Officer-in-Charge.

(i) The Design-Builder shall name the State as Additional Insured in its insurance policies pursuant to SP-3.1(h).

CHAPTER SP-27 REVISIONS TO RTD STANDARD DOCUMENTS

SP-27.1 PART 4 DESIGN CRITERIA

The Design Criteria Chapters included in SP-27.1 Attachment 1 shall replace the corresponding chapters of the HHCTCP Compendium of Design Criteria Rev. 1.0 dated February 22, 2010..

SP-27.2 PART 7 STANDARD SPECIFICATIONS

The Standard Specifications Sections included in SP-27.2 Attachment 2 shall replace the corresponding chapters of the HHCTCP Standard Specifications Rev.1.0 dated October 30, 2009.

SP-27.3 PART 8 STANDARD AND DIRECTIVE DRAWINGS

The Standard and Directive Drawings included in SP-27.3 Attachment 3 shall replace the corresponding Rev. 0 HHCTCP Standard and Directive Drawings dated November 13, 2009. Revision 1 of the Standard and Directive Drawings are reflected in the drawings contained in Attachment 3. The official release of the Rev. 1 version of the HHCTCP Standard and Directive Drawings will be provided when they are available. CADD files of the Directive Drawings Rev 1 will also be provided at the time of this release.

**ATTACHMENT TO
SPECIAL PROVISIONS SP-27.1**

**ATTACHMENT 1
DESIGN CRITERIA**

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- 4.0 TRACK ALIGNMENT AND VEHICLE CLEARANCES**
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DESIGN CRITERIA

CHAPTER 4

TRACK ALIGNMENT AND VEHICLE CLEARANCES

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4.0 TRACK ALIGNMENT AND VEHICLE CLEARANCES

4.1 GENERAL

The Track Alignment and Vehicle Clearances Criteria has been established to provide for a comfortable, economical, and efficient transport for passengers while maintaining adequate factors of safety with respect to overall operation, maintenance, and vehicle stability. They have been developed by utilizing accepted engineering practices and the experiences of currently operating rail transit and railroad systems.

4.2 RAIL TRANSIT TRACK ALIGNMENT

4.2.1 General

The track alignment shall be designed to accommodate a maximum design speed of 55 miles per hour (mph). Physical constraints along various portions of the system, together with other design limitations, may preclude achievement of this objective. The civil design speed shall be coordinated with the normal operating speeds as provided on the train performance simulation program speed-distance profiles.

Coordination of horizontal and vertical alignment shall avoid a combination of minimum radius, maximum grade, and maximum unbalanced elevation.

For areas of special trackwork, the following table illustrates the prescribed design speeds. Generally, the maximum level of unbalance (E_u) allowed through any area of special trackwork shall be limited to 2 inches. Any deviations from these speeds through special trackwork shall require the review and approval of the City and County of Honolulu Department of Transportations Services the Rapid Transit Division (RTD) on a case-by-case basis. Track alignment design shall consider the placement of all special trackwork while designing areas of horizontal and vertical alignment.

Turnouts and Crossovers	Speed (mph)
No. 6	10
No. 8	15
No. 10	20
No. 15	30

For mainline track, the track centers shall be 14 feet (minimum) through areas of tangent and curve, including side platform locations. Track centers shall be 40.5 feet (minimum) through center platform locations.

4.2.2 Horizontal Alignment

The horizontal alignment of mainline tracks shall consist of a series of tangents joined to circular curves by means of spiral transition curves. Superelevation shall be used to maximize running speeds whenever practical.

A. Tangent Alignment

The minimum length of tangent track between curved sections of track shall be as follows:

Condition	Tangent Length
Desirable minimum	200 feet
Minimum	100 feet or 3 times the design speed (in mph), whichever is greater
Absolute minimum	70 feet

If adjacent curves in the same direction are in close proximity to one another and cannot be replaced by a single simple curve due to geometric constraints, a series of compound curves shall be the preferred arrangement. Broken back curves (i.e., short tangents between curves in the same direction) shall be avoided.

At station platforms, the horizontal alignment shall be tangent throughout the entire length of the platform. The tangent shall be extended beyond both ends of the platform as follows:

Condition	Tangent Length
Desirable minimum	75 feet
Minimum	60 feet
Absolute minimum	45 feet

All special trackwork shall be located on horizontal tangents. The same limits prescribed above should be used between areas of special trackwork and horizontal/vertical curve limits.

1. Track Centers in Tangent Alignment

Tracks shall be parallel within all sections of tangent track. Track centers shall be 14 feet in tangent sections. Track centers through side platforms shall also be 14 feet. Track centers shall be 40.5 feet within the limits of center platforms.

B. Curved Alignment

Intersections of horizontal tangents shall be connected by circular curves by either simple curves or spiraled curves as required by these criteria.

1. Circular Curves

Circular curves shall be specified by their radius. Degree of curvature (arc definition), where required for calculation purposes, shall be defined by the following formula:

$$D = \frac{5729.58}{R}$$

where: D = degree of curvature
R = radius of curvature, in feet

The minimum radii for mainline tracks shall be as follows:

Location	Minimum Radius
Aerial structures	500 feet
At-grade	300 feet

The minimum radii for yard and service tracks shall be as follows:

Location	Minimum Radius
Yard and service tracks	250 feet desirable
	150 feet absolute

The desirable minimum circular curve length shall be determined by the following formula:

$$L = 3V$$

where: L = minimum length of curve, in feet
V = design speed through the curve, in mph

For spiraled circular curves, the length in feet of the circular curve added to the sum of one-half the length of both spirals shall be an acceptable method of determining compliance with the above criteria.

The absolute minimum length of a superelevated circular curve shall be 70 feet.

The design speed for a given horizontal curve shall be based on its radius, length of spiral transition, and actual and unbalance elevation through the curve as described in the following sections.

2. Track Centers in Curves

Tracks shall be concentric in all curves. Track centers shall not be less than 14 feet through curves and may need to be widened to accommodate the selected vehicle.

3. Superelevation

Mainline tracks shall be designed with superelevation so as to permit desired design speeds to be achieved without resorting to excessively large radii of curvature. Note that due to local constraints, the design speed may be less than either the system maximum speed or the maximum possible speed for a curve of a given radius. The design speed criteria stated herein are based on a maximum lateral acceleration of the passenger of 0.125 g, where g is a measure of apparent gravity caused by acceleration.

Equilibrium elevation is the amount of elevation that would be required so that the resultant force from the center of gravity of the rail vehicle will be perpendicular to the plane of the two rails and halfway in between them at a given speed. If a curved track is superelevated so as to achieve equilibrium at a given speed, a passenger would experience no centrifugal force through the curve at that speed. Equilibrium elevation shall be determined by either of the following equations:

$$E_q = E_a + E_u = 3.96 \left(\frac{V^2}{R} \right)$$

or

$$E_q = 0.00069 V^2 D$$

where: E_q = equilibrium elevation, in inches
 E_a = actual track superelevation to be constructed, in inches
 E_u = unbalance elevation, in inches
 V = design speed through the curve, in mph
 R = radius of curve, in feet
 D = degree of curve, in degrees (arc definition)

In practice, the full equilibrium elevation (E_q) is rarely installed in track as doing so would require excessively long spiral transition curves. It could also produce passenger discomfort on board a train which is moving much slower than the design speed or stopped in the middle of a steeply superelevated curve. Therefore, only a portion of the calculated E_q , the actual superelevation E_a , shall be designed for and installed in the track. The difference between the equilibrium elevation and the actual superelevation is called the unbalance, and is designated as E_u .

The desired relationship between E_a and E_u shall be defined by the following equation:

$$E_u - \left(\frac{E_a}{2} \right) = 1$$

Desirable values of actual superelevation (E_a) can be determined by the following formula:

$$E_a = 2.64 \left(\frac{V^2}{R} \right) - 0.66$$

The two equations noted above are guidelines and should not preclude the Designer from using sound engineering judgment in order to determine the optimum level of superelevation (E_a) that can accommodate the highest practical speed, while not imposing excessively long spirals. Use of the above equation will result in the gradual introduction of both actual and unbalanced elevation and avoid unnecessary

lateral acceleration of rail vehicles and their passengers. Values for actual superelevation shall be rounded to the nearest one-quarter inch. For a total elevation (E_q) of 1 inch or less, no actual superelevation (E_a) is needed.

Actual superelevation (E_a) shall be attained and removed linearly throughout the full length of the spiral transition curve by raising the outside rail while maintaining the inside rail (or low rail) at the profile grade line.

The maximum values for actual and unbalance elevation shall be as follows:

Elevation	Maximum Value
$E_a =$	4 inches desirable 6 inches absolute
$E_u =$	3 inches desirable 4.5 inches absolute

4. Spiral Transitions

Spiral transition curves shall be used in order to develop the superelevation of the track and limit lateral acceleration during the horizontal transition of the rail vehicle as it enters the curve. Spirals shall be Barnett or Talbot as defined by the AREMA Manual for Railway Engineering.

The minimum length of spiral shall be the greater of the lengths determined from the following formulae, but preferably not less than 60 feet:

$$L_s = 62 E_a$$

$$L_s = 1.22 E_u V$$

$$L_s = 1.10 E_a V$$

where: L_s = minimum length of spiral, in feet.

A spiral is preferred, but not required, for yard and secondary tracks where design speeds are less than 10 mph. Yard and secondary tracks which have design speeds greater than 10 mph shall have spirals, and superelevation is required when at all feasible.

Under normal situations, superelevation shall be introduced and run off uniformly through the length of a spiral transition curve.

Spirals will not be required for curves where the total equilibrium elevation (E_q) is less than or equal to 1 inch and E_a is zero.

5. Compound Circular Curves

Where compound curves are used, they shall be connected by a spiral transition curve. The absolute minimum spiral length shall be the greater of the lengths as determined by the following:

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$$L_s = 62 (E_{a2} - E_{a1})$$

$$L_s = 1.22 (E_{u2} - E_{u1}) V$$

$$L_s = 1.10 (E_{a2} - E_{a1}) V$$

where: L_s = minimum length of spiral, in feet
 E_{a1} = actual superelevation of the first circular curve, in inches
 E_{a2} = actual superelevation of the second circular curve, in inches
 E_{u1} = unbalanced elevation of the first circular curve, in inches
 E_{u2} = unbalanced elevation of the second circular curve, in inches
 V = design speed through the circular curves, in mph

Spiral transition curves connecting compound curves are not required when $(E_{u2} - E_{u1})$ is less than 1 inch and $(E_{a2} - E_{a1})$ equals zero.

6. Reverse Curves

Where extremely restrictive horizontal geometrics make it impossible to provide sufficient tangent length between reversed superelevated curves, the curves may meet at a point of reverse spiral. These locations must be reviewed on a case-by-case basis and will require the approval of RTD.

The point of reverse spiral shall be set so that:

$$L_{s1} \times E_{a2} = L_{s2} \times E_{a1}$$

where: E_{a1} = actual superelevation applied to the first curve
 E_{a2} = actual superelevation of the second circular curve, in inches
 L_{s1} = the length of the spiral leaving the first curve
 L_{s2} = the length of the spiral entering the second curve

A maximum separation of three feet between the spirals is acceptable in lieu of meeting at a point.

4.2.3 Vertical Alignment

A. General

The vertical alignment shall be composed of constant grade tangent segments connected at their intersection by parabolic curves having a constant rate of change in grade.

The profile grade line in tangent track shall be along the centerline of track between the two running rails and in the plane defined by the top of the two rails. In curved track, the inside rail of the curve shall remain at the profile grade line and superelevation achieved by raising the outer rail above the inner rail.

B. Vertical Tangents

The minimum length of constant profile grade between vertical curves shall be as follows:

Condition	Length
Desirable minimum	100 feet or 3 times the design speed (in mph), whichever is greater
Absolute minimum	70 feet

The profile at stations shall be on a vertical tangent that extends 60 feet beyond each end of the platform. Special trackwork shall be located on vertical tangents.

C. Vertical Grades

The following profile grade limitations shall apply:

Location	Condition	Profile Grade Limitations
Mainline tracks	Maximum (sustained grade unlimited length)	4.0%
	Maximum (sustained grade with up to 2,500 feet between PVI's of vertical curves)	6.0%
	Minimum (tangent)	0.5%
Station area	Desirable	0.5%
	Maximum	1.0%
Yard tracks	Desirable	0.0%
	Maximum	1.0%
Yard storage and pocket tracks	Desirable	0.0%
	Maximum	0.2%

All tracks entering the yard shall either be level, sloped downward away from the mainline, or dished to prevent rail vehicles rolling from the yard onto the mainline. For yard secondary tracks, it is desirable to have a slight grade, maximum 1.0 percent, to achieve good track drainage at the subballast level.

Through storage tracks shall have a sag in the middle of their profile to prevent rail vehicles from rolling to either end. It is desirable that the profile grade of a stub end storage track descend towards the stub end and, if adjacent to a mainline or secondary track, be curved away from that track at its stub end. If it is necessary for the profile grade of a storage track to slope up toward the stub end, the grade shall not exceed 0.2 percent.

Tracks located within maintenance shop buildings shall be level with a 0 percent grade.

4.2.4 Vertical Curves

All changes in grade shall be connected by vertical curves. Vertical curves shall be defined by parabolic curves having a constant rate of change in grade.

A. Vertical Curve Lengths

The minimum length of vertical curves shall be determined as follows:

Desirable length LVC = 200A

Preferred minimum length LVC = 100A

Absolute minimum length

Crest curves $LVC = \frac{AV^2}{25}$

Sag curves $LVC = \frac{AV^2}{45}$

- where: LVC = length of vertical curve, in feet
A = $(G_2 - G_1)$ = algebraic difference in gradients connected by the vertical curve, in percent.
G₁ = percent grade of approaching tangent
G₂ = percent grade of departing tangent
V = design speed, in mph.

Both sag and crest vertical curves shall have the maximum possible length, especially if approach and departure tangents are long. Vertical broken back curves and short horizontal curves at sags and crest of vertical curves shall be avoided.

B. Compound Vertical Curves

Compound and unsymmetrical vertical curves shall be permitted on a case-by-case basis and will require the approval of RTD.

C. Reverse Vertical Curves

Reverse vertical curves shall be permitted on a case-by-case basis and will require the approval of RTD.

D. Combined Vertical and Horizontal Curvature

Where possible, areas of combined vertical and horizontal curvature shall be avoided, specifically within spirals. Vertical curves kept within the body of curve (between the spiral-to-curve [SC] and curve-to-spiral [CS] points) will be acceptable. Vertical curves within the limits should be avoided but will be allowed so long as the prescribed superelevation is less than 3 inches.

4.3 VEHICLE CLEARANCES

4.3.1 General

This section establishes the minimum dimensions required for proper clearances between the rail vehicles or transit structures and the obstructions involved. All designs shall meet or exceed the minimum clearance criteria as specified herein. Since the provision of adequate clearances for the safe passage of rail vehicles is one of the most fundamental concerns inherent in the design of the system, it shall be rigorously monitored during both the design and construction phases.

4.3.2 Clearance Envelope

The Clearance Envelope (CE) is defined as the space occupied by the Vehicle Dynamic Envelope (VDE) plus the effects of other wayside factors (OWF), including construction and maintenance tolerances for track and various facilities, plus running clearances (RC). This relationship can be expressed as follows:

$$CE = VDE + OWF + RC$$

The CE represents the space into which no physical part of the system (other than the rail vehicle) shall be placed, constructed, or protrudes. The CE shall be referenced from the centerline of track at the top of rail.

The following factors shall be considered in developing the CE.

A. Vehicle Dynamic Envelope

Determination of the VDE begins with the cross sectional outline of the static vehicle. The dynamic outline of the vehicle is then developed by making allowances for the car body movements that occur when the vehicle is operating on level, tangent track. In addition to car body movements on level, tangent track, the effects of track curvature and superelevation must also be considered to allow additional room for vehicle overhang on curves and for vehicle lean when the curves are superelevated.

1. Static Vehicle Outline

Design of the project is typically initiated prior to the specific dimensional characteristics of the rail vehicle being known. In order to allow design of fixed facilities to proceed, a composite design vehicle concept has been employed which incorporates the most critical dimensions and operational characteristics of the rail vehicles considered for the project.

2. Dynamic Vehicle Outline

The dynamic outline of the vehicle shall be defined as the extreme car body displacement that can occur for any combination of rotational, lateral, and vertical car body movements that occur when the vehicle is operating on level, tangent track. These car body movements are due to truck suspension movements, spring action, allowable wheel and rail wear, and permitted tolerances in vehicle and track construction.

3. Vehicle Inswing/Outswing

In addition to the dynamic car body movements described above, car body overhang on horizontal curvature also increases the lateral displacement of dynamic outline relative to the track centerline. For design purposes, both mid-car inswing and end-of-car outswing of the vehicle shall be considered. The amount of mid-car inswing and end-of-car outswing depends primarily on the truck spacing and end overhang of the vehicle and on the radius of track curvature.

4. Superelevation Effects

The effect of superelevation shall also be taken into account in developing the VDE. Superelevation effects shall be limited to the vehicle lean induced by a specified difference in elevation between the two rails of a track and shall be considered independently of other effects on the dynamic outline. In determining the superelevation effects, the shape of the dynamic outline shall not be altered. Rather, the dynamic outline shall be rotated about the centerline of the top of low rail an amount equal to the actual track superelevation.

When calculating the VDE for horizontal curves with spirals, the tangent CE shall end 50 feet before the tangent-to-spiral (TS) and 50 feet beyond the spiral-to-tangent (ST) point. The full curvature CE shall begin 25 feet prior to the SC point and end 25 feet beyond the CS point. The horizontal component of the VDE between these two offset points (i.e., 50 feet before the TS and 25 feet before the SC) shall be considered to vary linearly with distance between the two points. Horizontal offsets at intermediate locations shall be calculated by linear interpolation. For simple circular curves, the full curvature CE shall begin 50 feet prior to the point of curvature (PC) and end 50 feet beyond the point of tangency (PT).

The CE through turnouts shall be calculated based on the centerline radius of the turnout.

B. Other Wayside Factors

The following define the other wayside factors and are applicable to and shall be included in the horizontal component of the CE.

Other Wayside Factors	Distance
Construction tolerance along proposed soldier pile and lagging wall	6 inches
Construction tolerance along all other proposed structures	2 inches
Construction tolerance at poles or signal equipment	1.5 inch
Track construction and maintenance tolerance for embedded or direct fixation track	0.5 inch
Track construction and maintenance tolerance for mainline, ballasted track	2.5 inches
Track construction and maintenance tolerance for secondary and yard tracks	1 inch
Allowance for acoustical treatment, where required	3 inches

C. Running Clearances

In addition to the VDE and other wayside factors, the CE includes an allowance for RC. The following define the running clearances to be included in the horizontal component of the CE.

Running Clearances	Distance
At poles, signals, signs and other non-structural members	2 inches
Along soldier pile and lagging walls and other structures which are normally constructed with liberal construction tolerances	6 inches
Along cast-in-place, precast, and masonry walls and other structures which are normally constructed with strict construction tolerances	2 inches
For adjacent rail vehicles	2 inches

The above dimensions are design values, the applicability of which depends on the type of track construction as well as on the type of structure which the vehicle must clear. The following is a description of the applicability and rationale of these values.

1. Track Construction and Maintenance Tolerances

The combination of several factors, such as track misalignment and wheel and track gauge tolerances, creates the need for this tolerance. Ballasted track demands a greater track misalignment tolerance than either direct fixation or embedded track would require. Furthermore, a distinction is also made between primary tracks and secondary or yard tracks for safety reasons.

2. Construction Tolerances along Proposed Structures

Where the facility adjacent to the trackway is a structure or part of a structure, the minimum horizontal construction tolerance shall be provided on the assumption that the structure, or part thereof, may be misplaced during construction by a dimension of that magnitude. It is emphasized that the term "structure" as used in this subsection applies to any facility to be constructed alongside the rail system and above the top of rail.

3. Acoustical Treatment

The need for this allowance shall be investigated in cases where noise produced from the system operations may be found in excess of tolerable limits for a given area.

4. Running Clearances

To provide clear passage for a vehicle which has moved to the extreme position within the Dynamic Outline, the minimum horizontal clearance to any structure, or part of a structure, shall always include a horizontal running clearance.

4.3.3 Special Clearance Situations

In addition to the CE requirements described above, there are several special clearance situations warranting further definition. These special situations include the vehicle interface at station

platforms, retaining walls in both cut and fill sections, through girder bridges, and maintenance and emergency evacuation paths.

A. Vehicle Interface at Station Platforms

At passenger stations, the distance from the centerline of the track to the edge of platform tolerance shall be plus ½ inch and minus 0 inches.

B. Retaining Walls

Where retaining walls are used, they shall comply with the following:

1. Cut Sections

In those cases where a retaining wall along the system is in a cut section, the preferred minimum clearance from the centerline of track to the near face of a retaining wall shall be 9 feet 0 inches. Where no maintenance and emergency evacuation path is required adjacent to the retaining wall, the absolute minimum clearance from the centerline of track to the near face of a retaining wall shall be no less than that required to clear the CE and never less than 6 feet 7 inches.

2. Fill Sections

In retained fill sections, the top of a retaining wall shall be at the same elevation as the top of the adjacent rail (the rail nearest to the wall), and the preferred minimum distance from the centerline of track to any fencing or hand railing on top of the wall shall be a minimum of 9 feet 0 inches. Where no maintenance and emergency evacuation path is required adjacent to a curb or retaining wall without a fence or railing, the absolute minimum clearance from the centerline of track to the near face of the curb or wall shall be no less 6 feet 0 inches.

C. Maintenance and Emergency Evacuation Paths

A minimum clear width of 30 inches (48 inches desirable) shall be provided between the CE and any continuous obstruction alongside the track in a designated passenger emergency evacuation path. A minimum clear distance of 24 inches shall be provided between the CE and any continuous obstruction along a path which is used by maintenance employees in the performance of their duties.

4.3.4 Vertical Clearances to Overhead Structures

The following vertical clearances from the top of the high rail along any given section of track to the soffit of any overhead structure within the horizontal limits of the CE shall be provided:

Location	Minimum Vertical Clearance
At overhead bridges	16 feet 0 inches, preferred minimum
	14 feet 0 inches, desired minimum
	13 feet 0 inches, absolute minimum

END OF CHAPTER

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CHAPTER 9

STRUCTURAL

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9.0 STRUCTURAL

9.1 GENERAL

9.1.1 Introduction

The basic design criteria for the structures on the Project are established in this chapter. Items in this category include aerial guideway structures, passenger stations, maintenance and ancillary facility structures.

9.1.2 Reference Data

- A. The basic code for this project is the City and County of Honolulu (City) Building Code and shall govern structural designs for buildings and other structures not governed by American Association of State Highway and Transportation Officials (AASHTO) guidelines and specifications. This code adopts the soon to be adopted 2006 International Building Code and International Residential Code with local amendments. This code and its amendments are referred to herein as the Building Code.
- B. The basis of the design for aerial guideways shall be the AASHTO LRFD (Load and Resistance Factor Design) Bridge Design Specifications, 4th Edition, 2007, including all subsequent interim revisions as amended by the State of Hawaii Department of Transportation (HDOT) Highway Division Design Branch Design Criteria for Bridges and Structures dated April 15, 2008. The HDOT Design Criteria and their amendments are referred to herein as HDOT Code. The AASHTO LRFD Specification and applicable interim revisions and the AASHTO LRFD Construction Specifications are referred to herein as AASHTO LRFD. Seismic Design for new aerial guideways shall be in accordance with the HDOT Code and AASHTO Guide Specifications for LRFD Seismic Bridge Design (May 2007), herein referred to as AASHTO Seismic Guide Specs.
- C. Structural-geotechnical design shall meet all applicable portions of the State of Hawaii general laws and regulations and the current editions of the codes, manuals, or specifications identified in this chapter of the Compendium of Design Criteria. Where the requirements stipulated in any of the above documents or by these criteria are in conflict, use the stricter, unless otherwise explicitly noted herein. Unless specifically noted otherwise in these criteria, the latest edition of the code, regulation, and standard that is applicable at the time the design is initiated shall be used. If a new edition or amendment to a code, regulation, or standard is issued before the design is completed, the design shall conform to the new requirement(s) to the extent practical or required by the governmental agency enforcing the code, regulation, or standard changed; and as agreed to by the City and County of Honolulu, Department of Transportation Services, Rapid Transit Division (RTD).

Where there are cases of special designs encountered that are not specifically covered by these criteria, the Designer shall bring them to the attention of RTD along with proposed criteria from standards of a recognized authority that address these special designs.

- D. *Project Structural Engineer* is defined herein by procurement method.
 - 1. *Design-build (D-B)*: Design-builder's engineer of record's lead structural engineer who shall be a licensed professional structural engineer as defined by the State of

Hawaii Department of Commerce and Consumer Affairs (DCCA) and who shall be in responsible charge of all structural work and who shall affix his stamp and seal on all project design work. All work shall be subject to RTD review and acceptance.

2. *Design-bid-build (D-B-B)*: Lead structural engineer who shall be a licensed professional structural engineer as defined by DCCA and who shall affix his stamp and seal on all project design work prepared for RTD either directly or indirectly as an employee of the engineer of record or as a sub-consultant to the engineer of record. All design work shall be subject to RTD review and approval.

- E. All structural calculations provided in support of these criteria shall be sealed by a project structural engineer.

9.2 AERIAL GUIDEWAY STRUCTURES

9.2.1 General

Bridges and aerial structures that support rail transit loadings shall be designed using the requirements of the following applicable loadings, except as otherwise noted herein. When AASHTO LRFD is not applicable, the Manual for Railway Engineering of the American Railway Engineering and Maintenance of Way Association shall be used. Bridges and aerial structures that support rail transit loadings shall be designed for the maximum dead and live loads to which they may be subjected, including erection loads occurring during construction and the following other loads and forces:

- A. Dead loads of structural components and nonstructural attachments (DC)
- B. Superimposed dead loads (DW)
- C. Live loads (LL)
 1. Weight of Light Metro Vehicle with 3rd rail power supply (LMV)
 2. Weight of maintenance car (HP)
- D. Pedestrian live load (PL)
- E. Derailment loads (DR)
- F. Earthquake loads (EQ)
- G. Friction force (FR)
- H. Dynamic load allowance (IMV, IMH)
- I. Centrifugal force (CE)
- J. Longitudinal force (LF)
- K. Earth pressure (EH)
- L. Vertical pressure from dead load of earth fill (EV)

- M. Live load surcharge (LS)
- N. Downdrag force (DD)
- O. Earth Surcharge Force (ES)
- P. Water load, steam pressure, buoyancy, scour (WA)
- Q. Wind load on structure (WS)
- R. Wind load on live load (WL)
- S. Force effects due to shrinkage (SH)
- T. Force effects due to creep (CR)
- U. Locked-in construction forces (EL)
- V. Secondary forces from post-tensioning (PS)
- W. Force effects due to uniform temperature (TU, TTR, TLR)
- X. Rail fracture (RF)
- Y. Force effects due to temperature gradient (TG)
- Z. Force effects due to settlement (SE)
- AA. Vehicular collision loads (CT)
- BB. Vessel collision load (CV)

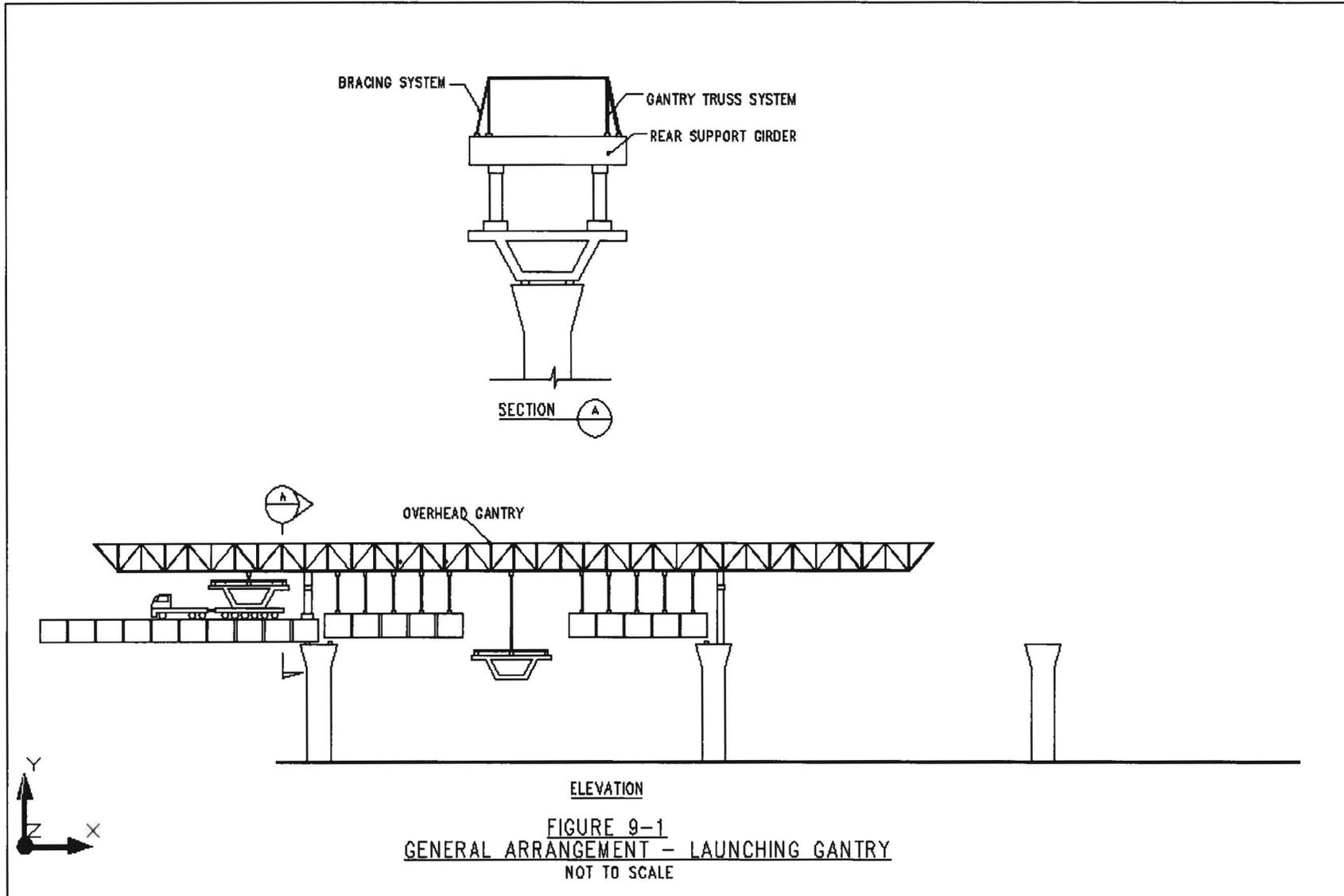
Loading criteria to which the structures are designed shall be shown on the Designer's structural drawings. Concrete placing and construction sequence shall be shown on the Designer's plans when required by design conditions. Provisions of agreements with property owners and other agencies regarding special loading for portions of structures that pass beneath or adjacent to their properties or facilities shall be considered in establishing the loading conditions for such structures. Attention shall be paid to proposed future construction.

All aerial structures and bridges shall be designed for sound walls. Dead load of 270 pounds per linear foot of structure shall be assumed per wall. Walls shall be considered to occupy either side of the structure or both sides simultaneously.

Temporary and Staged Construction:

- A. The design of all segmental girder aerial structures: The construction forces resulting from the use of an erection gantry and locked-in forces. See Figure 9-1.
- B. Construction Loads shall be considered in the design in accordance with AASHTO LRFD Section 5.14.2.

Figure 9-1. General Arrangement—Launching Gantry



- C. Seismic forces: Design response spectra shall be in accordance with HDOT Code. Seismic shall be considered in the following construction load combinations:
1. For Maximum Force effects:
 - a. $Q=1.0(DL+DIFF)+1.0CE+A+EQ$
 2. For Minimum Force effects:
 - a. $Q=1.0DC+1.0CE+A+EQ$

9.2.2 Dead Loads (DC, DW)

Dead loads consist of the actual weight of the structure, permanently installed trackwork, partitions, service walks, pipes, conduits, cables, utilities, services, and all other permanent construction and fixtures. Component dead load (DC) shall consist of the weight of all components of the structure. Superimposed dead load (DW) shall include the weights of all appurtenances and utilities attached to the structure, including, but not necessarily limited to, the weights of the running rails, rail fasteners, concrete rail support (plinth) pads, emergency guardrails, contact rail and coverboard with mountings and support pads, walkways, wireways, cable trays, cables, railings and acoustical barriers. Dead loads for all elements shall account for deck camber, curvature and superelevation. Since dead load stresses are always present, the structure must be designed to sustain them at all times without reductions. For design of aerial guideways, unit weights and loads specified in Subsection 2.03 of HDOT Code shall be used. The dead load for all other structures shall be computed from the weights of the materials composing the structure and its permanent fixtures. The approximate unit weights of materials normally used in construction are shown in Table 9-1. A specific check should be made as to the actual weight where a variation might affect the adequacy of the design or where the construction may vary from the normal practice.

9.2.3 Live Loads (LL, PL)

Light metro vehicle with 3rd rail power supply (LMV): The FTA Transit Cooperative Report Program 57 designates vehicle design live loading as AW0, AW1, AW2, AW3, and AW4:

- A. AW0 is the total revenue service ready dead weight
- B. AW1 is AW0 plus all seated passengers at 155 pounds each
- C. AW2 (design load) is AW1 plus standing passengers at 4 standees per square meter
- D. AW3 (crush load) is AW1 plus standing passengers at 6 standees per square meter
- E. AW4 (vehicle structure design) is AW1 plus standing passengers at 8 standees per square meter

Light metro vehicle with 3rd rail power supply (LMV) using AW3 shall be used for live loads. The data presented in Figure 9-2 should be used for initial design, recognizing that structural calculations will be required to confirm the adequacy of the final design after the vehicle characteristics are confirmed. In all cases, the combination of train lengths used for structural design shall be the one that produces the most severe conditions on the element being designed. The number of vehicles considered in an LMV train shall vary from one to the number required to add up to approximately 240 feet in total train length.

Table 9-1. Weights of Materials

Material	Weight
Aluminum alloy	175 pcf
Asphalt mastic, bituminous macadam	150 pcf
Ballast, crushed stone, compacted earth	120 pcf
Ceilings, plaster board, unplastered	3 psf
Gypsum ceiling tile, 2" unplastered	9 psf
Pressed steel	2 psf
Ceramic glazed structural facing tile, 4"	33 psf
Concrete: plain or reinforced; gravel aggregates	160 pcf
Special and lightweight concretes	110 pcf*
Floors: gypsum floor slab, per inch of depth	5 psf
Asphalt mastic	5 psf
Ceramic tile, on 1" mortar bed	23 psf
Terrazzo, 1" on 1/2" mortar bed	18 psf
Marble, 1" on 1/2" mortar bed	20 psf
Linoleum	2 psf
Maple, 7/8" on sheathing, 2" cinder fill, no ceiling	18 psf
Oak, 7/8" on sheathing, wood joists at 16" centers, no ceiling	11 psf
Glass	160 pcf
Gravel, sand	120 pcf*
Iron, cast	450 pcf
Partitions: plaster, 2" channel stud, metal lath	20 psf
Plaster, 4" channel stud, metal lath	32 psf
Hollow plaster, 4" metal lath	22 psf
Gypsum block solid, 3"—both sides plastered	19 psf
Gypsum block, hollow, 5"	22 psf
Marble wainscoting, 1"	15 psf
Steel partitions	4 psf
Ceramic glazed structural tile, 4"	33 psf
Rails and fastenings, per track (2 rails)	130 plf
Third rail	32 plf
Roofs: roofing felt, 3 ply, and gravel	5-1/2 psf
5 ply	6-1/2 psf
Sheathing, 3/4" thick	3-1/2 psf
Steel	490 pcf
Timber: untreated	48 pcf
Timber: treated	60 pcf
Walls: brick solid, per inch	10 psf
Walls: terra cotta tile 4"—plastering, add 5 psf per side	25 psf
Glass, structural, per inch	15 psf
Windows, frame, glass, sash	8 psf
Stone, 4"	55 psf
Steel sheeting, 14 gauge	3 psf

*See HDOT Code for special weight conditions

pcf = pounds per cubic foot

psf = pounds per square foot

plf = pounds per linear foot

Figure 9-2. LMV Loading Diagram

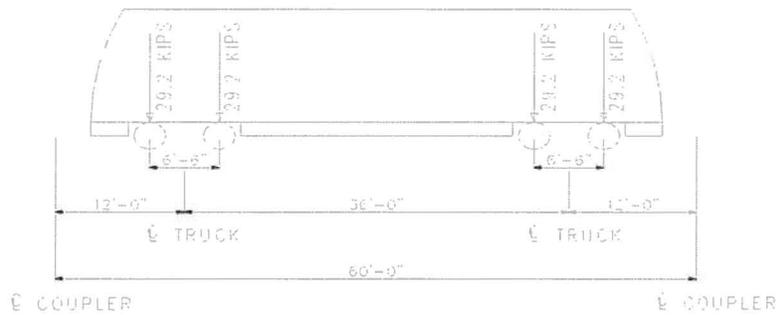
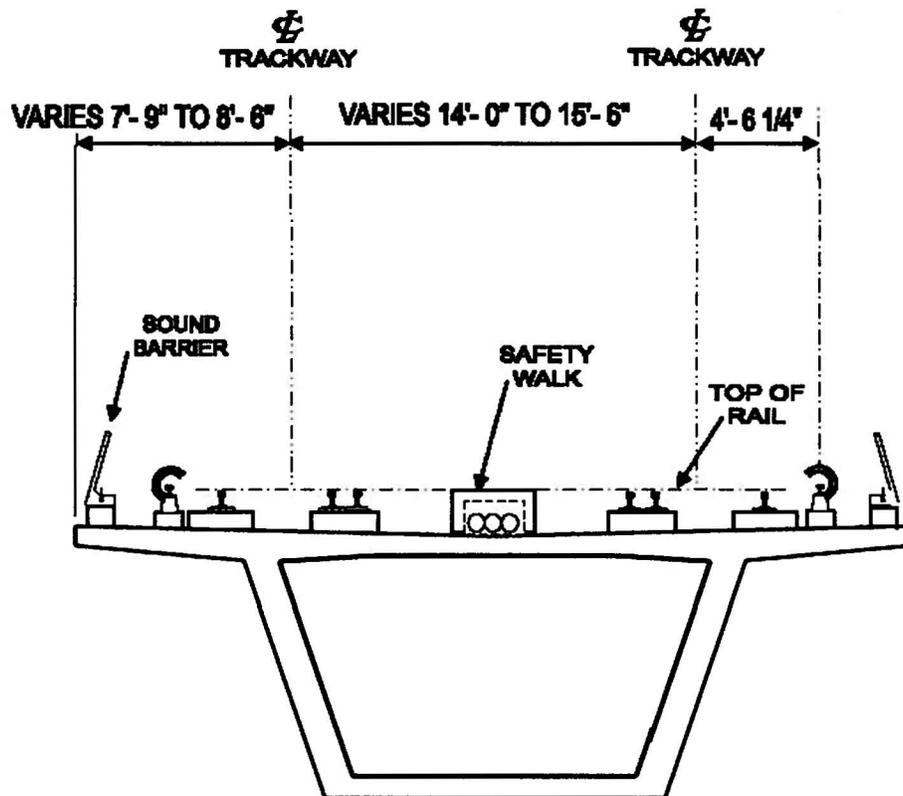


Figure 9-3. LMV Girder Configuration



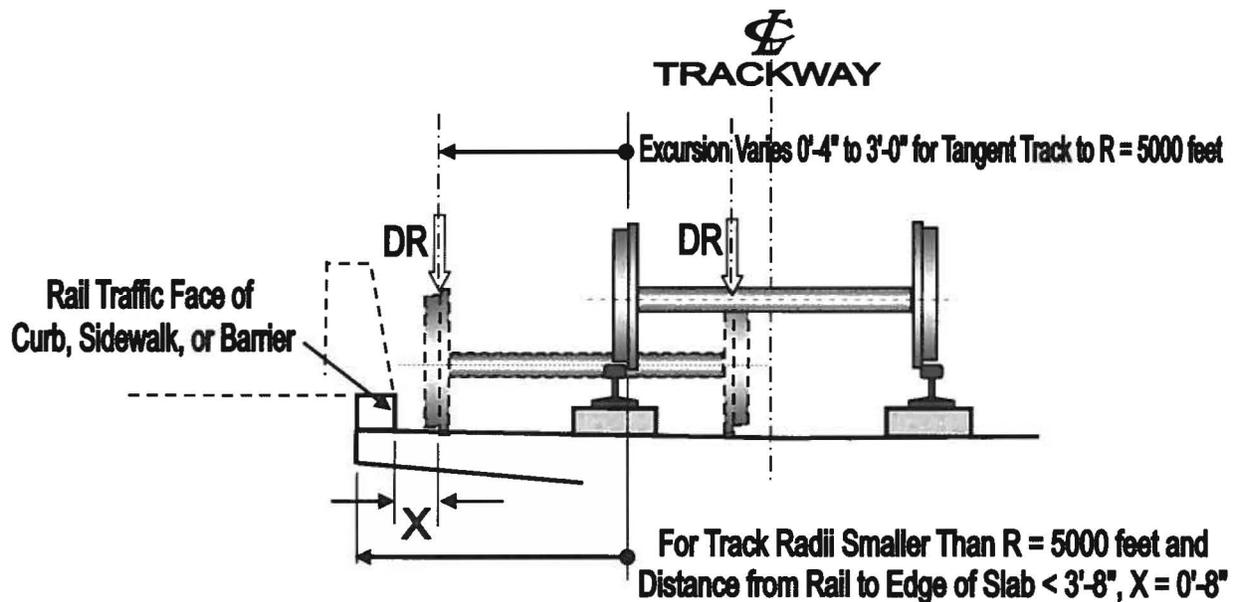
9.2.4 Derailment Loads (DR)

Guideway structures supporting LMV trains are subject to derailment forces. These shall be applied as follows.

9.2.4.1 Vertical

The vertical derailment load shall be taken as that produced by fully loaded vehicles placed with their longitudinal axes parallel to the track. Lateral vehicle excursion shall vary from 4 inch minimum to 3 feet 0 inches maximum for tangent track and curved track with radii greater than 5,000 feet. For track with smaller radii and where the distance from the rail to the edge of the deck slab is less than 3 feet 8 inches, the maximum excursion shall be adjusted so that the derailed wheel flange is located 8 inches from the rail traffic face of the nearest barrier, if any, or the edge of the deck. See Figure 9-4.

Figure 9-4. Lateral Vehicle Excursion for Vertical DR Load



A vertical impact factor of 100 percent of vehicle weight shall be used to compute the equivalent static derailment load. This vertical impact shall be in lieu of the dynamic load allowance provided in Section 9.2.6.

When checking any component of superstructure or substructure that supports two or more tracks, only one train on one track shall be considered to have derailed, with the other track being loaded with a stationary train without impact. All elements of the structure shall be checked assuming simultaneous application of all derailed wheel loads. However, the reduction of positive moment in continuous slabs due to derailed wheel loads in adjacent spans shall not be allowed.

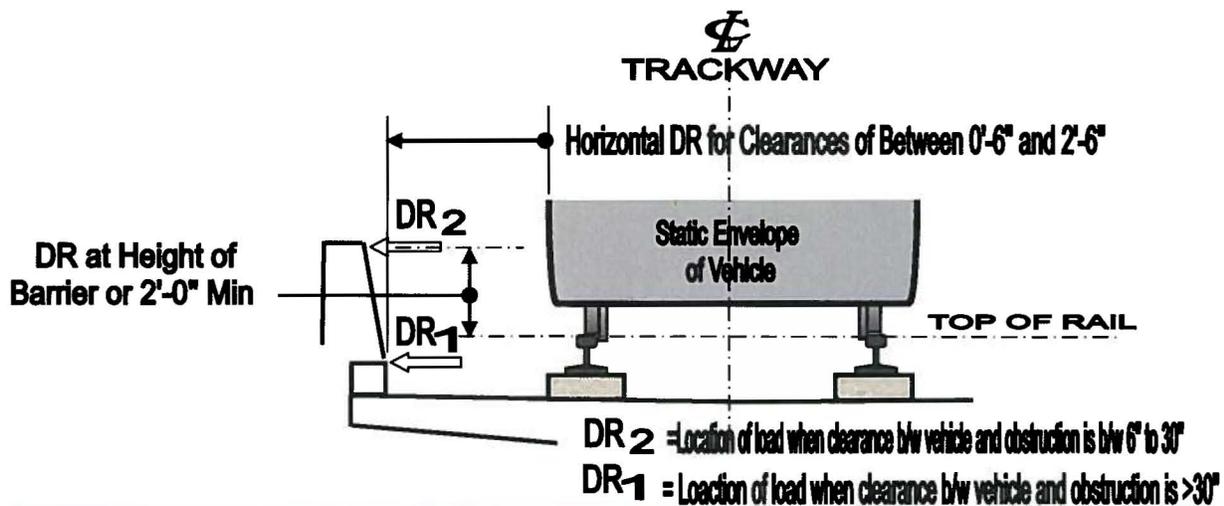
9.2.4.2 Horizontal

Aerial guideways and guideways supported on embankments more than 4 feet above the surrounding grade shall be provided with restraining rails on the inside running rail on all curves on a

radius of less than 500 feet. In addition, a concrete curb a minimum of 8 inches high shall be provided at the outside edge of the guideway or embankment that is above and composite with the structure supporting the guideway and structurally capable of sustaining the DR prescribed in the paragraph below.

For guideway cross-sections having a clearance between the vehicles and the barrier walls of between 6 inches and ~~3-2~~ feet ~~60~~ inches, with LMV speed of 55 mph or greater, the force due to horizontal DR shall be taken as 40 percent of a single fully loaded vehicle acting 2 feet above the top of rail and normal to the barrier wall for a distance of 10 feet along the wall (See Figure 9-5). For guideway cross-sections having a clearance between vehicles and adjacent obstructions of greater than 3 feet 0 inches, the centerline of the trackway shall be located so that the face of an 8-inch curb can be provided with a minimum of 3 feet 0 inches from the face of the obstruction and capable of sustaining the DR prescribed in the above paragraph (See Figure 9-5).

Figure 9-5. Lateral Force Distribution for Horizontal DR Load



9.2.5 Earthquake Loads (EQ)

- A. All aerial structures and bridges shall be designed to resist earthquake motions in accordance with the HDOT Code and AASHTO Seismic Guide Specs. In some cases, aerial structures with bridges may be under jurisdictions other than RTD and design criteria specified elsewhere.
- B. Earth retaining structures shall be designed to resist lateral earth pressure induced by earthquakes as recommended by the Geotechnical Engineering Report provided for the Project project geotechnical engineer see Section 9.6.1.
- C. All other structures shall be designed to resist earthquake motions in accordance with applicable building codes.

9.2.6 Dynamic Load Allowance (IMV, IMH)

Dynamic load allowance is the statically equivalent dynamic effect resulting from vertical and horizontal acceleration of the LL given as a percent of LL.

- A. Dynamic load allowance considerations for aerial structures supporting rail transit loading shall be as follows:
1. Dynamic load allowance shall be used for the design of the superstructure and generally to those members of the structure that extend down to the main footings as well as the portion above the ground line of concrete or steel piles rigidly connected to the superstructure. Dynamic load allowance shall not be used for abutments, retaining walls, wall-type piers, embedded piles, footings, and service walks. Dynamic load allowance shall not be applied to the maintenance car (HP).
 2. Vertical dynamic load allowance (IMV) for aerial structures shall be 33 percent of LL.
 3. In addition to IMV provided above, a horizontal dynamic load allowance (IMH) equal to 10 percent of LL shall be applied. This force shall be equally distributed to the individual axles of the vehicle and shall be assumed to act in either direction transverse to the track through a point at 3.5 feet above the top of the low rail. The horizontal force component transmitted to the rails and supporting structure by an axle shall be concentrated at the rail having direct wheel flange to rail head contact. When IMH acts simultaneously with CE, only the larger of the two forces needs to be considered.
- B. Design of the top slab of utility vaults and other underground structures supporting highway loading shall conform to the following:

$$IM = 33(1.0 - 0.125D_e) > 0\%$$

where: D_e = Minimum depth of earth cover above the structure (feet)

The depth of cover shall be measured from the highest top of ground or paving to the top of the underground structure.

- C. Structures supporting special vehicles, such as moving equipment or other dynamic loadings that cause significant impact, shall conform to the local building code or, if not covered by code, shall be considered individually using the best technical information available.

9.2.7 Centrifugal Force (CE)

Structures on curves shall be designed for a horizontal radial force (CE) equal to the following percentage of the LL, without Dynamic Load Allowance, in all trackways:

$$CE = f(V)^2 / gR$$

where: g = 32.2 feet/second²
 V = design speed (feet/second)
 f = 4/3 for load combination other than fatigue and 1.0 for fatigue
 R = the radius of the curve of the track centerline (feet)-

The centrifugal force shall be applied 4 feet above the top of low rail on all tracks.

9.2.8 Longitudinal Force (LF)

9.2.8.1 Forces due to Acceleration and Deceleration

Provision shall be made for LF due to the train acceleration and deceleration. The magnitude of LF shall be computed as follows:

- A. For decelerating trains, LF shall be equal to 28 percent of LL without dynamic load allowance.
- B. For accelerating trains, LF shall be equal to 14 percent of LL without dynamic load allowance.

This force shall be applied to the rails and supporting structure as a uniformly distributed load over the length of the train in a horizontal plane at the top of the low rail. Consideration shall be given to various combinations of acceleration and deceleration forces where more than one track is carried by the structure.

9.2.8.2 Forces due to Restraint of Continuous Welded Rail

Wherever a continuous welded rail (CWR) is terminated, provision shall be made to fully restrain its end. This restraint shall be assumed to introduce an LF in the end of each rail of 165,000 pounds based on 85°F temperature change. Unless aerial structures and direct fixation bridges are designed to resist this force, CWR shall not be terminated thereon. See Trackwork Standard Drawings.

Termination, as used in the above paragraph, means *absolute termination*. The placement of a turnout or crossover between ends of CWR does not necessarily result in absolute termination of the rail; the CWR is not considered to be terminated if some means is provided, through the turnout or crossover, to transmit the above force from the end of one rail to the end of the other. The rail shall extend beyond the aerial or bridge structure such that a minimum of 100 rail fasteners, adjacent to each other, are engaged in the continuous at-grade or underground portions of the track.

9.2.8.3 Forces due to Rail Bumping Posts

A rail-mounted vehicle retarding device in the form of bumper posts shall be used on stub-end tracks located in yards, on main lines, or on sidings.

The transfer of loads due to collision between any number of rail transit cars, traveling at the design speed and any structure-mounted rail bumping post shall be limited to 200 kilo pounds (kips), including impact. The bumping post shall be attached only to the rail it protects and shall transfer load to the structure only through rail seat assemblies. The structure will be designed for the loads transmitted through the rail seat assemblies for only one bumping post being activated at one time.

To further protect the structure, the bumping post shall be designed with mountings so that excess loads will cause the bumper to slide over a safe distance. As an alternative to a frangible mounting, the design shall preclude any device that would cause the transferred loads to exceed 200 kips. For structural design, the bumping post load shall be evenly divided between the two rails it is attached to. Structures shall be designed to resist the lesser of 200 kips or the total available restraint provided by the rail seat assemblies on the structure supporting the rails and the bumping post in question.

9.2.9 Earth Pressures (EH, EV, LS)

- A. Earth pressures shall be as specified in AASHTO LRFD Section 3.11
- B. Surcharge loads values shall not be less than those specified in AASHTO LRFD Section 3.11.6.
 - 1. Rail transit loading shall be based on actual axial loads, including impact factor, and car spacing.
 - 2. Vehicle [non-rail transit] loading shall be in accordance with AASHTO LRFD Section 3.11.6.
 - 3. LL and DL from adjacent foundations of structures within the zone of influence shall be considered in computing horizontal pressures on new or existing structures. The zone of influence is defined as being a line projected downward at a slope of 1H:1V from the outside edges around the entire perimeter.
 - 4. The lateral earth pressures to be used in design of structures either fully or partially embedded in "rock" shall be per the recommendations of the project geotechnical engineer as defined in the geotechnical section herein.

9.2.10 Water Load, Stream Pressure, Buoyancy, Scour (WA)

Design ground water level shall be in accordance with recommendation from the project geotechnical engineer and geotechnical data obtained from subsurface data. In addition, design surface water levels, if any, shall be in accordance with site/area-specific hydraulics report. The effects of hydrostatic pressure and buoyancy shall be considered whenever groundwater is present or may be present at a future date. The possibility of future major changes in groundwater elevation shall be considered. The total weight of structure and backfill shall always exceed the calculated uplift due to buoyancy by not less than 10 percent. The design shall take into account the effect of hydrostatic pressures pertaining to construction sequence. The backfill shall be considered as the volume contained within vertical planes defined by the outside limits of the structure. Soil shear resistance on the sides of the structure and vertical planes defining outside limits of the structure shall not be included in resistance to buoyancy calculation.

Local flooding may add to loading on structures within the flood plain. Anticipated flood elevations shall be determined by a study of official flood records. The consequences of changes in foundation conditions resulting from the "check flood" for bridge scour and "design flood" for scour shall be considered. Water load shall be included in the design of aerial structures where applicable. All piers and other portions of structures that are subject to flood forces shall be designed in accordance with the requirements outlined in AASHTO LRFD and HDOT Code.

Guideways that cross over flood control channels and rivers shall meet requirements of the City and County Flood Control Districts and the Corps of Engineers.

9.2.11 Wind Load on Structure (WS)

The aerial structures shall be designed to withstand wind loads of uniform pressure acting upon the superstructure, substructure, and live load (see the wind load on live load section below).

9.2.11.1 Wind Load on Superstructure

A horizontal uniform wind load of the intensities given by AASHTO LRFD shall be applied simultaneously at the centroid of all exposed areas.

9.2.11.2 Wind Load on Substructure

The substructure shall be designed to withstand the preceding loads applied to the superstructure as they are transmitted to the substructure. In addition, a horizontal wind load of magnitude specified in AASHTO LRFD in any direction shall be applied simultaneously at the centroid of the exposed projected substructure area.

9.2.12 Wind Load on Live Load (WL)

- A. For trains operating on aerial structures with the underside of the main girders not more than 40 feet above the mean retarding surface, WL shall consist of a transverse wind load of 115 plf of train and a longitudinal wind load of 28 plf of train. These loads shall be applied simultaneously. The transverse force shall be applied to the rail and superstructure as loads concentrated at the axle locations and in plane 6 feet 4 inches above the top of the lower rail. The longitudinal force shall be applied to the rails and superstructure as a load uniformly distributed over the length of the train in a horizontal plane 6 feet 4 inches above the top of the lower rail.
- B. For higher aerial structures, the values of WL in the transverse and longitudinal directions shall be as follows:

H = 41 feet to 60 feet

where: Transverse wind pressure = 126 plf
Longitudinal wind pressure = 31 plf

H = 61 feet to 100 feet

where: Transverse wind pressure = 130 plf
Longitudinal wind pressure = 34 plf

Where H is measured from the mean retarding surface to the underside of the main girder.

These loads apply to the design of substructure elements supporting a single track. For the design of substructure elements supporting two tracks, these loads shall be increased by 30 percent when both tracks are loaded; this factor accounts fully for shielding effect of vehicle-on-vehicle as the two trains run alongside each other.

9.2.13 Force Effects due to Temperature Gradient (TG)

Temperature gradient shall be considered, if applicable. Internal stresses and structural deformations due to both positive and negative temperature gradients may be determined in accordance with the provision of AASHTO LRFD Section 3.12.3.

9.2.14 Force Effects due to Shrinkage and Creep (SH, CR)

Stresses and movements resulting from concrete shrinkage and creep shall be incorporated into the design of the structures in accordance with AASHTO LRFD. Refer to NFPA 130, CEB-FIP 1990, for creep and shrinkage coefficients.

9.2.15 Force Effects due to Uniform Temperature (TU, TTR, TLR)

A. Provision shall be made for stresses and deformations resulting from temperature ranges as follows.

1. Concrete
 - a. Temperature range = $T_{\max\text{Design}} - T_{\min\text{Design}} = 60^{\circ}\text{F}$ (see HDOT Code)
 - b. Coefficient of expansion .0000060 inch/inch/ $^{\circ}\text{F}$
2. Steel
 - a. Temperature range = $T_{\max\text{Design}} - T_{\min\text{Design}} = 75^{\circ}\text{F}$ (See AASHTO LRFD)
 - b. Coefficient of expansion .0000065 inch/inch/ $^{\circ}\text{F}$
3. Direct Fixation Track
 - a. Controlled setting temperature
 - b. 80 $^{\circ}\text{F}$ minimum
 - c. 95 $^{\circ}\text{F}$ maximum
 - d. Temperature rise 34 $^{\circ}\text{F}$ maximum
 - e. Temperature fall 43 $^{\circ}\text{F}$ maximum
 - f. Coefficient of expansion 0.0000065 inch/inch/ $^{\circ}\text{F}$

The temperature ranges specified above are based on a range of ambient air temperature of 52 $^{\circ}\text{F}$ (minimum) to 94 $^{\circ}\text{F}$ (maximum). The CWR is assumed to achieve a minimum temperature of the ambient air temperature and a maximum temperature of 20 $^{\circ}\text{F}$ above the ambient air temperature.

B. For direct fixation track, provision shall be made for transverse and longitudinal forces due to temperature variations in the rail. These forces shall be applied in a horizontal plane at the top of the low rail as follows:

1. Transverse Force (TTR): The transverse force per linear foot of structure per rail shall be determined by the following formula:

$$T = 151 \text{ Kips/R}$$

where: R = radius of curvature in feet

2. Longitudinal Force (TLR): The longitudinal force per structure per rail shall be determined by the smallest of 200 kips or by the following formula:

$$T = 0.65 \times P \times L$$

where: P = longitudinal restraint force of rail per linear foot
L = average length of adjacent structures (feet)

9.2.16 Rail Fracture (RF)

The final design of structures shall consider the possibility of any one CWR breaking under a tensile load of 200 kips. The break will be restrained by a longitudinal restraint force in the range of 1,600 pounds to 2,200 pounds per rail seat assembly. The structures will be designed for the possibility of only one rail break at one time.

Structures shall be designed to resist the lesser of 200 kips from the rail break or the total available restraint available from the rail seat assemblies on the structure for that rail. Rail seat assemblies will be spaced typically at 30 inches on-center except at bonded rail joints and at special trackwork.

At special trackwork locations, design details for anchoring rails using the same type of rail fasteners as the typical structures shall be provided.

9.2.17 Force Effects due to Settlement (SE)

Load(s) induced on the structures by differential settlement shall be considered in the loading combination. Consider this load similar to shrinkage and thermal forces or in the section on settlement and deflection below. Requirements for allowable differential settlements are prescribed in the geotechnical section below.

9.2.18 Vehicular Collision Loads (CT)

Piers or other support elements for elevated guideways or roadways which have less than 30 feet clearance from the edge of travel way of an adjacent roadway, or less than 50 feet from the centerline of a railway track, shall be designed to withstand a horizontal static force of 400 kips, unless protected with suitable barriers. This force is assumed to act in any direction in a horizontal plane at a height of 4 feet above ground level. This condition occurs with the dead load of the structure but need not be applied concurrently with other applied loadings.

9.2.19 Design Specifications

Use the AASHTO LRFD method for the design of all structural components and connections. Each component and connection shall satisfy each of the following limit states, unless noted otherwise:

9.2.19.1 Service limit state

- A. Service I: Load Combination relating to operational use of the guideway with operational wind.

- B. Service II: Load Combination intended to control yielding of steel structures and slip of slip-critical connections due to live load.
- C. Service III: Load Combination for longitudinal analysis relating to tension in prestressed concrete structures with the objective of crack control and to principal tension in the webs of segmental concrete girders.
- D. Service IV: Load Combination relating only to tension in prestressed concrete substructures with the objective of crack control.
- E. Service V: Load Combination relating to non-operational use of the guideway with high velocity wind.
- F. Service VI: Load Combination relating to only to control uplift and concrete tension during derailment.
- G. Service VII: Load Combination relating only to segmental bridges, with no live loads and full temperature gradient.

9.2.19.2 Fatigue and fracture limit state

- A. Fatigue I: Fatigue and fracture load combination relating to repetitive live load and dynamic response.

9.2.19.3 Strength limit state

- A. Strength I: Load Combination relating to operational use of the guideway without wind.
- B. Strength II: Load Combination relating to use of Owner-specified permit vehicles without wind.
- C. Strength III: Load Combination relating to non-operational use of the guideway with high velocity wind.
- D. Strength IV: Load Combination relating very high dead load to live load force effect ratios.
- E. Strength V: Load Combination relating to operational use of the guideway with operational wind.
- F. Strength VI: Load Combination relating to operational use of the guideway with emergency braking.

9.2.19.4 Extreme event limit state

- A. Extreme Event I: Load Combination relating to operational use of guideway during a seismic event for connection of superstructure to substructure and substructure to foundation only.
- B. Extreme Event II: Load Combination relating to operational use of guideway during a vessel or truck collision. (Vessel and truck collision are considered to be separate events and should not be applied simultaneously).

- C. Extreme Event III: Load Combination relating to operational use of the guideway during a derailment.
- D. Extreme Event IV: Load Combination relating to a rail fracture.
- E. Extreme Event V: Load Combination relating to superflood (500 year) scour event.

Limit states are defined herein to establish a set of performance criteria that shall be met for given loading conditions. These loading conditions combine various loads which can occur simultaneously during operational and non-operational service.

9.2.20 Application of Loadings

Where applicable, use loads and forces listed above for the design of rail transit aerial structures. Rail transit vehicle live loads, buoyancy, wind loads and other variable loads shall be reduced or eliminated to create the maximum force effect on the structure. When all or a portion of deck width is dedicated exclusively to rail transit, apply only the rail transit loads to that width.

9.2.21 Multiple Presence Factor

For structures carrying rail transit loads, tracks shall be treated as a traffic lane in applying the provisions of AASHTO LRFD, except the multiple presence factor for the first two loaded tracks shall be 1.0 and for three or more loaded tracks shall be 0.85.

9.2.22 Special Design Considerations

9.2.22.1 Vibration

A moving vehicle exerts a dynamic effect on the guideway resulting from a highly complex interaction of the vehicle suspension system, vehicle speed, and roughness of the riding surface with the guideway. In order to avoid resonance and provide passenger comfort, the dynamic interaction between the vehicles and the guideway structure shall be performed.

To limit vibration amplification due to the dynamic interaction between the superstructure and the rail car(s), the first-mode natural frequency of flexural vibration of each simple span guideway should generally be not less than 2.5 hertz, ~~and no more than one span in a series of three consecutive spans should have a first mode natural frequency of less than 3.0 hertz~~

Special analysis shall be performed for any bridge or for superstructures having a first mode of vertical vibration less than 2.5-hertz, ~~or for the condition when more than one span in a series of three consecutive spans has the first mode of vibration less than 3.0 hertz~~ To assure passenger comfort, the vehicle amplitude of the vehicle – structure dynamic response must be limited to 0.05 g, where g is the acceleration of gravity.

This special analysis shall model the proposed structure and the transit vehicle. The analysis shall contain a sufficient number of degrees of freedom to allow modeling of the structure, vehicle truck spacing, vehicle primary suspension, vehicle secondary suspension, and the car body. It shall make provision for the placement of the vehicle on the structure in various locations to model the passage of the transit vehicle. When the exact configuration of either the vehicle or the structure is not known, the analysis shall assume a reasonable range of parameters and shall model combinations of those parameters as deemed appropriate.

The analysis shall determine whether vertical dynamic load allowance loads in excess of 33 percent of LL are required for the design of the structure.

Thermal force interaction between the structural components and the trackwork system shall be considered, as specified in the section on force effects due to uniform temperature above.

9.2.22.2 Fatigue

The effect of stress level changes caused by passage of rail trains over structures shall be considered using 3 million cycles of maximum stress over the life of the structure to estimate the number of repetitive maximum stress cycles.

9.2.22.3 Uplift

There should be no uplift at any support for any combination of service loading. See the section on loading combinations herein.

9.2.22.4 Friction

Friction shall be considered in the design where applicable.

9.2.22.5 Sound Barriers

Sound barriers, both presence and absence, shall be considered in the evaluation of vibration and deflection limits.

9.2.22.6 Bearings

AASHTO LRFD shall be used for design of bearings.

9.2.22.7 Camber and Deflections for Aerial Guideway Structures

As a guide in design, the total long-term predicted camber growth, less deflection due to full dead load, shall be limited to 1/2000 of the span length for non-ballasted, prestressed concrete aerial structures, unless approved otherwise by RTD.

To ensure rider comfort, the deflection of longitudinal girders under normal live load plus dynamic load allowance shall not exceed 1/1000 of the span length. For main cantilever girders, the deflection under normal live load with dynamic load allowance shall not exceed 1/375 of the cantilever span.

The differential deflection of the slab immediately below the centerline of the two rails of the same track, due to girder and slab deformations, shall not exceed 1/5000 of the span length.

9.2.22.8 Longitudinal Tension Stresses in Prestressed Members

HDOT Code shall be used for allowable longitudinal tension stresses. Tension stresses are not allowed in pre-compressed tensile zones after all losses have occurred.

9.2.22.9 Structure Deformations and Settlements

The control of deformations through proper geotechnical and structural design is of paramount importance in obtaining acceptable ride quality for the transit vehicles and passengers. Consider all structure deformations, including foundation settlement, not only for the effects on structural behavior but also for their effect on trackwork. As a minimum, guideway piers and abutments settlement as measured at the top of concrete of the finished guideway girder deck shall be limited as prescribed in Section 9.6.6, Settlement and Deflection.~~the section on settlement and deflection below.~~

9.2.22.10 Additional Requirements for Segmental Guideway Construction

- A. Shear and torsion design to conform to AASHTO LRFD Section 5.8.6.
- B. Principal tensile stresses in webs to conform to AASHTO LRFD Section 5.8.5.
- C. If hollow precast columns are used, the columns shall have access opening for future inspection. The columns shall have a solid section minimum 5 feet above finished grade or 12 feet above high water level. Vertical Post-tensioning is not allowed in the solid sections.
- D. Dry joints not allowed in the superstructure and substructure precast elements with match cast joints.
- E. Box girders shall be transversely post-tensioned. No transverse pre-tensioning is allowed.

9.2.22.11 Crack Control

The design of prestressed concrete aerial structures shall consider the effect of temporary loads imposed by sequence of construction stages, forming, falsework, and construction equipment, as well as the stresses created by lifting or placing pre-cast members, stress concentration (non-uniform bearing at the ends of pre-cast beams), end block design and detailing, methods of erection, shrinkage, and curing. Ensure that the structural design of all pre-stressed or reinforced concrete members is adequate and clear and that specifications are prepared which are compatible with the design so that objectionable cracking does not occur in erection or service.

9.2.23 LOADING COMBINATIONS

The following groups (Table 9-2) represent various combinations of loads and forces to which a structure may be subjected. Each structural component shall be designed for the appropriate load combination limit states and load factors as specified in AASHTO LRFD. Additionally, for segmentally constructed bridges, consider load combination in AASHTO LRFD equation 3.4.1-2 for service limit state (Service VII in Table 9.2).

9.2.24 LOAD DISTRIBUTION

Distribute live loads in accordance with provisions of AASHTO LRFD, except as noted herein. Modify AASHTO LRFD by the following additions:

9.2.24.1 Ballasted Track

Axle loads may be assumed as uniformly distributed longitudinally over a length of 3 feet, plus the depth of ballast under the tie, plus twice the effective depth of slab, except as limited by axle spacing.

Table 9-2. Load Combination and Load Factors

Load Combination Limit State	Permanent Loads		Transient Loads				Loads Due to Volumetric Change			Exceptional Loads				
	DC DD DW EH EV ES EL PS CR SH	SE	LL IMV IMH CE LF PL LS	WA	WS	WL	FR	TU** TTR** TLR**	TG	EQ	CT	CV	DR	RF
Strength I	γ_p	1.00	1.70	1.00	-	-	1.00	0.5/1.20	-	-	-	-	-	-
Strength II	γ_p	1.00	1.40	1.00	-	-	1.00	0.5/1.20	-	-	-	-	-	-
Strength III	γ_p	1.00	-	1.00	1.40	-	1.00	0.5/1.20	-	-	-	-	-	-
Strength IV	γ_p	-	-	1.00	-	-	1.00	0.5/1.20	-	-	-	-	-	-
Strength V	γ_p	1.00	1.40	1.00	0.40	1.40	1.00	0.5/1.20	-	-	-	-	-	-
Strength VI	γ_p	1.00	1.40	1.00	-	-	1.00	0.5/1.20	-	-	-	-	-	-
Extreme Event I	γ_p	-	1.0*	1.00	-	-	1.00	-	-	1.10	-	-	-	-
Extreme Event II	γ_p	-	1.0*	1.00	-	-	1.00	-	-	-	1.10	1.10	-	-
Extreme Event III	γ_p	-	1.0*	1.00	-	-	1.00	-	-	-	-	-	1.30	-
Extreme Event IV	γ_p	1.00	-	-	-	-	1.00	0.5/1.20	-	-	-	-	-	1.30
Extreme Event V	γ_p	-	1.0*	1.00	-	-	1.00	-	-	-	-	-	-	-
Service I	1.00	1.00	1.00	1.00	0.30	1.00	1.00	1.00/1.20	γ_{TG}	-	-	-	-	-
Service II	1.00	-	1.30	1.00	-	-	1.00	1.00/1.20	-	-	-	-	-	-
Service III	1.00	1.00	0.80	1.00	-	-	1.00	1.00/1.20	γ_{TG}	-	-	-	-	-
Service IV	1.00	1.00	-	1.00	0.70	-	1.00	1.00/1.20	-	-	-	-	-	-
Service V	1.00	1.00	-	1.00	1.00	-	1.00	1.00/1.20	γ_{TG}	-	-	-	-	-
Service VI	1.00	1.00	1.00	1.00	-	-	1.00	1.00/1.20	γ_{TG}	-	-	-	1.00	-
Service VII	1.00	-	-	1.00	-	-	-	-	γ_{TG}	-	-	-	-	-
Fatigue	-	-	1.00	-	-	-	-	-	-	-	-	-	-	-

* Live load from Light Metro Vehicle (LMV)—loaded only on one track.

** Larger value shall be used for deformations and the smaller value for all other effects.

*** Fatigue Load Combination shall include LL, IMV, IMH & CE only.

γ_p Values, See AASHTO LRFD Table 3.4.1-2, Load Factors for Permanent Loads, except as noted herein.

γ_p Values for PS, CR and SH; see AASHTO LRFD Table 3.4.1-3, Load Factors for Permanent Loads Due to Superimposed Deformations.

γ_p Value for EL shall equal the value for DC.

γ_{TG} Value for Service I, III, V & VI shall be 0.5, value for Service VII shall be 1.0.

Wheel loads may be assumed to have uniform lateral distribution over a width equal to the length of the tie plus the depth of ballast under the tie, except as limited by the proximity of adjacent tracks or the extent of the structure.

9.2.24.2 Direct Fixation Track

Where wheel loads are transmitted to the deck slab through rail mountings placed directly on the slab, the wheel load shall be assumed as uniformly distributed over a length of 3 feet along the rail. This load may be distributed transversely (normal to the rail and centered on the rail) by the width of the rail fastener pad plus twice the depth of the deck and track concrete.

For derailment loads where the vehicle wheels bear directly on the slab, the wheel loads shall be assumed to be distributed over 3 feet of the slab in a direction perpendicular to the main reinforcement.

9.3 SURFACE STATIONS AND BUILDINGS

Surface stations are defined as those stations with platforms constructed at or below adjacent finished grade (at-grade stations). Design the following structures and buildings (but not limited to the following) included in the Project in accordance with the Building Code when the structures do not participate in the loads carried by the aerial guideway girders.

- A. All building framing and components for surface stations, excluding aerial station platforms, mezzanines, and aerial pedestrian access/ramps
- B. Maintenance facilities
- C. Ancillary facilities
 - 1. New building(s) by private developers representing commercial interests or other public agencies that are planning pedestrian entrance access to RTD facilities must have their designs reviewed and accepted by RTD. It is the general policy of RTD to review designs on a case-by-case basis. This includes not only plans for physical attachment but also all new construction within the influence zone of the existing RTD facilities.
 - 2. Foundation and soils investigations and reporting requirements shall be in accordance with Section 1802 of the Building Code, except as modified herein.
 - 3. Temporary support of project facilities during the adjacent excavation for new buildings will be such that at any level, the project facilities lateral displacement shall not exceed 0.001 times its overall height above the bottom of the base slab, but not to exceed 1/2 inches without Engineer's prior approval. Unless otherwise approved by RTD in advanced and in writing, the lateral forces used for the design of temporary excavation support shall consider both the static and dynamic loads for which the project facility was designed. Temporary support shall not endanger the safety of any persons or cause damage to any property and shall conform to HDOT Standard Specifications Section 107.12.
 - 4. Areas of new buildings adjacent to project facilities where the public has access or that cannot be guaranteed as a secure area, such as parking garages and commercial storage and warehousing, shall be treated as areas of potential explosion. NFPA 130, Standard for Fixed Guideway Transit Systems, life safety separation criteria shall be applied that assumes such spaces contain Class-I flammable or Class-II or Class-III combustible liquids. For structural and other

considerations, separation and isolation for blast shall be treated the same as for seismic, and the more restrictive shall be applied.

5. Parapets

Where parapets are used, they shall be designed to withstand dead load, wind load, force due to thermal expansion and contraction, shrinkage force, and earthquake forces equal to the full dead load of the parapet acting at the center of mass of the component parts.

6. Elevators

Surface structures shall be designed for the loads described below:

- a. Dead load of structure
- b. Live load of 100 plf applied at the free edges of the frame
- c. Wind load of 40 psf on windward side
- d. For traction type elevators, the surface structure shall be designed to support elevator beams. The end reaction of the elevator beams shall be 18,000 pounds minimum. The location of the elevator beams varies with the type of elevator and its relative machine room location. The Designer shall coordinate with elevator manufacturers regarding elevator beam locations.

D. Escalators

The support elements shall be designed for the end reactions from the escalators. The end reactions shall be provided to the Designer by RTD.

E. Elevators, Escalators, and Passenger Conveyors

Structures supporting elevators, escalators, or passenger conveyors shall be designed for the maximum reactions from any of the manufactured units considered for use in the system.

F. Stairs

Stairways shall be designed for a uniform LL of 100 psf or a concentrated load of 300 pounds on the center of stair treads, whichever is critical. Impact shall not be considered for stairways.

G. Storage Space and Machinery Rooms

Electrical equipment rooms, pump rooms, service rooms, storage space, and machinery rooms shall be designed for uniform LL of 250 psf, to be increased if storage or machinery loads so dictate. Fan rooms and battery rooms shall be designed for uniform loads of 350 psf.

H. Railings

Railings in station platforms, mezzanines and service walkways shall be designed in accordance with the Building Code.

I. Gratings

1. Gratings in areas that are subject to loading from vehicles shall be designed to carry HL-93 loading in accordance with AASHTO LRFD. Gratings in sidewalks and in areas protected from vehicular traffic shall be designed for a uniform LL of 300 psf.
2. Pedestrian assembly areas and platforms shall be designed for a Uniform LL of 125 psf.
3. Service and emergency walks shall be designed for a uniform LL of 85 psf of walkway area.

J. Seismic Design of Buildings

Building framing and components shall be designed to resist earthquake motions in accordance with the applicable codes of the Building Code. Seismic parameters shall be as prescribed by the Code or site-specific recommendations in the RTD Geotechnical Engineering Report.

9.4 AERIAL STATION PLATFORMS AND PEDESTRIAN BRIDGES

The following structures (but not limited to the following) included in the Project shall be designed in accordance with AASHTO LRFD, AASHTO Seismic Guide Specs, and HDOT Code when the structure participates in loads carried by the rail guideway girders, or in accordance with the Building Code when it does not.

- A. Aerial station platforms
- B. Pedestrian bridges and ramps/access
- C. Mezzanines

9.4.2 Pedestrian Area Live Load

Pedestrian ramps, pedestrian bridges, mezzanines, and other pedestrian areas shall be designed for a uniform LL of 100 psf. Station platform areas shall be designed for a uniform LL of 125 psf. Pedestrian loads shall not be subject to a dynamic load allowance.

9.4.3 Vibration Criteria for Structures Supporting Pedestrian Traffic Only

To avoid the possibility of resonant vibrations induced by pedestrian traffic, the natural frequency of the unloaded structure shall be not less than 3.0 hertz. To avoid vibrations that might be objectionable to patrons, the calculated live load deflection, in inches, shall be limited to 1/500 of the span length.

9.4.4 Seismic Design

Station platforms, pedestrian ramps, pedestrian bridges, and mezzanines shall be designed to resist earthquake motions in accordance with the applicable Building Code or AASHTO LRFD, whichever is stricter. Seismic parameters shall be as prescribed by the above or site-specific parameters provided by the project geotechnical engineer.

9.5 MATERIAL DESIGN REQUIREMENTS AND CRITERIA

9.5.1 Reinforced and Prestressed Concrete Design

A. Minimum material properties: For all above ground reinforced concrete cast-in place structures, including columns, cap beams, and superstructure for aerial structures and bridges, columns, beams, slabs, and walls for the buildings: $f'c = 4000$ psi minimum.

B. ~~For all Cast~~cast in place drilled shaft foundations: ~~$f'c = 4500$ psi minimum.~~

1. Unconfined compressive strength ($f'c$):

a. Strength in accordance with the requirements of Standard Specification 31 63 30 – Drilled Concrete Shaft Foundations.

b. Any request for extending beyond the 28 days specified for determination of $f'c$ shall be subject to City approval before finalization of mix design.

1.2. Mix design shall account for construction method, reinforcement clear space openings, and estimated time of placement.

2.3. Maximum 3/8-inch aggregate shall be used and rebar minimum clear spacing 5 inches unless it is demonstrated that drilled shaft reinforcing cage clear space opening of at least 10 times the maximum size aggregate is maintained.

3.4. No accelerants shall be permitted.

4.5. Temperature monitoring of one or more trial shafts ~~trial and test shafts~~ using the proposed concrete mix ~~shafts~~ shall be performed at three ~~locations~~ elevations within ~~the each trial shaft~~ ~~shafts~~ to establish the heat of hydration development ~~within the as placed shaft trial mix concrete~~ vertical and radial profiles and show conformance with Specification Section 03 70 00 – Mass Concrete. ~~The data acquisition system shall be capable of acquiring, storing, printing, and downloading [archiving] data to a computer.~~ One Temperature sensors group shall be ~~in the upper~~ located within the upper third but not more than 20 feet from the top; the remaining two temperature monitoring elevations shall be at approximate ~~and~~ top and bottom of the middle third as measured along the length of the completed test shaft. A minimum of three sensors are required at each elevation: one in the center and two on opposite sides of the reinforcing cage. ~~shaft.~~ For purposes of temperature monitoring, the shaft diameter groupings shall be:

a. Under 5 feet to 8 feet,

b. 8 feet to 10 feet, inclusive

- c. Greater than 10 feet or ~~greater~~-up to 14 feet, inclusive
- d. Greater than 14 feet

The data acquisition system shall be capable of acquiring, storing, printing, and downloading [archiving] data to a computer for evaluation and documentation.

~~5.6.~~ Type-IV or Type-II (moderate heat) cement may be used in lieu of temperature monitoring if cement content is less than 650 lb/yd³.

~~6.7.~~ Supplementary cementitious materials if used shall be fly ash and natural pozzolan, excepting Class-C fly ash, which is prohibited.

~~7.~~ Mix design shall address the workability requirements for drilled shaft concrete over a period of time exceeding expected duration of the pour. Workability of shaft concrete shall be ensured over the expected duration of pours such that slump measured at expected duration of pour plus 2 hours shall not be less than 6 inches. Duration of estimated pours shall take into account travel and any stand-by times and be based on substantiated placement production rates.

8. Once a mix design has been approved, it shall not be changed without substantiation as described above.

C. For prestressed concrete: $f'_c = 6000$ psi minimum.

D. For all building foundations, floor slabs, pits, and other miscellaneous foundations at yards and shops; miscellaneous foundations other than those specified; and station platform foundations: $f'_c = 3000$ psi minimum.

E. In certain cases, strengths of concrete other than those specified above might be required. These cases will be as recommended by the Designer and accepted by RTD.

F. Reinforcing steel: Bar reinforcement shall conform to AASHTO M 31 for billet-steel bars or ASTM A706 for low-alloy steel bars and the following minimum requirements:

- 1. Bars shall be deformed type.
- 2. Bars shall be Grade 40 or, for ASTM A615/A706 bars or when specified for AASHTO M 31 bars, Grade 60.

G. Prestressing steel: Stress relieved steel strand ASTM A416 (AASHTO M 203) (low relaxation), high strength steel bar ASTM A722 (AASHTO M 275).

H. Deviations from the AASHTO LRFD Bridge Design Specifications:

1. Since the deck will not be subjected to direct traffic, deck rebar shall have a minimum concrete cover of 2 inches in lieu of the 2.5 inch cover specified in section 5.12.3 of the AASHTO LRFD Bridge Design Specifications.

2. A modulus of rupture of $0.24\sqrt{f'_c}$ shall be used in lieu of the $0.37\sqrt{f'_c}$ modulus specified in section 5.4.2.6 of the AASHTO LRFD Bridge Design Specifications.

9.5.2 Structural Steel Design

- A. Structural steel channels, angles, MC shapes: ASTM A36 or ASTM A50.
- B. Structural steel W shapes for building frame: ASTM A992.
- C. Structural steel tube: ASTM A500 Gr B.
- D. Structural steel pipe: ASTM A53 Gr B.
- E. For uses requiring higher steel strengths or where economically justifiable: ASTM A242, A441, A514, A572, A588.
- F. Structural steel and composite steel-concrete flexural members for aerial structures shall conform to the requirements of AASHTO LRFD.
- G. The requirements governing LL deflections and structure deformations and settlements as outlined for reinforced and prestressed concrete design also apply to structural steel design.
- H. Bolts: ASTM A325, unless otherwise shown.
- I. Refer to AISC Manual of Steel Construction, Load and Resistance and Factor Design, Third Edition, Specification for Structural Joints Using ASTM A325 or A490 Bolts for use of bolts in snug-tightened, pretensioned, and slip critical joint applications.
- J. Shop connections as detailed by the Designer shall be welded unless otherwise directed by RTD. Weld in accordance with the current code or specifications of the AWS, as applicable.

9.6 GEOTECHNICAL

9.6.1 Definitions

- A. *Project geotechnical engineer* is defined herein by procurement method.
 - 1. *Design-build (D-B)*: Design-builder's engineer of record's lead geotechnical engineer who shall be a licensed professional engineer (civil or structural) as defined by the State of Hawaii Department of Commerce and Consumer Affairs (DCCA) and who shall be in responsible charge of all geotechnical work and who shall affix his stamp and seal on all project geotechnical reports. Reports shall be subject to RTD review and acceptance.
 - 2. *Design-bid-build (D-B-B)*: Lead geotechnical engineer who shall be a licensed professional engineer (civil or structural) as defined by DCCA and who shall affix his stamp and seal on all project geotechnical reports and recommendations prepared for RTD either directly or indirectly as an employee of the engineer of record or as a subconsultant to the engineer of record. Reports and recommendations shall be subject to RTD review and approval.
 - 3. Lead geotechnical engineer for aerial guideway foundations shall have at least ten years experience in design of foundations for bridges or aerial guideways of similar

size, type, and loading; ; and for at-grade facilities shall have at least ten years experience and not less than five years local experience, in foundations engineering and earthworks.

- B. *Site* is defined per AASHTO LRFD Section 10.5.5.2.3: "A site shall be defined as a project site, or portion of it, where the subsurface conditions can be characterized as geologically similar in terms of subsurface stratification, i.e., sequence, thickness, and geologic history of strata, the engineering properties of the strata and the groundwater conditions." For aerial guideway foundations, this definition is modified herein to read, "...~~contiguous portion~~" and not exceeding 5,000 feet in total length."
- C. *Dry Construction* for drilled shafts is defined herein as the excavation condition and concrete placement method wherein the bottom of shaft may be visually inspected prior to placement of concrete and where water depth at the bottom of the shaft is not more than 3 inches at the start of concrete placement and where water accumulation in the bottom of the shaft is not greater than 12 inches per hour when no water pumping is permitted.
- D. *Wet Construction* for drilled shafts is defined herein as condition not qualifying as dry construction, requiring excavation and concrete placement through water or slurry, whether intended for excavation stabilization or result of naturally occurring hydrogeologic conditions.
- E. *Non-redundant drilled shaft foundation* is defined herein as foundations consisting of three or fewer shafts per guideway bent or pier or those shafts deemed non-redundant per AASHTO LRFD Section 1.3.4.
- F. *Deep foundations* as used herein are defined to include drilled shafts, driven piles, micro-piles, and other foundation types deriving their principal support from embedment into the subsurface and where embedment depth exceeds minimum element dimension.
- G. *Shallow foundations* as used herein are generally footings for which capacity is derived principally from its bearing at shallow depth below existing or final ground surface adjacent to the foundation, e.g. embedment depth generally less than foundation width or length.

Reference AASHTO LRFD Section 10.2 for additional foundations-specific definitions.

9.6.2 Geotechnical Planning Report

Within 90 days following NTP, the project geotechnical engineer shall prepare a Geotechnical Planning Report (GPR) and submit the GPR to the RTD for review and acceptance (D-B contract) or approval (D-B-B contract) prior to the start of field investigations.

The GPR shall define the engineering and design approach that the project geotechnical engineer will follow to develop the necessary geotechnical information for the Project in accordance with the requirements of these design criteria. The GPR will address all aspects of the required geotechnical effort and foundation design and analysis, including, but not limited to, the following:

- A. Succinct description of the structural and civil project components that the geotechnical work scope addresses.

- B. Methods proposed to execute any of the identified subsurface investigation and data needs and develop sufficient data, including laboratory and field tests, for the analyses per AASHTO LRFD Sections 10.4.3 and 10.4.5. Demonstrate that the investigation meets or exceeds the requirements of the Contract.
- C. Proposed methods of geotechnical analyses and construction:
 - 1. Proposed geotechnical analyses for the identified structural and civil components, including software to be used.
 - 2. Proposed construction methods for drilled shaft and pile foundations.
- D. Coordination with structural engineer.
- E. Proposed format of geotechnical reports and topical outline.
- F. Proposed deflection and settlement criteria to be used for design of deep foundations.

9.6.3 Geotechnical Investigations

Frequency of investigations shall be sufficient for the design and construction planned but not less than minimums set forth herein. Subsurface investigations for structures governed by AASHTO guidelines shall be conducted in accordance with AASHTO LRFD Section 10.4.2 (Subsurface Exploration) and FHWA HI-97-021 (Subsurface Investigations-Geotechnical Site Characterization); Frequency. The frequency of investigations shall be sufficient for the design and construction planned but not less than minimums set forth in AASHTO LRFD Table 10.4.2-1 and specified herein. Furthermore, investigations for aerial guideway foundations require a minimum of one boring for each pier or foundation as detailed below. Subsurface investigations for buildings and other structures not governed by AASHTO guidelines shall be conducted in accordance with the Building Code. Geotechnical investigations completed for the Project as well as other existing geotechnical information are made available for the project geotechnical engineer's use. These completed investigations are included in the Geotechnical Data Report.

City Data: Field investigation locations for deep foundations completed by the City shall be deemed acceptable when located within 20 feet of the final deep foundation location as measured from the center line of the foundation(s) and where foundations derive less than 25% of their support from end bearing on or in rock, coralline, or coralline detritus formations. Where deep foundations derive 25% or more of their support on or in rock, coralline or coralline detritus formations, all subsurface investigation holes whether completed by the City or new, shall be located within the footprint of each drilled shaft, or within the footprint of the foundation of other types of deep foundations.

Additional Data: For all structures to be supported on deep foundations, any additional at least one geotechnical boring investigations required to complete completed the work in accordance with the criteria presented herein and with the Standard Specification 02 32 00 - Geotechnical Investigations -shall be located within foundation plan limits. Furthermore, at aerial guideway bents where multiple drilled shafts are used to support the pier or column, geotechnical investigations shall be performed at each drilled shaft locations where the drilled shafts derive 25% or more of their support on or in rock, coralline, or detritus formations.

9.6.3.1 Field Investigations

The project geotechnical engineer shall, prior to the start of any field investigations, submit a detailed plan addressing how the planned field investigations meet the requirements of the GPR. The locations of these investigations shall be shown on a site plan not smaller than 1 inch equal to 200-100 feet for aerial guideway and not smaller than 1 inch equal to 40 feet for appurtenant facilities and civil structures. The plan shall clearly state the types of equipment to be used, planned completion/ penetration depths, sampling types and intervals, any down hole testing planned, and completion details. In addition, the plan must address management of investigation, spoil material, maintenance of traffic requirements, environmental compliance requirement, and a time line for execution of the work, including permitting and utility clearances. Investigation methods shall conform to the recommendations of FHWA HI-97-021 and these criteria. Handling and storage of investigation derived samples shall be in accordance with the requirements Standard Specification Section 02 32 00 – Geotechnical Investigations. For buildings and other structures not governed by AASHTO, the field and laboratory testing plan may be submitted concurrent with the Geotechnical Planning Report.

9.6.3.2 Field and Laboratory Testing

The project geotechnical engineer shall, prior to the start of any field and laboratory testing, submit a detailed plan addressing how the planned testing meets the requirements of the GPR. Applicable testing methods and procedures shall be cited. Unless otherwise noted, all testing standards shall be in accordance with HDOT standards. In addition, the plan shall clearly state the name(s) and locations of the testing facility that will be used and any applicable certifications/accreditations. Testing facility shall have current accreditation by HDOT, AASHTO Materials Reference Laboratory (AMRL) or Navy for the specific laboratory tests to be performed. Laboratory testing shall meet the requirements of AASHTO LRFD Section 10.4.3 and Standard Specification 02 32 00-Geotechnical Investigations.

For buildings and other structures not governed by AASHTO, the geotechnical report may be submitted concurrent with or combined with the Geotechnical Data Report required in 9.6.4.

9.6.4 Geotechnical Data Reports

Geotechnical reports or memoranda as detailed below, signed and sealed per the requirements of 9.6.1 above, shall be submitted to the City for review and acceptance (D-B contract) or approval (D-B-B contract). Reports to be based on FHWA ED-88-053 (Checklists and Guidelines For Review of Geotechnical Reports and Preliminary Plans and Specifications).

The project geotechnical engineer shall prepare ~~signed and sealed per the requirements of 9.6.1 above,~~ and submit to the City, report(s) documenting the field investigations and all field and laboratory testing performed, explicitly noting the date, project limits or specific area represented, the report's intended purpose, and all field and laboratory data obtained. These investigation data, together with investigation data included in the Geotechnical Data Report, shall be the bases for the engineering analyses and geotechnical designs.

9.6.4.1 Interpretation, Analyses, and Recommendations

The Project Geotechnical Engineer shall prepare and submit to RTD a geotechnical report, which shall be based on the available subsurface information, and shall include at a minimum a discussion of the interpreted subsurface and ground water conditions, including but not limited to:

- A. How RTD-provided geotechnical information is incorporated.
- B. Evaluation of geotechnical conditions encountered.
- C. Site subsurface characteristics, variation thereof, and rational or bases for selected engineering design properties. At a minimum, site characterization(s) shall include formation, location and thickness of soil and rock units, ground water conditions observed, including design profile, interpreted engineering properties for each soil and rock unit encountered, recommended design parameters for design of the foundations, and an assessment of geologic and seismic hazards. At a minimum engineering properties and design parameters to be addressed include but not limited to:
 - 1. Cohesion and adhesion,
 - 2. skin friction,
 - 3. end bearing,
 - 4. lateral earth pressures,
 - 5. soil or rock spring constants or horizontal modulus, and
 - 6. intermediate factors.
- D. Site characterizations for seismic design, including bases for seismic design parameters if different from HDOT Code, site classification (AASHTO Seismic Guide Spec Section 3.4.2.1 or Building Code Section 1613.5.2), response spectra, and site-specific properties used for sites requiring site-specific evaluations under the governing code.
- E. Definition of the extent [alignment station or area] that the characteristic site (as defined in thesethis criteria) represents, and variations of engineering properties, if any.
- F. Areas where foundation excavation will extend below first ground water, discussions of ground water chemistry and the potential for ground water fluctuations whether seasonal or tidal, and artesian.
- G. Discussion of how the engineering designs, design parameters, and analyses take construction means and methods into account.
- H. Discussion of recommended resistance factors for design of structure foundations in accordance with requirements of HDOT Code and discussion of recommended factors of safety for structures or facilities where design is governed by the Building Code.

9.6.5 Geotechnical Designs

Project structures and improvements shall be designed so that imposed loadings do not exceed soil resistance while limiting deflections, as applicable, to prescribed maximums. Foundations supporting aerial guideways and transit rail retaining walls shall be designed in accordance with the requirements of AASHTO LRFD Chapter 10 and 11, and AASHTO Seismic Guide Spec. Foundations for buildings, retaining walls, and appurtenances not governed by thesethis design criteria, shall be designed in accordance with Building Code Chapter 18 (Soils and Foundations). Presumptive load resistance values (i.e., maximum allowable bearing pressures and lateral

resistance) shall not exceed the maximum values specified. Additionally, for aerial guideway designs a minimum of 50% of the bent locations within the specified reach or segment shall have been investigated and reported to the City in accordance with Geotechnical Investigations (listed above), prior to submittal of the design report required by the following subsection.

9.6.5.1 Deep Foundations

Design of deep foundations shall be based on project-specific information developed for the location and foundation type(s) planned. Soil and rock engineering properties shall be based on the results of field investigations as presented in the geotechnical report required by 9.6.4.1 above; use of presumptive values will not be allowed. ~~Bottom clean out of drilled shafts constructed using the wet method shall be verified by Miniature Shaft Inspection Device® (MiniSID) or approved equal.~~ Auger cast piles are not acceptable for support of aerial guideway.

Tops of deep foundations, including top of single drilled shafts or pile caps where multiple shafts or piles are employed, shall be a minimum of 2 feet below lowest adjacent finished grade.

The upper 5 feet as measured from lowest adjacent grade shall be discounted in any axial and lateral load analyses to account for possible future excavations around the shaft or pile group.

Statnamic or APPLE type testing shall not be substituted for the specified drilled shaft or pile capacity testing required herein.

Axial demands must account for down drag loads.

A. Drilled Shafts

Permanent steel casing shall be provided in areas and to depths where, based upon subsurface investigation and laboratory testing programs, the soil strength is ~~determined~~ anticipated to be 600 psf or less. Where permanent steel casing is used and is relied upon for structural capacity, it shall have a minimum wall thickness of 3/4 inch. Additionally, the design basis of the steel section shall be reduced to account for corrosion over the life of the structure based on actual soil and ground water conditions but not less than 1/8 inch; in lieu of a site specific corrosion study, a presumptive value of 1/4 inch shall be used. Steel casing shall not be considered for structural support in extremely aggressive environments.

Drilled shafts designed with their tips founded on coralline or coralline detritus formations shall not include end bearing capacity in the design. Drilled shafts designed with their tips founded on or within cobbles and boulders shall not include end bearing capacity in their design without a load test to substantiate design ~~field~~ values. Base grouting, in accordance with the requirements of Specification Section 31 63 30 – Drilled Concrete Shaft Foundations, shall not be allowed without prior written consent of the City and where allowed shall not relieve eContractor from any of the Contract requirements.

~~For guideway shafts greater than or equal to 5 feet in diameter, the drilled shafts shall be designed assuming the column is offset at the top of the shaft a minimum of 6 inches. Minimum concrete cover over reinforcing steel for drilled shafts shall be 6 inches.~~

~~Method shafts shall be performed on a minimum of one drilled shaft at any given Site but not less than one per 5,000 contiguous feet or portion thereof of aerial guideway alignment where subsurface conditions are defined as being similar (i.e., Site). Method~~

shaft for each Site shall be completed and accepted prior to initiating load test shafts. A minimum of one method shaft shall be performed for each method of construction proposed and each variation in subsurface and ground water conditions. Proposed construction means and methods shall be distinguished between cased vs. uncased excavations, rotary vs. non-rotary tools, and dry vs. wet construction. Artesian conditions and likewise excavation with water or mineral and polymer slurry are distinct aspects associated with wet construction.

Load tests shall be performed on a minimum of one drilled shaft at any given Site but not less than one per- 5,000 ~~contiguous-cumulative~~ feet or portion thereof of aerial guideway alignment where subsurface conditions are defined as being similar (i.e., Site.) ~~in the Geotechnical Data Report.~~ Load tests shall be performed on shafts of the same diameter, length, reinforcement and permanent casing as planned for the production drilled shafts and using the means and methods of the accepted method shaft test.

At least 50% of the subsurface investigations shall be completed prior to finalizing selecting locations for method and load test shafts. Load tests for each Site shall be completed before starting any production shafts within that Site. Load tests shall not be performed on any permanent drilled shaft. Load tests shall be performed using the Osterberg load cell (O-Cell) test method.

B. Driven Piles

Driven piles founded on coralline or detritus formations shall not include end bearing capacity in the design, driven piles founded on or within cobbles and boulders shall not include end bearing capacity in their design without a load test to substantiate field values.

Geotechnical capacity of the pile size, length, and grouping shall be based on the design parameters reported in the geotechnical report specific to the Site or segment under consideration. Adjustments to reported engineering properties based on local experience of field load tests shall be explicitly noted and justification documented.

Wave Equation Analyses shall be performed prior to pile driving to verify that the pile can be driven to the required capacity and penetration depth at a reasonable driving resistance without excessive driving stresses.

Dynamic load tests with signal matching shall be performed, in accordance with ASTM D7383-08 Standard Test Methods for Axial Compressive Force Pulse (Rapid) Testing of Deep Foundations, on all test piles and on a minimum of 2 percent of production piles. Static load tests shall be performed in accordance with ASTM D1143/D1143-07e1 Standard Test Methods for Deep Foundations Under Static Axial Compressive Load on a minimum of one driven pile at any given Site but not less than one per 2,500 contiguous feet or portion thereof of aerial guideway alignment where subsurface conditions are defined as being similar (i.e., Site) in the geotechnical report.

C. Micropiles

Design of micropiles shall be in accordance with AASHTO LRFD Section 10.9 (Micropiles) and FHWA-SA-97-070 (Micropile Design and Construction Guidelines, June 2000).

End bearing resistance shall not be included in the design of micropiles.

Verification load tests shall be performed in accordance with ASTM D1143/D1143-07e1 Standard Test Methods for Deep Foundations Under Static Axial Compressive Load on a minimum of one micropile at any given Site but not less than one per 2,500 contiguous feet or portion thereof of aerial guideway alignment where subsurface conditions are defined as being similar (i.e., Site) in the geotechnical report. Verification load tests shall not be performed on any permanent micropiles.

~~Additional requirements bearing on micropile design considerations are presented in Standard Specification Section 31.63.33—Drilled Micropiles, including proof testing.~~

9.6.5.2 Shallow Foundations and Miscellaneous Structures

A. Shallow Foundations

Per AASHTO LRFD Section 10.2 (Definitions): “Shallow Foundation— A foundation that derives its support by transferring load directly to the soil or rock at shallow depth.”

Design of shallow foundations, e.g., spread and strip footings, shall be based on project-specific information developed for the location(s) and foundation type(s) planned. Soil and rock engineering properties shall be based on the results of field investigations as presented in the geotechnical report; use of presumptive values will not be allowed. Designs of shallow foundations supporting rail structures or attached appurtenances shall be as required in AASHTO LRFD Section 10.6) and in accordance with FHWA-SA-02-054 (Geotechnical Engineering Circular No. 6 Shallow Foundations)). Shallow foundations for support of structures under the purview of the Building Code, buildings not directly supported off the aerial guideway, shall be designed in conformance with the requirements of Building Code Section 1805 (Footings and Foundations).

Shallow foundations shall have a minimum ground cover of 2 feet as measured from top of footing to finished grade.

Support of aerial guideway on shallow foundations will not be permitted.

Geotechnical investigations for shallow foundations shall be in accordance with ~~AS~~AASHTO LRFD Section 10.4.2 Subsurface Exploration and Table 10.4.2-1 therein.

B. Miscellaneous Structure Foundations

Design of shallow foundations for miscellaneous structures shall be in accordance with the above requirements for shallow foundations, excepting that presumptive values may be used. These include, but are not limited to miscellaneous structures such as light standards, signs, retaining walls less than 10 feet in height and not supporting any structures, and other such lightly loaded and uninhabited structures.

9.6.6 Settlement and Deflection

Allowable foundation settlements and lateral deflections (deformations), except as prescribed herein, shall be established by the project structural engineer in consultation with the project geotechnical engineer.

9.6.6.1 Deep Foundations

Settlement of deep foundations (i.e., drilled shafts, micropiles, or driven piles) shall be limited to no more than 1/2 inch total vertical deflection as measured at the pile head or top of pier cap after placement of the pier column. Total settlement measured after placement of the guideway girder shall be limited to not more than 1 1/2 inches. Differential settlement between adjacent bents spaced not less than 100 feet apart shall be limited to no more than 1 inch; this maximum decreases proportionately for lesser bent spacing and increases by 1/2 inch per 100 feet for bent spacing exceeding 100 feet to a maximum of 1 1/2 inches.

Lateral deflection limitations for design of deep foundations for ~~non-seismic loading shall be limited under~~ Service I Loading demand shall be limited to no more than one inch (1") for drilled shafts greater than or equal to six feet (6') in diameter and not more than 3/4 inch for drilled shafts less than six feet (< 6') in diameter. For deep foundations other than drilled shafts and less than thirty inches (< 30") in diameter lateral deflections under Service I Loading demand shall be limited to no more than 1/2 inch. ~~lateral deflection~~. Lateral deflection limits as prescribed hereinabove shall be based on Service I excluding wind load contributions and shall be measured at the top of drilled shaft or at the interface ~~to~~ with the pile cap.

Deflections of deep foundations under extreme or earthquake loadings shall be established by the project structural and geotechnical engineers but not greater than the deflection and rotation which would result in a deflection of 18 inches at the top of rail.

9.6.6.2 Shallow Foundations

Shallow foundations shall be designed to limit total settlement ~~to or heave~~ no more than 1 inch and differential settlements or heave between adjacent footings to no more than 1/2 inch and differential settlement or heave across the length or width of a footing to an angular distortion of not more than 1:750.

9.6.6.3 Slabs-on-Grade

Slabs-on-grade shall be designed to limit total settlement ~~or heave~~ to no more than 1 inch and differential settlements to an angular distortion of not more than 1:750.

9.7 STATIONS

Design requirements for transit stations shall be in accordance with the criteria and bases defined herein. Station design shall be coordinated with aerial guideway design and performance. Station designs must include and account for the deflections and settlement of the separately designed and constructed aerial guideway.

9.8 RETAINING WALLS

Retaining walls for structures governed by AASHTO shall be designed in accordance with AASHTO LRFD Section 11. Reinforcing elements for mechanically stabilized earth and other such proprietary retaining walls shall be of non-metallic type. For retaining walls for buildings and other structures not governed by AASHTO, design shall be in accordance with the Building Code.

Segmental retaining wall (SRW) system design shall be in accordance with Specification 32 32 23 – Concrete Segmental Retaining Wall System.

- SRW under Building Code purview: NCMA TR127, Design Manual for Segmental Retaining Walls, Second Edition, Second Printing, 1997
- SRW structures supporting rail or subject to HDOT review: FHWA NHI-00-043, Mechanically Stabilized Earth Walls and Reinforced Soil Slopes Design and Construction Guidelines (NHI Course No. 132042), March 2001

9.9 EXCAVATION SUPPORT STRUCTURES

Excavation support structures shall be designed by a Hawaii-registered Professional Engineer and constructed to resist the loads and displacements caused by *in-situ* ground and water pressures, applicable roadway and structure surcharge loads, construction surcharges, and the installation and removal of ground support elements. Excavation support structures shall be designed and constructed in accordance with the Standard Specifications.

END OF CHAPTER

**GENERAL CONDITIONS
OF DESIGN-BUILD CONTRACTS
CITY AND COUNTY OF HONOLULU**

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**GENERAL CONDITIONS
OF DESIGN-BUILD CONTRACTS
CITY AND COUNTY OF HONOLULU**

The General Conditions of Design-Build contracts of the City and County of Honolulu, incorporated by reference in the Request for Proposals and referred to as the "GCDB" or "General Conditions," represent the City's policy and requirements relating to design-build projects as authorized by Hawaii Revised Statutes (HRS), Chapter 103D, and the Hawaii Administrative Rules (HAR), Title 3, Department of Accounting and General Services (collectively referred to as "Procurement Code and Rules"). Related provisions from HAR, Title 3, Department of Accounting and General Services, are presented for convenience only and may not be complete. Should any contractual term herein be inconsistent with the Procurement Code and Rules, the Procurement Code and Rules shall govern. Offerors and contractors should familiarize themselves with HRS Chapter 103D and HAR.

The separate parts of the Request for Proposals (RFP), as defined below, including the plans and specifications, are intended to complement each other. Unless it is apparent that a different order of precedence is intended, the most recent addenda shall govern over all other previously issued addenda and other contract documents; plans shall govern over the City's Standards and Specifications, which are detailed in §1.2(c) of GCDB and these General Conditions; special provisions shall govern over plans, the City's Standards and Specifications, and the General Conditions. Where there is a discrepancy between the Final Proposal, as defined below, and other parts of the RFP, the Final Proposal shall govern.

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

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

CHAPTER 1 - DEFINITIONS; REFERENCES

1.1 Definitions.

Terms as used in these General Conditions and the Contract, unless the context requires otherwise, shall have the following meaning:

"**Addendum**" means a written document issued by the Contracting Officer during the RFP and Proposal period, involving changes to the RFP, which shall be considered and made a part of the RFP and the Contract.

"**Change order**" means an amendment or modification of the Contract signed by the Contracting Officer or, when delegated by the Contracting Officer, by the Officer-in-Charge directing the Contractor to make changes with or without the consent of the Contractor. [HRS 103D-104]

"**City**" means the City and County of Honolulu, State of Hawaii.

"**Construction**" means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property. [HRS 103D-104]

"**Contract**" means all documents covering the construction of the Project and services in connection therewith for which award is made to the Contractor, including the furnishing of labor, materials and

equipment in connection therewith. It shall include the following documents and any amendments or addenda thereto: the RFP Final Proposal (see definition herein), the GCDB, change orders, bonds and plans, and the contract agreement, whether attached to or incorporated by reference.

"Contract modification" or "Modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of the Contract accomplished by mutual action of the parties to the Contract. [HRS 103D-104]

"Contracting Officer" means:

- (1) For improvement district projects, the City Council Chair or any official of the City so designated by the City Council Chair;
- (2) For the Board of Water Supply, the Manager and Chief Engineer of the Board of Water Supply or the Manager and Chief Engineer's delegated designee; and
- (3) For all other projects, the Director of the Department of Budget and Fiscal Services of the City and County of Honolulu, or the Director's delegated Designee.

"Contractor" means any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the Contract with the City, and acting directly or through its agents or employees. [HAR 3-120-2]

"Days" means consecutive calendar days unless otherwise specified. [HAR 3-120-2]

"Designee" means a person appointed by the Director of Budget and Fiscal Services or the Officer-in-Charge to act on its behalf with delegated authority.

"Final Proposal" means the final mutually-agreed terms of the proposal submitted by the awarded Offeror in response to the City's RFP or the Best and Final Offer accepted by the City in accordance with HAR §§3-122-53 and 3-122-54.

"Guarantee" or "Warranty" means a written agreement or assurance of the quality of or the length of use to be expected from equipment, material, device, or system offered, or work performed.

"Hazardous materials" mean and include any and all radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, hazardous wastes, toxic substances, and any and all other substances or materials defined as "hazardous materials," "extremely hazardous materials," "hazardous wastes" or "toxic substances" under or for the purposes of hazardous materials laws.

"Hazardous materials laws" mean and include all federal, state or local laws, ordinances, rules, regulations or codes, now or hereafter in effect, relating to environmental conditions, human health or industrial hygiene, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601, et seq., the Resource Conservation and Recovery Act, 42, U.S.C. section 6901, et seq., the Hazardous Materials Transportation Act, 42 U.S.C. section 1801, et seq., the Clean Water Act, 33 U.S.C. section 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. section 2601 - 2629, the Safe Drinking Water Act, 42, U.S.C. sections 300f - 300j, HRS Chapter 128D, Environmental Response Law, HRS Chapter 342B, Air Pollution Control, HRS Chapter 342D, Water Pollution, HRS Chapter 342H, Solid Waste Pollution, HRS Chapter 342J, Hazardous Waste, HRS Chapter 342L, Underground Storage Tanks, Chapter 342P, Asbestos, and any similar state or local laws or ordinances and the regulations now in effect or hereafter adopted, published or promulgated thereto.

"HRS" means the Hawaii Revised Statutes of the State of Hawaii, as amended.

"Improvement district project" means a project constructed pursuant to chapter 14, Revised Ordinances of Honolulu (ROH), entitled "Public Works Infrastructure Requirements Including Fees and Services."

"Notice to Offerors" means the publication or the notice of a solicitation for offers.

"Notice to proceed" or "NTP" means the document issued to the Contractor designating the official commencement date of the performance under the Contract.

"Offer" means the Proposal.

"**Offeror**" means any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, an offer for the goods, service, or construction contemplated. [HAR 3-120-2]

"**Officer-in-Charge**" means the department head of the agency with delegated authority for which construction is being procured or the Officer-in-Charge's delegated designee.

"**Procurement**" means buying, purchasing, renting, leasing, or otherwise acquiring any good, service, or construction. The term also includes all functions that pertain to the obtaining of any good, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. [HRS 103D-104]

"**Professional services**" means those services within the scope of the practice of architecture, landscape architecture, professional engineering, and surveying, real property appraisal, law, medicine, accounting, dentistry, or any other practice defined as professional pursuant to Sections 415A-2, HRS, or the professional and scientific occupation series contained in the United States office of personnel management's Qualifications Standard Handbook [HRS103D-104]

"**Project**" means work to be performed as set forth in the Contract, including furnishing all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of work contemplated under the Contract.

"**Proposal**" means the executed document submitted by an Offeror in response to the RFP.

"**Purchasing agency**" means the agency requesting the design-build project for the using agency.

"**Purchasing Division**" means the Division of Purchasing, Department of Budget and Fiscal Services, with delegated authority to solicit bids and award contracts.

"**Request for Proposals**" or "**RFP**" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

"**Responsible Offeror**" means a person who has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability which will assure good faith performance. [HRS103D-104]

"**Responsive Offeror**" means a person who has submitted an offer which conforms in all material respects to the RFP. [HAR 3-120-2]

"**Solicitation**" means an invitation for bids, request for proposals, or a request for quotation issued by the City for the purpose of soliciting bids or proposals to perform under City contract. [HRS 3-120-2]

"**Specifications**" mean any description of the physical or functional characteristics, or of the nature of a good, service, or construction item. The term includes descriptions or any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery. [HRS 103D-104]

"**State**" means State of Hawaii.

"**Subcontractor**" means any person who enters into an agreement with the Contractor to perform a portion of the work for the Contractor. [HAR 3-120-2]

"**Working day**" means any day on the calendar, exclusive of State holidays, Saturdays, and Sundays. Unless another meaning is intended, "working days" shall mean consecutive working days.

1.2 References. (a) When reference is made to known Standards and Specifications, the most recently adopted and published edition of such standards and specifications on the date of the notice to contractors is contemplated, unless otherwise specified.

(b) Abbreviations. The following abbreviations shall refer to the technical society, organization, body, code, rules, or standards, listed opposite each abbreviation:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADAAG	Americans with Disabilities Act Accessibility Guidelines
AISC	American Institute of Steel Construction
AITC	American Institute of Timber Construction

ANSI	American National Standard Institute
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
AWS	American Welding Society
FHWA	Federal Highway Administration, U.S. Department of Transportation
FS	Federal Specifications
G06	General Order No. 6 of the Public Utilities Commission, Rules for Overhead Electric Line Construction
GRJP	General Rules for Joint Use of Poles
HAR	Hawaii Administrative Rules
HRS	Hawaii Revised Statutes
IES	Illuminating Engineering Society
NEC	National Electrical Code
UBC	Uniform Building Code
UL	Underwriters' Laboratories, Inc.
UPC	Uniform Plumbing Code
WCLA	West Coast Lumberman's Association

(c) City and County of Honolulu Standards and Specifications. The following are commonly referred to standards and specifications of the City and County of Honolulu which are available for purchase at the City's Library, Records Management and Bookstore Section of the Customer Services Department.

- (1) Standard Details for Public Works Construction, September 1984, commonly referred to as standard details;
- (2) Standard Specifications for Public Works Construction, September 1986, commonly referred to as standard specifications;
- (3) Standard Details for Parks and Recreation Construction, May 1990; and
- (4) Water System Standards, Volume I, Approved Material List and Standard Details for Water System Construction, Volume II, dated 2002, and Water System External Corrosion Control Standards, Volume III, dated 1991, of the Board of Water Supply, commonly referred to as water system standards.

1.3 Contractor's Representations.

(a) License. Contractor represents that Contractor is a business entity which is experienced and skilled in the design and construction of projects of the type described in the Contract and that the Contractor is licensed by the State of Hawaii to engage in the type of design and construction required by the Contract and is in compliance with all laws and regulations.

(b) Contractor's warranty. By the act of submitting its proposal in response to the RFP, the Contractor warrants that:

- (1) The Contractor and all subcontractors intended to be used by the Contractor have carefully and thoroughly reviewed the RFP and have found them complete and free from ambiguities and sufficient for the purpose intended;
- (2) The Contractor has investigated and examined carefully the site and the RFP and understands the nature, location and character of the project and the site;
- (3) The Contractor and all workers, employees and subcontractors intended to be used are skilled and experienced in the type of design and construction represented in the RFP;

- (4) Neither the Contractor nor any of the Contractor's employees, agents, suppliers, or subcontractors has relied upon any verbal representations from the City, its employees or agents, including architects, engineers or consultants, in assembling its proposal;
- (5) The Contractor's proposal, including the proposed price, is based solely upon the RFP and properly issued written addenda and not upon any other written or verbal representation, and based upon the Contractor's own examination and investigation of surface and subsurface condition and availability of materials and equipment; and
- (6) Contractor has no obligations, commitments or impediments of any kind that will limit or prevent performance of work as required by the Contract.

(c) Independent price determination; no collusion. Each offeror certifies that the price submitted was independently arrived at without collusion. [HAR 3-122-192.]

CHAPTER 2 -GENERAL PROVISIONS

2.1 Contract not binding unless funds available. (a) No contract shall be binding or of any force and effect without endorsement by the Director of the Department of Budget and Fiscal Services that there is an appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the Contract. Certification that there is an appropriation or balance of an appropriation sufficient to cover the amount required by the Contract as well as the application of federal funds, shall comply or be exempt under section 103D-309, HRS. [HAR 3-122-102]

(b) If a contract is a multi-term contract pursuant to Section 3-122-149, HAR, the Director of Budget and Fiscal Services shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts that is sufficient to cover the amount required to be paid under the contract during the current fiscal year or remaining portion of the current fiscal year of the first term of the multi-term contract. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

(c) Certification of a portion of funds. Notwithstanding the requirement for endorsement in subsection (a) above, certification of a portion of the total funds required for a contract may be permitted when an immediate solicitation will result in significantly more favorable contract terms and conditions to the City than a solicitation made at a later date; provided that certification for partial funding shall be permitted only if the Director of the Department of Budget and Fiscal Services states in the certificate that the availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special fund revenues. All contracts partially funded shall be enforceable only to the extent to which funds have been certified as available. [HAR 3-122-104(c)]

(d) Contracts involving federal funds. In any contract involving not only State or City funds, but supplemental funds from the federal government, HRS 103D-309 shall be applicable only to that portion of the contract amount obligated and payable out of State or County funds. Unless otherwise specified, the Contractor, by submittal of a Proposal and acceptance of an award, agrees that payment of that portion of the Contract amount that is supplemented or funded entirely by federal funds shall be payable upon receipt of those federal funds.

(e) In a contract involving funds from the federal government, no contract shall be binding or of any force and effect without an endorsement by the Director of the Department of Budget and Fiscal Services that such federal funding is available for the City.

2.2 Fiscal responsibility. (a) Every contract modification, change order, or contract price adjustment under a contract shall be subject to prior written certification by the fiscal officer for funding the project or the contract, as to the effect of the contract modifications, change order or adjustment in contract price on the total Project budget or the total contract budget. [HAR 3-122-241]

(b) In the event that any contract modification, change order, or adjustment results in an increase in the total budget or total contract budget, the Contracting Officer shall not execute or make any contract modification, change order, or adjustment in contract price unless sufficient funds are made available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the existing project budget or contract budget; provided, that with respect to the validity, as to the contractor, of any executed contract modification, change order or adjustment in contract price, which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the section. [HAR 3-122-241]

2.3 Nondisclosure of designated trade secrets or proprietary information. The Contractor shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential, that *such material shall be clearly labeled as confidential and readily separable from other data in order to facilitate inspection of the nonconfidential portion of the Proposal and Contract.* [HAR 3-122-46]

2.4 Confidential or proprietary information of City. Contractor understands and agrees that, in the performance of work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Contractor agrees that all information disclosed by the City to the Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent Contractor would use to protect its own proprietary data.

2.5 Personal information protection.

(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 City by virtue of this Contract, which consists of personal information, shall be safeguarded by the Contractor and shall not be disclosed without the prior written approval of the City.

(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 City to reduce the risk of unauthorized access to the personal information.

(4) Contractor shall report to the City 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 City, or personal information created or received by the Contractor on behalf of the City.

(c) Security awareness training and confidential 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 to this Contract.

(d) Termination for cause. In addition to any other remedies provided for by this Contract, if the City learns of a material breach by the Contractor of this paragraph by the Contractor, the City 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 City 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, the Contractor shall pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the City.

(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 City, and any cost or pricing data, for three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall not be disclosed without the prior written approval of the City. After the three (3) year retention period

has ended, the files, books, and records that contain personal information shall be destroyed pursuant to Chapter 487R, HRS.

2.6 Copyright or patent. If the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the right for such use shall be procured by the Contractor from the patentee or owner. The Contractor shall indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright in connection with the work to be performed under the contract, and shall indemnify the City and all of their officers, employees or agents, for any costs, expenses and damages which it may be obliged to pay by reason of any such infringement at any time during the prosecution or after the completion of the work, including but not limited to attorneys fees and costs incurred in defense of any such claims.

2.7 Work Made for Hire. All work products developed or prepared by the Contractor under the Contract, but not limited to deliverables, materials, documents, design plans, or blueprint, are the property of the City, and all right, title, and interest therein shall vest exclusively in the City and shall be deemed to be a "Work Made for Hire" under United States Copyright Laws (17 U.S.C. § 101 et seq.). To the extent that title to any such works may not, by operation of law, vest in the City or such works may not be considered to be work made for hire, Contractor hereby agrees that all right, title, and interest therein are irrevocably assigned to the City. All such work products shall belong exclusively to the City with the City having the right to obtain and to hold in its own name, copyrights, registrations or such other protection as may be appropriate to the subject matter, and extensions and renewals thereof. Contractor may make copies or reproduce the work products developed under this Contract for its file and reference. Contractor further agrees to execute and deliver to the City all lawful documents, including without limitation, petitions, oaths, declarations, assignments, disclaimers, and affidavits, in form and substance as may be requested by the City in connection with this provision; execute and record all documents necessary to evidence the chain of title in or to, and City's ownership of, the Works Made for Hire described herein; and furnish to the City any and all documents in Contractor's possession or control, or in the possession or control of Contractor's agents, legal representatives, successors and assigns, which the City may deem useful for establishing the facts surrounding the creation, use or registration of the Work Product.

2.8 Ownership of results. Any interests of Contractor or its subcontractors, in drawings, plans, specifications, blueprints, studies, memoranda, computation sheets, computer files, and media or other documents prepared by the Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted by the City. However, Contractor may retain and use copies for references and as documentation of its experience and capabilities.

2.9 Assignment of antitrust claims for overcharges for goods and materials purchased. Contractor and owner (City) recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the owner. Therefore, Contractor hereby assigns to City any and all claims for such overcharges as to goods and materials purchased in connection with the order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this contract or any change order and which are not passed on to the City under an escalation clause. In addition, Contractor warrants and represents that each of its first tier suppliers and subcontractors shall assign any and all such claims to the City, subject to the same exception.

2.10 Assignment of contract; change of name. (a) Assignment of contract. When in the best interest of the City and upon written consent by the Contracting Officer, a successor in interest may be recognized in an assignment agreement in which the transferor, the transferee and the City agree that:

- (1) The transferee assumes all of the transferor's obligations;
- (2) The transferor remains liable for all obligations under the contract but waives all rights under the contract as against the City; and
- (3) The transferor shall furnish all required bonds. [HAR 3-125-14]

(b) Change of name. When a Contractor requests to change the name in which it holds a contract with the City, the Contracting Officer shall, upon receipt of a document indicating such change of name (for example an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Contractor to effect such a change of name. The agreement changing the name shall be in the form attached hereto as Exhibit "I" and shall specifically indicate that no other terms and conditions of the contract are thereby changed. [HAR 3-125-14]

2.11 Assignment of money. No money receivable under the contract is transferable, or otherwise assignable, without the written consent of the Director of Budget and Fiscal Services [HAR 3-125-14]. The rights of the assignee to monies due or to become due to the Contractor shall be subject to Section 6.13, "Authority to withhold money due or payable."

2.12 Independent contractor. The Contractor is an independent contractor and shall not be deemed to be an agent, servant, representative or employee of the City. The contract shall not be construed to create a partnership or joint venture between the City and the contractor.

2.13 Liability. CITY'S PAYMENT OBLIGATIONS UNDER THIS CONTRACT SHALL BE LIMITED TO THE PAYMENT FOR SERVICES UNDER THIS CONTRACT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, IN NO EVENT SHALL CITY BE LIABLE REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS CONTRACT.

2.14 Indemnification. Contractor shall defend, indemnify and save harmless City, including its elected and appointed officials, agents, employees, volunteers and Construction Managers, and any other entities required to be indemnified by the City under the Contract, and each of them (collectively referred to as "Indemnitees" and individually referred to as "Indemnitee"), of and from any and all claims, demands, causes of action in law or equity, damages, penalties, costs, expenses, actual attorneys' fees, experts' fees, consultants' fees, judgments, losses or liabilities, of every kind and nature whatsoever, including, without limitation, damages, losses or liabilities, of every kind and nature whatsoever, including, without limitation, damages from personal injury, bodily injury, emotional injury, sickness or disease, or death to persons (including, but not limited to any employees or agents of the Contractor, City or any other contractor or any person) arising out of or in any way connected or incidental to, the performance of the work or any of the obligations contained in this Contract. It is expressly acknowledged and agreed that each of the obligations set forth herein is independent of any obligations to procure insurance for the benefit of the City and that each shall be given effect. It is expressly acknowledged and agreed that the Contractor and any other responsible party shall be jointly and severally liable to the City with respect to

claims and/or losses. At its sole discretion, the City may determine which indemnitor or indemnitors City will look to for indemnification hereunder.

(b) Worker's compensation law. The Contractor shall save harmless the City its departments, and all of their officers, consultants, representatives, employees or agents, and the construction manager from all suits, actions or claims of any character brought on account of any claims or amounts arising or recovered under the Workers' Compensation Law or any other law, by-law, ordinance, order or decree.

2.15 Liquidated damages. (a) It is mutually understood and agreed by and between the parties to the Contract that time shall be of the essence in the completion of the work and all of the provisions of this Contract and that in case of failure on the part of the Contractor to complete the work under the Contract within the time fixed or agreed upon, the City will be damaged thereby, and the amount of said damages, inclusive of expenses for inspection, superintendence, and necessary traveling expenses, being difficult, if not impossible, of definite ascertainment and proof, it is hereby agreed that the amount of such damages shall be the amount set forth in the Contract as liquidated damages for each and every calendar day, including weekends and holidays, that the Contractor delays in finishing the work beyond the completion deadline established in the Contract; and the Contractor hereby agrees to pay the said sum as liquidated damages, and not by way of penalty, to the City and further authorizes the City to deduct the amount of the damages from monies due the Contractor under the Contract, computed as aforesaid. If the monies due the Contractor are insufficient or no monies are due the Contractor, the Contractor shall pay the City the difference or the entire amount, whichever may be the case, upon demand by the Contracting Officer.

The acknowledgment form, attached to the RFP and made a part of the RFP, shall be completed, signed by the Contractor and submitted with its Proposal. Failure to acknowledge and submit the form with the bid may be cause for rejection of the Proposal.

2.16 Audit and inspection of records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Contract. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Contract. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Contract or until after final audit has been resolved, whichever is later. [HAR 3-122-181]

2.17 Severability. If any term, condition, provision, covenant or agreement of the terms hereunder or under the Contract or the application thereof to any person or circumstance is rendered or held invalid, illegal or unenforceable under the laws of the State of Hawaii or the United States of America, such part of the terms hereunder or under the Contract as shall have been rendered or held to be invalid, illegal or unenforceable shall not affect the validity of the terms hereunder or under the contract as a whole or the remainder of the terms hereunder or under the contract and the application of such part to other persons and circumstances, but shall be given effect and enforced without such part to the greatest extent permitted by applicable law.

2.18 Laws, regulations. The Contractor shall keep itself fully informed of all present and new laws, regulations, and ordinances which affect the contract and the performance thereof, including but not limited to:

- (1) Chapter 103, HRS, relating to expenditure of public money;

- (2) Chapter 103D, HRS, relating to Hawaii procurement code;
- (3) Chapter 104, HRS, relating to wages and hours of employees on public works;
- (4) Chapter 378, HRS, relating to fair employment practices;
- (5) Chapter 386, HRS, relating to worker's compensation;
- (6) Chapter 396, HRS, relating to occupational safety and health; and
- (7) Chapter 444, HRS, relating to licensing of contractors.

The Contractor shall comply with all such present and new laws, regulations and ordinances, including the giving of all notices necessary and incident to the performance of the contract. If any discrepancy or inconsistency is discovered between the Contract and any such law, regulation, or ordinance, the Contractor shall forthwith report the same in writing to the Contracting Officer or the Officer-in-Charge.

2.19 No reimbursement. The City shall not provide any reimbursement for the cost of developing or presenting proposals in response to the Request for Proposal unless specifically provided for. Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal.

2.20 Governing law and venue. The provisions of this document and the contract shall be interpreted in accordance with the laws of the State of Hawaii as those laws are construed and amended from time to time. All disputes arising out of or relating to this Contract shall be subject to the jurisdiction and venue of the state and federal courts in Honolulu, Hawaii.

2.21 Sexual Harassment.

(a) **General.** The Contractor must comply with Revised Ordinances of Honolulu (ROH) section 1-18 on sexual harassment. The Contractor shall have and enforce a policy prohibiting sexual harassment. The Contractor's sexual harassment policy must set forth the same or greater protection than those contained or required by the ordinance. Section 1-18, ROH, is on file and available for viewing in the Purchasing Division. Contractors needing a copy must pick up the copy from the Office of the City Clerk, Room 203, City Hall, 530 South King Street, Honolulu, Hawaii.

- (b) **Applicability.** The ordinance is applicable to the employer's business and includes:
- (1) Prohibitions against an officer's or employee's sexual harassment of the following:
 - (A) Another officer or employee of the employer;
 - (B) An individual under consideration for employment with the employer; or
 - (C) An individual doing business with the employer;
 - (2) A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under paragraph (1) above;
 - (3) A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;
 - (4) A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;
 - (5) Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;

(6) Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;

(7) A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard";

(8) Disciplinary actions which may be imposed on an officer or employee who committed a prohibited act; and

(9) For an employer with at least five employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

(c) **Policy term.** The policy required under this section shall be in effect for at least the duration of the Contractor's contract with the City.

(d) **Pledge and acceptance.** The action of the Contractor signing the contract shall constitute the Contractor's pledge and acceptance of the provisions for the sexual harassment policy as required by section 1-18, ROH.

2.22 ENERGY STAR products.

(a) Definitions.

"ENERGY STAR" is the joint program of the United States Environmental Protection Agency (EPA) and the United States Department of Energy designed to identify and promote energy efficient products.

"ENERGY STAR qualified product" means a product that has met strict energy efficiency guidelines set by the EPA and Department of Energy and is identified by the ENERGY STAR label.

(b) Required procurement of ENERGY STAR qualified products. The Contractor shall incorporate into its design and provide products that earn the ENERGY STAR and meet the ENERGY STAR specifications for energy efficiency, unless no comparable product is ENERGY STAR qualified or the life-cycle costs of all comparable ENERGY STAR qualified products are more than 105 per cent of the life cycle cost of a product that is not ENERGY STAR qualified.

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

CHAPTER 3 - INSURANCE; BID SECURITY, PERFORMANCE AND PAYMENT BONDS

3.1 Insurance.

(a) Required coverages. The Contractor shall procure or cause to be procured and maintain (as provided herein), in a company lawfully authorized to do business in Hawaii, at Contractor's sole cost, during the life of this contract and any extensions thereof, or until such time as action against the

Contractor or subcontractor for death, injuries, losses and damages is barred by the provisions of Chapter 657, HRS, the following types of insurance to cover the operations under the contract, and all other insurance that may be required under the laws, ordinances or regulations of any governmental authority with the following minimum coverage provided below, except as otherwise set forth in the Special Provisions:

(1) Workers Compensation and Employers Liability Insurance. The Contractor shall maintain workers compensation and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability and/or commercial excess limits shall be not less than \$1,000,000 each accident. Such policies shall include a waiver of subrogation in favor of the City.

(2) Commercial General and Excess Liability Insurance.

(A) Contractor shall maintain commercial general liability (CGL) insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and not less than \$2,000,000 products-completed operations aggregate limit. CGL insurance shall be written on ISO occurrence form, CG 00 01 (or a substitute form providing equivalent coverage), and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, explosion, collapse and underground property damage (XCU) and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Such insurance shall include Contractors protective professional liability, using ISO forms CG 22 79 or CG 22 80 or equivalent. The City shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent), and under the commercial excess, if any. The City's Design Engineers, Architects and/or Surveyors, and Construction Manager shall be included as additional insureds, using ISO additional insured endorsement CG 20 32 (or equivalent).

(B) Continuing Completed Operations Liability Insurance: Contractor shall maintain products and completed operations insurance with limits of not less than \$2,000,000 each occurrence for at least one (1) year following final acceptance of the work, or for such other period as specified in the Special Provisions. Such continuing insurance shall be written on ISO occurrence form CG 00 01 10 93 (or equivalent form) and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract. Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit. The City shall be included as an additional insured.

(3) Auto Liability Insurance. Contractor shall maintain auto liability (including no-fault coverage) insurance, either comprehensive or business automobile form, with limits of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used in the performance of this contract. Such auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, or CA 00 20, with appropriate Hawaii endorsements, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

(4) Umbrella Liability Insurance. Contractor shall provide Umbrella liability insurance, including

coverages in paragraphs (1), (2) and (3) above, with limits of not less than FIVE MILLION (\$5,000,000) per occurrence. The City shall be included as an additional insured under such policy or policies.

(5) Professional Liability Insurance. Contractor shall provide professional liability insurance, covering the Contractor, any design professionals hired by Contractor, and or any subcontractors, and their respective employees and agents for liability arising out of errors, omissions, or negligence in the performance of professional services provided in connection with this Project.. Limits shall be not less than \$1,000,000 per claim. Such insurance shall remain in full force and effect continuously for the period of design and construction of the work, and for an additional one (1) year period following Substantial Completion of Work set forth in the Contract.

(6) Contractor's Pollution Liability. Contractor will purchase a policy, with limits of not less than \$2,000,000, covering third party injury and property damage claims including mold, cleanup costs, as a result of pollution conditions arising from Contractor's operations or completed operations, performed by or on behalf of Contractor. Completed operations coverage will remain in effect for not less than 1 year after Substantial Completion of the Work set forth in this Contract. Coverage will be provided by a carrier acceptable to Owner, name Owner as an additional insured, and be written on an occurrence form, including Gradual and Sudden/Accidental Pollution. If applicable, coverage will apply to liability arising out of transportation and non-owned disposal sites.

(7) Property Insurance. Contractor shall purchase and maintain in force Builder's Risk insurance in an amount equal to the full replacement cost of the work, or the contract sum including any subsequent modifications thereto, whichever is greater, with deductible amounts as the City may approve. Such property insurance shall be maintained in effect as required in the Contract documents. This insurance shall name as insured the City, the Contractor, and all subcontractors in the work. The City shall be included as Loss Payee on all required policies except coverage specified in subparagraph (D) below.

(A) Builder's Risk Insurance shall be on a "Special Form" policy form, covering all risks of physical loss or damage, including the perils of fire and extended coverage, including theft, vandalism, malicious mischief, collapse, explosion and underground ("XCU") perils, debris removal, and demolition occasioned by enforcement of any applicable legal requirements, and shall include coverage for reasonable compensation for architects' services and other expenses made necessary due to an insured loss. Coverage shall also be provided, as needed, for earthquake, flood and named storms. Builder's Risk insurance shall cover loss or damage to covered property, which shall include structures or buildings, and all fixtures, materials, supplies, machinery and equipment to be used in or incidental to the work, scaffolding, falsework, fences and temporary buildings located on the site, portions of the work located away from the site but intended to be used in the site, and portions of the work in transit, and Valuable Papers and Records and all documentation produced or used in connection with the Project (with sublimits of not less than \$1,000,000, providing coverage against "Special Form" perils).

(B) Site work: Property insurance is not required for loss or damage to site work, defined as

new underground works, sidewalks, paving, excavation or site preparation and landscaping. Contractor is responsible for loss or damage to such site work, as defined, until final acceptance and it is the Contractor's sole option to insure or self-insure this risk.

(C) Boiler and Machinery Insurance: The Contractor shall purchase and maintain Boiler and Machinery insurance if required by the contract documents or by law, covering insured objects during installation and testing and until final acceptance.

(D) Contractor's Equipment: All Risk Equipment Insurance covering all risk of physical damage to equipment provided for use at the Project site by the Contractor, whether owned, leased, rented, borrowed or used at the Project site. Contractor agrees to waive and does hereby waive its rights of recovery against Owner, its elected or appointed officials representatives, employees and agents or its Construction Manager as to any damage or loss which may occur to its equipment to the extent covered by insurance. Contractor will have the insurance company specifically agree to this waiver. If uninsured, Contractor will hold harmless Owner, its elected or appointed officials representatives, employees and agents or its Construction Manager for loss or damage to its tools and equipment. Contractor shall be responsible for any and all loss or damage to Contractor's equipment, tools and other personal property.

(b) Partial occupancy or use of the work shall not commence until the insurance company or companies providing insurance as required have consented to such partial occupancy or use. Contractor shall take reasonable steps to obtain consent of the insurer(s) and Contractor and City agree to take no action, other than upon mutual written consent, with respect to occupancy for use of the work that could lead to cancellation, lapse, or reduction of insurance.

(c) General Conditions. General conditions applicable to all insurance herein required, unless otherwise specified above:

(1) As used herein, City shall mean the City and County of Honolulu, its elected and appointed officials, employees, agents, volunteers and Construction Manager (if any).

(2) Except for Professional Liability insurance required in Section 3.1(a)(4) above, Contractor waives all rights against the City for recovery of damages to the extent such damages are covered by the insurance required herein.

(3) All insurance required herein shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City.

(4) Subcontractors Insurance. Contractor shall either:

(A) Include all subcontractors as insureds under all insurance set forth in Section 3.1(a), above; OR

(B) Cause each subcontractor employed by Contractor to purchase and maintain in insurance of the types specified above on the same terms set forth above. Contractor shall obtain and maintain evidence of subcontractors' insurance, and if requested by City, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

(5) Cross-Liability coverage. If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

(6) The Contractor is responsible for paying any portion of any loss not covered because of the operation of any deductible applicable to the insurance required herein. If the City is damaged by the failure of the contractor to maintain insurance as required in this paragraph, then the Contractor shall bear all reasonable costs properly attributable to that failure.

(7) Evidence of Insurance.

(A) Upon execution of the contract by Contractor, Contractor shall furnish City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with insurance requirements set forth in paragraphs 3.1(a) above.

(B) With respect to continuing insurance as required under section 3.1(a)(2)(B) and 3.1(a)(4) above, Contractor shall provide certificate(s) of insurance evidencing such coverage at the time of final payment, and thereafter whenever requested by the City.

(C) If the Contractor has any self-insured retentions (SIR's) or deductibles under any of the required coverages, the Contractor must identify on the certificate of insurance the nature and amount of such self-insured retentions and deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions will be the Contractor's sole responsibility.

(D) All certificates shall provide for 30 days written notice to City prior to the cancellation or material change of any insurance referred to therein.

(E) Contractor shall provide certified copies of all insurance policies required above within 10 days of the City's written request for said copies.

(F) Failure of the City to demand such certificate or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligations to maintain such insurance.

(8) Failure to Maintain Required Insurance

(A) Failure to maintain the required insurance may result in termination of this contract at City's option.

(B) The City shall have the right, but not the obligation, of prohibiting Contractor or any of its subcontractors from entering the project site until Contractor has provided certificates or other evidence that insurance has been placed in complete compliance with these requirements and such certificates have been approved by the City.

(C) If the Contractor fails to maintain the insurance as set forth herein, the City shall have the right, but not the obligation, to purchase said insurance at Contractor's expense.

(9) No representation of coverage adequacy. By requiring insurance herein, the City does not represent that coverage and limits will necessarily be adequate to protect Contract, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the City under this contract.

(10) The City reserves the right to require additional insurance policies, additional or increased limits of coverage in existing policies and additional endorsements, including without limitation, project-specific liability insurance. Such additional insurance shall be in such amounts, on such policy forms and with such carriers as City may reasonably require.

3.2 Payment guarantee. The Contractor guarantees the payment of all just claims for materials, supplies, tools, labor and other just claims against the Contractor or any subcontractor in connection with this Contract, and shall deliver the project free and clear of any liens or potential lien applications, whether filed or unfilled. Contractor's bond, if required, will not be released by final acceptance and payment by the City unless all such claims are paid or released, or so much of the monies due or to become due the Contractor under the contract as shall be considered necessary by the Contracting Officer upon recommendation by the Officer-in-Charge may be retained by the City. Should any suit or claim be filed against the Contractor, the City upon consultation with its Corporation Counsel may retain, from any monies due to the Contractor, such amount or amounts as may be deemed necessary by the City until such suits or claims have been finally settled and determined and upon satisfactory evidence of such settlement of such suits or claims the money retained shall be paid to the Contractor.

3.3 Bid security, performance and payment bonds.

(a) Bid security required.

(1) In accordance with HAR 3-122-223, bid security shall be required with the submitted proposal when the price proposed is \$25,000 or more and shall be in an amount equal to or at least five per cent (5%) of the total proposed amount.

(2) If an offeror fails to accompany its proposal with the bid security, the proposal shall be deemed nonresponsive in accordance with the definition of "responsive offeror," except as provided in subsection (3) below. [HAR 3-122-223]

(3) If a proposal does not comply with the security requirements of this section, the proposal shall be rejected as nonresponsive, unless the failure to comply is determined by the Contracting Officer to be nonsubstantial where:

(A) Only one proposal is received, and there is not sufficient time to re-solicit the contract;

(B) The amount of the bid security submitted, though less than the amount required by the request for proposal, is equal to or greater than the difference in the price stated in the next acceptable proposal plus an amount to cover administrative costs and expenses including the cost of re-soliciting the project, resulting from the failure of the bonded offeror to enter into a contract; or

(C) The bid security becomes inadequate as a result of the correction of a mistake in the proposal or modification to the proposal in accordance with HAR 3-122-31, if the offeror increases the amount of security to required limits within the time specified by the Contracting Officer. [HAR 3-122-223]

(4) Bid deposits of offerors shall be retained until execution of a contract and deposit of the proper performance and payment bonds by the successful contractor, after which time the bid deposits of the remaining offerors shall be returned.

(b) Contract performance and payment bonds. Performance and payment bonds shall be required when the price of the contract is \$25,000 or more and each shall be in an amount equal to one hundred per cent (100%) of the amount of the contract price. The performance and payment bonds shall be delivered by the Contractor to the City at the same time the contract is executed. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's award shall be canceled, the Contractor shall be subject to a claim for all resulting damages, its bid security enforced, and the Contracting Officer may award the contract to the next ranked offeror in accordance with subchapter 11 of Chapter 122 of HAR. [HAR 3-122-224]

(c) Acceptable bid security, contract performance and payment bonds. Offerors and contractors shall be required to provide, at no cost to the City, bid security, contract performance and payment bonds. Acceptable bid security, contract performance and payment bonds shall be limited to:

- (1) Surety bond in the form attached to the RFP underwritten by a company licensed to issue bonds in this State;
- (2) Legal tender; or
- (3) A certificate of deposit, credit union share certificate, or cashier's, treasurer's, teller's, or official check drawn by, or a certified check accepted by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, and payable at sight or unconditionally assigned to the Director of Budget and Fiscal Services, City and County of Honolulu.

(A) These instruments may be utilized only to a maximum of \$100,000.

(B) If the required security amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be accepted.

[HAR 3-122-222]

(d) Bond forms. Failure to utilize the City's surety bid bond form (Exhibit "A") shall not relieve the offeror or contractor from liability or responsibility if it is discovered that the form utilized is not in compliance with the HAR. The Contractor shall execute the surety performance and payment bond forms provided with award of the contract (Exhibits "B" and "C"). If the offeror intends to submit other than surety bonds, the offeror may request of the agency issuing the RFP, the bond form to be submitted with security other than surety bond, or the offeror may submit the bid security or performance and payment security along with its own bond form which shall be in conformance with Exhibits "D" and "E." [HAR 3-122-228]

(e) Contracts with federal funds. In addition to the requirements of this section, whenever a contract is partially or fully funded with federal funds, the amount of the bonds shall be the amount required by the federal agency, and the surety companies shall be those listed in the latest issue of the U.S. Treasury Circular 570.

(f) Payment claims against the bond.

(1) Every person who has furnished labor or material to the Contractor for the work provided in the contract for which a payment bond or a performance and payment bond is furnished under this section, and who has not been paid amounts due before the expiration of a period of ninety days after the day on which the last of the labor was performed or material was furnished or supplied, for which a claim is made, may institute an action for the amount, or balance thereof, unpaid at the time of the institution of the action against the Contractor or Contractor and its sureties, on the payment bond and have their rights and claims adjudicated in the action, and judgment rendered thereon, subject to the City's priority on the bond.

As a condition precedent to any such suit, written notice shall be given by registered or certified mail to Contractor and surety, **within ninety days** from the date on which the person did or performed the last labor or furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed.

(2) Every suit instituted upon a payment bond shall be brought in the circuit court of the circuit in which the project is located, but no suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied for the work provided in the contract. The obligee named in the bond need not be joined as a party in any suit.

(3) If the full amount of the liability of the Contractor or the Contractor and its sureties on the security is insufficient to pay the full amount of the claims, then, after paying the full amount due the City, the remainder shall be distributed pro rata among the claimants. [HAR 3-122-227]

(4) Certified copies of bonds may be requested and obtained by any person upon payment of the costs of reproduction and certification of the bonds, and postage. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original. [HAR 3-122-228]

CHAPTER 4 - PERFORMANCE

4.1 Time is of the Essence. The parties hereto acknowledge that time is of the essence in the completion of the work and in all of the provisions of this Contract. Performance of the Contract shall commence on the commencement date designated in the Notice to Proceed and shall be completed within the number of days specified in the contract, except as modified by mutual agreement.

4.2 Commencement requirements.

(a) Notice to proceed. Upon execution of the contract by the Contracting Officer, the Officer-in-Charge may schedule a pre-work conference or issue a notice to proceed to the Contractor designating the official commencement date for performance of the contract. Unless otherwise specified in the RFP, the notice to proceed shall be issued **within 60 days** after execution of the Contract by the Director of the Department of Budget and Fiscal Services unless a later date is agreed to by mutual agreement. In the event that the notice to proceed is delayed beyond the 60 days or the time mutually agreed to, the contract amount may be adjusted in accordance with section 7.1, "Suspension of work," or the Contracting Officer may, upon recommendation by the Officer-in-Charge, terminate the contract for convenience.

(b) Commencement of work. Unless otherwise specified by the Officer-in-Charge, the Contractor shall begin work **within ten working days** from the official commencement date and shall diligently prosecute the same to completion within the contract time allowed. The Contractor shall notify the Officer-in-Charge at least **three working days before** beginning work. At any subsequent suspension and resumption of work, the Contractor shall notify the Officer-in-Charge at least **twenty-four hours before** beginning actual operations.

Unless otherwise specified in the contract or in any written order, the Contractor shall not proceed with any part of the Contract, such as ordering of any equipment or materials, or performing any work prior to the official commencement date.

Unless otherwise provided for in these provisions or in the RFP, the requirements in this section shall be considered incidental to the Contractor's performance of the Contract.

(c) Submittals.

(1) The Contractor shall screen, stamp and sign all submittals before submitting them to the Officer-in-Charge for acceptance in writing. Submittals shall be identified by project title and

appropriate specification section numbers or construction plan sheet numbers or both, and shall indicate all data necessary for evaluation. All nonapplicable data shall be blocked out and deviations from specifications shall be clearly marked and justified.

(2) If required, the Contractor shall submit six prints of working or shop drawings to the Officer-in-Charge for acceptance as to the method of construction and design prior to the commencement of the work under Contract or the delivery to the project site of any equipment or material covered by the drawings, whichever is later. The Officer-in-Charge may require the drawings to be resubmitted as often as necessary to render them complete, legible and free from extensive corrections. If a resubmittal is required, the Officer-in-Charge shall return one print to the Contractor who shall make all the corrections or additions shown thereon. The Contractor shall then resubmit six prints of the corrected drawings for written acceptance by the Officer-in-Charge.

(3) No working or shop drawings that have been approved shall be changed without the written approval of the Officer-in-Charge. After acceptance, the Contractor may proceed with the parts of the project called for in such drawings.

(4) The Contractor shall submit for the acceptance of the Officer-in-Charge, other submittals as required by the contract.

(d) Payment and performance schedules. **Within seven days** of the official commencement date or within such further time as the Officer-in-Charge may allow, the Contractor shall submit for acceptance in writing of the Officer-in-Charge:

(1) In addition to the schedule provided in the Final Proposal, a detailed performance schedule of the critical path method (CPM) type or approved equal, in the form of a network diagram and activity listing, unless otherwise specified in the specifications. The schedule shall show in sufficient detail and in orderly sequence all activities, their description, duration, relationship and dependencies necessary to the completion of the contract. It shall contain, but not be limited to, the sequence of all operations including procurement and mobilization of equipment, plant and materials to complete the work within the contract period. If the schedule is not accepted, it shall be revised as directed by the Officer-in-Charge. Changes in the schedule shall be made only with the written acceptance of the Officer-in-Charge. The schedule shall be used as a basis for establishing major construction operations and as a check on the progress of the work performed under the contract. Claims by the Contractor for delays including related time extensions may be considered only if the initial performance schedule has been accepted by the Officer-in-Charge.

Within seven days after receipt of recommended revisions to the performance schedule, the Contractor shall submit a revised schedule to the Officer-in-Charge for acceptance. Progress payments will be withheld until final approval of the schedule. At all times the schedule shall represent the Contractor's plan for orderly completion of the work. Any changes to the schedule shall require the written acceptance of the Officer-in-Charge. The Contractor shall update the schedule within 15 days of acceptance of any change to the schedule or deviation of 30 days between the Contractor's performance and the accepted schedule.

(2) The Contractor's work week schedule, in days and hours that the Contractor intends to work. Changes to the schedule shall not be made without written acceptance by the Officer-in-Charge.

(3) Payment schedule. Together with the performance schedule, the Contractor shall submit for the Officer-in-Charge's acceptance, an estimated payment schedule which coincides with the performance schedule. The schedule shall include an itemized breakdown of lump sum items. The schedule shall list the anticipated monthly payment and shall be used by the City for project budgeting purposes. Revised payment schedules shall be submitted for acceptance by the Officer-in-Charge immediately on acceptance of revised performance schedules.

(e) Personal supervision. The Contractor, at all times, shall be present in person, or be represented by the Contractor's superintendent with authority to act for the Contractor in connection with the contract during the performance of the contract. The Contractor shall submit to the Officer-in-Charge prior to start of work, the name of the person charged with the responsibility of all work. Pursuant to section 7.1, "Suspension of work," failure of the Contractor or its superintendent to be present at the job site may result in suspension of the work by the Officer-in-Charge.

The Contractor shall be available upon reasonable demand to discuss the progress of the services being performed under the Contract. The Contractor shall also remain available through any applicable alternative means of contact, such as pager or cellular phone, in the event of an emergency or other event that necessitates immediate communication with the Contractor. All questions arising during the performance of the Contract which must be resolved by the Officer-in-Charge shall be brought to the Officer-in-Charge's immediate attention. [added from?]

(f) Contractor's place of business. The Contractor shall maintain, for the duration of the Contract, a permanent place of business within the State where the Contractor may be served notice and legal process. Written notice may also be served on the Contractor or its superintendent on the project site personally, or via facsimile machine if the Contractor has one, or via mail to the local post office address or post office box. [HRS 444-14]

(g) Field office, field telephone.

(1) Field office. If required in the RFP the Contractor shall provide a field office for the Officer-in-Charge at a location approved by the Officer-in-Charge. It shall be available **within seven days after** the commencement of the work under the Contract. Unless otherwise specified in the RFP, the field office shall be weatherproof and not less than one hundred twenty square feet in gross floor area. The aggregate window areas of the office shall not be less than ten per cent of the floor area, and one exterior door shall be provided with a keyed cylinder-type lock. The office shall be furnished with one drafting table having a dimension of not less than 3' x 6' and a stool, adequate plan racks and hangers, one desk, two chairs, shelves, a broom, telephone service, electric outlets, electric lighting, paper towels, paper cups, soap, toilet paper, and potable water and shall be maintained in good repair and in a clean and sanitary condition by the Contractor. If the office is not equipped with a water closet and lavatory, the Contractor shall make other arrangements to provide such facilities for the Officer-in-Charge. The Contractor shall comply with the requirements of the Land Use Ordinance of the City and County of Honolulu, relating to Special Permit Use and ADAAG. Payment for the field office shall be as specified in the RFP.

(2) Field telephone. If required in the RFP, the Contractor shall provide a field telephone for the Officer-in-Charge. Such field telephone shall be placed at a convenient and accessible location and housed in a box provided with a door which may be secured by a keyed cylinder-type lock. Payment for field telephone shall be as specified in the RFP.

(3) The field office, equipment, and telephone shall be maintained in good repair and in a clean and sanitary condition by the contractor until final payment or an earlier date as determined by the Officer-in-Charge. The ownership of the field office, equipment, and telephone shall remain with the contractor and shall be removed when instructed by the Officer-in-Charge.

(h) Sanitation facilities. Sanitation facilities for the use of employees on the work site shall be provided and maintained by the Contractor and their exclusive use strictly enforced. These facilities shall comply with the requirements and regulations of the State Department of Health. Contractor's sanitation facilities shall be located so that it will be as inconspicuous as possible to the passing motorists and the facility visitors.

In parks and other sites where there are comfort stations and/or public facilities, the Contractor will not be required to provide sanitation facilities for use by its employees; however, the Contractor shall be responsible to keep the City facilities used by its employees clean and respectable.

(i) Project sign. If required in the RFP, the Contractor shall submit to the City for approval shop drawings of signs to identify the project. Upon approval, the signs shall be erected at locations approved by the Officer-in-Charge at the site of the project **upon commencement** of the work under the contract. Signs shall be properly erected and kept clean and legible. After completion of the work under the contract and final acceptance thereof, the Contractor shall remove the signs as the Contractor's property. Payment for the project signs will be as specified in the RFP.

(j) Permits, licenses. The Contractor shall obtain all permits and licenses, pay all charges, fees, and taxes, give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. These may include, but not be limited to, demolition permit, building permit, dumping charges, grading permit, excavation permit, traffic permit, community noise permit, City park right-of-entry permit, National Pollutant Discharge Elimination System (NPDES) permit and compliance with Rodent Control Requirements on Demolition of Structures and Clearing of Sites and Vacant Lots. All City building and grading permit fees are waived for the contract. All cost and work under this subsection shall not be paid for directly but shall be considered incidental and included in the Offeror's Proposal prices for the various items of work.

(k) Surveys and construction stakes, lines and grades. Drawings include site plan showing approximate existing and new finish elevations. Contractor shall verify all grades, lines, levels, and dimensions shown on drawings and shall report any errors or inconsistencies to the Officer-in-Charge before commencing work. Failure to do so shall make the Contractor responsible for any changes which may be required thereafter in connection therewith. The Contractor shall at his own expense furnish all stakes, templates, platforms, equipment, and labor that may be required in setting and cutting or laying out any part of the work. The Contractor will be held responsible for the proper execution of the work to such lines and grades as may be indicated by the Officer-in-Charge, and all stakes or other marks thus established shall be preserved by him until their removal is authorized by the Officer-in-Charge. The Contractor shall be responsible for laying out the project. [SP version]

The work required for construction shall be laid out and provided with grade stakes through the service of a registered land surveyor licensed in the State of Hawaii.

(l) Water removal. The Contractor shall examine the site of the project and make all necessary arrangements with affected property owners for removal of water from the site. The Contractor shall provide a bridge or other means to prevent water, flowing into adjacent streets as a result of the Contractor's activities, from interfering with the traffic on such streets. The Contractor shall be responsible for all permits which may be required for removal of water from the site, including but not limited to the National Pollutant Discharge Elimination System (NPDES) permit. All costs under this subsection shall be considered incidental and shall be included in the Offeror's proposal prices for the various items of work.

(m) Electrical and water services. Unless otherwise specified in the RFP, the Contractor shall pay for all utility service or connection charges against the Department of Design and Construction by the various public utility companies, including the Board of Water Supply and the Department of Environmental Services, and it shall be considered that the cost of the charges are included in the submitted proposal, and no extra compensation shall be paid to the Contractor thereof.

Where there are existing utilities serving the project site and upon approval from the Officer-in-Charge, the Contractor may make a temporary connection into the utility lines within the site for use during construction of this project. The Contractor shall furnish all labor, materials (including temporary meters), and equipment necessary for proper installation and the protection of existing improvements. The Contractor will be assessed a charge based on the usage indicated from the meter readings. Upon completion of the project, the Contractor shall remove all temporary installations and restore the site to the satisfaction of the Officer-in-Charge at no cost to the City. All assessed charges for temporary utility services shall be included as part of the proposal price and independent of other utility allowances.

(n) Work limitations, protective barriers, and warning signs. It may be necessary to confine the work to one area at any one time. The Contractor shall provide and maintain protective barriers, fencing, and whatever signs necessary to caution the visiting public. The cost of providing and maintaining the protective barriers and warning signs shall be considered incidental to the cost of the project and no extra compensation shall be made to the Contractor.

(o) Traffic control.

(1) The Contractor shall obtain the necessary permits from the City's Department of Transportation Services **prior to commencing operations**. The Contractor shall notify the Honolulu Police Department and the Honolulu Fire Department of the construction work in progress and the blocking of any street during construction. Warning signs of adequate size, wording, and construction shall be located and installed as directed by the City's Department of Transportation Services, and the Contractor shall abide by other directives which may be issued by the City's Department of Transportation Services to eliminate other traffic problems and hazards.

(2) Work on any City street or in any area adjacent to a City street where traffic is impeded shall be performed between the hours of 8:30 a.m. to 3:30 p.m., unless otherwise permitted by the City's Department of Transportation Services.

(3) Whenever possible, the Contractor shall maintain roadways suitable for two lanes of traffic while construction is in progress. Adequate traffic control as required by the approved permit shall be provided by the Contractor during working hours.

(4) When material excavated for substructure construction is placed adjacent to the trench or excavation, it shall be placed in such a manner as to economize space and minimize interference with traffic. If necessary, such material shall be confined by suitable bulkheads or other devices.

If the street is not of sufficient width to hold excavated material without using part of an adjacent walkway, a passageway in compliance with the requirements of the ADA shall be provided and kept open at all times.

(5) When substructure excavations cross street intersections, safe crossings for vehicles and pedestrians shall be provided and maintained. Pedestrian crossings shall be of a safe nonslip material, be separate from vehicle crossing and be provided with handrails except in areas opened for vehicular traffic.

(6) During nonworking hours, all excavations on the roadway shall be covered with a safe nonskid bridging material and all excavations in the sidewalk area shall be covered with a safe, nonslip surface.

(7) The Contractor shall provide paved detours as necessary.

(8) A roadway may be closed only with the express permission of the City's Department of Transportation Services.

(9) The Contractor shall cooperate with the Officer-in-Charge, the City's Department of Transportation Services and other authorized persons in locating all warning signs, lights, walkways and detours required under this subsection. If the Contractor fails to promptly provide adequate warning signs, lights, walkways and detours, the Officer-in-Charge may provide them at the Contractor's expense. The Contractor shall pay the cost of such work to the City, or the City may deduct the cost from any moneys due the Contractor from the City.

(10) All costs under this subsection shall be considered incidental and shall be included in the offeror's proposal prices for the various items of work.

4.3 Joint contractor; subcontractor. (a) If solicitations are issued pursuant to HRS 103D-302 or if specified in the RFP, the Contractor shall comply with HRS 103D-302, relating to the listing of joint contractors or subcontractors. [HAR 3-122-21]

(b) Specialty work. Joint contractors and subcontractors may perform only the specialty work for which they are listed.

(c) Changes. The Contracting Officer, upon recommendation by the Officer-in-Charge, or for informal bids, the Officer-in-Charge alone, may allow changes to the original listing of joint contractors and subcontractors only if justified by the Contractor for reasons such as the joint contractor or subcontractor:

(1) Files a petition in bankruptcy or is the subject of an involuntary petition in bankruptcy which is not dismissed within ten (10) days of filing;

(2) Is not performing in accordance with the subject contract;

(3) Is to perform additional work for which a joint contractor or subcontractor was not required to be listed in the proposal; or

(4) For any other reason that the Contracting Officer or the Officer-in-Charge may consider justified.

(d) Subcontractual relations. The Contractor shall be responsible under the contract for the acts and omissions of its subcontractors, suppliers, and persons either directly or indirectly employed by them, as fully as the Contractor is for acts and omissions of its own employees. Nothing in the contract shall create any contractual relation between any subcontractor or supplier and the City, or any obligation on the part of the City to pay any money to, or cause to be paid any money from any subcontractor or supplier.

4.4 Contract, plans and specifications to be kept on site. The Contractor shall keep a copy of the most current plans and specifications, contract and shop drawings on the site of the project readily accessible for reference.

4.5 Construction methods and equipment. The Contractor shall use proper and efficient methods and equipment for the performance of the contract. All equipment furnished by the Contractor and used on the work shall be of such size and of such mechanical condition that the work can be prosecuted in an acceptable manner at a satisfactory rate of progress and the quality of work produced will be satisfactory.

4.6 Access and inspection. (a) Circumstances under which the City may perform inspections include but are not limited to, inspections of the Contractor's, its subcontractor's, or supplier's plant, or site of the project in order to determine [HAR 3-122-166]:

- (1) Whether the standards set forth in section 1.2(c) of the GCDB, "City and County of Honolulu Standards and Specifications," have been met or are capable of being met;
- (2) If the contract is being performed in accordance within its terms;
- (3) Whether the goods or services are acceptable by inspection of the goods or services;
- (4) The accuracy of cost or pricing data by audit of its books and records pursuant to section 3-122-175, HAR; or
- (5) Whether or not to debar or suspend a person from consideration for award of contracts pursuant to sections 3-126-11 through 3-126-18, HAR.

(b) During the performance of the contract, the Contractor shall provide the Officer-in-Charge with proper and safe facilities for access to the site of the project and the shops of the Contractor, its subcontractors or suppliers. The Contractor, its subcontractor, or supplier shall provide without charge, all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing. Such assistance may include but not be limited to installation of hoists and ladders necessary to inspect the plant or site of project.

(c) The presence or absence of an inspector shall not result in the waiver of any requirements of the contract, nor shall any act, statement or omission by an inspector constitute or be deemed a change unless the procedure for changes is followed.

(d) Other contractors of the City shall be permitted access to the site of the project when it is required for performance of their respective contracts.

(e) Covered work

- (1) If a portion of the work is covered contrary to the request of the Officer-in-Charge or to requirements specifically expressed in the contract, it must, if required in writing by the Officer-in-Charge, be uncovered for the inspection and be replaced at the Contractor's expense without change in the contract time.
- (2) If a portion of the work has been covered which the Officer-in-Charge has not specifically requested to inspect prior to its being covered or is not expressly required by the contract to remain uncovered for inspection, the Officer-in-Charge may request to see such work and it shall be uncovered by the Contractor. If such work is in accordance with the contract, costs of uncovering and replacement shall, by appropriate change order, be charged to the City. If such work is not in accordance with the contract, the Contractor shall pay such costs unless the condition was caused by the City or a separate contractor in which event the City shall be responsible for payment of such costs.
- (3) The Contractor shall promptly correct work rejected by the Officer-in-Charge or failing to conform to the requirements of the contract, whether or not fabricated, installed or completed. The

Contractor shall bear all costs of correcting such rejected work, including additional testing and inspections and compensation for any consultant services and expenses incurred by the City made necessary thereby.

(4) The Contractor shall remove from the site portions of the work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

(5) If the Contractor fails to correct nonconforming work **within seven days**, or within the time specified in the written notice, the Officer-in-Charge may correct it in accordance with section 7.2, "Termination for default for nonperformance or delay; damages for delay." If the Contractor does not proceed with correction of such nonconforming work within the time fixed by written notice from the Officer-in-Charge, the City may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay the costs of such removal and storage **within ten days after** written notice, the City may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the any consultant services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the contract shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

(6) The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or other contractors caused by the Contractor's correction or removal of work which is not in accordance with the requirements of the contract.

(7) Nothing contained in this subsection shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the contract. Establishment of the time period of one year as described in section 4.27, "Guarantee," relates only to the specific obligation of the Contractor to correct work, and has no relationship to the time within which the obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct work.

4.7 Quality of materials and equipment. (a) Materials and equipment installed as part of any permanent construction shall be new, unless otherwise specified. The contract contemplates the use of first-class materials and equipment throughout the performance of the contract, and it is agreed that any material for which no particular specification is given shall be of the highest quality of its class or kind. For the purpose of this subsection, "new" shall mean purchased specifically for the project for which award was made.

(b) Samples. Whenever requested by the Officer-in-Charge, the Contractor shall furnish samples of materials to be used in the performance of the contract. Said samples, if accepted, will be retained by the Officer-in-Charge and shall be used as the standard with which all like materials furnished under the contract must conform. The acceptance of any sample tested by the Officer-in-Charge or the failure of the Officer-in-Charge to require the furnishing of samples shall not relieve the Contractor from performing the work in accordance with the contract.

(c) Samples and test specimens. When required by the Officer-in-Charge, test specimens or samples of materials, appliances and fittings to be used or offered for use in the performance of the contract shall be prepared and furnished by the Contractor in such quantities and sizes as may be required for proper

examination and tests, with information as to their sources. The Contractor shall furnish additional test specimens and samples as directed. Unless otherwise specified in the RFP, samples, test specimens, and tests, shall be considered incidental to the Contractor's performance of the contract.

(1) Test specimens and samples shall be submitted in ample time to enable the Officer-in-Charge to make such tests or examinations as may be necessary. Laboratory tests and examinations made in a laboratory other than that of the City shall be at the expense of the Contractor.

(2) Tests. Tests specified by the contract, statute, regulation or ordinance shall be made and the costs thereof shall be borne by the Contractor unless otherwise provided for in such contract, statute, regulation or ordinance. Such tests shall be conducted under the direction of the Officer-in-Charge and the Contractor shall repair any damage resulting therefrom.

(3) In addition, the Officer-in-Charge may require such tests as deemed necessary to carry out the Officer-in-Charge's duties during the performance of the work under the contract. When a test is required by the Officer-in-Charge, the Contractor under the direction of the Officer-in-Charge shall conduct such test and shall bear all of the costs, including the cost of tools, labor and materials necessary therefor.

4.8 Character of workers, methods and equipment. The Contractor shall employ persons who possess the skill required to properly perform the work under the contract. When required by the Officer-in-Charge, whose decision shall be final, the Contractor shall replace any employee who lacks the skill to perform the work assigned to the employee or is discourteous or disorderly while performing such work. If acceptable to the Officer-in-Charge, a person who has been so replaced may be assigned other work on the project. Any such acceptance by the Officer-in-Charge shall not relieve the Contractor from performing the work in accordance with the contract.

(1) All workers must have sufficient skill and experience to perform properly the work assigned to them. All workers engaged in special work or skilled work such as bituminous courses of mixtures, concrete pavement or structures, electrical installation, plumbing installation, or in any trade shall have sufficient experience in such work and in the operation of the equipment required to properly and satisfactorily perform all work. All workers shall make due and proper effort to execute the work in the manner prescribed in the RFP.

(2) Insufficient workers. Should the Officer-in-Charge find that the work is being performed with an insufficient number of workers, the Contractor shall be required to increase the number of workers on the project.

4.9 Other contracts. The Contractor shall coordinate its operations with those of other contractors who may be employed on adjacent or related projects of the City, shall avoid interference therewith, and shall cooperate with the other contractors so as to avoid unnecessary delay or hindrance in the performance of their respective contracts. Any difference or conflict which may arise between the Contractor and the other contractors of the City in regard to their projects shall be resolved by the Officer-in-Charge, whose decision shall be final and binding.

4.10 Wages and hours. (a) Contractors shall observe and comply with all the provisions of Chapter 104, HRS, relating to wages and hours of employees on public works. The Contractor shall pay all employees on any contract with the City, the minimum basic wage rate in conformance with applicable Federal and State laws.

(b) Minimum wages. The minimum wage shall be periodically increased during the performance of the contract in an amount equal to the increase in the prevailing wages for those kinds of work as

periodically determined by the State Director of Labor and Industrial Relations. Notwithstanding the provisions of the original contract entered into, if the Director of Labor and Industrial Relations determines that the prevailing wage has increased, the rate of pay of laborers and mechanics on the contract shall be raised accordingly. No additional compensation shall be made to the Contractor for failing to consider increases of the minimum wage during the duration of the contract.

(c) Overtime work. No laborer or mechanic employed on the job site shall be permitted or required to work on a Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on a Saturday, Sunday, and a legal holiday of the State or in excess of eight hours on any other day. For purposes of determining overtime compensation under this subsection, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the Director of Labor and Industrial Relations to be the prevailing basic hourly rate for corresponding classes of laborer and mechanics on projects of similar character in the State.

(d) Certified payrolls. Two (2) certified copies of all payrolls shall be submitted weekly to the Officer-in-Charge. The Contractor shall be responsible for the submission of certified copies of the payrolls of all subcontractors and lower tiered subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the Director of Labor and Industrial Relations, and that the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. The payrolls shall contain the name of each employee, the employee's classification, rate of pay (basic rate and fringe benefits), daily and weekly number of hours worked on the project as well as hours performed on other projects, the deductions made and the actual wages paid.

(e) Maintain payroll records. Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the Contractor and its subcontractors, during the course of the work and preserved for a period of three years thereafter. The records shall contain the name of each employee, the employee's correct classification, rate of pay, daily and weekly numbers of hours worked, deductions made and actual wages paid.

(f) Availability of Payrolls. The Contractor shall make payroll records available for examination within ten (10) days from the date of a written request by a governmental agency or any authorized representative thereof. Any Contractor who: (1) fails to make payroll records accessible within ten days; (2) fails to provide information requested for the proper enforcement of this chapter within ten (10) days; or fails to keep or falsifies any record required under this chapter; shall be assessed a penalty as provided in section 104-22(b) of the HRS.

(g) Violations. If the Officer-in-Charge finds that any laborer or mechanic employed on the job site by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate, or has not received the laborer's or mechanic's full overtime compensation, the Officer-in-Charge may take appropriate action in accordance with HRS 104-21, or the Contracting Officer may, upon recommendation of the Officer-in-Charge, by written notice to the Contractor, terminate the Contractor's right, or the right of any subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such or part by contract or otherwise, and the Contractor and its sureties shall be liable to the City for any excess costs occasioned thereby.

(h) Post wage schedule. The Contractor is required to post the applicable wage schedule in a prominent and easily accessible place at the job site. The Contractor shall give to each laborer and mechanic employed under the contract a copy of the rates of wages required to be posted.

(i) Federally funded or federally assisted projects. On federally funded or federally assisted projects, the current federal wage rate determination in effect at the time of advertising the RFP is incorporated as part of the contract, and both Federal and State wage rates shall apply. Where rates for any class of laborers and mechanics differ, the higher rates shall prevail. The minimum federal wage rates shall be those in the U. S. Department of Labor Wage Determination Decision and Modifications in effect ten days prior to the bid opening date.

A copy of the wage rate determination, (including any additional classification and wage rate conformed under 29 CFR 5.5a(1)(ii)) and Davis-Bacon poster (WH-1321) shall be posted at all times at the site of work in a prominent and accessible place where it can be easily seen by the workers.

Employee Interviews. The Officer-in-Charge and the State of Hawaii Department of Labor and Industrial Relations may interview employees during working hours on the job. Failure to allow employees to be interviewed may be assess penalties described under section 104-22(b) of the HRS.

(j) Failure to comply. Failure to comply with the requirements of this section may result in disqualification from bidding or submitting proposals on future projects.

(k) Inclusion in subcontract. The Contractor shall include this section in every subcontract for work under this Contract.

4.11 Safety and health. (a) The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

(b) Safety program. The Contractor shall comply with chapter 396, HRS, relating to the standards of occupational safety and health and all applicable Federal, State and City laws and regulations, including but not limited to section 396-18, HRS, relating to safety and health programs for contractors for City construction projects where the proposal amount is in excess of \$100,000.

(c) Responsibility. The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Officer-in-Charge.

(d) Safeguards, signs. The Contractor shall erect and maintain, as required by existing conditions and performance of the contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

(e) No loading. The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

(f) Emergency. In an emergency affecting safety of persons or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. The Contractor shall notify the Officer-in-Charge in writing of such emergency and remedial steps taken as soon as reasonably feasible. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in section 6.9(c), "Price adjustment," and section 5.6, "Delay; time extensions."

4.12 Protection of pedestrians and vehicular traffic; access to property. (a) Unless otherwise specified in the RFP, the requirements in this section shall be considered incidental to the Contractor's performance of the contract.

(b) Safe passage and access to site. The Contractor shall employ such methods in the performance of the contract and provide such barriers, guards, temporary bridges, detours, notices, lights, warnings, and other safeguards as may be necessary to prevent injury to persons and property, and to provide safe access to property. The Contractor shall define the line of safe passage with suitable lights, wherever the public may have access to the site of the project, during the hours from one-half hour before sunset to one-half hour after sunrise. All passages and accesses shall be in conformance with the Americans with Disabilities Act and related regulations and guidelines. All traffic controls shall conform to the requirements of the Administrative Rules of Hawaii Governing the Use of Traffic Control Devices at Work Sites On or Adjacent to Public Streets and Highways adopted by the City Director of Transportation Services, Manual of Uniform Traffic Control Devices, U.S. Department of Transportation, Federal Highway Administration, and the current Traffic Code of the City.

(c) Traffic bridges. The Contractor shall provide proper traffic bridges where necessary so that all streets, roads, lanes, alleys, driveways, and garages will be accessible to traffic at all times. These bridges shall be constructed so that their decks are flush with the pavement, and maintained free from projecting nails, splinters, or rough edges. In lieu of the traffic bridges, the Contractor may use suitable steel plates. The bridges or steel plates shall be able to support all legal highway loads permitted by law and shall have a non-skid surface. Any steel plate edges shall be in conformance with accessibility requirements pursuant to the Americans with Disabilities Act and related regulations and guidelines.

(d) Public and private right-of-way. The Contractor shall provide safe access to property abutting the site of the project when the usual means of access are obstructed by the performance of the contract. The Contractor shall provide free access to water meters, water valves, and abutting public and private property. No material or obstruction of any sort shall be placed within twenty-five feet of any fire hydrant. Fire hydrants must be readily accessible to the fire department at all times. Special attention is called to private and public rights-of-way. Driveways shall be kept open unless the owners of the property using these rights-of-way are otherwise provided for satisfactorily. During the construction of driveways and driveway ramps, satisfactory access shall be provided by the Contractor for each driveway and driveway ramp. The accesses provided by Contractor shall conform with any and all accessibility requirements pursuant to the Americans with Disabilities Act and related regulations and guidelines.

4.13 Discovery of hazardous materials. (a) Responsibility. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the contract.

(b) Stop work. In the event the Contractor encounters on the site material or substances reasonably believed to be hazardous materials which have not been rendered harmless, the Contractor shall

immediately stop work in the area affected and report the condition to the Officer-in-Charge in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the City and the Contractor if in fact the material is a hazardous material and has not been rendered harmless. The work in the affected area shall be resumed in the absence of any hazardous materials, or when it has been rendered harmless.

(c) Notice. The Contractor shall give any notices bearing on safety of persons or property or their protection from damage, injury or loss and any other required notices or reports and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities .

(d) Safeguards, signs. The Contractor shall erect and maintain, as required by existing conditions and performance of the contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent site and utilities.

4.14 Environmental pollution and hazardous materials control. (a) Environmental pollution prevention and hazardous materials control shall consist of the protection of humans and the environment from pollution during and as a result of construction operations under the contract. The control of environmental pollution and hazardous materials requires the consideration of air, water and land and involves noise, dust, and solid waste management as well as other pollutants. It is the responsibility of the Contractor to investigate and comply with all applicable hazardous materials laws, including but not limited to those relating to control and abatement. Unless otherwise specified in the RFP, the requirements in this section shall be considered incidental to and part of the Contractor's performance of the contract.

(b) Explosives, hazardous materials. When use or storage of explosives or hazardous materials or equipment or unusual methods are necessary to perform work, before doing so, the Contractor shall notify the Officer-in-Charge in writing of the nature of the hazardous material, its intended use, intended duration of its presence on the premises and method of maintenance on the premises. The Contractor shall exercise utmost care in maintaining and using the explosive or hazardous material and carry on such activities under supervision of properly qualified personnel.

(c) Protection of land resources. Land resources within the project area and outside the limits of permanent work performed under the contract shall be preserved in their present condition or be restored to a natural condition that will not detract from the appearance of the surrounding area. Except in areas marked on the drawings to be cleared, the Contractor shall maintain and water trees in the construction area. Except in areas marked on the drawings to be cleared, the Contractor shall not deface, injure or destroy trees or shrubs nor remove or cut them without approval. Any tree or other landscape features scarred or damaged by the Contractor's equipment or operations shall be restored as nearly as possible to its original condition at the Contractor's expense.

(d) Water pollution. The Contractor shall comply with the provisions of Chapter 54, Water Quality Standards and Chapter 55, Water Pollution Control, of Title 11, Administrative Rules of the State Department of Health during all phases of work. The Contractor shall not pollute water resources including streams and drainage systems with fuel, oils, bituminous materials, calcium chloride, acids, construction wastes, wash waters, or other harmful materials. Surface drainage from cuts and fills whether or not completed and from borrow and waste disposal areas shall, if turbidity producing materials are present, be held in suitable sedimentation ponds or shall be graded to control erosion to meet acceptable

limits. Objectionable construction discharges shall be processed, filtered, ponded or otherwise treated prior to their discharge into a waterway or drainage system. Disposal of any material, garbage, oil, grease, chemicals, trash, and other similar materials on areas adjacent to streams or drainage systems shall be subject to the acceptance of the Officer-in-Charge. Such acceptance shall not relieve the Contractor from obtaining permits and meeting any requirements under applicable statutes, ordinances, rules, regulations or guidelines.

(e) Protection of fish and wildlife. The Contractor shall at all times perform all work in such a manner as to prevent any interference or disturbance to fish and wildlife.

(f) Dust control. The Contractor shall maintain all excavation, embankment, stockpile and all other work within or adjoining the project site free from dust which would cause a hazard or nuisance. Sprinkling, chemical treatment, bituminous treatment, or similar methods will be permitted to control dust upon acceptance by the Officer-in-Charge. Sprinkling must be repeated at such intervals as to keep all pavements and disturbed areas at least damp enough to prevent dust nuisance at all times, and the Contractor shall have sufficient sprinkling equipment on the job. Wet cutting shall be required for cement masonry blocks, concrete and asphaltic concrete pavements unless attachments are used with dry cutting equipment to capture the dust created thereby. All grinding work shall be wet. No dry powder brooming will be permitted in unconfined areas--vacuuming, wet mopping, wet sweeping, or wet power brooming may be used upon acceptance by the Officer-in-Charge.

(g) Damages and loss. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the contract) to property caused in whole or in part by the Contractor, a subcontractor at any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under this section, except damage or loss attributable to acts or omissions of the City or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under section 2.14.

(h) Non-compliance. The Officer-in-Charge will notify the Contractor of any non-compliance with the foregoing provisions and the action to be taken. If the Contractor fails or refuses to comply promptly, the Officer-in-Charge, with the approval of the Contracting Officer, may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No extension of time or payment for excess costs or damages shall be made for the time lost due to such stop action. The cost of environmental pollution control shall not be paid for directly, but shall be considered incidental and included in the proposal prices for the various items of work.

4.15 Noise control. (a) The Contractor shall comply with the provisions of Chapter 43, Community Noise Control for Oahu, of the State Department of Health, Administrative Rules. When required, the Contractor shall obtain a community noise permit.

(b) Construction activities shall not create "excessive noise" when measured at or beyond the property line of the construction site for the hours before 7:00 am and after 6:00 p.m. of the same day.

(c) Construction activities which emit noise in excess of 95 dBA at or beyond the property line of the construction site shall be restricted to the hours between 9:00 a.m. and 5:30 p.m. of the same day.

(d) Construction activities which exceed 95 dBA at or beyond the property line of the construction site shall be prohibited on Saturdays.

(e) Construction activities which exceed the "allowable noise levels" at or beyond the property line of the construction site shall be prohibited on Sundays and on all holidays observed by the City.

(f) The costs and work covered by this section shall not be paid for directly, but shall be considered incidental and included in the proposal prices for the various items of work.

4.16 Rubbish disposal. All unusable debris and waste materials shall be hauled away to an appropriate off-site dump area. However, with prior approval of the State Department of Health, burning may be permitted.

4.17 Restoration and precautions. (a) The Contractor shall protect property adjacent to the site of the project from damage and shall immediately restore property damaged by the Contractor to the condition it was in prior to the damage. Unless otherwise specified in the RFP, the requirements in this section shall be considered incidental to the Contractor's performance of the contract.

(b) **Buildings and other structures.** If the site of the project passes close to or under buildings and other structures, the Contractor shall protect all such buildings and structures by suitable means from any and all damages.

(c) **Dewatering.**

(1) The Contractor shall be responsible for the water and its control and disposal during the construction of all work covered by the contract. Dewatering shall be accomplished by suitable means. The Contractor shall repair any and all damages to property including buildings, retaining walls, etc., resulting from such dewatering operation to the satisfaction of the owners of such property. Dewatering shall be prohibited in areas subject to substantial damages to adjacent buildings and properties resulting from settlement due to dewatering.

(2) All concrete pours shall be dewatered in accordance with applicable sections of the standard specifications.

(3) The Contractor shall construct and maintain all cofferdams, drains, sumps, temporary diversions and protective works; and shall furnish, install, maintain and operate all necessary pumping and other equipment for dewatering the various parts of the work, regardless of the source of water. The Contractor shall maintain a water-free foundation to properly perform the items of work. The Contractor shall maintain the work free from water for at least six hours following the placement of each unit of concrete, concrete unit masonry or concrete rubble masonry. All temporary protective works shall be removed in a manner satisfactory to the Officer-in-Charge.

(d) **Pavement, curb and gutter.** The Contractor shall replace, restore and repair pavements, gutters, and curbs damaged or removed by the Contractor.

(e) **Fences.** The Contractor shall replace fences removed by the Contractor. Precautions shall be taken to prevent livestock from escaping when fences enclosing them are removed.

(f) Grass. When lawns are disturbed by trenching, the area over the trench shall be carefully graded and replanted with similar grass spaced over the trench substantially similar to the condition it was in prior to the excavation.

(g) Trees and shrubbery. Trees and shrubbery which must be disturbed shall be transplanted under the direction of the owner or lessee of the property to some other site and, upon completion of the backfill, shall be replanted on the original site, to the satisfaction of the said owner or lessee.

(h) Property marks. The Contractor shall reference and replace marks, stakes, pipes, monuments of the property line, and similar objects which may be disturbed by the Contractor while performing the contract. Any such replacements shall be certified by a surveyor licensed by the State of Hawaii.

(i) Sidewalks, patios, driveways and other like concrete construction. When trenches are to be made across concrete sidewalks, patios, driveways, and other like concrete construction, the Contractor shall make neat cuts in the concrete with pavement saws, or other means acceptable to the Officer-in-Charge, and shall thoroughly compact the backfill and reconstruct such construction with concrete similar to the existing construction.

(j) Topsoil. Where private land under cultivation is disturbed, the Contractor shall place the upper twelve inches of topsoil to one side, which shall not be mixed with the general excavated material. After backfill has been made to within twelve inches of the surface, the topsoil shall be replaced.

(k) Excavated material. Unless other specified, all excavated material shall become the property of the Contractor and shall be hauled from the jobsite to a disposal site acceptable to the Officer-in-Charge. Hauling of wet, dripping material over public streets is not permitted.

(l) Walls, rock, and masonry. The Contractor shall replace rock and masonry walls removed by the Contractor.

(m) After the construction, the Contractor shall restore the premises used for its operations to its original condition.

(n) The cost of the work under this section shall not be paid for directly, but shall be considered incidental and included in the proposal prices for the various times of work.

4.18 Historical and archaeological finds. All items having any apparent historical or archaeological interest discovered in the course of construction activities shall be preserved. The Contractor shall leave the archaeological find undisturbed and immediately report the find to the Officer-in-Charge so that the proper authorities may be notified.

4.19 Surface and subsurface conditions.

(a) City representations. Where investigation of subsurface conditions has been made by the City in respect to foundation or other design, the Contractor may inspect the records of the City as to such investigation and examine any sample that may be available. Where such information is shown in the plans, said information represents only the statement by the City as to the character of material which has

been actually encountered by the City in its investigation and is included only for the convenience of Contractor and other offerors.

Any subsurface information or hydrographic survey data furnished are for the Contractor and other offerors' convenience only. The information and data furnished are the product of the Officer-in-Charge's interpretation of the facts gathered in investigations made at the specific locations indicated to aid in the design of the project, and the City assumes no responsibility whatever in respect to the sufficiency or accuracy of borings or of the log of test borings or other preliminary investigations, or of the interpretation thereof, and there is no guaranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work. In addition, no assurance is given that conditions found at the time of the subsurface explorations, such as the presence or absence of water, will be the conditions that prevail at the time of construction. The Contractor shall be solely responsible for all assumptions, deductions, or conclusions the Contractor may make or derive from the subsurface information or data furnished.

Making information concerning subsurface conditions available to Contractor and other offerors is not to be construed in any way as a waiver of the Contractor's responsibility to examine the RFP and site. Contractor must satisfy itself through its own investigation as to conditions to be encountered.

(b) Differing site conditions. Unless the parties agree to include HAR Section 3-125-11(1) in the Special Provisions in lieu of this section, the Contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the Contract can and will be performed under such conditions, and that all materials, equipment, labor, and other facilities required because of any unforeseen surface or subsurface conditions (physical or otherwise) shall be wholly at the contractor's own cost and expense, anything in this Contract to the contrary notwithstanding. [HAR 3-125-11(2)]

(c) The Contractor is alerted to its encountering obstacles whether shown on the plans or not, or which may differ in location from that shown on the plans which may interfere with his normal method of operations. The Contractor shall take into account any additional costs anticipated due to these conditions and shall have these costs included in the RFP items which it feels most appropriate. No separate additional compensation shall be made.

4.20 Utilities, underground.

(a) The Contractor shall be responsible for the protection of existing surface and subsurface utilities and facilities within and abutting the project site that the Contractor encounters during the progress of the work, such as telephone system, electric system, water system, sewer system, drainage system, and irrigation system, etc., whether or not shown on the plans. Such utilities and facilities shall not be disturbed or damaged unless otherwise instructed in the plans and specifications. The Contractor shall notify the Officer-in-Charge of the affected utility and/or facility immediately of any damage or disturbance to the utility and/or facility.

(b) The existing surface and subsurface utilities and facilities shown on the plans are approximate in their locations. The Contractor shall be fully responsible for any and all damages, injuries, death and expenses to property and persons from accidents to and from existing utilities and facilities under the following conditions:

- (1) Utilities were show on the plan;
- (2) Utilities were located and exposed on the job as it progressed;
- (3) Utilities were pointed out to the Contractor in the field;
- (4) The utilities' actual locations are within five feet of the centerline of the utility or facility as shown on the plan;
- (5) The Contractor should have been made aware of through the Contractor's diligent personal investigation and inspection of records and drawings of owners of the utilities, supplemented by probing, actual digging, or by other means in the field if necessary, to have determined the actual locations of utilities with all their branch and services;
- (6) The Contractor's failure to exercise reasonable care in the performance of the work, whether or not shown on the plans.

The Contractor shall immediately notify the Officer-in-Charge of any disturbance or damage to utility. The Contractor shall repair, restore or reconstruct at its cost any damage to the disturbed utilities and facilities to the pre-existing condition. Any damage claims due to the disruption of service caused by the utilities being damaged shall be paid by the Contractor, who shall save harmless the City from all suits, actions or claims of any character brought on account of such action.

(c) Should existing utilities and facilities not shown on the plans, not pointed out to the Contractor in the field, not located or exposed on the job as the work progressed, or not discovered through the Contractor's investigation and inspection of records and drawing of owners of the utilities, supplemented by probing, actual digging, or by other means in the field if necessary, be encountered during the performance of the work, the Contractor shall promptly notify the Officer-in-Charge for instruction. Failure to do so will constitute acceptance of the site conditions and the Contractor assumes responsibility for any and all damages arising from its operations. Upon notification of the encounter with unanticipated utilities, the Officer-in-Charge may instruct the Contractor to relocate or adjust the existing utilities or facilities which shall be considered additional work as covered by Chapter 5 of this Contract, "Modifications; change orders." Utilities which must be relocated due to construction and not so indicated in the Contract shall be considered additional work.

(d) Damage to sewer facility. The Contractor shall notify the Officer-in-Charge and the Department of Environmental Services Collection and Maintenance Division immediately whenever a sewer facility is damaged. All Contractor-related damages which are knowingly not reported immediately to Collection and Maintenance Branch, and results in sewer backups, spills, and overflow, shall be billed for the actual cost of the clean-up by the City. Any subsequent fines, imposed upon the City by the Environmental Protection Agency (EPA) and/or State Department of Health will be backcharged to the Contractor.

4.21 Materials and equipment. The City does not assume any responsibility for the availability of any materials or equipment required under this contract. Unless otherwise specified in the RFP, the offeror shall be considered as having taken into account when submitting a proposal the availability of materials or equipment required under the contract, except as provided for in section 5.6, "Delay; time extensions."

4.22 Maintenance of site and final cleanup. (a) The requirements in this section shall be considered incidental to the Contractor's performance of the contract.

(b) Maintenance of site. The Contractor shall maintain the site of the project in an orderly and clean condition, and shall at suitable intervals and upon completion of each phase of the project, remove

accumulations of rubbish or refuse materials, surplus concrete, mortar and excavated materials not required or suitable for backfill. Washings from concrete mixers or mixing boxes shall not be deposited in the drainage or sewer system of the City or on paved streets. The Contractor shall keep the project and surrounding area neat and free of dirt and dust by periodic blading, power brooming, watering or other approved means.

(c) Surplus excavated material. All surplus excavated materials from the project shall become the property of the Contractor unless otherwise specified. Excess material, debris, adobe and unacceptable material shall be hauled away. The cost of the work under this section shall be considered incidental and included in the proposal prices for the various items of work.

(d) Removal. Upon completion and before final acceptance by the Officer-in-Charge of the work performed under the contract, the Contractor shall remove rubbish, surplus or discarded materials, falsework, forms, temporary structures, field offices, project signs, signs not a part of the project, and Contractor's equipment and machinery, and shall leave the site and ground occupied by the Contractor in connection with the performance of the contract in an orderly and clean condition. Buildings constructed, altered, or worked in by the Contractor in the performance of the contract shall be left "broom clean," and stains and other blemishes resulting from the Contractor's operations, such as dropped or splattered concrete or mortar and paint, shall be removed from floors, walls, ceilings, windows, and all other exposed surfaces.

4.23 Partial acceptance of project. The Officer-in-Charge may accept and place parts of the project in service as completed and the Contractor shall give proper access to such portions for this purpose. Use by the public without permission of the Officer-in-Charge shall not in any way be construed as an acceptance of the work under the contract and shall not in any way relieve the Contractor from the Contractor's obligation under the contract.

4.24 Responsibility of the contractor prior to acceptance. (a) The Contractor shall repair, reconstruct, restore, and replace the work or any part thereof which is injured, damaged or vandalized prior to acceptance of the work by the Officer-in-Charge, by any cause whatsoever, except damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God, such as earthquakes, tsunamis, lava flows, and acts of the public enemy or governmental authorities.

(b) Occupancy prior to acceptance. The City may occupy or use any completed or partially completed portion of the work at any stage prior to acceptance when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the Contractor's insurer. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, air conditioning, utilities, damage to the project and insurance, and have agreed in writing concerning the period for correction of work and commencement of the guarantee required by the contract. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.

(c) Inspection. Immediately prior to such partial occupancy or use, the Officer-in-Charge and Contractor shall jointly inspect the area to be occupied or used in order to determine and record the condition of the area.

(d) No acceptance of non-complying work. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the project shall not constitute acceptance of work not complying with the requirements of the contract.

4.25 Final inspection. (a) Before notifying the Officer-in-Charge that the project is substantially complete including compliance with section 4.23, "Maintenance of site and final cleanup," the Contractor shall inspect the project and test all equipment with all of its subcontractors. The Contractor shall also proceed to obtain the documents required under the Contract such as but not limited to:

- (1) All written guarantees;
- (2) All "as-built" drawings;
- (3) All certified payroll affidavits if not submitted earlier;
- (4) Certificate of plumbing and electrical inspection;
- (5) Certificate of building occupancy;
- (6) Certificate of soil and wood treatments;
- (7) Certificate of water system chlorination;
- (8) Maintenance service contract;
- (9) Two (2) copies of a list of all equipment installed; or
- (10) All operating and maintenance manuals for equipment installed.

Prior to requesting a final inspection to determine substantial completion, Contractor shall also complete the following items:

- (1) Arrange to deliver tools, spare parts, extra materials, and similar items to a location designated by the Contracting Officer. Label with manufacturer's name and model number, where applicable.
- (2) Complete startup testing of systems.
- (3) Submit test, adjust and balance records.
- (4) Terminate and remove temporary facilities from Project site, along with mockups, construction tools, and similar elements.
- (5) Advise the Contracting Officer of changeover in other utilities.
- (6) Complete final cleaning requirements.

(b) "Substantially complete" means:

- (1) All utilities are connected and in working condition;
- (2) All air conditioning and other major equipment are in acceptable working condition;
- (3) The building, structure, improvement, or site can be used for its intended purpose; and
- (4) The completed work conforms to the specifications of the Contract, except for "minor discrepancies" as provided for in Section 4.25(f) of this Contract.

(c) After finding everything in order, the Contractor shall notify the Officer-in-Charge in writing that the project is substantially complete and ready for inspection.

(d) The Officer-in-Charge shall then make a determination as to whether or not the project is ready for inspection. If the Officer-in-Charge is not satisfied, the Contractor will be notified in writing of the items that require completion prior to inspection. After the Contractor complies with the Officer-in-Charge's instructions, the Contractor will again submit, in writing, a request for inspection.

(e) When the Officer-in-Charge determines that the project is substantially complete, a pre-final inspection will be conducted by the Officer-in-Charge along with representatives of other City agencies interested in the project, within seven days of receipt of the request from the Contractor.

(f) If the pre-final inspection discloses only minor discrepancies, the Officer-in-Charge shall accept the project as substantially complete and issue in writing, a list of the discrepancies that need to be corrected including all documents required by the Contract, hereinafter referred to as the "punch list," and the time in which the Contractor must complete the punch list. The date of acceptance of the project as substantially complete shall signify the end of the contract completion time.

(g) The Contractor shall, **within seven days** after receipt of the punch list, proceed to complete the items on the punch list. Upon completion, the Contractor shall submit a written request for a final inspection, after which, if the Officer-in-Charge finds that all discrepancies are satisfactorily corrected, the Officer-in-Charge will accept the project as completed, hereinafter referred to as "final acceptance."

(h) Noncompliance. If the Contractor fails to proceed or complete the punch list within the specified times, the Officer-in-Charge may proceed to have such work performed at the Contractor's expense, and the Contractor's sureties will be liable therefor. The City shall be entitled to reasonable attorneys' fees, consultants' fees and costs necessarily incurred by the Contractor's refusal to complete the contract and to pay such costs of corrective work.

(i) Upon final acceptance, the Contractor shall be relieved of its responsibility in maintaining and protecting the work and site and for injury to persons or property. Release of final payment shall be as specified in section 6.7, "Final Payment."

(j) Prior to release of final payment, the Contractor shall submit, **within thirty days after** final acceptance, or within such time as the Officer-in-Charge may allow, all remaining documents required by the Contract.

4.26 Guarantee. (a) This guarantee shall be deemed supplemental to guarantee provisions provided in other sections of the specifications for the individual units and systems of units so specified.

(b) Performance. The Contractor guarantees its performance and the performance of its subcontractors under the contract.

(c) Materials and equipment. The Contractor also guarantees all materials and equipment furnished or installed under the contract against defects and poor workmanship and to be in operable condition upon final acceptance of the work or portions of the work, and that all such materials and equipment conform to the requirements of this contract and be fit for the use intended.

(d) Design. The Contractor guarantees the design to meet the criteria and operating requirements specified and against failure to perform in accordance with such criteria and operating requirements.

(e) Guarantee period. Unless otherwise specifically stated in the RFP that a longer period is intended, the guarantee shall extend for a period of one year upon final acceptance of the work by the Officer-in-Charge and shall include all labor, materials, equipment and parts. The Officer-in-Charge may also determine the guarantee period to commence upon acceptance of the material or equipment installed, or

work performed. Furthermore, this period shall be extended from the time of correction of any defect or failure, corrected under the terms of this guarantee, for a like period of one year. The Contractor shall provide a new certificate of guarantee for the extended one-year period.

(f) **Correction.** The Contractor shall correct all defects or failures discovered within the guarantee period. The City will give the Contractor prompt written notice of such defects or failures following their discovery. The Contractor shall commence corrective work **within seven days** following notification and shall diligently prosecute such work to completion. The Contractor shall bear all costs of corrective work, which shall include necessary disassembly, transportation, reassembly and retesting, as well as repair or replacement of the defective materials or equipment and any necessary disassembly and reassembly of adjacent work.

(g) **Noncompliance.** If the Contractor fails to perform corrective work in the manner and within the time stated, the City may proceed to have such work performed at the Contractor's expense, and the Contractor's sureties will be liable therefor. The City shall be entitled to reasonable attorneys' fees, consultants' fees and costs necessarily incurred by the Contractor's refusal to complete the contract and to pay such costs of corrective work.

(h) **Performance bond.** Unless otherwise specifically stated in the RFP that a longer period is intended, the performance bond shall be in full force and effect for the duration of the contract and for a period of one year after final acceptance of the contract by the Officer-in-Charge.

(i) **Rights and remedies.** The rights and remedies of the City under this provision do not preclude the exercise of any other rights or remedies provided by this contract or by law with respect to unsatisfactory work performed by the Contractor.

4.27 As-built drawings. The Contractor shall maintain at the job site two (2) sets of full size contract drawings, marking them in red to show all variations between the construction actually provided and that indicated or specified in the contract documents, including buried or concealed herein, or where variations in scope or character of work from that of the original contract are authorized, the drawings shall be marked to define the construction actually provided. Where equipment installation is involved, the size, manufacturer's name, model number and power input or output characteristics, as applicable, shall be shown on the as-built drawings. The representations of such changes shall conform to standards and details as necessary to clearly portray the as-built construction.

The drawings shall be maintained and updated on a daily basis. Monthly and final payments to the Contractor shall be subject to prior approval of the updated drawings, including approved Change Order changes to design.

On completion of the work, both sets of marked-up drawings shall be delivered to the Officer-in-Charge and shall be subject to the Officer-in-Charge's approval before acceptance.

CHAPTER 5 – MODIFICATIONS; CHANGE ORDERS

5.1 Supplemental plans and specifications. The Officer-in-Charge may furnish by written order such supplemental plans and specifications, during the performance of the Contract, as may be necessary to clarify the Contract or define it in greater detail, and the Contractor shall comply with such supplemental plans and specifications. Such supplemental plans and specifications shall become a part of the Contract upon execution of a no-cost change order or otherwise.

5.2 Omission, errors or discrepancies in contract. (a) Omissions. Work incidental to the Contract, although not specifically referred to in the Contract, shall be furnished and performed by the Contractor without change in the contract price. Labor, materials and equipment directly or indirectly necessary to complete the construction of the project, whether or not the same may have been expressly provided for in the Contract, shall be furnished and performed by the Contractor without change in the Contract price.

(b) Errors or discrepancies. The Contractor shall notify the Officer-in-Charge in writing immediately upon discovery of any error, omission or discrepancy:

- (1) In points or instructions furnished by the Officer-in-Charge; or
- (2) Within the contract or any part thereof.

(c) After discovery of an error, omission, or discrepancy as described in subsections 5.2(a) and (b), the Contractor shall provide written notice of same in the manner and time prescribed above to the Officer-in-Charge. The Contractor shall proceed with the performance of the contract only after receiving written approval or instructions from the Officer-in-Charge.

5.3 Change Orders. (a) The Officer-in-Charge may at any time, without notice to any surety, issue a change order to make changes in the work within the scope of the contract as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the Contractor will perform the work as changed, as though it had been part of the original contract. Minor changes in the work may be directed by the Officer-in-Charge at no change in contract price or time. In the absence of a change order or written order, the Contractor will not be entitled to payment for any such extra work. [HAR 3-125-4(1)] The Contractor's cost of responding to requests for price or time adjustments is included in the contract price. No additional compensation will be allowed unless authorized by the Contracting Officer.

(b) Adjustments of price or time for performance. If any change order increases or decreases the Contractor's cost of, or the time required for performance of any part of the work under this contract, an adjustment may be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this section shall be determined in accordance with HAR § 3-125-13(a), which is included in Section 6.9 of this GCDB, "Price adjustment." Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with the price adjustment clause included in Section 6.9 pursuant to HAR § 3-125-13(a)(1)(E). Failure of the parties to agree to an adjustment in time shall not excuse a contractor from proceeding with the contract as changed, provided that the Contracting Officer, within 14 days after the changed work commences, makes such provisional adjustments in time as the Contracting Officer deems reasonable. The right of the Contractor to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the notice requirements for disputes and claims established by the Contract. [HAR 3-125-4(2)]

On any price adjustment, Contractor shall submit detailed cost breakdowns in the format attached herein as Exhibit "F," for material, equipment and labor, including additional or reduction in time, for the Officer-in-Charge's approval, **within three working days** or within such further time as the Officer-in-Charge may allow, from the time the Contractor is informed of the work to be performed or of any changes. The substantiation shall include the Contractor's and subcontractor's cost breakdown to a level of detail acceptable to the Officer-in-Charge.

Should the Contractor delay or refuse to submit detailed cost breakdown for the changed work, the Officer-in-Charge may pay the Contractor in accordance with Section 6.9, "Price adjustment."

(c) Time period for claim. Within thirty days after receipt of a written change order under subsection (a) above, unless such period is extended by the procurement officer in writing, the Contractor shall file a notice of intent to assert a claim for an adjustment. The requirement for filing a timely written notice cannot be waived and shall be a condition precedent to the assertion of a claim. [HAR 3-125-4(3)]

(d) Claim barred after final payment. No claim by the Contractor for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Contract. [HAR 3-125-4(4)]

(e) Other claims not barred. In the absence of such a change order, nothing in this clause shall restrict the Contractor's right to pursue a claim arising under the contract or for breach of contract. [HAR 3-122-4(5)]

5.4 Claims based on oral directives. (a) Oral directives. Any oral order, direction, instruction, interpretation or determination from the Officer-in-Charge which, in the opinion of the Contractor, causes any change, can be considered as a change only if the Contractor gives the Officer-in-Charge written notice of its intent to treat the oral order, direction, instruction, interpretation or determination as a change directive. The written notice must be delivered to the Officer-in-Charge before the Contractor acts in conformity with the oral order, direction, instruction, interpretation or determination, but **not more than five days after** delivery of the oral order to the Contractor. The written notice shall state the date, circumstances, whether a time extension will be requested, and source of the order that the Contractor regards as a change. The written notice may not be waived and shall be a condition precedent to the filing of a claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any oral order shall not be treated as a change and the Contractor waives any claim for an increase in the contract time or contract price related to the work. [HAR 3-125-16]

(b) Acknowledgment of oral directive. **Not more than five days after** receipt of the written notice from the Contractor, the Officer-in-Charge shall issue a change order for the subject work if the Officer-in-Charge agrees that it constitutes a change. If no change order is issued in the time established, it shall be deemed a rejection of Contractor's claim for a change. If the Contractor objects to the Officer-in-Charge's refusal to issue a change order, it shall file a written protest with the Officer-in-Charge **within thirty days after** delivery to the Officer-in-Charge of the Contractor's written notice of its intention to treat the oral order as a change. In all cases the Contractor shall proceed with the work. The protest shall be determined in accordance with the disputes provisions under section 8.7, "Authority to resolve contract and breach of contract controversies." [HAR 3-125-16]

5.5 Overtime inspections. (a) Written request. If the Contractor wishes to work at such time of the day which is during the period other than the regular business hours of the City, or on a Saturday, Sunday,

or legal State holiday, the Contractor shall make a written request for inspection services during such period.

(b) Notice. If such a request is made and granted, the Contractor shall notify the Officer-in-Charge **not less than twenty-four hours in advance** of the time when such inspection services are required. The Contractor shall pay the City in accordance with section 41-20.1, ROH, at the rate for the current fiscal year set by the Director, Department of Budget and Fiscal Services, or in the event that the City has retained a private construction manager, the Contractor shall pay the rate established by the private construction manager.

(c) Invoice.

(1) City inspector. The City shall invoice the Contractor for overtime inspection services rendered by City inspectors.

(2) Private construction manager. The private construction manager will invoice the Contractor at the construction manager's established rate for overtime inspection.

5.6 Delay; time extensions; unforeseeable delays; suspension. (a) Permits. For delays in obtaining the necessary building and/or grading permits which are extraordinary and beyond the control of the Contractor and will result in a delay of the commencement of work, the Contractor may be granted an extension of time for the performance of the contract corresponding to the delay, provided the Contractor notifies the Officer-in-Charge **immediately** upon first encountering the delay. The Contractor shall keep the Officer-in-Charge informed as to the estimated length of the requested delay.

(b) Increases in scope of work. For increases in the scope of work caused by alterations and additional work under this Agreement, the Contractor will be granted an extension of time only if the changes are on the critical path and affect the final completion date of the Contract. If the Contractor feels that an extension of time is justified, the Contractor must request it in writing when submitting the detailed cost breakdown for the change order. The Contractor must show how the final completion date will be affected based on the progress of the project and must also support the claim with schedules and statements from its subcontractors, suppliers, and/or manufacturers as to the extent of the delay.

(c) Delivery of materials and equipment.

(1) For delays in delivery of materials and equipment which occur as a result of unforeseeable causes beyond the control and without fault or negligence of either the Contractor, subcontractors or suppliers, the Contractor may be granted an extension of time provided that the Contractor complies with the procedures herein. No extension of time will be considered unless the material and equipment were ordered at the earliest possible date.

(2) No extension of time shall be granted for a delay caused by a shortage of materials unless the Contractor, **within ten days** from the beginning of the delay (unless the Officer-in-Charge grants a further period of time before the date of final payment under the contract), notifies the Officer-in-Charge in writing of the delay and submits proof that the Contractor has diligently made every effort to obtain the materials from all known sources, and further proof that the inability to obtain the materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations.

[HAR 3-125-18]

(3) The extent of delay must be substantiated by submission of evidence and supported by specific reasons for the delay to the satisfaction of the Officer-in-Charge, which may include.

(A) State specifically the reason or reasons for delay. Also, explain as necessary, the effect of this delay to the other trades and to the specified completion date of the project.

(B) List the pertinent chronological events and their dates, for the project such as, but not limited to, the following:

- (i) Notice to proceed
- (ii) Sample or shop drawing submittal
- (iii) Sample or shop drawing return
- (iv) Purchase order
- (v) Factory shipment
- (vi) Arrival of ship
- (vii) Delivery to job site
- (viii) Material installation
- (ix) Specified completion of project
- (x) Actual completion of project
- (xi) Pertinent correspondence, telegrams, meetings and telephone conversations.

(C) Submit copies of purchase order, factory invoice, bill of lading, shipping manifest, delivery tag and any other pertinent correspondence as evidence to support the delay.

(D) Cite the period of delay and the number of days requested therefore. The period of delay shall not exceed the difference between the originally scheduled delivery date at the job site versus the actual delivery date.

(d) Other unforeseeable delays. If any delay in the completion of the work arises from causes such as acts of God, acts of the public enemy, acts of the City and any other governmental entity in either a sovereign or contractual capacity, acts of another contractor (but not the Contractor's subcontractor) in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, unusually severe weather, or delays of subcontractors due to causes similar to those set forth above, then the Contractor shall be granted an extension of time provided that:

(1) The Contractor shall notify the Officer-in-Charge in writing, **within ten days** from the commencement of the delay (unless the Officer-in-Charge grants a further period of time before the date of final payment under the Contract), of the causes of the delay and, if possible, the possible effects such circumstances may have on the completion date of the Contract. Upon becoming aware of the extent of any such delay, the Contractor shall immediately inform the Officer-in-Charge in writing, stating specifically the reason or reasons for the delay and submit evidence to support its reasons. [HAR 3-125-18]

(2) The extent of any delay must be substantiated as follows:

(A) State specifically the reason or reasons for the delay. Also, explain as necessary, the effect of this delay to other trades and to the specified completion date of the project.

(B) List the pertinent chronological events for the project and their dates, such as, but not limited to, the following:

- (i) Notice to proceed
- (ii) Sample or shop drawing submittal
- (iii) Sample or shop drawing return
- (iv) Purchase order
- (v) Delivery to job site
- (vi) Material installation
- (vii) Specified completion of project
- (viii) Actual completion of project
- (ix) Pertinent correspondence, telegrams, meetings and telephone conversations.

- (C) Submit copies of purchase orders, delivery tags, and any other pertinent correspondence as evidence to support claim.
- (D) Cite the period of delay and the number of days requested therefore.
- (E) A statement either that the above circumstances have been cleared and normal working conditions restored as of a certain day or that the above circumstances will continue to prevent completion of the project.

(e) Other work. For subsections (b), (c), and (d), the Officer-in-Charge shall have the option of extending the contract time for only that portion of the work affected by the delay. If the Officer-in-Charge exercises this option, the Contractor shall defer work in the areas approved by the Officer-in-Charge and complete the remaining work within the time specified in the contract.

(f) Suspension.

(1) When the performance of work is totally suspended by the Officer-in-Charge for one or more days in accordance with paragraphs (1), (2), (3), or (5), of section 7.1, "Suspension of work," the contract completion date shall be revised accordingly.

(2) During periods of partial suspensions of the work, the Contractor will be granted an extension only if the partial suspension affects the final completion date of the contract. If the Contractor feels that an extension of time is justified, the Contractor must request it in writing **at least five working days before** the partial suspension will affect the critical operations in progress. The Contractor must show how the final completion date will be affected based on the progress of the project and must also support his claim with statements from his subcontractors.

(3) Evaluation. The Officer-in-Charge shall evaluate all time extension requests and shall ascertain the facts and extent of the time involved and the Officer-in-Charge's findings of the facts thereof shall be final and conclusive.

(4) No time extension will be considered for the following:

(A) Delays or suspension of work due to the fault of the Contractor, including the causes listed in paragraph (2) of section 7.1(a).

(B) Delays in arrival of materials and equipment due to the fault of the Contractor, its subcontractor or supplier in ordering, fabricating, delivery, etc.

(C) Delays caused by changes which the Officer-in-Charge determines unjustifiable due to the lack of supporting evidence or because the change is of such nature that the final completion date will not be affected.

(D) Delays caused by the failure of the Contractor to submit, on a timely basis, for approval by the Officer-in-Charge, shop drawings descriptive sheets, material samples, color samples, etc. except as covered in subsections 5.6(c) and 5.6(d).

(E) Failure to submit requests for clarification on a timely basis to avoid impacting the project schedule.

(F) Delays of weather unless unusually severe weather, or unless determined by the Officer-in-Charge to be justified.

(g) Additional rights and remedies. The rights and remedies of the City provided in the contract are in addition to any other rights and remedies provided by law. [HAR 3-125-18]

5.7 Variations in estimated quantities. (a) Where the quantity of a pay item in the contract is an estimated quantity and where the actual quantity of such pay item varies more than fifteen per cent above or below the estimated quantity stated in the contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due

solely to the variation above one hundred fifteen per cent or below eighty-five per cent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Officer-in-Charge shall, upon receipt of a timely written request for an extension of time, prior to final payment of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Officer-in-Charge the findings justify. Any adjustment in the contract price shall be in accordance with section 6.9, "Price adjustment." [HAR 3-125-10]

(b) All quantities appearing in the RFP are approximate, and those indicated in the RFP are prepared for the comparison of proposals only. The City does not, expressly or by implication, warrant that the actual quantities will correspond therewith. The Contractor understands and has included in its proposed prices, the entire cost of the performance of the contract, and it is understood and agreed that there is included in each lump sum or unit priced item, the entire cost of any and all items incidental to the performance of the contract covered by such lump sum or unit priced item. By submittal of its proposal, the Contractor certifies that it has verified these quantities in a manner deemed necessary or expedient.

5.8 Value engineering incentive. The Contractor may develop and submit value engineering change proposals for drawings, designs, specifications, or other requirements of the contract in accordance with HAR 3-132-1 et seq.. If any proposal is accepted and approved, in whole or in part, by the Officer-in-Charge, the contract shall be modified and shall include an equitable adjustment of the contract price in accordance with this section.

This section shall not apply to any cost reduction proposal that is not identified as a value engineering change proposal by the contractor at the time of its submission to the Officer-in-Charge.

Exhibit "J" titled "Value Engineering Change Proposal" may be used to initiate a value engineering change proposal.

CHAPTER 6 – PAYMENT; PRICE ADJUSTMENTS

6.1 Payment. (a) The Contractor shall be paid the contract price as full compensation for the performance of the contract. Should there be a discrepancy between the basis of payment outlined in the standard specifications and that called for in the Contract, the Contract shall govern. If an error, omission or misstatement shall be discovered in the quantities or measurements stated in the Contract, the same shall not vitiate the contract, or release the Contractor or his surety or sureties from performing the contract, or affect the price agreed to under the contract, or excuse the Contractor from any of the obligations or liabilities under the contract, or entitle him to damages or compensation, except as provided herein.

(b) Each application or request for payment shall be based upon the most recent schedule of payment submitted by the Contractor and accepted by the City in accordance with the terms of the Contract, the sum of which shall not exceed the total Contract amount. Each request shall be supported by data to substantiate its accuracy. The schedule of payment must be approved by the officer-in-charge, prior to any progress payments.

Requests for payment must include the following documents before the City is obligated to make any payment under this Contract:

- (1) A copy of the City-approved schedule of payment;
- (2) A certificate by the Contractor of the percentage of completion of each position of the work as well as the materials that have been obtained by the Contractor and accepted by the officer-in-charge as of the end of the period covered by the request for payment; and
- (3) An updated monthly critical path method (CPM) schedule for the Project that shows:
 - (A) Any Contractor claimed event of delay;
 - (B) The impact of the event of delay on the critical path of the Project; and
 - (C) The current revised critical path based upon the event of delay.

(c) Lump sum contracts.

(1) For lump sum contracts, the contract price shall be the result obtained by first reducing the amount designated as the total sum proposed in the award by the amount included therein for allowances and contingencies, and adding thereto or deducting therefrom any extra cost or any reduction in cost, respectively, to the City as a result of supplemental agreements in writing and written orders.

(2) Lump sum contract prices include all materials, equipment, labor and all other incidental work required for the complete construction and installation of the lump sum product, all in accordance with the plans and specifications. Payment will be made only for the item in place complete, regardless of the amount of material, equipment and labor necessary to complete the same in a proper and workmanlike manner and in accordance with the plans and specifications.

(d) Unit priced items. Payment shall be made for the actual quantities of units incorporated into the contract multiplied by the unit prices of the contract items, when the unit work or items are in place complete, provided that where the quantity of any item varies more than fifteen per cent above or below the estimated quantity stated in the contract, payment shall be made at the adjusted unit price in accordance with section 5.7, "Variations in estimated quantities."

6.2 Allowance items. Payment for allowance items shall be included in the monthly estimate for progress payment upon submittal of paid invoices. Unless otherwise specified in the RFP, the Contractor shall be reimbursed from the allowance items as follows:

- (1) For utility allowance, no markup of any kind will be allowed.
- (2) For off-duty police officers, the reimbursement shall also include the administrative fees charged by the Honolulu Police Department, plus twenty per cent inclusive of any administrative costs, overhead/profit, bond fee, and applicable taxes.

6.3 Mobilization. (a) Mobilization shall consist of preparation work and operations, including but not limited to those necessary for the movement of personnel, equipment, supplies and incidentals to the project site; for the acquisition of all work materials; for the establishment of all offices; buildings, and other facilities, excluding field office and project site laboratories, necessary for work on the project; and

for all other work and operations which must be performed, or costs incurred, prior to beginning work on the various items on the project site.

(b) Maximum allowed amount for mobilization. Where there is an item in the RFP for mobilization, unless otherwise specified, the maximum offer allowed for this item is an amount not to exceed six per cent of the total sum of all items within the group of items in which the mobilization item is included, excluding the price of the mobilization item. If the proposal submitted by the offeror indicates an amount in excess of the allowable maximum, the amount or amounts submitted by the offeror shall be reduced to the allowable maximum, and the total sum offer shall be adjusted to reflect any such reduction. For the purpose of comparing offers and determining the contract price to be inserted in the contract awarded to the offeror, if any is so awarded, the sum of all items adjusted in accordance with the foregoing shall be used and the offeror's proposal shall be deemed to have been submitted for the amounts as reduced and adjusted in accordance herewith.

(c) Payment. Mobilization will be paid for on a lump sum basis. Partial payments will be made as follows:

- (1) When five per cent of the total sum offer is earned, fifty per cent of the amount proposed for mobilization will be paid;
- (2) When ten per cent of the total sum offer is earned, seventy-five per cent of the amount proposed for mobilization will be paid; and
- (3) When twenty per cent of the total sum offer is earned, one hundred per cent of the amount proposed for mobilization will be paid.

Nothing herein shall be construed to limit or preclude partial payments otherwise provided for by the contract. The cost for demobilization shall be considered incidental to the mobilization and no further allowances will be made for such.

6.4 Payments during performance of work. Monthly estimate and payment. The Officer-in-Charge shall, not later than the fifteenth day of each month during the performance of the contract, make an estimate of the amount of work completed in accordance with the contract during the immediately preceding month for the construction items listed in the performance schedule described in section 4.2(d), "Payment and performance schedules." In arriving at an estimate of work completed during the month, the Officer-in-Charge shall deduct sufficient allowance for any incomplete or unprotected work or to provide for any contingencies for remedy of defects or damage to said work or for the necessity of performing any part of the work over again to cure defects or damage.

6.5 Retention. (a) Retention for satisfactory progress. Pursuant and subject to Section 103-32.1, HRS, if the Officer-in-Charge finds that satisfactory progress is being made:

- (1) Progress payments to the Contractor for the work completed for the month shall be for a sum equal to ninety-five per cent of the above estimate (after accounting for any deductions and contingencies), less previous payments and sums withheld by the City pursuant to subsection (a).
- (2) After the first fifty per cent of the work to be performed under the contract has been completed and progress is satisfactory, progress payments will be for one hundred per cent of the above estimate less:

(A) Five per cent withheld from the previous payments to the Contractor during the performance of the first fifty per cent of work required under the contract;

(B) Other sums withheld by the City pursuant to the contract; and

(C) Previous payments.

(b) Unsatisfactory progress. The Officer-in-Charge may continue to make progress payments to the Contractor for a sum equal to ninety-five per cent of the above estimates, less previous payments and sums withheld by the City pursuant to the contract until such time that satisfactory progress is achieved by the Contractor.

(c) The retention amount withheld by the Contractor from its subcontractors of any tier shall not be more than the same percentage of retainage as that of the Contractor, where a subcontractor has provided evidence to the Contractor of:

- (1) A valid performance and payment bond for the project that is acceptable to the Contractor and executed by a surety company authorized to do business in this State;
- (2) Any other bond acceptable to the Contractor; or
- (3) Any other form of collateral acceptable to the Contractor. [HRS 103-32.1]

Where subcontractor does not provide the above-listed performance and payment bonds, retainage by the Contractor (of subcontractor's billings) shall be in accordance with HRS 103-32.1(e).

(d) A written notice of any withholding shall be issued to a subcontractor, with a copy to the Contracting Officer, specifying the following:

- (1) The amount to be withheld;
- (2) The specific causes for the withholding under the terms of the subcontract; and
- (3) The remedial actions to be taken by the subcontractor to receive payment of the amounts withheld.

(e) Any retainage provided for in this Section or requested to be withheld by the Contractor shall be held by the Contracting Officer.

(f) A payment request made by a Contractor to the Officer-in-Charge that includes a request for sums that were withheld or retained from a subcontractor and are due to the subcontractor may not be approved under HRS 103-10.5(e), unless the payment request includes:

- (1) Substantiation of the amounts requested; and
- (2) Certification by the Contractor, to the best of the Contractor's knowledge and belief, that:
 - (A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
 - (B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
 - (C) The payment request does not include any amounts that the Contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

(g) Contractor shall comply with all provisions of HRS 103-32.1 relating to retainage requirements.

(h) Delay in completion of work. Upon written request from the Contractor, if the completion of the work under the contract is being delayed through no fault of the Contractor, the Contractor may request for the release of all or part of the amount withheld. The Contracting Officer, upon recommendation of the Officer-in-Charge, may make additional payments from the amount withheld to the extent that such amount withheld is not required for the protection of the City. The Contracting Officer may require the Contractor to submit tax clearances from the State and Internal Revenue Service and surety clearance as a condition to the release of any retention.

(i) Substitution with general obligation bonds. Pursuant to HRS 103-32.2, the Contractor may request, and the Contracting Officer, upon recommendation of the Officer-in-Charge, may enter into an agreement to allow the Contractor to withdraw from time to time the whole or any portion of the sums retained as set forth above upon depositing with the Contracting Officer any general obligation bond of the State or its political subdivisions with a market value not less than one hundred ten per cent of the sum to be withdrawn.

6.6 Payment for delivered materials or equipment. (a) No payment for any material or equipment that is affixed, movable or removable, delivered to the site of the work under the contract will be made until said material or equipment is incorporated into the parts of the project required to be constructed under the contract. Payment for the delivered material or equipment shall be included in the monthly progress payment under the appropriate cost item. Each progress payment shall include the completed "Report of Equipment Purchased with Construction Contracts" (Form BFS-P-79), Exhibit "L." Whenever payment is requested for delivered equipment that is movable or removable, two copies of the list of such equipment must be attached to the report. The list shall include the equipment description, make, model, serial number, quantity, cost, an indication of whether or not the equipment is movable or removable, and the specific location of the equipment such as the room number. The amount included for payment under this subsection shall be subject to the retention requirement. Approval of progress payment shall be contingent upon the submission of the report (Form BFS-P-79) and the equipment list.

(b) Specialized or special ordered materials, equipment. The Officer-in-Charge may, to the extent provided for in the contract, include in the monthly estimate for progress payment the delivered cost of specialized materials, special ordered materials or equipment usable only for the contract. Such inclusion in the monthly estimate will be allowed only if all costs are substantiated by evidence of delivery and payment, and only for such materials or equipment as are specifically described or referred to in the contract as being the subject matter for such inclusion in the monthly estimate for progress payment. *The progress payment shall include the "Report of Equipment Purchased with Construction Contracts" and a list of the movable and removable equipment as described in Section 6.6(a).* Payment to the Contractor shall not terminate the Contractor's responsibility or ownership of such materials or equipment until incorporated in place and accepted by the Officer-in-Charge. The Contractor shall be responsible for the safekeeping of such specialized materials or equipment until incorporated into the work and accepted by the Officer-in-Charge. The amount included for payment under this subsection shall be subject to the retention requirement.

(c) Movable or removable equipment. Movable or removable equipment as specified in subsection (a) is defined as any item that can be removed with a hand tool, or can be moved or transferred to another location, or can be tagged with an identification number. The City policy is that such equipment shall be

budgeted and purchased with equipment phase funds.

6.7 Final Payment. (a) Final Payment. After final acceptance by the Officer-in-Charge, the Contractor will be paid the balance due in accordance with the Officer-in-Charge's final estimate of the construction actually performed and approved by the Contractor, provided that final payment will be made only with the approval of the Contracting Officer or, for improvement districts, the City Council, and upon submittal of the following to the Contracting Officer:

- (1) Completed form BFS-P-79, "Report of Equipment Purchased with Construction Contracts," in accordance with Section 6.6;
- (2) Whenever the payment includes payment of movable or removable equipment, two copies of the list of equipment installed or provided under the contract, listing the description, make, model, serial number, quantity, cost, an indication of whether or not the equipment is movable or removable, and the specific location of the equipment such as the room number, in accordance with Section 6.6;
- (3) Written consent of the surety or sureties on the Contractor's bonds;
- (4) Completed form DF-P-65 (Exhibit "K"), acknowledging any outstanding claims arising out of the performance of the Contractor's work; and
- (5) Evidence of continuing insurance as required in section 3.1.
- (6) Contractor is required to submit a tax clearance certificate from the director of taxation from the State and the Internal Revenue Service. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to a tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), Exhibit "M," will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from the Procurement of Goods, Services and Construction-Chapter 103D, HRS, menu.

(b) Failure to comply. If the Contractor delays or fails to comply with the requirements of this Section, the Contracting Officer, upon recommendation of the Officer-in-Charge and without further obligation to the Contractor, may take any or all of the following actions:

- (1) Upon notice from the State Department of Taxation or Internal Revenue Service, assign payment to the appropriate tax agency.
- (2) Unilaterally, use the final payment estimate of the Officer-in-Charge as the final payment to the Contractor.
- (3) Determine the Contractor to be nonresponsible which may jeopardize the Contractor's future status as a qualified offeror.

(c) Upon final payment to the Contractor, full payment to all subcontractors shall be made in accordance with Section 6.11, "Prompt payment by contractors to subcontractors." [HRS 103-10.5; HAR 3-125-23]

6.8 Payment does not imply acceptance of work. The granting of any payment by the City, or the receipt thereof by the Contractor, shall in no way imply acceptance of work. The unsatisfactory character

of such work, equipment, components or workmanship that do not conform to the requirements of this Agreement may be rejected by the City and in such case must be replaced by the Contractor without delay.

6.9 Price adjustment. (a) Method and manner of reaching price adjustment. Any adjustment in contract price made pursuant to the contract shall be determined in one or more of the following ways [HRS 103D-501(b); HAR 3-125-13]:

- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance;
- (2) By unit prices specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
- (3)
- (3) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon before commencement of the pertinent performance;
- (4) In any other manner as the parties may mutually agree upon before commencement of the pertinent performance;
- (5) In the absence of agreement between the parties, the provisions of Section 103D-501(b)(5), HRS, shall apply.

(b) For mutually-agreed changes, the allowances for all overhead, extended overhead resulting from adjustments to contract time (including home office and field overhead) and profit combined, shall not exceed the percentages set forth below:

- (1) For the Contractor, for any work performed by its own labor forces, fifteen percent of the cost;
- (2) For each subcontractor involved, for any work performed by its own forces, fifteen percent of the cost;
- (3) For the Contractor or any subcontractor, for work performed by their subcontractors, seven percent of the amount due the performing subcontractor.

(c) In the absence of agreement between the parties, where the Contractor and the Officer-in-Charge cannot agree to the price adjustment of any change in work:

- (1) For change orders with value not exceeding \$50,000 by documented actual costs of the work, allowing for twenty per cent (20%) of the actual costs for overhead and profit on work done directly by the Contractor and ten per cent (10%) on any subcontractor's billing to the Contractor for the Contractor's overhead and profit ("Force Account"); or
- (2) For change orders exceeding \$50,000 by a unilateral determination by the Officer-in-Charge of the costs attributable to the events or situations under clauses with adjustment of profit or fee, all as computed by the Officer-in-Charge in accordance with applicable sections Chapters 3-123 and 3-126 of the HAR ("Unilateral Determination"). [HRS § 103D-501(b)(5)(A)]

(d) Cost or pricing data.

- (1) Application. Application for cost or price adjustment shall be made pursuant to HAR 3-122-121 et seq. For any adjustment exceeding \$100,000, the Contractor shall submit cost or pricing data and certification of that data except as provided for in paragraph (3). Certification shall be in the form attached herein as Exhibit "H." For adjustments less than \$100,000, the Officer-in-Charge may, upon written determination that the circumstances warrant submission of cost or pricing data, require cost or pricing data.

(2) Cost or pricing data defined. Cost or pricing data mean all facts as of the date of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiation significantly. Such data are factual, not judgmental, and are therefore verifiable. They are facts that can reasonably be expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred including such facts as:

- (A) Vendor quotations;
- (B) Nonrecurring costs;
- (C) Information on changes in production methods and in production or purchasing volume;
- (D) Data supporting projections of business prospects and objectives and related operation costs;
- (E) Unit cost trends such as those associated with labor efficiency;
- (F) Make or buy decisions;
- (G) Labor union contract negotiations; and
- (H) Information on management decisions that could have a significant bearing on costs.

(3) Exceptions. Cost or pricing data are not required if the price is based on contract unit prices, adequate competition (as in receiving bids or quotations from various subcontractors or suppliers for changed work), established catalogue prices or market prices, or prices set by law or regulation. However, the Officer-in-Charge may request cost or pricing data if the Officer-in-Charge considers that such price is not reasonable.

(4) Submission of cost or pricing data and certification. The Contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provision of Section 103D-312, HRS. The submission of any cost or pricing data shall be made subject to the provisions of subchapter 15, Chapter 3-122. A fully executed change order or other documents permitting billing for the adjustment in price under any method listed in Section 6.9(a)(1)-(4) shall be issued within 10 days after agreement on the method of adjustment. Cost or pricing data shall be submitted to the Officer-in-Charge prior to beginning price negotiations. The Contractor shall submit certification of that data in the form attached herein as Exhibit "H," as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of the date of reaching agreement on price. Certification constitutes a representation as to the accuracy of the data upon which the Contractor's judgment is based. A certificate of current cost or pricing data shall not substitute for examination and analysis of the Contractor's proposal.

(e) Defective cost or pricing data. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or not current as of the date stated in the certificate, the City 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.

If the Contractor and the Officer-in-Charge cannot agree as to the existence of defective cost or pricing data or amount of adjustment due to defective cost or pricing data, the Officer-in-Charge shall set an amount in accordance with the provisions of HAR 3-122-121 et seq., and the Contractor may appeal this decision as a contract controversy under chapter 3-126, HAR.

6.10 Force account. When the Contractor and the Officer-in-Charge cannot agree to the price adjustment of any change in work, the Officer-in-Charge may, in accordance with section 6.9, "Price adjustment," require that the work be performed under force account until such time that an equitable adjustment can be agreed to by both parties, provided that the Officer-in-Charge promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. Payment for work under force account shall be as follows: [HAR 3-125-4, 3-125-13]

- (a) Allowable costs. In force account, cost shall be the sum of the costs of the following:
- (1) Labor. The Contractor shall receive the current wage rate including fringe benefits for actual work engaged by the hourly worker and foreman in charge of the specific force account work. Fringe benefits are required amounts established by the State Department of Labor and Industrial Relations, any collective bargaining agreement and other employment contract generally applicable to the classes of labor employed. The Contractor shall submit the fringe benefits for each class in writing to the Officer-in-Charge for acceptance before the force account work begins. The wages for labor shall not exceed the rate of wages paid for similar labor performed under the contract, as evidenced by the record of the Contractor's payroll on file with the Officer-in-Charge.

For salaried workers, the Officer-in-Charge will determine the hourly wage rate by dividing the monthly salary plus benefits by one hundred seventy-six hours. The Officer-in-Charge shall authorize salary workers to perform the work.

For overtime work, payment will be for one and a half times the hourly wage rate plus the actual hours of overtime for fringe benefits, and/or as required by any collective bargaining agreement. For authorized salaried workers, payment will be for the hourly wage rate times the actual hours of overtime.

- (2) Materials. The Contractor will receive the actual cost of materials accepted by the Officer-in-Charge and entering permanently into the work under the contract including transportation charges as shown by the invoices submitted to the Officer-in-Charge.

For stock materials, used and incorporated into the work, the Contractor shall receive the actual cost as certified by the Contractor to the cost paid by the Contractor. The Officer-in-Charge will include transportation charges and taxes paid by the Contractor.

- (3) Machinery and equipment, other than small tools and minor equipment, which may be necessary or desirable to perform the work. The Officer-in-Charge may reject any machinery or equipment which the Officer-in-Charge deems unnecessary, inefficient or inadequate for the work to be performed. The term "small tools and minor equipment" shall include individual equipment or tools having a replacement value of two hundred fifty dollars or less, whether or not they are consumed in the use thereof.

(A) The rate shall be the per-hour rental rate based on the monthly rate established for said machinery or equipment in the then-current edition of the Rental Blue Book for Construction Equipment including the estimated operating cost per hour, and regional correction provided therein.

The hourly rate will be determined by dividing the monthly rate by one hundred and seventy-six. The rate includes the estimated operating cost per hour and the regional correction factor. If no rate is listed for a particular kind, type or size of machinery or equipment, then the monthly, hourly rate shall be as agreed upon in writing by the Contractor and the Officer-in-Charge prior to the use of said machinery or equipment. The Contractor shall provide proof of the rental rates charged.

(B) For trucks not owned by the Contractor, rental rates as those established under the Hawaii State Public Utilities Commission will be used to determine the cost and will be paid for as a material item under paragraph (3).

(C) For Contractor-owned trucks not listed in the Rental Rate Blue Book, the rates shall be as agreed upon in writing by the Contractor and the Officer-in-Charge prior to the use of said trucks.

(D) Rental rates which are higher than those specified in the Rental Rate Blue Book may be allowed where such higher rate can be justified by job conditions such as work in water, on lava, etc. Request for higher rate shall be submitted in writing to the Officer-in-Charge for approval prior to the use of the machinery or equipment in question.

(E) All rental rates for machinery and equipment shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and all other incidentals.

(F) Transportation and/or mobilization

(i) The location from which the equipment is to be moved or transported shall be approved by the Officer-in-Charge.

(ii) Payment will be made for mobilizing and transporting the equipment or machinery to the force account work site, including loading and unloading, and back to its original location or other site, whichever cost is less. The cost of transportation shall not exceed the rates established by the Hawaii State Public Utilities Commission. If rates are nonexistent, then the rates will be determined by the Officer-in-Charge based upon the prevailing rates charged by established haulers within the locale.

(iii) Payment for self-propelled equipment or machinery will be for the cost of moving the equipment by its own power to the force account work site and back to the original location or other site, whichever cost is less.

(iv) When transporting equipment or machinery by other than its own power, payment shall be made for the transporter, if owned by the Contractor, at the hourly rate including the estimated operational rate and the applicable regional correction factor. Payment for the transporter, if not owned by the Contractor, shall be by invoice cost and paid for as a material item. Payment for the equipment or machinery shall be at the rate of "idle time" under (G).

(v) Payment for mobilization and transportation will not be made if the equipment or machinery is used on the work in any other way than upon extra work paid for under force account.

(G) Rental period

(i) Idle time. Idle time herein means the period in which the machinery or equipment designated for the specific force account work is not in use for the work. The time period shall be for a working day (8 hours). Payment shall be fifty per cent of the hourly rate excluding the estimated operational cost per hour per working day.

(ii) Standby time. Standby time herein means the period in which the machinery or equipment are standing by for the specific force account work day. A work day shall not exceed eight hours (standby time plus the operating time) unless the Officer-in-Charge authorizes the overtime. Payment shall be at the hourly rate including the estimated operational cost per hour per working day.

(iii) The rental period shall begin at the time equipment reaches the site of work, shall include each day that the machinery or equipment is at the site of the work and shall terminate at the end of the day on which the Officer-in-Charge directs the discontinuance of the use of the machinery or equipment.

(iv) Less than thirty minutes of operation will be considered a half hour of operation.

(v) Rental time will not be allowed or credited for any day on which machinery or equipment is inoperative due to its breakdown. On such days, the Contractor will be paid only for the actual hours that the machinery or equipment was in operation.

(vi) When force account work is completed within less than 8 hours, payment shall be for 8 hours.

(vii) For the purpose of determining the rental period, the continuous and consecutive days shall be the normal 8-hour shift work day, Monday through Friday excluding Saturday, Sunday, and legal holidays. Any work day to be paid less than 8 hours shall not be considered as continuous, except for equipment removed from rental for fuel and lubrication.

(viii) Overtime shall be paid for each hour in excess of the normal 8-hour shift work day at the corresponding hourly rate for daily, weekly, and monthly rates.

(4) State excise and use tax. State excise tax not to exceed the current rate and will be added to the total sum of paragraphs (1) through (3).

(5) When work is performed by a subcontractor who has been approved pursuant to Section 4.3, "Joint contractors; subcontractors," the Contractor will receive an additional amount equal to ten per cent of the total cost of paragraphs (1) and (3), to which shall be added the State excise tax.

(6) Percentages for fee and overhead. Not more than three line item percentages for fee and overhead, not to exceed the maximum percentages shown in subsection 6.9(c), will be allowed regardless of the number of tier subcontractors. [HAR 3-125-13]

(7) Payment for the above shall be deemed payment in full for work done under force account including superintendence, overhead, use of tools, machinery and equipment for which no rental is allowed, profit, taxes, subcontracting and other costs in connection therewith which are not provided for herein. **No payment will be made until itemized records along with receipted invoices and appropriate documents have been submitted and approved.**

(b) Records. The Contractor shall submit records of the above to the Officer-in-Charge at the end of each day on Daily Force Account Report sheets (Form DF-49), Exhibit "G," issued by the Officer-in-Charge. Such records submitted shall be subject to the approval of the Officer-in-Charge as evidenced by the Officer-in-Charge's signature thereon. The Contractor shall submit a statement covering the cost of all of the above items not later than the tenth day of the month following the month in which the costs were incurred.

6.11 Prompt payment by Contractors to subcontractors.

(a) Any money paid to Contractor for work performed by a subcontractor shall be disbursed to the subcontractor 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 on which the Contracting Officer has withheld payment.

(b) Upon final payment to Contractor, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

(c) Penalties. The Contracting Officer or the Contractor, as applicable, will be subject to a penalty of one and one-half per cent (1-1/2%) per month upon outstanding amounts due that were not timely paid by the responsible party under the following. Where a subcontractor has provided evidence to the Contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in subsection (d) below, and:

(1) Has provided to the Contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or

(2) The following has occurred:

(A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to Contractor and the surety, as provided for in Section 103D-324, HRS; and

(B) The subcontractor has provided to the Contractor an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the Contractor, any other bond acceptable to the Contractor, or any other form of mutually-acceptable collateral.

Then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the Contracting Officer to the Contractor and subsequently, upon receipt from the Contracting Officer, by the Contractor to the subcontractor within the applicable time periods specified in subsection (b) and Section 103-10, HRS. The penalty may be withheld from future payment due to the Contractor, if the Contractor was the responsible party. If a Contractor has violated subsection (b) three or more times within two years of the first violation, the Contractor shall be referred by the Contracting Officer to the contractor license board for action under Section 444-17(14), HRS. [HRS 103-10.5(c); HAR 3-125-23.]

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

(1) Substantiation of the amounts requested;

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

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

(B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the

- proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
- (C) The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and
- (3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

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

(e) In the case of a construction contract, a payment request made by a contractor to the Contracting Officer that includes a request for sums that were withheld or retained from a subcontractor and are due to a subcontractor may not be approved under subsection (c) unless the payment request includes:

- (1) Substantiation of the amounts requested; and
- (2) A certification by the Contractor, to the best of the Contractor's knowledge and belief, that:
 - (A) The amounts requested are only for performance in accordance with the specifications, terms and conditions of the contract;
 - (B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
 - (C) The payment request does not include any amounts that the Contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

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

(f) This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under subsection (c) of this section; provided that any such payments withheld shall be withheld by the Contracting Officer.

6.12 Payment in bonds. When the contract is for an improvement district project, payment to the Contractor may be made in either cash or improvement district bonds.

6.13 Authority to withhold money due or payable. (a) Withholding money due or payable. The City may withhold such amounts from the money due or to become payable under the contract to the Contractor, or any assignee under section 2.11, "Assignment of money," as may be necessary to:

- (1) Protect the City from any liability resulting from the work performed under this contract;
- (2) Satisfy any obligation of the Contractor to the City, State Department of Taxation or Internal Revenue Service, including obligations not relating to the contract as required by law, and the obligation of the Contractor to the workers, subcontractors, and suppliers who have performed

labor or furnished material and equipment under the contract as the Contracting Officer deems necessary, but only with the concurrence of or instructions from the Contractor's surety; or
(3) Repair, restore, or compensate for, any real or personal property located within the project site or in the vicinity thereof which was damaged as a result of the fault or negligence of the Contractor while performing the work under this contract.

(b) Making payment from money withheld. The City may make such payments from such amounts withheld for reasons specified in subsection (a); provided, that before making any payment for damages to property prescribed in subsection (a)(3), the Officer-in-Charge shall request the Contractor in writing to undertake the repair or restoration of the damaged property or make compensation therefor. If the Contractor fails or refuses to make such repair, restoration, or compensation to the satisfaction of the Officer-in-Charge **within seven days** after notification by the Officer-in-Charge, the Contracting Officer, upon recommendation of the Officer-in-Charge and upon the Contracting Officer's own findings that such recommendation is justified, may make the necessary payments.

6.14 Interest. Interest on amounts ultimately determined to be due to Contractor shall be payable at the statutory rate applicable to judgments against the State under Chapter 622 from the date the governmental body receives notice of the written notice through the date of decision or judgment, whichever is later; except that if an action is initiated in circuit court pursuant to Section 103D-711, interest under this section shall only be calculated until the time such action is initiated.

CHAPTER 7 - DISPUTES AND REMEDIES

7.1 Suspension of work. (a) The Officer-in-Charge may, by written order, suspend the work, either in whole or in part for periods as the Officer-in-Charge may deem necessary for any cause, including but not limited to:

- (1) Weather or soil conditions considered unsuitable for prosecution of the work;
- (2) Failure on the part of the Contractor to:
 - (A) Correct conditions unsafe for the general public or for the workers;
 - (B) Carry out orders given by the Officer-in-Charge;
 - (C) Perform the work in strict compliance with the provisions of the contract;
 - (D) Provide adequate supervision on the jobsite; or
 - (E) Maintain current liability insurance coverages.
- (3) Whenever a redesign that may affect the work is deemed necessary by the Officer-in-Charge;
- (4) Unacceptable noise or dust arising from the construction even if it does not violate any law or regulation; or
- (5) The convenience of the City. [HAR 3-125-7]

(b) Partial and total suspension. Suspension of work on some but not all items of work shall be considered a "partial suspension." Suspension of work on all items shall be considered "total suspension." The period of suspension shall be computed from the date set out in the written order for work to cease until the date of the order for work to resume. [HAR 3-125-7]

(c) Reimbursement to Contractor. In the event that the Contractor is ordered by the Officer-in-Charge in writing as provided herein to suspend all or part of the work under the contract in accordance with

subsections (a)(3), (a)(4), or (a)(5), the Contractor may be reimbursed for actual money expended towards the project during the period of suspension. No allowance will be made for anticipated profits. [HAR 3-125-7]

(d) Cost adjustment. If the performance of all or part of the work is suspended for reasons beyond the control of the Contractor, an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such suspension, and the contract modified in writing accordingly. However, no adjustment under this section shall be made for any suspension:

- (1) To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or
 - (2) For which an adjustment is provided for or excluded under any other provision of the contract.
- [HAR 3-125-7]

(e) Claims for adjustment. Any adjustment in contract price made pursuant to this section shall be determined in accordance with the provisions on changes and claims for adjustment. Claims for compensation shall be filed in writing with the Officer-in-Charge **within thirty days** after the date of the order to resume work or the claims will not be considered. Together with the claim, the Contractor shall submit substantiating documents covering the entire amount shown on the claim. The Officer-in-Charge shall take the claim under consideration and may make such investigations as are deemed necessary and shall be the sole judge as to the equitability of the claim and the Officer-in-Charge's decision shall be final. [HAR 3-125-7]

(f) No adjustment. No provision of this section shall entitle the Contractor to any adjustments for delays due to failure of surety, for suspensions made at the request of the Contractor, for any delay required under the contract, for suspensions, either partial or whole, made by the Officer-in-Charge under the provisions in subsection (a)(2). [HAR 3-125-7]

(g) Contractor's responsibilities. In case of suspension in the performance of the work under the contract from any cause whatsoever, the Contractor in addition to being responsible for performing the work under the contract shall:

- (1) Indemnify and save the City and its officers and employees harmless from liability for any injury or damage occurring during the period that the performance of the contract is suspended;
- (2) Be responsible for all materials and equipment delivered to the site of the project, including materials and equipment for which Contractor has received partial payment;
- (3) Properly store the materials and equipment which have been partially paid for by the City or which have been furnished by the City;
- (4) Remove immediately as directed by the Officer-in-Charge all surplus materials, equipment, and rubbish;
- (5) Neatly and compactly store all materials and equipment on the site of projects within public highways or streets so as not to impede traffic or interfere with the use of public utilities or facilities;
- (6) Provide suitable drainage and erect such temporary structures as are necessary to protect the project or parts of the project from damage;
- (7) Properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedlings, and sodding furnished under this contract; and

- (8) Continue to maintain liability insurance coverages.

7.2 Termination for default for nonperformance or delay; damages for delay. (a) Default. If the Contractor refuses or fails to perform the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in the contract, or any agreed upon extension thereof, fails to complete said work within such time, or commits any other substantial breach of the contract, and further fails **within seven days** after receipt of written notice from the Officer-in-Charge to commence and continue correction of the refusal or failure with diligence and promptness, the Contracting Officer may, upon recommendation by the Officer-in-Charge, by written notice to the Contractor, declare the Contractor in breach and terminate the Contractor's right to proceed with the work or the part of the work as to which there has been delay or other breach of contract. In this event the City may take over the work and perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and the Contractor's sureties shall be liable for any damage to the City resulting from the Contractor's refusal or failure to complete the work within the time specified. [HAR 3-125-18]

Any of the following causes may be deemed by the City to be a default and result in Contractor's termination under the contract:

- (1) Failure to commence work within the time specified in the notice to proceed;
- (2) Failure to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work;
- (3) Failure to comply with orders of the Officer-in-Charge;
- (4) Discontinuation of the prosecution of the work;
- (5) Failure to resume work which has been discontinued within a reasonable time after notice to resume;
- (6) Insolvency or is declared bankrupt, or commits any act of insolvency or bankruptcy;
- (7) Allows any final judgment to stand against the Contractor unsatisfied for a period of ten days;
- (8) Assignment for the benefit of creditors;
- (9) Unauthorized changes in the subcontractor listing submitted with the Contractor's proposal; or
- (10) Failure to correct deficiencies or to complete the contract.

(b) Liquidated damages.

- (1) Upon termination. If fixed and agreed liquidated damages are provided in the contract, and if the City so terminates the Contractor's right to proceed, the resulting damage will consist of the liquidated damages for the time as may be required for final completion of the work.
- (2) In absence of termination. If fixed and liquidated damages are provided in the contract, and if the City does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted. [HAR 3-125-18]

(c) Time extension. The Contractor's right to proceed shall not be so terminated nor shall the Contractor be charged with resulting damage if the delay in the completion of the work was not the fault of the Contractor as in section 5., "Delay; time extensions." [HAR 3-125-18]

(d) Additional rights and remedies. The rights and remedies of the City provided in this section are in addition to any other rights and remedies provided by law or under this contract. [HAR 3-125-18]

7.3 Termination for convenience. (a) Termination. The Contracting Officer may, when the interests of the City so require, terminate the contract in whole or in part, for the convenience of the City. The Contracting Officer, upon recommendation by the Officer-in-Charge, shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective. [HAR 3-125-22]

(b) Contractor's obligations. The Contractor shall incur no further obligations in connection with the terminated work, and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the City's approval. The Officer-in-Charge may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the City. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so. [HAR 3-125-22]

(c) Right to construction and goods. The Officer-in-Charge may require the Contractor to transfer title and deliver to the City in the manner and to the extent directed by the Officer-in-Charge:

- (1) Any completed constructions; and
- (2) The partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "construction material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of the contract.

The Contractor shall protect and preserve property in the possession of the Contractor in which the City has an interest. If the Officer-in-Charge does not exercise this right, the Contractor shall use its best efforts to sell the construction, goods, and construction materials in accordance with the standards of section 490:2-706, HRS. This in no way implies that the City has breached the contract by exercise of the termination for convenience clause. [HAR 3-125-22]

(d) Compensation

(1) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by subchapter 15, chapter 3-122, HAR, bearing on such claim. If the Contractor fails to file a termination claim **within one year** from the effective date of termination, the Contracting Officer may, upon recommendation of the Officer-in-Charge, pay the Contractor, if at all, an amount set in accordance paragraph (3)(B).

(2) The Officer-in-Charge 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 City, the proceeds of any sales of construction, goods, and construction materials under paragraph (3)(C), and the contract price of the work not terminated.

(3) Absent complete agreement under paragraph (2), the Contracting Officer shall pay the Contractor the following amounts, provided payments under paragraph (2) shall not duplicate payments under this subsection for the total (without duplication of any items) of:

(A) The cost of all contract work performed prior to the effective date of the notice of termination plus a five per cent markup on actual direct costs on the portion of the work (the markup shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of the work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(B) Subject to the prior approval of the Contracting Officer, the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subsection (b). Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with subparagraph (A);

(C) The total sum to be paid the Contractor under this subsection shall not exceed the total contract price reduced by the amount of any sales of construction, goods, and construction materials under subsection (c), and the contract price of work not terminated.

(D) Cost claimed, agreed to, or established under paragraphs (2) and (3) of this subsection shall be in accordance with chapter 3-123, HAR, Cost principles. [HAR 3-125-22]

7.4 Authority to resolve contract and breach of contract controversies.

(a) Decisions of the Officer-in-Charge. Any question or dispute concerning any provisions of the Contract which may arise during its performance shall be decided by the Officer-in-Charge; provided, that decisions on questions or disputes relating to default or termination of the Contract, additional cost to the City where the cost is more than ten per cent of the original contract price or \$25,000 or more, and payment, shall be made only with the approval of the Contracting Officer.

(b) All controversies between the Officer-in-Charge and the Contractor which arise under, or are by virtue of, the contract and which are not resolved by mutual agreement between the Officer-in-Charge and the Contractor, shall be decided by the Contracting Officer in writing, within the time limitations below, after receipt of a written request from the Contractor for a final decision:

(1) For controversies or for claims not exceeding fifty thousand dollars: **ninety calendar days** after receipt of the claim.

(2) For claims exceeding fifty thousand dollars: **ninety calendar days** after receipt of the claim; provided that if a decision is not issued within ninety calendar days, the Contracting officer shall notify the Contractor of the time within which the Contracting Officer will make the decision. The reasonableness of this time period will depend on the size and complexity of the claim and the adequacy of the Contractor's supporting data and other relevant factors.

If a decision on a controversy or a claim not exceeding fifty thousand dollars is not made within ninety calendar days after receipt, or if a decision is not made within the time promised for a claim in excess of fifty thousand dollars, the Contractor may proceed as if an adverse decision has been received.

The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting Contractor action concerning appeal. Such payments shall be without

prejudice to the rights of either party and where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment. [HAR 3-126-28]

(c) Controversies involving City claims against the Contractor. All controversies involving claims asserted by the City against a Contractor which cannot be resolved by mutual agreement shall be the subject of a decision by the Contracting Officer or the Officer-in-Charge as applicable. [HAR 3-126-29]

(d) Cost of dispute. The Contractor shall pay to the City the amount of the City's costs to enforce the contract, including but not limited to amounts for attorneys' fees, consultants' fees and expenses.

(e) Decision. The Contracting Officer shall immediately furnish a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. Any such decision shall be final and conclusive, unless fraudulent, or unless the Contractor brings an action seeking judicial review of the decision in a circuit court of this State **within the six months** from the date of receipt of the decision.

The Contractor shall comply with any decision of the Contracting Officer and proceed diligently with performance of the contract pending final resolution by a circuit court of this State of any controversy arising under, or by virtue of, the contract, except where there has been a material breach of contract by the City; provided that in any event the Contractor shall proceed diligently with the performance of the contract where the Contracting Officer has made a written determination that continuation of work under the contract is essential to the public health and safety. [Chapter 3-126, subchapter 3, HAR]

EXHIBITS ATTACHED

EXHIBIT "A"

SURETY BID BOND

Bond No. _____

KNOW TO ALL BY THESE PRESENTS:

That we, _____,
(Full name or legal title of Bidder)
as Bidder, hereinafter called Principal, and _____

(Name of bonding company)
as Surety, hereinafter called Surety, a corporation authorized to transact
business as a Surety in the State of Hawaii, are held and firmly bound unto the
CITY AND COUNTY OF HONOLULU, as Owner, hereinafter called Owner, in the penal sum
of _____
DOLLARS (\$ _____), lawful money of the United States of America, for
the payment of which sum well and truly to be made, the said Principal and the
said Surety bind ourselves, our heirs, executors, administrators, successors and
assigns, jointly and severally, firmly by these presents.

WHEREAS:

The Principal has submitted an offer for _____

(Project number, if available, and description)

NOW, THEREFORE:

The condition of this obligation is such that if the Owner shall reject
said offer, or in the alternate, accept the offer of the Principal and the
Principal shall enter into a Contract with the Owner in accordance with the terms
of such offer, and give such bond or bonds as may be specified in the
solicitation or Contract Documents with good and sufficient surety for the
faithful performance of such Contract and for the prompt payment of labor and
material furnished in the prosecution thereof as specified in the solicitation
then this obligation shall be null and void, otherwise to remain in full force
and effect.

Signed this _____ day of _____, 200____.

(Principal)

By _____
Its

(Surety)

By _____
Its Attorney-in-Fact

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

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Obligees to the Surety and the Principal and subject to the limitation of the penal sum of this bond, Surety shall remedy the Default, or take over the work to be performed under the Contract and complete such work, or pay moneys to the Obligees in satisfaction of the surety's performance obligation on this bond.

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Contractor)

* _____
Signature

Title

(Seal)

Name of Surety

* _____
Signature

Title

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

EXHIBIT "C"

LABOR AND MATERIAL PAYMENT BOND (SURETY)
(6/21/07)

KNOW TO ALL BY THESE PRESENTS:

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

as Contractor, hereinafter called Principal, and _____

(Name and Street Address of Bonding Company)

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

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

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

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

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

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor and materials supplied to the Principal for use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.

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

2. A "Claimant" shall be defined herein as any person who has furnished labor or materials to the Principal for the work provided in the Contract.

Every Claimant who has not been paid amounts due for labor and materials furnished for work provided in the Contract may institute an action against the Principal and its Surety on this bond at the time and in the manner prescribed in Section 103D-324, Hawaii Revised Statutes, and have the rights and claims adjudicated in the action, and judgment rendered thereon; subject to the Obligee's priority on this bond. If the full amount of the liability of the Surety on this bond is insufficient to pay the full amount of the claims, then after paying the full amount due the Obligee, the remainder shall be distributed pro rata among the claimants.

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Contractor)

* _____
Signature

Title

(Seal)

Name of Surety

* _____
Signature

Title

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

EXHIBIT "D"

PERFORMANCE BOND

KNOW TO ALL BY THESE PRESENTS:

That we _____
 (full legal name and street address of Contractor)
 as Contractor, hereinafter called Contractor, is held and firmly bound unto
 City and County of Honolulu, its successors and assigns as Obligee, in the
 amount of _____
 Dollars (\$ _____), lawful money of the United States
 of America, for payment of which to the said Obligee, well and truly to be
 made, Contractor binds itself, its heirs, executors, administrators,
 successors and assigns, firmly by these presents. Said amount is evidenced
 by:

- [] Legal tender;
- [] Share Certificate unconditionally assigned to or made payable at
 sight to _____;
 Description: _____;
- [] Certificate of Deposit No. _____, dated _____
 issued by _____
 drawn on _____
 a bank, savings institution or credit union insured by the Federal
 Deposit Insurance Corporation or the National Credit Union
 Administration, payable at sight or unconditionally assigned to _____;
- [] Cashier's Check No. _____, dated _____
 drawn on _____
 a bank, savings institution or credit union insured by the Federal
 Deposit Insurance Corporation or the National Credit Union
 Administration, payable at sight or unconditionally assigned to: _____;
- [] Teller's Check No. _____, dated _____
 drawn on _____
 a bank, savings institution or credit union insured by the Federal
 Deposit Insurance Corporation or the National Credit Union
 Administration, payable at sight or unconditionally assigned to: _____;
- [] Treasurer's Check No. _____, dated _____
 drawn on _____
 a bank, savings institution or credit union insured by the Federal
 Deposit Insurance Corporation or the National Credit Union
 Administration, payable at sight or unconditionally assigned to: _____;
- [] Official Check No. _____, dated _____
 drawn on _____
 a bank, savings institution or credit union insured by the Federal
 Deposit Insurance Corporation or the National Credit Union
 Administration, payable at sight or unconditionally assigned to: _____;

EXHIBIT "D"

[] Certified Check No. _____, dated _____, accepted by a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to: _____;

WHEREAS:

The Contractor has by written agreement dated _____, entered into a contract with Obligee for the following Project:

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

NOW, THEREFORE:

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder.

EXHIBIT "D"

Signed and sealed this _____ day of _____,
20_____.

(Contractor) (Seal)

*By _____
Its

*By _____
Its

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC.

EXHIBIT "E"

LABOR AND MATERIAL PAYMENT BOND

KNOW TO ALL BY THESE PRESENTS:

That we _____ (full legal name and street address of Contractor) as Contractor, hereinafter called Contractor, is held and firmly bound unto City and County of Honolulu, its successors and assigns as Obligee, hereinafter called Obligee, in the amount of _____ Dollars (\$_____), lawful money of the United States of America, for payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

- [] Legal tender;
[] Share Certificate unconditionally assigned to or made payable at sight to _____ Description _____;
[] Certificate of Deposit No. _____, dated _____ issued by _____ drawn on _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to: _____;
[] Cashier's Check No. _____, dated _____ drawn on _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to: _____;
[] Teller's Check No. _____, dated _____ drawn on _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

EXHIBIT "E"

- [] Treasurer's Check No. _____, dated _____
drawn on _____
a bank, savings institution or credit union insured by the Federal
Deposit Insurance Corporation or the National Credit Union
Administration, payable at sight or unconditionally assigned to _____;
- [] Official Check No. _____, dated _____
drawn on _____
a bank, savings institution or credit union insured by the Federal
Deposit Insurance Corporation or the National Credit Union
Administration, payable at sight or unconditionally assigned to _____;
- [] Certified Check No. _____, dated _____
accepted by a bank, savings institution or credit union insured by
the Federal Deposit Insurance Corporation or the National Credit
Union Administration, payable at sight or unconditionally assigned
to _____;

WHEREAS:

The Contractor has by written agreement dated _____,
entered into a contract with Obligee for the following Project: _____

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

NOW, THEREFORE:

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, and shall promptly pay all persons supplying labor and materials for the performance of the Contract, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in

EXHIBIT "E"

accordance with the terms thereof.

AND IT IS HEREBY STIPULATED AND AGREED that this bond shall inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in said work so as to give any and all such persons a right of action as contemplated by Sections 103D-324(d) and 103D-324(e), Hawaii Revised Statutes.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment of mechanics' liens which may be filed of record against the Project, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this _____ day of _____, 20_____.

(Contractor) (Seal)

*By _____
Its

*By _____
Its

*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

EXHIBIT "F"

ESTIMATE FOR CHANGE ORDER WORK

PROJECT: _____

CONTRACTOR: _____

Reference: PCD No. _____ Other _____

MATERIALS

<u>Description</u>	<u>Qty.</u>	<u>Unit Price</u>	<u>Subtotal</u>
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

TOTAL FOR MATERIALS..... \$ _____ (1)

LABOR

(2) Fringe*/(3) Classification Hours Hourly Rate

*Identify fringe benefit separately.

Fringe		\$ _____	\$ _____
Fringe		\$ _____	\$ _____
Fringe		\$ _____	\$ _____
Fringe		\$ _____	\$ _____
Fringe		\$ _____	\$ _____
Fringe		\$ _____	\$ _____

Subtotal for labor..... \$ _____ (2) \$ _____ (3)

TOTAL FOR LABOR (Wages & fringes), (2+3)..... \$ _____ (4)

SUBTOTAL - MATERIALS & LABOR (1+4)..... \$ _____(5)
 O.H. & Profit (___ %) of (5) (Per HAR 3-125-13, not to exceed 15%)..... \$ _____(6)
 Ins. & Taxes (___%) of (3)..... \$ _____(7)
 O.H. for Ins. & Taxes, 6% of (7)..... \$ _____(8)
TOTAL FOR MATERIALS & LABOR (5+6+7+8)..... \$ _____(9)

EQUIPMENT

<u>Type or Class</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Subtotal</u>
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

TOTAL FOR EQUIPMENT..... \$ _____(10)

SUBCONTRACTOR

<u>Name</u>	<u>Amount (11)</u>	<u>O.H. & Profit, HAR 3-125-13(12)</u>
_____	\$ _____	x 7% = \$ _____
_____	\$ _____	x 7% = \$ _____

Subtotal for Subcontractor.....\$ _____(11).....\$ _____(12)

TOTAL FOR SUBCONTRACTOR (11 + 12)..... \$ _____(13)

TOTAL FOR MATERIAL, LABOR, EQUIPMENT, SUBCONTRACTOR (9+10+13).. \$ _____(14)

Bond Fee 1 % on (14) (If applicable)..... \$ _____(15)

Gross Income Tax (not to exceed 4.166%) on (14) + (15) minus (11)..... \$ _____(16)

TOTAL FOR THIS CHANGE ORDER (14+15+16)..... \$ _____

AUTHORIZED REPRESENTATIVE:

 CONTRACTOR

Date _____

EXHIBIT "G"
CITY AND COUNTY OF HONOLULU

(DEPARTMENT)

DAILY FORCE ACCOUNT REPORT

Tract No. _____ Contractor: _____ Date: _____
 Project _____ Covering change order no.: _____

NAME OF EMPLOYEE (1)	CLASS OF EMPLOYEE (2)	BASIC HOURLY RATE (3)	FRINGE BENEFIT/HR. (4)	TOTAL RATE (5)=(3)+(4)	HOURS (6)	TOTAL (7)=(5)x(6)	INSURANCE* RATE (8)	INSURANCE AMOUNT (9)=(3)x(8)x(6)
*s Compensation, PL/PD, FICA, TDI, Federal/State Unemployment Compensation						TOTAL FOR PART A		TOTAL FOR COLUMN (9)

MATERIALS	UNIT	UNIT PRICE (10)	NO. OF UNITS (11)	TOTAL (12)=(10)x(11)
TOTAL FOR PART B				

C TOTAL FOR PART C (TOTAL PART A + TOTAL COLUMN (9) + TOTAL PART B):

D CONTRACTOR'S MARKUP (HAR 3-125-15), NOT TO EXCEED 20% OF PART C:

EQUIPMENT	TYPE OR CLASS	RATE (13)	HOURS (14)	TOTAL (15)=(13)x(14)
TOTAL FOR PART E				

SUBCONTRACTOR	AMOUNT (16)	ALLOWANCE (17)=(10%)x(16)	TOTAL (18)=(16)x(17)
TOTAL FOR PART F			

G GROSS EARNED (PARTS C THROUGH F, INCLUSIVE):

H BOND FEE _____ % OF PART G:

I 4.712% STATE EXCISE TAX ON (PARTS G + H minus PART F COLUMN (16)):

GRAND TOTAL THIS REPORT (PARTS G + H + I):

DESCRIPTION OF WORK:

The above is a true statement of all force account work for this date.

 Project Inspector

 Contractor or Contractor's Representative

(To be triplicate, signed by both parties immediately after the day's work, with invoices, etc.)
 (10/2004)

EXHIBIT "H"

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in section 3-122-122, HAR, and submitted pursuant to section 3-122-125, HAR; either actually or by specific identification in

writing to the officer-in-charge in support of * _____

are accurate, complete, and current as of ** _____
(Month, day, year)

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the City which are part of the proposal.

Firm: _____

Signature: _____

(Print name & title of person signing)

***Date of execution: _____

- * Describe the project and reference (i.e. project name, PCD No., field change, change order number, etc.).
- ** The date should be a mutually determined date prior to but as close to the date when price negotiations were concluded and the price was agreed to as possible.
- *** Date of execution should be as soon after the date when price negotiations were concluded and the contract price was agreed to as practical.

EXHIBIT "T"

AGREEMENT

(NAME CHANGE)

Notification is given that the name of _____
_____ has been changed, effective _____,
to _____.

In accordance with Section 3-125-14(3) of the Hawaii Administrative
Rules, the corporation/sole proprietorship/partnership (circle one) of _____
_____ (insert new name and address)

hereby agrees that all other terms and conditions of the contract(s) listed
below, entered into between the City and County of Honolulu and _____
_____ (insert previous name) are in full force and

effect. A copy of the Articles of Amendment to Change Corporate Name (or
other document indicating the name change) is attached hereto.

Contract No. _____ PROJECT NAME AND DESCRIPTION _____

By _____
Its _____

By _____
Its _____

Dated: _____

ACCEPTED:
CITY AND COUNTY OF HONOLULU

By _____
Director, Department of Budget
and Fiscal Services

Dated _____

EXHIBIT "J"

**VALUE ENGINEERING CHANGE PROPOSAL (VECP)
CITY AND COUNTY OF HONOLULU**

	VECP NO.	DATE:
PROJECT TITLE:	PROJECT NO.	CONTRACT NO.
	CONTRACTOR:	

A. CHANGES: The following changes are to be performed in accordance with all contract stipulations and covenants (Specifications, drawings, special provisions, etc.):

B. CONTRACTOR'S QUOTATION: The changes included under Part A will be performed at a contract price decrease of \$_____ in accordance with all terms of the contract documents. Six copies of our cost breakdown are attached herewith. We are aware that this VECP must be approved by the City in the designated space below and that no work is to be performed until an approved change order has been given us. In case of rejection of this VECP by the City, we will continue all work in accordance with the existing contract terms.

NAME	TITLE
AUTHORIZED SIGNATURE	DATE

C. STATEMENT OF FUNDS:

Original contract price.....	\$ _____
Amended contract price.....	\$ _____

D. SUMMARY DESCRIPTION AND POTENTIAL IMPACTS OF THE PROPOSED CHANGES:

(VECP1.WPD)

E. TIME EXTENSION:

F. VALIDATION OF CHANGE ORDER

G. REJECTION OF CHANGE ORDER

Recommended for approval:

CONSTRUCTION ENGINEER

CONSTRUCTION ENGINEER

Approved:

Disapproved:

DEPARTMENT HEAD

DEPARTMENT HEAD

Distribution:

Distribution:

DATE

DATE

REASONS FOR REJECTION:

EXHIBIT "J"

**VALUE ENGINEERING CHANGE PROPOSAL (VECP)
City and County of Honolulu
(Contractor-required information)**

From: _____
To: _____ VECP No. _____
Project: _____ Contract: No. _____

INFORMATION REQUIRED OF THE CONTRACTOR: (If answer to any of the following questions is "Yes", explain in "REMARKS" below.)

		YES	NO
1.	Does this proposed change affect the time of completion of the contract as stated in the Contract?		
2.	Has the Contractor submitted this proposed change previously to this office or any other government agency?		
3.	Does this change affect other costs to the government, such as government-furnished property or costs of contract-related items?		
4.	Does this proposed change increase the maintenance or operation costs of original or proposed items.		
5.	Is a subcontractor involved in this proposed change to the original contract?		
6.	Does the Contractor intend to restrict the government's right to use any data described in this proposed change?		
7.	Does this proposed change involve use of proprietary materials?		

CHANGES OR REVISIONS TO DRAWINGS AND SPECIFICATIONS: (Attach applicable contract drawings and specifications, including Contractor's or shop drawings or literature with all changes marked on the drawings and specifications.)

REMARKS:

CONTRACTOR'S REPRESENTATIVE:

NAME	SIGNATURE	DATE
_____	_____	_____

RECEIVED BY: _____
Department

NAME	SIGNATURE	DATE
_____	_____	_____

EXHIBIT "K"

FORM DF-P-65

(Date)

Director, Department of
Budget and Fiscal Services
City and County of Honolulu
Honolulu, Hawaii 96813

Subject: Contract No. _____

As of this date, _____
(Contractor)

acknowledges receipt of the following outstanding bodily injury or death and property damage claims made by third parties arising out of the performance of it work in connection with the subject contract. The Contractor agrees to notify the City of the final disposition of said claims; or, if no final disposition of such claims, their status before actual payment of any amount withheld by the City.

- 1. _____

- 2. _____

- 3. _____

Sincerely,

(Authorized Signature)

(Contractor's Name)

EXHIBIT "L"

City and County of Honolulu · Department of Budget and Fiscal Services · Division of Purchasing



REPORT OF EQUIPMENT PURCHASED WITH CONSTRUCTION CONTRACTS

INSTRUCTIONS
1. Request For BFS Approval/Processing - Agency to complete Section I - Attach 1 copy of this form to every construction contract document that requires BFS approval or processing; i.e. construction contract drafts and finals, bid referrals, addendums, change orders, and requests for payment. This policy is applicable to consultant contracts only when it includes equipment, as defined in Item No. 3.
2. Request For Payment Of Equipment - Contractor and agency to complete Section II only when there is a request for payment of equipment, as defined in Item No. 3.
3. Equipment That Must Be Reported On This Form: Equipment that is movable or that is removable with a hand tool, which will hereafter be referred to as "equipment"

SECTION I (Agency to complete and attach to all documents requiring BFS approval/processing)
Contract No. Invoice No. Job/Project No.
Agency Agency Project Manager Phone
Project
Contractor
Check the appropriate box:
4. [] Contract does not include equipment, as defined in Item No. 3.
5. [] Contract includes equipment, as defined in Item No. 3.
(Note to Fiscal Services: If Item No. 5 is checked and there is a request for payment of equipment, completion of Section II is a prerequisite for payment)
Comments:
Signature of department head or representative Date

SECTION II (Contractor and Agency to complete only when there is a request for payment of equipment as defined in Item No. 3 above)
Contractor:
6. Two (2) copies of the detailed list of equipment are attached and includes the following information: description, make, model, serial number, quantity, cost, indication of whether or not it is movable or removable, and the specific location of the equipment such as the room number. See Item No. 9 for a sample of the detailed list.
Signature of contractor or representative Date
Agency: Check the appropriate box:
7. [] Federal funds are not being used to partially or totally reimburse, or pay, for the equipment.
8. [] Federal funds are being used to partially or totally reimburse, or pay, for the equipment.
Signature of department head or representative Date

For additional information: Contact the Property Management & Disposal Section, Purchasing Division, BFS, 808-523-4781.

Form BFS-P-79 6/01/04 misc/construction.eqpmt rpt.doc

Distribution at payment from Fiscal to: 1) Purchasing/Property Management & Disposal Section only if Section II is completed. Transmit with invoice & eqpmt list. 2) Pre-Audit

9. This is a sample of how the contractor shall provide the information that is required. To request an electronic copy of this Word software table: Contact the Property Management & Disposal Section, Purchasing Division, BFS, 808-523-4781

DETAILED LIST OF EQUIPMENT PURCHASED WITH CONSTRUCTION CONTRACTS

Date _____ Contract No. _____ Invoice No. _____ Job/Project No. _____
 Agency _____ Agency Project Manager _____ Phone _____
 Contractor _____ Project _____

SAMPLE

DESCRIPTION	MAKE	MODEL NUMBER	SERIAL NUMBER	QTY	UNIT PRICE	TOTAL PRICE	Equipment IS MOVABLE OR REMOVABLE	SPECIFIC LOCATION (i.e. Room No.)
1 Portable lift	American Equipment Co	ABC123	12345678901 67890123456 98765432101	3	40,000.00	120,000.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Mechanic Shop Room 3
2 Hand Truck 55 gallon	International Sales Inc	DEF45678	2345678912	1	4,000.00	4,000.00	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Tire Shop, Work Station A
			TOTAL	4		124,000.00		

I certify that the following information is correct.

Page _____ of _____

Contractor or Representative _____

Print name

Signature

Phone _____

(6/3/04)

