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**AGREEMENT FOR DESIGN-BUILD SERVICES
CONTRACT NO. CT-DTS-1000137**

This Contract for Design-Build Services dated 11/11/2009 (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 PACIFIC CO., 2215 1st Street, Vancouver, WA 98661 (the "DESIGN-BUILDER").

WITNESSETH THAT:

WHEREAS, the CITY desires to undertake design and construction of the West O'ahu/Farrington Highway Guideway in Honolulu, Hawai'i, from the East Kapolei Station to the Pearl Highlands 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, 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 ("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;
- f. Part 6 – The Request For Proposal Drawings as modified by the DESIGN-BUILDER's proposal information, dated August 28, 2009;
- g. Part 7 – The Standard Specifications;

Honolulu High-Capacity Transit Corridor Project

- h. Part 8 – The Standard Drawings, the RFP and all corresponding RFP addenda; and
- i. Part 9 – The DESIGN-BUILDER’s proposal information, dated August 28, 2009 and the corresponding Discussion Responses;

all of which are collectively referred to as the Contract Documents, 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 – DESIGN-BUILDER’s proposal information and Discussion Responses 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 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 strictly limited to Preliminary Engineering Work activities, as defined by the CITY, whose principal purpose is refinement and validation of information supporting the environmental review process. Until the Federal Transit Administration (“FTA”) issues its Record of Decision, no action by the DESIGN-BUILDER shall be taken which would have an adverse environmental impact or limit the choice of reasonable alternatives. Any such action would be considered grounds for possible termination of the Contract for cause.

The second NTP (“NTP #2”) and all subsequent NTPs will be issued after the FTA issues a Record of Decision for the Honolulu High-Capacity Transit Corridor Project and/or a Letter of No Prejudice. In the event NTP #2, NTP #3 and NTP #4 are not issued within One Hundred Twenty (120) calendar days after the Contract has been executed by the DESIGN-BUILDER and the CITY, the CITY and the DESIGN-BUILDER will meet and jointly determine the schedule and cost impacts. The pricing shall remain unchanged until the parties come to a mutual agreement.

NTP #2 will be for all required Preliminary Engineering Work Activities, as defined by the CITY, that go beyond the limits of NTP #1.

The third NTP (“NTP #3”) will be for Final Design Work Activities, as defined by the CITY.

The fourth NTP (“NTP #4”) and subsequent NTPs will be for all remaining Work of the Contract.

Refer to SP-4.1 for Contract Schedule requirements.

The reference to “Required Days After NTP” contained in the Table of Schedule Milestones, Special Provisions Section SP-4.1(b), Time is of the Essence, is hereby clarified to be based on NTP #4 as defined above. Day counts for completion of the Work Items listed in the Table of Schedule Milestones will be based on the issuance date of NTP #4. Elsewhere in the Contract Documents, unless specifically addressing NTP #1, NTP #2, or NTP #3, whenever reference is made to “the NTP” it shall be understood

Honolulu High-Capacity Transit Corridor Project

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 #4.

5. This is a firm fixed-price contract, and subject to the provisions of this paragraph and in accordance with Section 6 of the Special Provisions, the total aggregate amount of FOUR HUNDRED EIGHTY TWO MILLION NINE HUNDRED TWENTY FOUR THOUSAND DOLLARS (\$482,924,000), inclusive of State general excise and use tax (GET) and county one-half percent GET Surcharge, 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.

The CITY agrees to pay the DESIGN-BUILDER, for the satisfactory performance and completion of the Work, as set forth in the Special Provisions and the GCDB attached hereto.

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, either actually or by specific identification in writing to the Officer-in-Charge in support of this Contract, is accurate, complete, and current as of the date of this Contract.

7. 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, Hawaii 96813

Attention: Director

8. When notice is to be given to the DESIGN-BUILDER, it shall be mailed or delivered to:

Kiewit Pacific Co.
2215 E. 1st Street
Vancouver, WA 98661

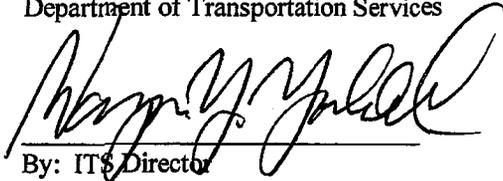
Attention: Lee Zink, Area Manager

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.

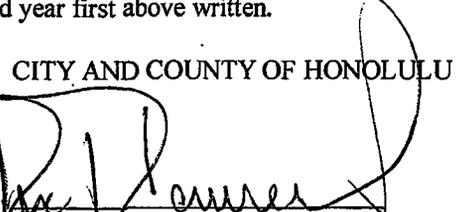
Honolulu High-Capacity Transit Corridor Project

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:
Department of Transportation Services


By: ITS Director

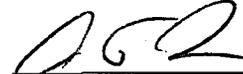
CITY AND COUNTY OF HONOLULU


By: Director of Budget and Fiscal Services

APPROVED AS TO FORM AND
LEGALITY:


Deputy Corporation Counsel

DESIGN-BUILDER
Kiewit Pacific Co.

By: 
ITS A. T. Skoro, Vice President
Federal I.D. No.

From BFS - 74
(Mar. 1996)

Certificate

The attached contract for West Oahu/Farrington Highway Guideway in Honolulu, Hawaii, from East Kapolei Station to the Pearl Highlands Station

(\$482,924,000.00)

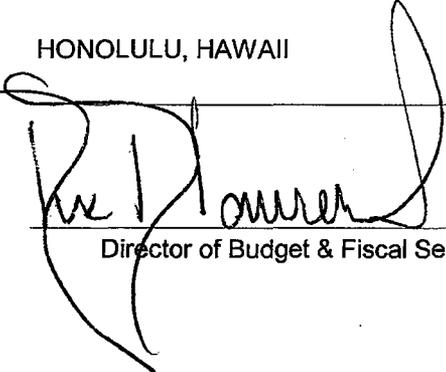
is hereby approved as to availability and designation of funds, and certification is hereby made that there is a valid appropriation from which expenditures to be made under said contract may be made and that sufficient unencumbered funds are available in the Treasury of the City and County of Honolulu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

CONTRACT NO. CT - DTS- 1000137
FUND Transit Fund (690)
Transit Improvement Bond Fund (695)

HONOLULU, HAWAII

NOV 17 2009

ACCOUNT NO. _____
690/7801-09-D (4064) \$ 40,530,000.00
690/7801-10-D (4064) 17,930,500.00
690/7801-09-C (4263) 100,000,000.00
695/7801-10-C (4263) 324,463,500.00
\$ 482,924,000.00

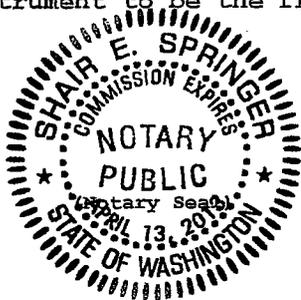

Director of Budget & Fiscal Services *dch*

(Acknowl.frm, 8/97)

DESIGN-BUILDER ACKNOWLEDGMENT
(Corporation)

STATE OF ~~HAWAII~~ Washington)
) ss.
CITY AND COUNTY OF ~~HONOLULU~~)
 Clark

On this 11 day of November, 2009, before me appeared
A. T. Skoro and _____
to me personally known, who, being by me duly sworn, did say that they are the
Vice President and _____, respectively,
of Kiewit Pacific 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 _____
Shair E. Springer and _____ acknowledged said
instrument to be the free act and deed of said corporation.



Shair E. Springer
Notary Public, State of ~~Hawaii~~ Washington
My commission expires: 04/13/2013

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)
Document Identification or Description: _____

Doc. Date: 11/11/2009 No. of Pages: 4 Jurisdiction: Clark County, Washington

POWER OF ATTORNEY

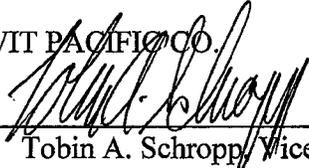
KIEWIT PACIFIC CO., a Delaware corporation (the "Corporation"), appoints A. T. SKORO as its Attorney-in-Fact with the authority to act on behalf of the Corporation for the purpose of executing and delivering the following documents to the City and County of Honolulu for the Honolulu High-Capacity Transit Corridor Project, West O'ahu/Farrington Highway Guideway DB, 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
- 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 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 until May 18, 2012, unless earlier revoked in writing.

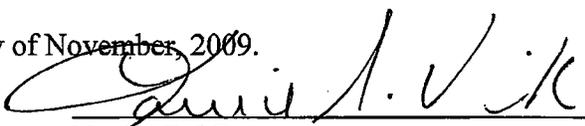
IN WITNESS WHEREOF, Kiewit Pacific Co. has caused its name to be subscribed hereto and its corporate seal to be affixed by its duly authorized officers on November 6, 2009 (the "Effective Date").

ATTEST: 
Michael F. Norton, Secretary

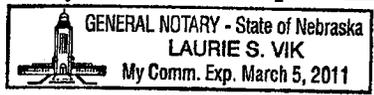
KIEWIT PACIFIC CO.
By 
Tobin A. Schropp, Vice President

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

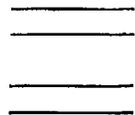
Subscribed and sworn to before me this 6th day of November, 2009.


Notary Public

My commission expires: 3-5-2011



SHAIR E SPRINGER
PO BOX 1769
VANCOUVER WA 98668



Your Notary Public certificate has changed in size and format, yet still contains all of the information required by RCW 42.44.030.

The Department of Licensing made this change to help control expenditures. The reduced printing and postage costs amount to nearly \$13,000 per year. The new certificate is the same size as all other professional licenses issued by the Department and can be mailed in a standard business envelope.

You must provide a photocopy of this certificate to the vendor who will manufacture your seal or stamp as required by WAC 308-30-010 (6).

Visit our website at www.dol.wa.gov/unfc/notfront.htm to find notary regulations and other useful information. As a Notary Public for the state of Washington, you are expected to know and abide by the Laws Relating to Notaries Public. To find them, click on RCW 42.44, WAC 308-30 and Uniform Regulation of Business and Professions under the "Quick Clicks" menu on the website. If you have questions, please call us at (360) 664-1550.

STATE OF WASHINGTON

DEPARTMENT OF LICENSING – BUSINESS AND PROFESSIONS DIVISION
THIS CERTIFICATE IS EVIDENCE OF THE AUTHORITY AND APPOINTMENT OF



NOTARY PUBLIC APPOINTMENT

SHAIR E SPRINGER

Christine Gregoire
Christine Gregoire, Governor

Sam Reed
Sam Reed, Secretary of State

Elizabeth A. Luze
Elizabeth A. Luze, Director, Department of Licensing

Cert/Lic No.
37354

Issued Date
04/27/2009

Expiration Date
04/13/2013

EXHIBIT B

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

KNOW TO ALL BY THESE PRESENTS:

That Kiewit Pacific Co., 2215 E. 1st Street, Vancouver, WA 98661, as Design-Builder, hereinafter called Principal, and Travelers Casualty and Surety Company
of America, One Tower Square, 2SHS, 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, its successors and assigns, hereinafter called Obligee, in the amount of TWO HUNDRED FORTY ONE MILLION FOUR HUNDRED SIXTY TWO THOUSAND AND NO/100 DOLLARS (\$241,462,000.00), 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 11/11/2009, for the following project:

CT-DTS-1000137, RFP-DTS-0900015
West Oahu/Farrington Highway Guideway Design-Build Contract, Honolulu High-Capacity Transit Corridor Project for the City and County of Honolulu, Honolulu, Hawaii,

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

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

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

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its

obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

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

Signed this 6th day of November, 2009.

(Seal) KIEWIT PACIFIC CO.

* 

Signature A. T. Skoro

Vice President

Title

(Seal) Travelers Casualty and Surety
Company of America

Name of Surety
* 

Signature Lisa Buller

Attorney-in-Fact

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

I, Janine Caldwell a Notary Public in and for said Clark County in the State of Washington do hereby certify that A.T. Skoro Vice President of Kiewit Pacific Co., proved to me on basis satisfactory evidence to be the person who appeared before me, and acknowledge that he signed Exhibit B Performance Bond Surety on 6th day of November 2009.



Janine L. Caldwell

Notary Public for Washington

My Commission Expires on May 3, 2011

STATE OF NEBRASKA
State,
COUNTY OF DOUGLAS

I, Christina M. Harnden a Notary Public in and for said County and do hereby certify that

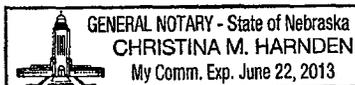
_____ President

_____ Vice President

Lisa Buller Attorney-in-Fact of Travelers Casualty and Surety Company of America, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me, and acknowledged that she signed, sealed and delivered a said instrument, for and on behalf of Travelers Casualty and Surety Company of America for the uses and purposes therein set forth.

Given under my hand and notarial seal, the 6th day of

November A.D., 2009.



Christina M. Harnden

Christina M. Harnden, Notary Public



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. 003216962

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 3rd day of September, 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 3rd day of September, 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 6th day of November, 20 09.

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.

EXHIBIT C

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

KNOW TO ALL BY THESE PRESENTS:

That Kiewit Pacific Co., 2215 E. 1st Street, Vancouver, WA 98661 as
Contractor, hereinafter called Principal, and Travelers Casualty and Surety Company
of America, One Tower Square, 2SHS, 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, its successors and assigns, hereinafter called Obligee, in the amount of TWO HUNDRED FORTY ONE MILLION FOUR HUNDRED SIXTY TWO THOUSAND AND NO/100 DOLLARS (\$241,462,000.00) 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 11/11/2009 for the following project:

CT-DTS-1000137, RFP-DTS-0900015
West Oahu/Farrington Highway Guideway Design-Build Contract,
Honolulu High-Capacity Transit Corridor Project

for the City and County of Honolulu, Honolulu, Hawaii 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 6th day of November, 2009.

(Seal)

KIEWIT PACIFIC CO.

* 

Signature A. T. Skoro

Vice President

Title

(Seal)

Travelers Casualty and Surety
Company of America

Name of Surety

* 

Signature Lisa Buller

Attorney-in-Fact

Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

I, Janine Caldwell a Notary Public in and for said Clark County in the State of Washington do hereby certify that A.T. Skoro Vice President of Kiewit Pacific Co., proved to me on basis satisfactory evidence to be the person who appeared before me, and acknowledge that he signed Exhibit C Labor and Material Payment Bond Surety on 6th day of November 2009.



Janine L. Caldwell

Notary Public for Washington

My Commission Expires on May 3, 2011

STATE OF NEBRASKA
State,
COUNTY OF DOUGLAS

I, Christina M. Harnden a Notary Public in and for said County and do hereby certify that

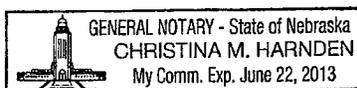
_____ President

_____ Vice President

Lisa Buller Attorney-in-Fact
of Travelers Casualty and Surety Company of America, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me, and acknowledged that she signed, sealed and delivered a said instrument, for and on behalf of Travelers Casualty and Surety Company of America for the uses and purposes therein set forth.

Given under my hand and notarial seal, the 6th day of

November A.D., 2009



Christina M. Harnden

Christina M. Harnden, Notary Public



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. 003216961

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 3rd day of September, 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 3rd day of September, 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 6th day of November, 20 09.

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.



Travelers
Bond, Home Office
(860) 277-9355
(860) 277-3931 (fax)

One Tower Square, 2SHS
Hartford, CT 06183

November 13, 2009

To Whom It May Concern:

Travelers Casualty and Surety Company of America is presently rated A+ by A.M. Best and has a single risk limit of \$173.5 million as of July 1, 2009 which is based on 10% of its statutory surplus. Federal and state laws, which limit the size of bonds a surety can retain, allow a company to issue a bond in excess of its single risk limit as long as the excess is protected by reinsurance or co-insurance from an authorized surety.

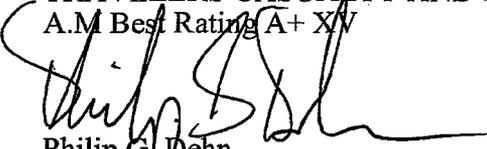
Travelers Casualty and Surety Company of America has a reinsurance agreement with Travelers Indemnity Company, Travelers Casualty and Surety Company, Standard Fire Insurance Company and Farmington Casualty Company. Combined, these companies, which are licensed by the Treasury, provide Travelers Casualty and Surety Company of America with approximately \$1.3 billion in capacity above and beyond its \$173.5 million single risk limit.

These reinsurance arrangements comply with all Federal and State laws.

Sincerely,

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

A.M Best Rating A+ XV



Philip G. Dehn
Attorney-in-Fact

(Seal)

STATE OF Nebraska

COUNTY OF Douglas

I, Christina M. Harnden a Notary Public in and
for said County and State, do hereby certify that

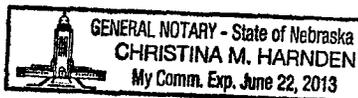
_____ President

_____ Vice President

Philip G. Dehn Attorney-in-Fact
of Travelers Casualty and Surety Company of America, who is personally
known to me to be the same person whose name is subscribed to the
foregoing instrument, appeared before me this day in person, and
acknowledged that she signed, sealed and delivered a said instrument,
for and on behalf of Travelers Casualty and Surety Company of America
for the uses and purposes therein set forth.

Given under my hand and notarial seal, the 13 day of

November A.D., 20 09



Christina M. Harnden

Notary Public



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. 003217344

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 3rd day of September, 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 3rd day of September, 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.

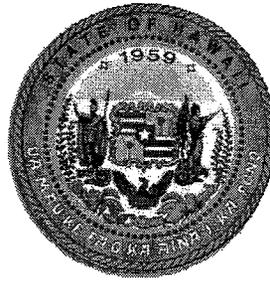
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 13 day of November, 2009.

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.



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

CERTIFICATE OF VENDOR COMPLIANCE

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

Vendor Name: KIEWIT PACIFIC CO.
DBA/Trade Name: KIEWIT PACIFIC CO.
Issue Date: 11/13/2009
Status: Compliant
Hawaii Tax#: w20098070-01
FEIN/SSN#:
UI#: 0000169650
DCCA FILE#: 7605

Status of Compliance for this Vendor on issue date:

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

Status Legend:

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



CERTIFICATE OF LIABILITY INSURANCE

Date (mm/dd/yy)

11/9/2009

Producer

Midwest Agencies, Inc.
3555 Farnam Street
Omaha, NE 68131

402-271-2956

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURER Zurich American Insurance Company

A

INSURER

B

INSURER American Guarantee & Liability Insurance Company

C

INSURER

D

INSURER

E

Insured

Kiewit Pacific Co.
2215 E 1st Street
Vancouver WA 98661

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE MM/DD/YY	POLICY EXPIRATION DATE MM/DD/YY	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIAB <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	GLO 4641069	3/1/2007	3/1/2010	EACH OCCURRENCE \$ 5,000,000 FIRE DAMAGE (Any one fire) \$ 5,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS-COMP/OP AGG \$ 10,000,000
	GEN'L AGG LIMIT APPLIES PER <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC				
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS	BAP 4641070	3/1/2007	3/1/2010	COMBINED SINGLE LIMIT \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$
A	NON-OWNED AUTOS <input checked="" type="checkbox"/> Hawaii	BAP 4641081	3/1/2007	3/1/2010	PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
C	EXCESS LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE	AUC9141395 AEC9035949	3/1/2007 3/1/2007	3/1/2010 3/1/2010	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000
	DEDUCTIBLE RETENTION \$				\$ \$ \$
A	WORKERS' COMPENSATION & EMPLOYERS' LIABILITY Prop/Partner Officers Incl.	EWS 4641067 EWS 4641068	3/1/2007 3/1/2007	3/1/2010 3/1/2010	<input checked="" type="checkbox"/> STATUTORY LIMIT OTHER EL EACH ACCIDENT \$ 2,000,000 EL DISEASE - EA EMPLOYEE \$ 2,000,000 EL DISEASE - POLICY LIMIT \$ 2,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

City and County of Honolulu, their officers, commissioners, employees of City (ATIMA) are named as an additional insureds on the General Liability and Automobile Liability policies. A waiver of subrogation is granted in favor of City and County of Honolulu, their officers, commissioners, employees of City (ATIMA).
RE: Honolulu High-Capacity Transit Corridor Project, West O'ahu/Farrington Highway Guideway DB Contract

CERTIFICATE HOLDER

Honolulu High-Capacity Transit Corridor Project

City and County of Honolulu
Attn: Purchasing Division
530 South King Street, Room 115
Honolulu HI 96813

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ~~endeavor to mail~~ 30* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~but no such notice shall impose any obligation or liability of any kind upon the company's agents or representatives.~~
* 10 Days for Non-Payment of Premium.

AUTHORIZED REPRESENTATIVE

Philip G. Dehn

ACORD 25-S (7/97)

© ACORD CORPORATION 1988

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

5/1/2011

DATE (MM/DD/YYYY)
11/10/2009

PRODUCER Lockton Companies, LLC-1 Kansas City
444 W. 47th Street, Suite 900
Kansas City MO 64112-1906
(816) 960-9000

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED KIEWIT PACIFIC CO.
1080948 PO BOX 1769
2200 COLUMBIA HOUSE BLVD
VANCOUVER, WA 98661

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: STEADFAST INSURANCE COMPANY

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES PETKI013 PC

THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER AND THE CERTIFICATE HOLDER.

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX DAMAGE TO RENTED PREMISES (Ea occurrence) \$ XXXXXXXX MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ XXXXXXXX GENERAL AGGREGATE \$ XXXXXXXX PRODUCTS - COMP/OP AGG \$ XXXXXXXX
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS _____	NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	NOT APPLICABLE			AUTO ONLY - EA ACCIDENT \$ XXXXXXXX OTHER THAN AUTO ONLY: EA ACC \$ XXXXXXXX AGG \$ XXXXXXXX
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> UMBRELLA FORM RETENTION \$ _____	NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX _____ \$ XXXXXXXX _____ \$ XXXXXXXX
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	NOT APPLICABLE			<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ XXXXXXXX E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX
A		OTHER CONTRACTOR'S PROTECTIVE PROF. IND. & LIABILITY	EOC9263156-00	10/26/2007	5/1/2011	\$10,000,000 PER CLAIM & AGGREGATE

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

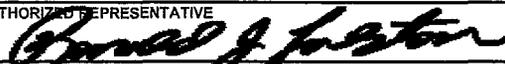
CERTIFICATE HOLDER

CANCELLATION

10715758
CITY AND COUNTY OF HONOLULU
ATTN: PURCHASING DIVISION
530 SOUTH KING STREET, ROOM 115
HONOLULU HI 96813

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/09/2009

PRODUCER
Aon Risk Services Central, Inc.
Chicago IL office
200 East Randolph
Chicago IL 60601 USA

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

PHONE: (866) 283-7122 FAX: (847) 953-5390

INSURERS AFFORDING COVERAGE	NAIC #
-----------------------------	--------

INSURED
Kiewit Pacific Co.
2215 E. 1st Street
Vancouver WA 98661 USA

INSURER A:	American International Specialty Lines	26883
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		

Holder Identifier :

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. LIMITS SHOWN ARE AS REQUESTED

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS			
		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE			
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)			
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT			
		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION				EACH OCCURRENCE			
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				<table border="1"> <tr> <td>WC STATUTORY LIMITS</td> <td>OTHER</td> </tr> </table> E.L. EACH ACCIDENT E.L. DISEASE-EA EMPLOYEE E.L. DISEASE-POLICY LIMIT	WC STATUTORY LIMITS	OTHER	
WC STATUTORY LIMITS	OTHER								
A		OTHER Contractor Poll	CP01955909	12/01/2008	12/01/2009	Aggregate	\$2,000,000		
						Each occurrence	\$2,000,000		

Certificate No : 570036774873

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 Re: Honolulu High-Capacity Transit Corridor Project, west O'ahu/Farrington Highway Guideway DB Contract. City & County of Honolulu, their officers, commissioners, employees of City are Additional Insured solely as respects liability arising out of the covered operations performed by the Named Insured regarding the above project.

CERTIFICATE HOLDER

CANCELLATION

City & County of Honolulu
 Attn: Purchasing Division
 530 South King Street, Room 115
 Honolulu HI 96813 USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE *Aon Risk Services Central, Inc.*

Honolulu High-Capacity Transit Corridor Project

CITY AND COUNTY OF HONOLULU HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT WEST O‘AHU/FARRINGTON HIGHWAY GUIDEWAY DESIGN-BUILD CONTRACT

PART 2 – SPECIAL PROVISIONS

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**SPECIAL PROVISIONS
OF DESIGN-BUILD CONTRACTS
FOR THE
CITY AND COUNTY OF HONOLULU**

**SPECIAL PROVISIONS (CHAPTERS 1-7)
CONFORMED**

Honolulu High-Capacity Transit Corridor Project

SPECIAL PROVISIONS OF DESIGN-BUILD CONTRACTS CITY AND COUNTY OF HONOLULU

SPECIAL PROVISIONS (SP) are intended to modify, amend, and provide specific Project requirements to the General Conditions of Design-Build Contracts for the City and County of Honolulu (GCDB) and the DB Contract.

The SP are organized as follows:

- (a) SP-1 through SP-7 modify or supplement the GCDB applicable to the Project; and
- (b) SP-8 through SP-21 provide additional performance requirements specific to the Project.

Should there be any conflicts with other sections or provisions of this Contract they should be brought to the City's attention for clarification.

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.

In the GCDB, whenever the following terms are used, they shall be interpreted as the corresponding equivalent term for this Contract:

Contractor = Design-Builder to whom the Contract has been awarded by the City

SPECIAL PROVISION

CHAPTER SP-1 DEFINITIONS; REFERENCES; REPRESENTATIONS

Chapter 1 of the GCDB is amended by being deleted in its entirety and replaced with the following Special Provisions SP-1 – Definitions; References; Representations:

SP-1.1 Definitions

Wherever in the Contract Documents or City correspondence the following terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

“**Acceptance**” means a determination by the City regarding satisfactory compliance with applicable Contract requirements and Governmental Rules.

“**Acceptance Program**” means all factors that comprise the City’s determination of the quality of the product as specified in the Contract Documents. These factors include Verification Sampling and Testing and City Oversight and auditing of the Design-Builder’s activities and may include the Design-Builder’s Quality Control (QC).

“**Act of God**” means an unusual, sudden, and unexpected manifestation of the forces of nature, the effect of which could not have been prevented by reasonable human foresight, pains, and care.

“**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.

“**Advertisement**” means a public announcement inviting prospective Offerors to obtain a Request for Proposal (RFP) and submit a Qualifications Proposal or a Technical and Price Proposal, as applicable.

“**Affiliate**” means any Person that:

(a) directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the following:

- (1) The Design-Builder; or
- (2) Any Principal Participant; or

(b) holds 10% or more of the equity interest directly or indirectly, beneficially or of record, by the following:

- (1) The Design-Builder;
- (2) Any Principal Participant; or
- (3) Any Affiliate of the Design-Builder under part (1) of this definition.

For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, by family relationship, or otherwise.

“**Agreement**” means Contract.

Honolulu High-Capacity Transit Corridor Project

“Approval” means the City’s written statement indicating that the subject Work complies with Contract requirements. Approval shall not be construed as a warranty by the City that the Design-Builder’s methods will succeed or will be the most efficient or economical method of accomplishing the Work, nor shall the terms be construed as a warranty that the actual materials used in construction will perform as represented in test results supplied to the City by the Design-Builder. Approvals will only be given for those submittals, activities, or Work specifically identified for “Approval” or “approval” in the Contract Documents.

“As-Built Plans” means final drawings and specifications furnished by the Design-Builder, documenting the details and dimensions of the completed Work, as further specified in GCDB 4.27.

“Award” means the written notification by the City to the selected Offeror that the submitted Proposal has been determined to be the best value to the City, or the presentation of a Contract to the selected Offeror.

“Baseline Schedule” means the time-scaled and resource-loaded Critical Path network, updated from time to time in accordance with the Contract and depicting the Price Items and subordinate activities and their respective prices (distributed over time), durations, sequences, and interrelationships that represent the Design-Builder’s Work plans the Design-Builder’s Work Breakdown Structure (WBS) for designing, constructing, and completing the Project and the Contract Price distributed over the period of the Contract.

“Basic Project Configuration” means the salient characteristics of the Project as defined and/or illustrated in the RFP Part 2, including any permitted deviations thereto contained in the Design-Builder’s Proposal. Basic Project Configuration elements may include the following:

- (a) The horizontal and vertical alignments;
- (b) The general location of the limits of the Project;
- (c) The minimum vertical clearances; and
- (d) The Right of Way (ROW) limits.

“Basis of Payment” means the terms under which the Design-Builder is paid for Work.

“Best Value” means the most advantageous Proposal determined by evaluating and comparing all relevant criteria in addition to price so that the Proposal meeting the overall combination that best serves the City is selected. These criteria may include, in addition to others, the total cost of ownership, performance history of the Offeror, quality of goods, services, or construction, delivery, and proposed technical performance.

“Betterment” means any improvement to an existing facility that is not integral to the Project, and is made solely for the benefit of and at the election of the facility’s owner or other third party; provided, however, that the following are not considered Betterments:

- (a) Any upgrade necessary for safe and effective construction of the Project;
- (b) Replacement devices or materials that meet equivalent standards although they are not identical;
- (c) Replacement of devices or materials no longer regularly manufactured with the next highest grade or size, where replacement devices or materials that meet equivalent standards are not available;
- (d) Any upgrading required by applicable Governmental Rules in effect as of the Proposal Due Date;
- (e) Replacement devices or materials which are used for reasons of economy (e.g. non-stocked

Honolulu High-Capacity Transit Corridor Project

items may be uneconomical to purchase);

- (f) Any upgrading required by Standards in effect as of the Proposal Due Date; and
- (g) Any discretionary decision by an owner contemplated within a particular Standard.

If a Utility Agreement includes a definition of “betterment,” that definition shall control over the foregoing with respect to the facilities subject to such agreement.

“**Bid Security**” means the security furnished with a Proposal to guarantee that the Offeror will enter into the Contract if an award is made to the Offeror further specified in section 3.3 of the GCDB.

“**Calendar Day**” means every day shown on the calendar, beginning at 12:00 a.m. Hawai‘i standard time.

“**Casting Yard Subcontractor**” means the Subcontractor (if applicable) that provides pre-cast segments and/or other pre-cast Materials to the Design-Builder.

“**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 Design-Builder to make changes with or without the consent of the Design-Builder.

“**Channel**” means a natural or artificial water course.

“**Chief Procurement Officer**” means Director of the BFS.

“**City**” means the City and County of Honolulu, State of Hawai‘i.

“**City-Directed Changes**” means any changes in the Work as described in the Contract (including changes in the standards applicable to the Work) that the City has directed the Design-Builder to perform as described in the Contract.

“**Code of Federal Regulations**” means the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

“**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.

“**Construction Easement**” means an acquired right of use over the property of another for the purposes of constructing highway related features outside City right of way limits. Right of use may be temporary in nature or permanent.

“**Construction Compliance Engineer**” means the City’s representative with primary responsibility for monitoring and/or auditing the Design-Builder’s construction and environmental field activities for compliance with the Contract’s requirements.

“**Construction Compliance Monitor**” means a representative of the Construction Compliance Engineer (CCE), with responsibility for monitoring and/or auditing the Design-Builder’s construction activities for compliance with the Contract’s requirements.

“**Construction Subcontractor**” means a Subcontractor (or Affiliate) retained by the Design-Builder that is

Honolulu High-Capacity Transit Corridor Project

involved in the actual construction of the Project.

“**Constructor**” means a Principal Participant or Subcontractor (or Affiliate) retained by the Design-Builder that is involved in the actual construction of the Project.

“**Contract**” means the written agreement between the City and the Design-Builder setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work, the furnishing of labor and Materials, and the Basis of Payment. The Contract includes the Contract Documents identified in the Agreement, including required post-Award documents approved by the City and authorized extensions, all of which constitute one instrument.

“**Contract Administrator**” means the DTS Second Deputy Director, who is the person designated to manage the various facets of the Contract to ensure the Design-Builder’s total performance is in accordance with the Contractual commitments and that obligations to the City are fulfilled.

“**Contract Documents**” means the documents identified as such in the Contract, including all provisions required by law to be inserted in the Contract whether actually inserted or not.

“**Contract Item**” means an item of Work specifically described and for which a price, either unit or lump sum, is provided. It includes the performance of all Work and the furnishing of all labor, equipment, and materials described in the text of a specific item included in the Contract or described in the Contract Documents.

“**Contracting Officer**” means:

- (a) For improvement district projects, the City Council Chair or any official of the City so designated by the City Council Chair;
- (b) 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
- (c) For all other projects, the Director of the Department of Budget and Fiscal Services of the City and County of Honolulu (BFS), or BFS Director's delegated Designee.

“**Contract Price**” means the total amount paid for the Work to be performed under the Contract, as it may be adjusted from time to time in accordance with the Contract Documents.

“**Contract Time**” means the time specified in the Contract and/or RFP Part 2 for completion of the Contract. This time may be defined as a specified fixed date, a given number of Working Days, a given number of Calendar Days, or a combination of the above. The Contract Time may be amended by mutual written agreement to include authorized extensions of time, as the performance of the Contract requires.

“**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.

“**Contractor**” means the Design-Builder

“**Cost**” means all expenditures, including design costs, wholly and necessarily incurred, whether on or off the Site, with respect to the Work and overhead, finance, and other charges properly allocable thereto. Cost does not include any allowance for profit.

Honolulu High-Capacity Transit Corridor Project

“**Critical Path**” means each path shown on the Baseline Schedule for which there is zero float.

“**Cultural Resource**” means any prehistoric or historic period artifact, site, building, structure, material remain, or traditional use area resulting from, or associated with, human cultural activity. Historically important cultural resources are those eligible for inclusion on the National Register of Historic Places.

“**Days**” means consecutive calendar days unless otherwise specified. [HAR 3-120-2]

“**DB Project**” means Project.

“**Deficiency**” means a material failure of a Proposal to meet the City’s requirements or a combination of significant Weaknesses in a Proposal that increases the risk of unsuccessful Contract performance to an unacceptable level.

“**Definitive Design**” means the point in the design process at which the design concepts are defined and the Basic Project Configuration is finalized.

“**Design Acceptance**” means written confirmation by the City after submittal and review of the As-Built Plans that the design conforms to the Contract Documents and reflects the As-Built conditions. Required as part of Final Acceptance.

“**Design-Build**” means the Project’s delivery methodology under which the City contracts with a single entity that has responsibility for the design and construction of the Project under a single contract with the City.

“**Design-Build Team**” means Design-Builder.

“**Design-Builder**” means the Person selected pursuant to the RFP Part 2 undertaking the execution of the Work under the terms of the Contract with the City, and acting directly or through its agents or employees (also referred to as the “Design-Build Team”).

“**Design-Builder’s Project Manager**” means the Design-Builder’s on-site designated representative and single point of contact for all aspects of the Work.

“**Design Compliance Engineer**” means the City’s representative with primary responsibility for monitoring and/or auditing the Design-Builder’s design and engineering activities for compliance with the Contract’s requirements.

“**Design Compliance Monitor**” means a representative of the Design Compliance Engineer (DCE), with responsibility for monitoring and/or auditing the Design-Builder’s design activities for compliance with the Contract’s requirements.

“**Design Documents**” means maps, Design Plans, Project Specifications, reports, calculations, records, submittals, and other specified documents prepared by the Design-Builder and/or Designer in the course of performing project engineering and design Work.

“**Design Plan**” means the plan prepared by the Designer during the design development to represent the Project.

“**Design Requirements**” means those specifications and design criteria contained in the Contract that specify

Honolulu High-Capacity Transit Corridor Project

the minimum acceptable technical standards and define the limits within which the design of the Project shall be developed and conducted.

“Design Review” means a comprehensive and systematic examination of the design as specified in the Contract to verify that the design is in conformance with the requirements of the Contract, as performed by the Design-Builder for all stages of the design except As-Built Plans, which is performed by the City. During all stages of the design, except As-Built Plans, the City will contribute to the review through Oversight including participation, auditing and spot-checking.

“Design Specifications” means the dimensional and other physical requirements of the item being purchased and how a product is to be fabricated or constructed.

“Design Unit” means a distinct portion of the Project of which the design is performed as a contiguous, integrated unit. A Design Unit typically leads to a construction Milestone as depicted on the Design-Builder’s schedule.

“Designee” means a person appointed by the Director of BFS or the Director of the DTS to act on its behalf with delegated authority.

“Designer” means a Principal Participant, specialized Subcontractor, or in-house designer that leads the team furnishing or performing the design of the Project.

“Detour” means a temporary route for vehicular and pedestrian traffic around a closed portion of road.

“Differing Site Condition” means subsurface or latent physical conditions that are encountered at the Site and differ materially from the conditions indicated in the Contract. Also, unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of Work provided for in the Contract, provided in all cases that the Design-Builder had no actual or constructive knowledge of such conditions as of the Proposal Due Date.

“Directive Drawings” means RFP drawings which will be used project-wide; these are Mandatory Drawings.

“Disadvantaged Business Enterprise” means a for-profit, small business concern which meets the definition set forth in 49 Code of Federal Regulations (CFR) Part 26.

“Discussion” means an oral or written exchange of information to promote understanding of the City’s requirements and Offeror’s Proposal and to facilitate arriving at a Contract that will be the Best Value to the City.

“Dispute” means a matter of Contract performance or Contract compensation, including granting of extensions of time, in which there is or may be disagreement between the Design-Builder and the City and which may involve adjustment of Contract Items or the addition of new items to the Contract, extension of time for performance, and/or adjustments in compensation necessitated by the resolution of such disagreement.

“Employee” means any person working on the Project and who is under the direction or control of, or receives compensation from, the Design-Builder or any Subcontractor.

“Environmental Approvals” means the Governmental Approvals contained or referenced in the

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environmental provisions of the Contract.

“Environmental Resource” means the physical and biological components of the human and natural environment.

“Equipment” means all apparatus, machinery, tools, and equipment, together with the necessary supplies for their upkeep and maintenance, necessary for the proper construction and acceptable completion of the Work.

“Erosion Control” means any action taken or item used as part of the Project, or as a separate action, to minimize the destructive effects of wind and water on surface soil. The use and placement of berms and dams, fiber mats, grasses, sod, mulches, slope drains, sediment basins, and drainage systems may be temporary and used only during construction or permanent and installed for the anticipated useful life of the facility / project.

“Escrowed Proposal Documents” means pricing data assembled by the Design-Builder, placed in escrow, which supports and explains the basis of the Price Proposal. The Escrowed Proposal Documents are used during project execution for negotiation of Change Orders and resolution of disputes and claims and other purposes set forth in the Contract.

“Extra Work” means an item of Work not provided for in the Contract as awarded but found essential to the satisfactory completion of the Contract within its intended scope.

“Fabricator” means an individual, partnership, firm, Limited Liability Company (LLC), corporation, or joint venture with which the Design-Builder subcontracts to assemble, construct, or otherwise substantially alter Material or supplies into assemblies, components, or finished items for inclusion into the Work prior to resale.

“Federal Transit Administration” means the current designation for the former Urban Mass Transportation Administration, United States Department of Transportation. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration or its acronym UMTA is deemed a reference to the Federal Transit Administration.

“Final Acceptance” means the acceptance of the Work by the City upon the completion of the Work as defined in the Contract and through Oversight and Design Acceptance of that Work by the City.

“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.

“Float” means the difference between early completion times and late completion times for activities as shown on the Baseline Schedule and including any float contained within an activity as well as any period containing an artificial activity.

“Force Account” means the Basis of Payment for the directed performance of design and/or construction Work, with payment based on the actual cost to the Design-Builder of labor, Equipment, and Materials, and including various constant activities.

“General Conditions Design-Build” means the General Conditions for Design-Build Contracts for the City and County of Honolulu, dated February 2009, which are available at the following website www.honolulu.gov/pur/index.htm.

“Governmental Approval” means any approval, authorization, certification, consent, decision, exemption,

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filing, lease, license, permit, registration, or ruling required by or with any Governmental Person in order to design and construct the Project.

“**Governmental Person**” means any federal, state, local, or foreign government; any political subdivision; or any governmental, quasi-governmental, judicial, public, or statutory instrumentality, administrative agency, authority, body, or entity other than the City.

“**Governmental Rule**” means any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, policy requirement, other governmental restriction, or any similar form of decision of, determination by, interpretation of, or administration of any of the foregoing by any Governmental Person, which is applicable to the Work or the Project, whether now or hereafter in effect.

“**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.

“**Guarantor**” means the Person assuming responsibility for the tangible net worth deficit or financing deficit obligations of the Offeror, as required by the Contract.

“**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.

“**Highway**” means a general term denoting a public way for purposes of vehicular travel, including the entire area within the right of way.

“**Holidays**” – In the State of Hawai‘i, these occur on:

- (a) January 1 (New Year’s Day);
- (b) Third Monday in January (Martin Luther King Jr.’s Birthday);
- (c) Third Monday in February (Presidents Day);
- (d) March 26 (Prince Jonah Kuhio Kalaniana’ole Day);
- (e) Friday before Easter (Good Friday);
- (f) Last Monday in May (Memorial Day);

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- (g) June 11 (King Kamehameha Day);
- (h) July 4 (Independence Day);
- (i) Third Friday in August (Statehood Day);
- (j) First Monday in September (Labor Day);
- (k) November 11 (Veterans' Day);
- (l) Fourth Thursday in November (Thanksgiving Day); and
- (m) December 25 (Christmas Day);

or, on any day that may be appointed by the President of the United States or Governor for public fast, thanksgiving or as a legal holiday.

If January 1, July 4, November 11, or December 25 falls upon a Sunday, the Monday following shall be observed as a holiday.

If January 1, July 4, November 11, or December 25 falls upon a Saturday, the Friday preceding shall be observed as a holiday.

“**HRS**” means the Hawai‘i Revised Statutes of the State of Hawai‘i, as amended.

“**Incidental Utility Work**” means all of the following Work necessary for the construction of the Project:

- (a) Relocations of Service Lines;
- (b) Protections in Place;
- (c) The adjustment of utility appurtenances (e.g., manholes, valve boxes, and vaults) for line and grade upon completion of roadway work;
- (d) All work necessary to remove any utilities (whether or not in use as of the Proposal Due Date) in situations for which leaving the utilities in place is not feasible or not permitted, or for facilities which the Design-Builder proposes be removed to accommodate or permit construction of the Project, regardless of whether replacements for such utilities are being installed in other locations; and
- (e) All work necessary to abandon in place any utility in accordance with proper procedures (e.g., flushing, capping, slurry backfill, etc.).

“**Independent Assurance**” means activities that are an unbiased and independent evaluation of all the sampling and testing procedures, Equipment calibration, and qualifications of personnel (Design-Builder’s or City’s) used in the Acceptance Program, including the Design-Builder’s QC.

“**Inspection**” means the act of viewing or looking carefully at construction, manufacturing, design, safety, and maintenance practices, processes, and products, including document control and Working Plan review, to ensure the practices, processes, and products comply with the requirements contained in the Contract and activities specified in the Contract, Design Plans, and/or Project Specifications.

“**Inspector**” means a Design-Builder representative detailed to inspect methods and Materials, Equipment, and Work both on and off the Site of the Project.

“**Laboratory**” means a testing laboratory retained by the Design-Builder for QC sampling and testing or by the City for Verification Sampling and Testing.

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“**Lead Principal Participant**” means the Principal Participant that is designated by the Offeror as having the lead responsibility for managing the Design-Builder’s organization.

“**Mandatory Drawings**” means drawings that the Offeror must use as the basis of their Technical and Price Proposal without modification, unless the Offeror submits a written request for an Alternative Technical Concept during the Proposal phase. Any request for an Alternative Technical Concept shall be submitted in accordance with the RFP documents.

“**Manufacturer**” means an entity that operates or maintains a factory or establishment that produces on its premises the Material, Equipment, or supplies obtained by the Design-Builder for incorporation into the Project.

“**Material**” means any approved material acceptable to the City and conforming to the requirements of the Standard Specifications.

“**Material Supplier**” means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A Material Supplier is a firm that engages in, as its principal business, and in its own name, the purchase and sale of the products in question. A Material supplier who deals in bulk items such as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Packers, brokers, manufacturer’s representatives or other persons who arrange or expedite transactions are not Material Suppliers

“**Milestone**” means a defined step towards the completion of Work within a Price Item (PI) identified in the Schedule of Milestones.

“**Necessary Basic Project Configuration Change**” means material changes in the Basic Project Configuration which are necessary to correct an error, omission, or defect in the Basic Project Configuration Plans as shown or described in the Contract (with the understanding that a change shall be deemed “necessary” only if the error, omission, or defect creates a problem which cannot reasonably be corrected without a material change in the Basic Project Configuration).

“**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 Design-Builder designating the official commencement date of the performance of specific work 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.

“**Officer-in-Charge**” means the Director of the DTS or department head of the agency with delegated authority for which construction is being procured or the Officer-in-Charge's delegated designee.

“**Opening**” means the date set for opening of Proposals.

“**Oversight**” means actions by the City to satisfy itself that the Design-Builder is designing, constructing and

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managing the Work in accordance with the Contract Documents. It includes actions identified in the Contract Documents by the terms QA, Review and Comment, accept/acceptance, audit, observe, monitor, verify or terms of similar import. Oversight may include *shadowing* the Design-Builder's activities to assure that the Quality Plan is being implemented effectively. Neither the activity of Oversight nor the lack of Review and Comment on the part of the City shall be construed to relieve the Design-Builder and its organization from the responsibility and costs for meeting all Contract and regulatory requirements.

“Partial Suspension” means suspension of Work on some, but not all, items.

“Partnering” means those actions taken to include all parties with an appropriate and vested interest in the Project in the management of the Project, such that the Project is completed in the most efficient, timely, safe, and cost effective manner for the mutual benefit of all concerned. These actions include, but are not limited to, communication, organization, establishing goals, continuous improvement, problem identification, conflict resolution, and managing change. Interested parties may include, but are not limited to, the City; the Design-Builder; Subcontractors; Suppliers of goods and services to the Project; the community within which the Project is constructed; the community served by the Project; federal, State, and local governments or other public agencies; and utilities.

“Pay Item” means a component of the Schedule of Milestones for which the Design-Builder provides a Pay Item Value for all Work included in a schedule milestone. A Pay Item may be a major contract item or series of interrelated items as identified in the Schedule of Milestones and the Design-Builder's Baseline Schedule.

“Pay Item Value” means that value allocated by the Design-Builder to a Pay Item that represents the dollar value to be achieved or achieved upon the completion of a schedule milestone as indicated in the Schedule of Milestones and the Design-Builder's Baseline Schedule.

“Payment Bond” means the approved form of security, executed by the Design-Builder and its Surety or Sureties, guaranteeing the payment of all legal charges, costs, amounts, and debts pertaining to the design and construction of the Work.

“Performance Bond” means the approved form of security, executed by the Design-Builder and its Surety or Sureties, guaranteeing performance of all Work in compliance with the requirements of the Contract Documents, including all Change Orders pertaining thereto.

“Performance Specifications” means the functional or performance requirements of the item, what a product does, and how well it performs.

“Periodic Payment Schedule” means the schedule submitted with the Design-Builder's Proposal and updated prior to first pay request (which schedule may be amended by Change Order) that depicts the planned monthly disbursement of Contract Price. The PPS will be used for comparative assessment to the Schedule of Milestones table and monthly pay requests.

“Person” means any individual, firm, corporation, company, LLC, LLP, joint venture, voluntary association, partnership, trust, or public or private organization, other legal entity, or combination thereof.

“Price Item” means a component of the Schedule of Prices for which the Design-Builder provides a Price Item Value (PIV) for all Work included in that item. A Price Item (PI) may be a major contract item or series of interrelated items as identified in the Pricing Information.

“Price Item Value” means that value allocated by the Design-Builder to a PI as set out in the Pricing

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Information.

“Price Proposal” means the portion of the Proposal that addresses the Project’s cost including the Schedule of Prices, Price Items, Price Item Values, PPS-P, and Proposal Bond. With the exception of the Proposal Bond, the Price Proposal is included in the Contract Documents at Award.

“Principal Participant” means any of the following entities:

- (a) The Design-Builder (or Offeror);
- (b) An individual firm, all general partners, or joint venture members of the Design-Builder (or Offeror); and/or
- (c) All Persons and legal entities holding (directly or indirectly) a 15% or greater interest in the Design-Builder (or Offeror).

“Priority List” means the list of those Offerors who: 1) have submitted a Qualifications Proposal in response to the RFP Part 1, and 2) that the City determines acceptable or potentially acceptable. If more than four acceptable or potentially acceptable Proposals have been submitted, it will be limited through evaluation and ranking to no more than four responsive and responsible Offerors who submitted the highest-ranked Proposals.

“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.

“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.

“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.

“Project Plans” means those portions of the Contract Documents prepared by or for the Design-Builder that receive City’s Review and Comment, consisting of drawings, diagrams, illustrations, schedules and other data which show the scope, extent, and character of the Work. Project Plans will go through Definitive Design, Interim Design (if necessary), and Final Design prior to being issued for construction.

“Project Specifications” means those specifications developed by the Design-Builder to define and control the specific requirements, conditions, means, and methods to be used on the Project. Project Specifications will be based on the Contract requirements, including the City’s Standard Specifications (as modified in the Contract Documents), and shall provide finished products that meet or exceed the quality requirements of the Contract. Project Specifications are subject to Review and Comment by the City during Design Reviews.

“Proposal” means the executed document submitted by an Offeror in response to the RFP. With respect to RFP Part 1, this means the Qualifications Proposal, and with respect to RFP Part 2, the Technical and Price Proposal.

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“Proposal Due Date” means the date on which the Proposal is to be received by the City. If Best and Final Offers are requested, the term shall mean the date on which the Best and Final Offer is to be received by the City.

“Proposal Information” means the documents so designated in the RFP Part 2 and submitted to the City by the Offeror/Design-Builder in accordance with the RFP Part 2 that will be included in the Contract Documents at Award. The Proposal Information is part of the Technical Proposal.

“Proposal Plans” means plans that are developed and submitted by the Offeror in their Proposal.

“Proposal Revision” means a supplemental Proposal submitted at the request of the City allowing a responsive Offeror determined to be in the Competitive Range the opportunity to clarify its initial Proposal, correct Deficiencies or Weaknesses in the initial Proposal, submit additional information requested by the City and/or desired by the Offeror, and submit a revised Price Proposal. A Proposal Revision is also known as a “Best and Final Offer (BAFO).” A request for Proposal Revision generally follows Discussions between the City and the Offerors.

“Protect in Place” or **“Protection in Place”** means any activity undertaken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility’s location by construction Equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered a method in which to Protect in Place, whereas temporarily moving power lines to another location after cutting them would be considered a Temporary Relocation. The term includes both temporary measures and permanent installations meeting the foregoing definition.

“Provisional Sum” means an estimated amount set by the City and so designated in the Pricing Information serving to provide for payment for specified items of Work or an expenditure which has not been quantified or detailed at the time the Contract is executed, which sum may include provision for Work to be executed or for goods, Materials, or services to be supplied. Also referred to as an “Allowance Item”.

“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.

“Qualifications Proposal” means the information prepared and submitted by an Offeror in response to the RFP Part 1.

“Quality Assurance” means all planned and systematic actions by the Design-Builder necessary to provide assurances that the Design-Builder is effectively performing QC in accordance with the Quality Plan, that all Work complies with the Contract and that all Materials incorporated in the Work, all Equipment, and all elements of the Work will perform satisfactorily for the purpose intended. QA actions include, but are not limited to, monitoring, independent verification testing, auditing, spot-checking and training the Quality management professionals assigned to perform QC. All QA reviews, audits, and verification testing shall be documented and part of the Design-Builder’s Quality Management Records that are available for City review.

“Quality Assurance Program” means the overall quality program and associated activities including City Oversight, Design-Builder QC and QA, the Contract’s quality requirements, and the Design-Builder’s Quality Plan.

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“Quality Control” means the total of all activities performed by the Design-Builder, Designer, Subcontractor, producer or Manufacturer to ensure that the Work meets Contract requirements. For design this includes, but is not limited to, procedures for design quality, checking, design review including reviews for constructability, and review and approval of Working Plans. For construction this includes, but is not limited to, procedures for Materials handling and construction quality. Inspection, sampling and testing of Materials, plants, production and construction; Material certifications; calibration and maintenance of Equipment; production process control; and monitoring of environmental compliance. Quality Control also includes documentation of all QC design and construction efforts.

“Quality Engineering Firm” means an independent engineering/testing firm responsible for administering, managing and conducting the construction QC and QA inspection, sampling and testing specified in the Contract Documents and the Design-Builder’s Quality Plan. The Quality Engineering Firm shall not be owned in any part or controlled by the Design-Builder, any Principal Participant or by any Construction Subcontractor. The Designer or a firm associated with or subsidiary to the Designer, may serve as the Quality Engineering Firm, except any Designer who is a Principal Participant or any Designer (or subsidiary of a Designer) that is an Affiliate of any Principal Participant or Construction Subcontractor shall not serve in the capacity of Quality Engineering Firm.

“Quality Manager” means the individual employed by the Design-Builder who is responsible for the overall Quality program of the Design-Builder, including the quality of management, design, and construction.

“Quality Plan” means the plan that sets out the Design-Builder’s means of complying with its obligations in relation to QA/QC, which plan shall be provided and maintained in accordance with the Contract following Review and Comment thereon by the City.

“Reference Documents” means the documents provided with and so designated in the RFP Part 2. The City makes no representation or guarantee as to, and shall not be responsible for their accuracy, completeness, or pertinence, and, in addition, shall not be responsible for the conclusions to be drawn therefrom. They are made available to the Offeror for the purposes of providing such information as is in the possession of the City, whether or not such information may be accurate, complete or pertinent, or of any value.

“Reference Drawings” means drawings which represent the City’s preference. The Offeror is allowed to make changes to these drawings provided the changes meet the Contract requirements.

“Referenced Standard” means any standard or specification applicable to the Project established by reference contained in the Contract to a described publication.

“Relocation” means each removal, relocation, abandonment, and/or protection in place (including provision of temporary services as necessary) of any and all Utilities that is necessary in order to complete the Work as required by the Contract.

“Request for Proposals” or **“RFP”** means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

“Request for Proposals Drawings” or **“RFP drawings”** means drawings prepared by the City to support the design-build procurement, to the extent they are identified in the Contract Documents. These drawings include Mandatory and Reference Drawings.

“Request for Proposals Plans” or **“RFP plans”** means RFP Drawings.

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“Responsible Engineer” means an engineer, employed by the Design-Builder, who has qualified academically, has the requisite practical experience, has passed a recognized examination, and is currently licensed as such in the State of Hawai‘i and who is in direct charge of the design of a designated Design Unit.

“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. [HRS 103D-104]

“Responsive Offeror” means a person who has submitted an offer which conforms in all material respects to the RFP. [HAR 3-120-2]

“Review and Comment” means the City’s reviews, observations, and/or inspections based solely on information submitted by the Design-Builder (not based on any independent investigation or inquiry by the City) and the City’s written responses resulting from such City actions.

“Right of Way” means a general term denoting land, property, or interests therein (including easements), usually in a strip or parcel acquired for or devoted to the Project.

“Right of Way Acquisition Schedule” means the schedule for acquisition of ROW permits or easements by the City set forth in the Contract and/or RFP Part 2.

“Safety Plan” means the plan that sets out the Design-Builder’s means of complying with its obligations in relation to project safety, which plan shall be provided and maintain in accordance with the Contract Documents following Review and Comment by the City.

“Samples” means representative quantities of Materials taken in specified amounts and frequencies for subsequent testing in accordance with specified standard procedures. Or, physical examples of Materials to be supplied or workmanship, which shall establish standards by which the Work shall be judged, provided such samples meet Contract requirements.

“Schedule of Milestones” means table of schedule milestones that include a Pay Item, Pay Item description, Pay Item Value, planned or actual achievement date, a cross reference to a corresponding activity on the Design-Builder’s Baseline Schedule, and serves as a basis for monthly payment. The Schedule of Milestones is a further breakdown of the Schedule of Prices and as such will sum to its Price Items.

“Schedule of Prices” means the schedule of Price Items that sum to the Contract Price and provided with the Design-Builder’s Price Proposal. The Schedule of Prices becomes part of the Contract and used to evaluate and compare the PPS and Schedule of Milestones. The Schedule of Prices includes Price Items, Price Item description, Price Item Value and cross references to the Design-Builder’s Baseline Schedule activity codes.

“Scope of the Project” means the brief description of the Work to be performed to design and construct the Project as contained in the Contract.

“Service Line” or **“service line”** means a utility line, the function of which is to connect directly the improvements on an individual property (e.g., a single family residence or an industrial warehouse) to another utility line located off such property, which other utility line connects more than one such individual line to a larger system, as well as any cable or conduit that supplies an active feed from a utility owner’s facilities to activate or energize a Governmental Person’s local lighting and electrical systems, traffic control systems, street lights, communication systems or irrigation systems.

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“**Site**” means those areas designated in writing by the City for performance of Work and such additional areas as may, from time to time, be designated in writing by the City for the Design-Builder’s use in performance of the Work. For purposes of insurance, indemnification, safety, security requirements, and payment for use of Equipment, the term Site also includes any areas on which Relocation Work is performed and any property being temporarily used by the Design-Builder for storage of Equipment and/or construction Work.

“**Site Security Plan**” means the plan that sets out the Design-Builder’s means of complying with its obligations in relation to Site security, which plan shall be provided and maintained in accordance with the Contract following Review and Comment thereon by the City.

“**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]

“**Special Provisions**” means additions and revisions to the General Conditions Design-Build covering conditions applicable to this individual Project.

“**Specialty Items**” means Work not usually performed by general contractors and so designated in the Contract. Work that requires specialized knowledge, skill, or Equipment not ordinarily available in construction organizations and in general limited to minor components of the overall Contract. For purposes of this Contract, all engineering and design Work are considered Specialty Items.

“**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 Hawai‘i.

“**Standard Drawings**” means detailed drawings that depict the dimensional requirements and clearances of certain features of the Project and components, subassemblies, or systems to be incorporated into the Project, issued by the City or other stakeholder, for general application and repetitive use in connection with the Project. The RFP Standard Drawings are Mandatory Drawings.

“**Standard Specifications**” means the Standard Specifications of the DTS Rapid Transit Division (RTD).

“**Structural Steel**” means shapes, plates, H-piling, and sheet piling.

“**Structures**” means bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, end walls, buildings, sewers, service pipes, underdrains, foundation drains and other features which may be encountered in the Work and not otherwise classed herein.

“**Subcontract**” means any agreement entered into by the Design-Builder or a Subcontractor (at any tier) for a portion of the construction or any other part of the Work in connection with, and under the terms of, the Contract.

“**Subcontractor**” means any person who enters into an agreement with the Design-Builder to perform a portion of the work for the Design-Builder.

“**Substantial Completion**” means the point of which the Project, or Section thereof, is complete, such that it can be safely and effectively used by the public without further barriers, delays, disruption, or impediments as requested by the Design-Builder and Approved by the City.

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“**Substantial Completion Date**” means the Date on which the Design-Builder is required to achieve Substantial Completion, per the Contract Documents.

“**Substructure**” means all of that part of the Structure below the bearings of simple and continuous spans, skewbacks of arches and tops of footings of rigid frames, together with backwalls, wingwalls and wing protection railings.

“**Superstructure**” means that part of an elevated fixed-guideway Structure above the bearings of simple and continuous spans, skewbacks of arches and top of footings of rigid frames; excluding backwalls, wingwalls and wing protection railings.

“**Supplemental Selection Information**” means the information from the Appendices to the Technical Proposal that will not be made a part of the Contract Documents at Award. The Supplemental Selection Information is part of the Technical Proposal.

“**Surety**” means the corporate body properly licensed in the State which has issued the Performance and/or Payment Bond.

“**Suspension and Debarment**” means the disqualification of an Offeror or Design-Builder from proposing on the Work for a period of time determined in accordance with United States Department of Transportation (US DOT) regulations.

“**Technical and Price Proposal**” means the information prepared and submitted by an Offeror in response to the RFP Part 2.

“**Technical Proposal**” means the portion of the Proposal consisting of the Proposal Information and the Supplemental Selection Information.

“**Temporary Relocation**” means any interim Relocation of a Utility (i.e., the installation, removal, and disposal of the interim facility) pending installation of the permanent facility in the same or a new location, and any removal and reinstallation of a Utility in the same place with or without an interim relocation.

“**Test**” means methods adopted by the City and the Design-Builder to ascertain the quality, character, and acceptability of Materials and processes utilized in performing the Contract.

“**Time Related Dispute**” means any dispute arising from any event not within the Design-Builder's control, performance, action, force, or factor which materially and adversely affects the scheduled time of performance depicted in the Design-Builder's most recent City Baseline Schedule submitted to the City.

“**Total Proposal Price**” means the total proposed amount that will be considered to be the correct sum of all proposed PIVs.

“**Unbalanced Price Proposal**” means a Price Proposal that is unbalanced either Materially or Mathematically. A Materially Unbalanced Price Proposal is a Price Proposal that generates a reasonable doubt that awarding the Contract to the Offeror submitting the Price Proposal will result in the lowest ultimate cost to the City. A Mathematically Unbalanced Price Proposal is a Price Proposal containing lump sum or Unit Price items that do not reasonably reflect the actual costs plus a reasonable proportionate share of the Offeror's anticipated profit, overhead costs, and other indirect costs.

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“**Unit Price**” means the price established by the Contract for a specified unit quantity of Work that is measured for payment.

“**Utility**” or “**utility**” means a privately, publicly, or cooperatively owned facility (which term includes lines, systems and other facilities, and includes municipal and/or government facilities) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar commodity, including any fire or police signal system as well as streetlights associated with roadways owned by local agencies. However, when used in the context of the Relocation of facilities to accommodate the Project, the term "Utility" or "utility" excludes traffic signals, flashing beacon systems, and lighting systems for the Project. The necessary appurtenances to each utility facility shall be considered part of the facility, including the utility source, guide poles, feeder service lines, supports, etc. Without limitation, any service lateral connecting directly to a utility shall be considered an appurtenance to that utility, regardless of the ownership of such service lateral.

“**Utility Agreement**” means the agreements with Utility Owners as described in the Contract.

“**Utility Information**” means the Utility-related data set forth in the Contract.

“**Utility Owner**” or “**utility owner**” means the owner or operator of any Utility (including Governmental Persons and privately held entities).

“**Utility Relocation Plans**” means the Design Plans for Relocation of a Utility impacted by the Project, to be prepared by the Design-Builder or the Utility Owner, as designated in any applicable Utility Agreements.

“**Utility Standards**” means the standard specifications, standards of practice, and construction methods that are applicable to a Relocation pursuant to the terms and conditions of a Utility Agreement; provided that if a particular facility is not governed by a Utility Agreement or the applicable Utility Agreement does not specify applicable standards, the term “Utility Standards” shall mean the standard specifications, standards of practice, and construction methods that are customarily applied by a utility owner to its facilities, in effect as of the Proposal Due Date.

“**Verification Sampling and Testing**” means sampling and testing performed to validate the quality of the product. The City, or a firm retained by the City, will perform Verification Sampling and Testing.

“**Weakness**” means a flaw in the Proposal that increases the risk of unsuccessful Contract performance. A significant Weakness in the Proposal is a flaw that appreciably increases the risk of unsuccessful Contract performance.

“**Work**” means all of the administrative, design, engineering, real property acquisition support services, Utility support services, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, Material, Equipment, maintenance, documentation, and other duties and services to be furnished and provided by the Design-Builder as required by the Contract Documents, including all efforts necessary or appropriate to achieve Final Acceptance of the Project except for those efforts which the Contract Documents specify will be performed by the City or other Persons. In certain cases, the term is also used to mean the products of the Work.

“**Worker**” means Employee.

“**Working Plans**” means those plans prepared by the Design-Builder to supplement Design Plans to specify additional details and procedures for construction of the Project, including the following:

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- (a) Construction details;
- (b) Erection plans;
- (c) Fabrication plans;
- (d) Field design change plans;
- (e) Stress sheets;
- (f) Shop plans;
- (g) Lift plans;
- (h) Bending diagrams for reinforcing steel;
- (i) Falsework plans; and
- (j) Similar data required for the successful completion of the Work.

“**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.

SP-1.2 References

(a) Utility and HDOT standards referenced in the Standard Specifications shall apply only to Material and workmanship with respect to Work, which upon completion is to be accepted by HDOT, a municipality or a utility company. The commercial terms within these references (e.g. HDOT Division 100 General Provisions, Control of Work, Prosecution and Progress, and Measurement and Payment) are not applicable to this Contract.

(b) Abbreviations:

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADAAG	Americans with Disabilities Act Accessibility Guidelines
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ANSI	American National Standard Institute
AOAC	Association of Official Agricultural Chemists
ARA	American Railway Association
AREA	American Railway Engineering Association
ARTBA	American Road and Transportation Builders Association
ASA	American Standards Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWPA	American Wood-Preservers Association
AWS	American Welding Society

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AWWA	American Water Works Association
BAFO	Best and Final Offer
BFS	Department of Budget and Fiscal Services, City and County of Honolulu
CADD	Computer Aided Design and Drafting
CCE	Construction Compliance Engineer
CCM	Construction Compliance Monitor
CD-ROM	Compact Disc – Read Only Memory
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CFR	Code of Federal Regulations
CO	Change Order
CPM	Critical Path Method
CSL	Contract Submittal List
DB	Design-Build
DBA	Decibels, A-scale
DBE	Disadvantaged Business Enterprise
DCE	Design Compliance Engineer
DCM	Design Compliance Monitor
DRT	Disputes Review Team
DTS	Department of Transportation Services, City and County of Honolulu
EEl	Electrical Engineering Institute
EIA	Electronic Industries Association
EIS	Environmental Impact Statement
EMT	Emergency Medical Technician
ENR	Engineering News Record (Trade Magazine)
EPA	Environmental Protection Agency
ETL	Electrical Testing Laboratories
FAR	Federal Acquisition Regulations
FHWA	Federal Highway Administration, U.S. Department of Transportation
FONSI	Finding of No Significant Impact
FS	Federal Specifications
FTA	Federal Transit Administration
GCDB	General Conditions of Design-Build Contracts for the City and County of Honolulu
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	Hawai'i Administrative Rules
HHCTCP	Honolulu High-Capacity Transit Corridor Project
HST	Hawai'i Standard Time
HRS	Hawai'i Revised Statutes
IA	Independent Assurance
IES	Illuminating Engineering Society
IMSA	International Municipal Signal Association
ISO	International Standards Organization
ITE	Institute of Transportation Engineers
ITS	Intelligent Transportation System
JV	Joint Venture
LCC	Leeward Community College
LLC	Limited Liability Company
LLP	Limited Liability Partnership

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LOI	Letter of Interest
MIL	Military Specifications
MOT	Maintenance of Traffic
MSDS	Material Safety Data Sheet
MSF	Maintenance and Storage Facility
MURK	Manual on Uniform Record Keeping
MUTCD	Manual of Uniform Traffic Control Devices
N/A	Not Applicable
NCR	Non-Conformance Report
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NEPA	National Environmental Policy Act
NHS	National Highway System
NPDES	National Pollutant Discharge Elimination System
NTP	Notice to Proceed
OSHA	Occupational Safety and Health Administration, United States Department of Labor
PA/CR	Public Awareness and Community Relations
PE	Preliminary Engineering
PI	Price Item or Public Information
PIV	Price Item Value
PPS-C	Contract Periodic Payment Schedule
PPS-P	Proposal Periodic Payment Schedule
PS	Performance Specification
QA	Quality Assurance
QC	Quality Control
QCM	Quality Control Manager
RFC	Request for Change
RFI	Request for Information
RFP	Request for Proposals
RFP Part 1	Request for Qualifications Proposals
RFP Part 2	Request for Technical and Price Proposals
ROD	Record of Decision
ROW	Right of Way
RTD	Rapid Transit Division, Department of Transportation Services, City and County of Honolulu
RUS	Rural Utilities Service
SAE	Society of Automotive Engineers
SBA	Small Business Administration
SHPD	State Department of Land and Natural Resources, Historic Preservation Division
SI	International System of Units
SM	Schedule of Milestones
SP	Special Provision
SSPC	Steel Structures Painting Council
STAA	Surface Transportation Assistance Act of 1982
STURAA	Surface Transportation and Uniform Relocation Assistance Act of 1987
TBD	To Be Determined
TEA-21	Transportation Equity Act for the 21st Century
UBC	Uniform Building Code
UH	University of Hawai'i
UL	Underwriters' Laboratories, Inc.

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UPC	Uniform Plumbing Code
US	United States
USC	United States Code
US DOL	United States Department Of Labor
US DOT	United States Department Of Transportation
UST	Underground Storage Tank
VE	Value Engineering
VECP	Value Engineering Change Proposal
WBE	Women-owned Business Enterprise
WBS	Work Breakdown Structure
WCLA	West Coast Lumberman's Association

SP-1.3 Design-Builder's Representations

(a) License. Design-Builder represents that the Design-Builder 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 Design-Builder is licensed by the State of Hawai'i to engage in the type of design and construction required by the Contract and is in compliance with all applicable laws and regulations.

(b) Design-Builder's warranty. By the act of submitting its Proposal in response to the RFP, the Design-Builder warrants that:

(1) The Design-Builder and all subcontractors intended to be used by the Design-Builder have carefully and thoroughly reviewed the RFP and have found the RFP complete and free from ambiguities and sufficient for the purpose intended;

(2) The Design-Builder 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 Design-Builder 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 Design-Builder nor any of the Design-Builder'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 Design-Builder'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 Design-Builder's own examination and investigation of surface and subsurface condition and availability of materials and equipment; and

(6) Design-Builder 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.]

(d) All materials submitted by Design-Builder under this Contract shall be provided in the English language. If material catalogs, instruction manuals, training materials and any other information are originally in another language, a full and complete translation shall be provided.

(e) Delivery. Notices, deliverables and correspondence shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:30 p.m. Hawai'i Standard Time and all other notices received after 4:30 p.m. shall be deemed received on the first business day following

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delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:30 p.m.). Any technical or other communications pertaining to the Work shall be conducted by the Design-Builder's Project Manager and technical representatives designated by the City. The Design-Builder's representatives shall be available at all reasonable times for consultation.

SP-1.4 Meaning of Terms

The words "*shall*" and "*shall be*" are also implied, and when implied or stated are to be considered mandatory and generally pertain to requirements or actions of the Design-Builder.

Whenever the Design-Builder is specifically directed or implied by these specifications to "*give notification*" or "*notify*," it is implied that the Design-Builder give such notification to the City. Likewise, whenever the specifications state "*notification will be given*," or "*will be notified*," it is implied that the City will give such notification to the Design-Builder.

Whenever anything is, or is to be, done, if, as, or, when, or where "contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, or condemned," it shall be understood as if the expression were followed by the words "by the City" or "to the City."

SP-1.5 Reserved

SP-1.6 Attachments to Special Provision SP-1

There are two attachments to this Special Provision SP-1. Attachment A contains an abbreviated scope of Work and description of roles and responsibilities for the City and the Design-Builder. Attachment B contains the FTA-required clauses.

SPECIAL PROVISION

CHAPTER SP-2 GENERAL PROVISIONS

SP-2.6 Copyright and Patent

Chapter 2, Section 2.6, of the GCDB is amended by being deleted in its entirety.

SP-2.8 Ownership of Property

Chapter 2, Section 2.8, of the GCDB is amended by being deleted in its entirety and replaced with the following:

The Design-Builder agrees that any reports, materials, studies, photographs, negatives, drawings or other documents prepared by the Design-Builder in the performance of its obligations under this Contract shall be the exclusive property of the City. Upon completion, termination or cancellation of the services embraced under this Contract, all such documents, together with all Work inclusive of research, investigation and analysis data, reports (including files on disks), computations, tabulations, original drawings (including CADD information on disks), correspondence input from external sources (including Subcontractors), etc., shall be delivered to and become the property of the City without limitation. Reuse of said materials, information or data, during performance or following termination of this Contract, on any other project or for any other purpose except as provided for herein, shall be at the City's discretion and the City's sole responsibility. The Design-Builder shall not utilize any materials, information or data obtained as a result of performing the services called for in this Contract in any commercial or academic publication or presentation without the express written permission of the City. The Design-Builder shall not reference an opinion of an employee or agent of the City obtained as a result of performing the services called for in this Contract in any publication or presentation without the written permission of the employee or agent to whom the opinion is attributed, in addition to the permission of the City.

SP-2.13 Liability

Chapter 2, Section 2.13, of the GCDB is amended by being deleted in its entirety and replaced with the following:

SP-2.13 Liability

CITY'S OBLIGATIONS UNDER THIS CONTRACT SHALL BE LIMITED TO THE PAYMENT FOR SERVICES UNDER THIS CONTRACT.

SP-2.14 Indemnification

Chapter 2, Section 2.14, of the GCDB is amended by being deleted in its entirety and replaced with the following:

SP-2.14 Indemnification

(a) Design-Builder 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,

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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 Design-Builder, 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; provided, however, that the Design-Builder shall not be responsible for such portion of damages, if any, proximately caused by the negligence or intentional misconduct of the City. 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 Design-Builder 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 Design-Builder 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.

(c) **Copyright or patent.** If the Design-Builder 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 Design-Builder from the patentee or owner. The Design-Builder 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.

SP-2.15 Liquidated Damages

Chapter 2, Section 2.15, of the GCDB is amended by adding the following as subparagraph (b) and (c):

b) If the Design-Builder fails to achieve Substantial Completion by the deadline(s) specified herein, the Design-Builder agrees to pay a Liquidated Damages charge of **\$20,000.00 per day**. If the Design-Builder fails to perform any of the other items of Work described in the Contract Documents, the Design-Builder agrees to pay the applicable Liquidated Damages charge specified herein.

c) The Substantial Completion Date is **1314 Days after NTP**. If the Design-Builder fails to achieve substantial completion by the Substantial Completion Date, Liquidated Damages will be paid in the amount specified above.

SP-2.18 Laws, regulations

Chapter 2, Section 2.18, of the GCDB is amended by adding the following as subparagraph (b):

b) **Public Records Law.** Information or documents received from the Design-Builder may be open to public inspection and copying. The City will have the duty to disclose this information or these documents unless a particular record is deemed confidential by law. The Design-Builder shall label specific parts of an individual documents as a "trade secret" or "confidential" or "proprietary information" in accordance HAR §§3-122-46(9) and 3-122-58, provided that the Design-Builder thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any document that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

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SP-2.20 Governing Law, Venue and Discovery

Chapter 2, Section 2.20, of the GCDB is deleted in its entirety and replaced with the following provision:

The provisions of this 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. The Design-Builder agrees that, as a result of its willingness to do business with the City, it will resolve any dispute with the City in Honolulu, Hawaii. All discovery between the parties undertaken pursuant to federal, state, or local rules shall be conducted within that county, including, but not limited to, the production of documents and the appearance of expert and lay witnesses for deposition, if such depositions are permitted by court rules. In the event of a dispute, the Design-Builder and the City agree to bear the cost of producing their own employees for deposition in Honolulu, Hawaii, including but not limited to travel costs, per diem expenses and cost of employee time. The parties further agree that if court rules or the court itself permits the deposition of expert witnesses, the party seeking the testimony of the expert witness will bear that witness' reasonable costs of travel, preparation costs and cost for time while in transit.

SPECIAL PROVISION

CHAPTER SP-3 INSURANCE PERFORMANCE AND PAYMENT BONDS

SP-3.1 Insurance

Chapter 3, Section 3.1 of the GCDB is amended by being deleted in its entirety and replaced with the following):

(a) **OWNER CONTROLLED INSURANCE PROGRAM.** The City has elected to implement an Owner Controlled Insurance Program (OCIP) that will provide Workers Compensation and Employers' Liability, General Liability and Excess Liability, and Builders' Risk insurance coverage for contractors of every tier providing direct labor to the Project as further described in the City's OCIP Manual, to be provided to the Design-Builder. All terms and conditions of SP-3.1 and the terms of the OCIP Manual, as amended, shall apply during the term of the Contract between the City and the Design-Builder. The City agrees to pay all premiums associated with the OCIP, unless otherwise stated in the Contract Documents.

Although the OCIP is intended to provide broad coverages and high limits, the Design-Builder acknowledges that the OCIP is not intended to and does not meet all the insurance needs of the Design-Builder or subcontractors. In addition to any insurance provided by the City, an Enrolled Contractor (defined below) and all Ineligible Contractors (defined below), shall be responsible for providing certain insurance as specified in paragraph (h) "Design-Builder Provided Coverage" at their own cost and expense.

The Design-Builder acknowledges that the Design-Builder has been advised to discuss OCIP with its insurance agent or consultant to ascertain that other necessary coverages are maintained, and the Design-Builder has done so.

The Design-Builder further acknowledges that the Design-Builder has been advised to inform its Subcontractors of the contents of this SP-3.1 and to include this SP-3.1 in all its subcontracts for the Project and that it has done so.

(b) **Applicability of the OCIP.** Participation in the OCIP is mandatory but not automatic. Each Eligible Contractor and subcontractor must follow the enrollment procedures as further detailed in the OCIP Manual.

"Eligible Contractor" includes all contractors and subcontractors providing direct labor on the Project. Temporary labor services and leasing companies providing direct labor on the Project are to be treated as Eligible Contractors.

"Enrolled Contractor" means any Eligible Contractor, whether the Design-Builder or a subcontractor, that follows and completes the enrollment procedures, and becomes enrolled in the OCIP.

"Ineligible Contractor" includes (but is not limited to) consultants, demolition, hazardous materials abatement contractors, suppliers (that do not perform or subcontract installation), vendors, materials dealers, guard services, janitorial services, food services, and truckers (including trucking to the Project where delivery is the only scope of work performed). Ineligible Contractors shall be required to maintain their own insurance for their Work on the Project. Notwithstanding the foregoing, any Ineligible Contractor that has direct labor on the Project shall be required to participate in the Project Safety Program as further detailed in the OCIP Manual.

The Honolulu High-Capacity Transit Corridor Project site is designated by the City and on file with the OCIP Insurance Carrier. The Project includes operations necessary or incidental to the Work of the Design-Builder

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covered by this Contract. The Design-Builder's regularly established workplace, plant, factory, office, shop, warehouse, yard or other property, even if such operations are for fabrication of materials to be used at the job site or training of apprentices, shall be considered off-site and are not covered by the OCIP.

(c) **Exclusion of Costs for OCIP-Provided Coverages.** THE DESIGN-BUILDER WARRANTS THAT IT HAS EXCLUDED FROM ITS PRICING, FOR ITSELF AND ALL ITS ELIGIBLE SUBCONTRACTORS OF ALL TIERS, ALL COSTS FOR OCIP-PROVIDED COVERAGES.

DURING THE TERM OF THE CONTRACT, THE DESIGN-BUILDER SHALL, AND SHALL CAUSE ALL ITS ELIGIBLE SUBCONTRACTORS TO PRICE EACH CHANGE ORDER TO EXCLUDE COSTS FOR OCIP-PROVIDED COVERAGES.

(d) **Audit and Recovery of Design-Builder and/or Subcontractor "Insurance Cost."** For insurance purposes, the Design-Builder shall, and shall cause all of its subcontractors, to keep and maintain accurate records of their payroll for operations at the Project site. Design-Builder shall agree, and shall cause all its subcontractors to agree, to cooperate with the City and/or the OCIP carriers and/or the OCIP Administrator with respect to periodic audit and review of Design-Builder's and subcontractors' payroll records for operations at the Project site.

The Design-Builder shall, and shall cause all its subcontractors to permit the City and its representatives to examine and/or audit their books and records pertaining to this Project. Design-Builder shall, and shall cause all its subcontractors to provide any additional information to the City or its representatives as may be requested with respect to their insurance and insurance costs.

Retention payments, except as statutorily required, may not be released until all closeout documentation has been received and approved by the City.

(e) **OCIP-Provided Coverages.** The OCIP will be for the benefit of the City and its Enrolled Contractors (which includes subcontractors of all tiers that have employees on the Project site). Such coverage applies only to Work performed under the Agreement at the Project site. All Eligible Contractors must provide their own insurance for off-site exposures including Automobile Liability insurance (see paragraph (h)).

The City, at its sole expense, will provide and maintain in force the types of insurance listed in subsection (1) through (4) below as a part of the OCIP for the Enrolled Contractors. Enrolled Contractors agree that the insurance policy limits of liability, coverage terms and conditions shall determine the scope of coverage provided by the OCIP.

(1) Workers' Compensation – Statutory limits with subrogation waivers and endorsements and minimum Employers' Liability limits provided as follows:

- (A) \$1,000,000 Bodily Injury with Accident - Each Accident;
- (B) \$1,000,000 Bodily Injury by Disease - Policy Limit; and
- (C) \$1,000,000 Bodily Injury by Disease - Each Employee;

(2) Commercial General Liability Insurance shall be provided on an "occurrence" form under a master liability policy.

- (A) Limit of Liability:
 - \$1,000,000 Each Occurrence Limit;
 - \$2,000,000 Personal and Advertising Injury Limit;
 - \$2,000,000 General Aggregate Reinstated Annually;

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- \$2,000,000 Products and Completed Operations;
- \$ 100,000 Fire Legal Liability—any one fire; and
- \$ 5,000 Medical Payments—any one person.

(B) Coverage and Terms:

- ISO Occurrence Form—CG 00 01 12 04;
- Completed Operations Aggregate Limits apply as a single limit for the policy term, including the period of the Completed Operations extension of ten years;
- Designated Project Only; and
- The Enrolled Contractor or subcontractor primarily responsible for causing any bodily injury or property damage liability loss, shall be responsible for the first \$5,000 of each insured loss.

(3) Excess Liability Insurance

(A) \$50,000,000 per occurrence/Aggregate; and

(B) Completed Operations Aggregate Limits apply as a single limit for the policy term, including the period of the Completed Operations extension of ten years

(4) **Builders Risk.** Builder's Risk Insurance will provide "All-Risk" coverage subject to policy terms and conditions. This insurance will provide coverage for all materials and equipment permanently incorporated into the Project and Work performed under the Contract while in the course of construction, reconstruction, remodeling, or alteration. The Builders Risk policy will not provide coverage against loss by theft or disappearance of any materials (unless the materials are to be incorporated into the Project), tools, or equipment of the Design-Builder or any tier of subcontractor, or any other person furnishing labor or materials for the Work to be performed under the Contract.

A deductible of \$25,000 per occurrence shall be borne by the Design-Builder or subcontractor(s) responsible for the materials and equipment to be incorporated into the Project or for the Work performed under the Contract.

(f) **Certificates and Policies for City Provided Coverages.** Certificates of Insurance will be furnished for the Workers' Compensation, General Liability, Excess Liability and Builders' Risk coverages. These policies will be available for review by the Enrolled Contractor upon request to the City. The terms of such policies or programs, as such policies or programs may be from time to time amended, are incorporated by reference. The Design-Builder agrees to be bound by the terms of coverage as contained in such insurance policies and/or self-insurance programs.

(g) **Termination/Modification of the OCIP.** The City reserves the right to terminate or to modify the OCIP or the OCIP Manual. Prior to exercising such right, the City will provide thirty (30) days advance written notice of termination or material modification to the Enrolled Contractors covered by the OCIP. In such an event, the Design-Builder will promptly obtain appropriate replacement insurance coverage acceptable to the City. Written evidence of such insurance shall be provided to the City prior to the effective date of the termination or modification of the OCIP coverages. The reasonable cost of such replacement insurance will be reimbursed by the City to the Enrolled Contractors.

SPECIAL NOTE: The Design-Builder understands and agrees that after the Design-Builder has completed its Work under the Contract at the Project and its insurance, as provided by the City's

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OCIP, has been terminated, if Design-Builder returns to the Project site to perform Work, it does so under its own insurance coverages and not under those provided by the City's OCIP.

(h) **Design-Builder Provided Coverage.** For any Work not covered under the OCIP, and until completion and Final Acceptance of the Work under this Contract, the Design-Builder shall, and shall cause its subcontractors, at their own expense, to furnish to the City OCIP Administrator, Certificates of Insurance giving evidence that no less than the following minimum coverages are in force. Such Certificate(s) shall identify the Project and shall **name City and all other entities as required by Contract, and their officers, commissioners, agents and employees of City (as their interest may appear) as Additional Insureds on their Commercial General Liability and Automobile Liability policies.**

(1) Commercial Automobile Liability Insurance:

(A) Minimum Combined Single Limit that shall not be less than \$1,000,000 per occurrence.

(B) Commercial Automobile Liability Insurance covering all vehicles owned by, hired by, or used by, or on behalf of, the Design-Builder/ subcontractor,

(2) Workers' Compensation and Employer's Liability Insurance

(A) Statutory Limits with Other States Endorsement and minimum Employer's Liability Limits as follows:

- \$1,000,000 Bodily Injury with Accident - Each Accident;
- \$1,000,000 Bodily Injury by Disease - Policy Limit;
- \$1,000,000 Bodily Injury by Disease - Each Employee; and
- The policy will be endorsed to exclude the Project if the Design-Builder is an Enrolled Contractor.

(3) Commercial General Liability Insurance:

(A) Design-Builder

- \$1,000,000 Each occurrence;
- \$2,000,000 General Aggregate;
- \$2,000,000 Products/Completed Operations Aggregate; and
- \$2,000,000 Personal and Advertising Injury.

(B) Subcontractor

- \$1,000,000 Each occurrence;
- \$2,000,000 General Aggregate;
- \$2,000,000 Products/Completed Operations Aggregate; and
- \$2,000,000 Personal and Advertising Injury.

(C) Coverage shall include the following:

- Occurrence Basis;
- Premises operations;
- Contractual Liability;

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- Products/Completed Operations;
- Broad Form Property Damage; and
- Subcontracted Work (Independent Contractor/Contractor's Liability)

If the Enrolled Contractor chooses to have its own policy endorsed to include the Project site during the construction period, such coverage for the Design-Builder shall only be Excess and/or Difference in Conditions (DIC) of the OCIP coverages. Inclusion of the Project site on such insurance policy shall not replace the OCIP coverages or otherwise affect the Design-Builder's requirement in paragraph (c) to exclude from its pricing and from all change orders cost for OCIP-provided coverages.

- (4) Excess Liability Insurance:
- (A) \$25,000,000 for Design-Builder;
 - (B) \$25,000,000 for Automobile;
 - (C) \$ 2,000,000 for Design-Builder's subcontractors unless otherwise specified in the Contract Documents; and
 - (D) Coverage should apply and follow form over the primary coverages shown above.
- (5) Coverages and Terms:
- (A) Excess of General Liability;
- (6) Excess of Employer's Liability; and
- (B) Completed Operations.

If the Enrolled Contractor chooses to have its own policy endorsed to include the Project site during the construction period, coverage for the Design-Builder shall only be Excess and/or Difference in Conditions (DIC) of the OCIP coverages. Inclusion of the Project site on such insurance policy shall not replace the OCIP coverages or otherwise affect the Design-Builder's requirement in paragraph (c) to exclude from its pricing and from all change orders cost for OCIP-provided coverages.

(7) Professional Liability Insurance. Design-Builder shall provide professional liability insurance, covering the Design-Builder, any design professionals hired by the Design-Builder, 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 for the Design-Builder and first-tier subcontractor shall be not less than \$10,000,000 per claim, and limits for second-tier and lower subcontractors shall not be less than \$1,000,000.00 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.

(8) Design-Builder's Pollution Liability. If and as required, the Design-Builder 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 the Design-Builder's operations or completed operations, performed by or on behalf of the Design-

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Builder. 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 the City, name the City 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.

(i) Certificates of Insurance for Design-Builder Provided Coverage

(1) Certificate Holder

City and County of Honolulu
c/o (Selected Broker)
Attn: TBD
Street Address
City, State Zip Code

Each policy and Certificate shall provide that the City must receive at least thirty (30) days advance written notice of any cancellation or material modification or reduction of coverage. In the event that the Design-Builder or any subcontractor fails to procure and maintain such insurance coverages, the City shall have the right, at its option, to procure and maintain such insurance coverages and back charge the Design-Builder for the costs thereof. The amount of insurance required in Section (h), shall not be construed to be a limitation of liability on the part of the Design-Builder or any of its subcontractors. If the Design-Builder or any of its subcontractors maintain any insurance policies covering owned, leased or borrowed equipment, Design-Builder shall obtain, and shall cause its subcontractors to obtain, waivers of subrogation in favor of the City and any other entities as required by contract in such policies.

Certificates of Insurance acceptable to the City shall be filed with the City by furnishing them to the OCIP Administrator, prior to commencement of any of the Work covered by this Contract. If any of the foregoing insurance coverages are required to remain in force after final payment, renewal Certificate(s) evidencing continuation of such coverage shall be submitted to the City on a timely basis throughout the period of time specified in the contract documents.

(j) **Other Insurance.** Any type of insurance or any increase of limits of liability not described in this Contract which the Design-Builder or any of its subcontractors require for its own protection or on account of any law, statute or regulation shall be the Design-Builder's own responsibility and at its own expense.

(k) **Design-Builder Responsibilities.** The Design-Builder will cooperate with, and will require all subcontractors to cooperate with, the City and/or its OCIP Administrator and other designated representatives with respect to the administration and operation of the OCIP. The Design-Builder or subcontractor's responsibilities shall include, but are not limited to:

(1) Compliance with all rules and regulations of the applicable State Insurance Bureau/Board. Failure to meet state requirements may result in fines being assessed. For any fines assessed against City as a result of the Design-Builder's non-compliance, the Design-Builder shall deduct the full amount of any such fines or penalties from monies due, or to become due, under the provisions of this Contract;

(2) Compliance with applicable Construction Safety Program;

(3) Provision of necessary Contract, operations and insurance information; and

(4) Cooperation with any OCIP insurance carrier and the OCIP Administrator with respect to requests for the Design-Builder's policy declarations and rating pages, claims, payroll or other information required under the program.

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(l) **Design-Builder's Responsibility for its Subcontractors.** The Design-Builder shall include this Section with the subcontract bid documentation and require that all subcontractors of every tier participate in the City's OCIP and comply with all OCIP requirements including enrollment, insurance cost identification and close-out procedures. It will be the Design-Builder's responsibility to submit to the City, and/or its designated representative, all subcontractor bid documentation for approval.

(m) **Assignment of Return Premiums.** The City will be the sole recipient of any dividend(s) and/or return premium(s) generated by the OCIP. In consideration of City's provision of the insurance coverage under the OCIP, the Design-Builder and subcontractors agree to irrevocably assign to, and for the benefit of, the City, all return premiums, premium refunds, premium discounts, dividends, retentions, credits, interest, and any other monies in connection with the OCIP insurance. The Design-Builder agrees to evidence such assignment by executing the appropriate forms as provided in the OCIP Manual. The Design-Builder further agrees to require each subcontractor to execute the required forms for the benefit of the City.

(n) **Waiver of Subrogation and Other Rights of Recovery.** City waives all rights of subrogation and recovery against the Enrolled Contractors to the extent any loss or damage is insured under the OCIP. The Design-Builder waives all rights of subrogation and recovery against the City and other Enrolled Subcontractors of all tiers, to the extent any loss or damage is covered under the OCIP. The Design-Builder and each subcontractor will require all subcontractors to similarly waive their rights of subrogation and recovery in each of their respective construction contracts with respect to their Work on the Project.

(o) **No Release.** The City provision of the OCIP shall in no way be interpreted as relieving the Design-Builder or any of its subcontractors of any other responsibility or liability under this Contract or any applicable law, statute, regulation or order, except the responsibility of securing the OCIP coverages if, and commencing when, the Design-Builder becomes an Enrolled Contractor.

(p) **Approval of Forms and Companies.** All insurance described in this Section will be written by an insurance company or companies authorized to do business in Hawaii. Such insurance shall conform to the requirements of this Section and be in form and content satisfactory to the City. The Design-Builder shall not violate, or knowingly permit to be violated, any of the provisions of the policies of insurance described in this Section.

(q) **Coverage to be Provided by Design-Builder After Completion of Work.** During any extended insurance coverage period, as described in the Contract Documents and following the Substantial Completion Date, the Design-Builder will maintain in full force and effect all insurance coverages specified in paragraph g) covering all Work performed under this Contract.

(r) **Claims Responsibilities.** The Design-Builder shall, and shall cause all of its subcontractors, to cooperate fully with the OCIP Carrier's claims representatives in the investigation of all claims and adhere to and perform all claims or incident reporting requirements as set forth in the Claims Procedures portion of the OCIP Manual.

SP-3.3 Bid Security, Performance and Payment Bonds

Chapter 3, Section 3.3 (b) of the GCDB is amended by being deleted in its entirety and replaced with the following:

b) **Bonding requirements.** For this Contract, performance and payment bond amounts shall be limited to not less than fifty percent (50%) of the Proposal Price. Additional performance bond or payment bond may be required by the City for a contract change order or modification where the contract amount increases. [HAR §3-122-225]

SPECIAL PROVISION

CHAPTER SP-4 PERFORMANCE

SP-4.1 Time is of the Essence

Chapter 4, Section 4.1, Time is of the Essence, of the GCDB is amended by adding the following as subparagraph (b):

b) Schedule Milestones. The following dates shall be incorporated into the Design-Builder's Baseline Schedule and serve as a part of the Contract requirements for the West O'ahu/Farrington Highway Guideway DB Contract, occurring no later than:

TABLE OF SCHEDULE MILESTONES

Item	Event Description	Required Days After NTP
1	Final Track Alignment Plans	91
2	Final Trackwork Design and Specifications	153
3	Relocate Portable Buildings in Waipahu HS & LCC	244
4	TPSS Fdn/Duct bank for Farrington Ready for Core Systems Cntr	639
5	Guideway Ready for Farrington Station Contract	655
6	Guideway Section D, Ready for Core Systems Contract	806
7	Guideway Section E over H1, Ready for Kamehameha Contract	866
8	Guideway Ready for West Oahu Station Contract	988
9	TPSS Fdn/Duct bank for W. Oahu Ready for Core Systems Cntr	1096
10	Guideway Sections B & C, Ready for Core Systems Contract	1292
11	Guideway Contract Substantially Complete	1314 *
	City-furnished Facilities and Materials (detailed in SP-4.21(b)):	
12	Rail Assembly Yard Access to Guideway Contract	561
	(*) Liquidated Damages (LD) Contract provisions apply	
	Section B = Ho'opili Segment (approx. Sta 392+00 to 500+00 on RFP Drawings)	
	Section C = West Farrington Segment (approx. Sta 500+00 to 650+00 on RFP Drawings)	
	Section D = East Farrington Section (approx. Sta 650+00 to 728+00 on RFP Drawings)	
	Section E = Pearl Highlands Segment (approx. Sta 728+00 to 754+52 on RFP Dwgs)	
	Note: Section B, C, D, and E delineation is used on the Schedule of Prices, Exhibit 16 of RFP	

SP-4.2 Commencement Requirements

Chapter 4, Section 4.2 of the GCDB is amended as outlined below:

Delete subsection 4.2 (c) in its entirety.

Delete subsection 4.2 (d) in its entirety.

Delete subsection 4.2 (g), Field Office, field telephone, in its entirety and replace with the following:

(g) Design-Builder provided facilities, services and equipment. Design-Builder shall provide and pay for all office and other building space, facilities, and equipment necessary to construct the Project and meet the requirements of the Contract and of this Section:

(1) In making arrangements for its staff and for accommodating the City staff and/or the City's agent, the Design-Builder shall provide for:

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(A) Locating the Design-Builder's project management staff and the City's project management staff in the same building or in close proximity to one another;

(B) Providing facilities for Responsible Engineers to be present in the local office whenever they are required;

(C) Locating the City's Design Compliance Engineer and staff in the same building or in close proximity to the Design-Builder's design staff;

(D) Locating a Field Office for City's Field staff in close proximity to the Project.

(2) **Joint Inventory and Inspection of Facilities.** Prior to accepting or using any facility or item provided by the Design-Builder, the City in conjunction with the Design-Builder, will conduct a condition survey and inventory of all such items, and the City and Design-Builder will note the condition of each item. The City and Design-Builder will provide written receipts for all facilities and items found to meet Contract requirements. The written receipt will note the condition of all items. The City will not be obliged to accept any facility or item that the City reasonably considers does not meet the requirements of the Contract.

(3) **Facilities and Space Requirements.** The Design-Builder shall provide the City with the facilities and items specified in this Section for the Project. For office space, including any office trailers, the Design-Builder shall be responsible for providing all Utilities connections and supply, including domestic water, electricity, telephone and gas [natural gas or liquefied petroleum gas (LPG)] and sewerage and for paying all costs for providing and supplying such Utilities until at least 30 days after Final Acceptance for the Work included in the Contract or after facilities are no longer needed by the City, whichever is earlier.

(4) **General Office Requirements for Facilities Provided by Design-Builder.** For office trailers or spaces provided by the Design-Builder, the Design-Builder shall provide offices in good repair and in a clean and sanitary condition, at least of the same quality as the facilities that Design-Builder provides its counterpart project management, design and field staff, respectively, and be available for occupancy as specified. The Design-Builder shall secure sites, obtain all site permits, install, set up, and provide Utility services, and maintain the facilities as part of the Work. The offices shall have at least two (2) exits from each building/trailer. Entrance to offices shall be secured with a door lock plus a dead bolt lock. All interior spaces shall have overhead lighting meeting OSHA and code requirements for office space. Each office space shall have at least two (2) duplex receptacles. Minimum circuit capacity shall be 20 amps. Each office space shall be wired for phone and computer Local Area Network (LAN). The office space shall include a conference room large enough for 20 people and separate restrooms for male and female. In the event that office spaces or appurtenant facilities are destroyed or damaged during the Contract period, except by fault of the City or its personnel, the Design-Builder shall, at its expense, repair or replace those items which the Design-Builder provided, to their original condition within ten (10) calendar days. For the facilities it provides, the Design-Builder shall:

(A) Be responsible for installing, maintaining, and paying all utilities;

(B) Provide daily janitorial service (except weekends and Holidays) and shall provide, service and maintain trash containers and trash pickup service;

(C) Be responsible for maintenance of the exterior area of office spaces including access to parking areas;

(D) Include desks, chairs, filing cabinets, bookcases and telephones in all offices. Provide copying, computer, printing and fax equipment services;

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(E) Provide and maintain all City offices that it provides for at least thirty (30) days after Final Acceptance of the Work included in the Contract or until facilities are no longer needed, whichever is earlier, unless otherwise agreed by the City in writing. Ownership of the field office, equipment, and telephone shall remain with the Design-Builder and shall be removed when instructed by the City;

(F) Be responsible for disposal or removal of all Design-Builder-provided facilities and any site restoration Work required;

(G) Provide, ventilation, and air conditioning/cooling systems capable of maintaining temperature between 70 and 75 degrees Fahrenheit in all spaces throughout the year;

(H) Provide facilities that meet local code requirements for office space; and

(I) Provide telephone service with outside lines for each office space in the field office facility. At least one (1) additional line will be dedicated for FAX service and one (1) additional line will be dedicated to high speed data service. The phone system shall be capable of providing voice mail service to each extension. The City will pay all local and long distance phone charges after installation.

(5) Field Office for City’s Field Staff. The Design-Builder shall provide a Field Office for City’s field staff co-located with the Design-Builder’s construction management personnel. Not later than 15 days prior to the start of construction, the Design-Builder shall provide office space not less than the size indicated below:

Item	No. Required	Requirement
Private Office	1	Min 150 square feet, enclosed with lockable door
Staff offices	14	Min 100 square feet each
Conference room	1	Min 500 square feet, enclosed, with lockable door
Storage/filing space	1	250 square feet, enclosed, with lockable door
Restrooms	1 each	Men’s & women’s
Paved parking		Min 20 spaces including+ 5 visitor spaces
Break room	1	Min 150 square feet, 8 feet of counter space with sink

The Design-Builder shall provide a well-graded site for the office with access road and parking area. The parking area shall be reasonably level. The parking area, including visitor parking, shall have an all-weather surface. The field office shall be equipped with either a 24-hour security service or silent watchmen-type security system. The Design-Builder shall install sufficient exterior security lighting that is automatically activated at low light levels to maintain two foot-candles of lighting in the office site area, including parking.

The conference room for the Field Office shall have a large table and 20 chairs.

In addition to the individual office file cabinets, the Design-Builder shall also provide for the Field Office 25 total commercial grade 5 drawer vertical lockable file cabinets for project files.

(6) Computer Hardware and Software. Design-Builder shall provide computer hardware and software for the City’s use in each of the offices and shall provide a server, accessible to its staff, City staff and Stakeholder staff for common deposit and retrieval of letters to and from the City and Design-Builder, drawings, submittals, and other project information needed by all parties. The Design-Builder shall make necessary arrangements for allowing access to the server either through

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“hardwiring” or remote access. The Design-Builder shall also make arrangements for the City’s computers to be linked directly to the City’s network.

At a minimum, computer hardware and software shall meet the following specifications:

- (A) Desktop Computers;
- (B) Intel Pentium D Processor (800 Mhz);
- (C) Microsoft Vista Operating System
- (D) 2.0 GB Ram;
- (E) 17 inch Flat Panel Monitor;
- (F) 80 GB Hard drive with 8 MB Cache;
- (G) USB Mouse;
- (H) Leadfree Motherboard;
- (I) 16X DVD+/-RW and 48X CD with Roxio Creator;
- (J) Speakers;
- (K) On-site Setup Services; and
- (L) 3 Year Hardware Technical Services, including Hard Drive Support.

(7) Backup of Electronic Files and Protection of Hardcopy Files. The Design-Builder shall provide for daily, weekly and monthly backup of its electronic files, including off-site storage of said files in a secure, fireproof location. The Design-Builder shall also be responsible for protecting its project-critical hardcopy files in secure, fireproof storage and/or filing cabinets. The City will provide backup for the City’s electronic files.

(8) Site Identification Signing. The Design-Builder shall provide site identification signing at all project offices and all sites of Work.

(9) Communication. The Design-Builder shall establish and maintain telephone and radio communications, as appropriate, to control the Work and maintain communications with City, local and regional emergency response agencies or entities and Utility Owners. The Design-Builder shall not use police or other emergency services’ radio frequencies.

The Design-Builder shall provide daily courier service between Design-Builder’s main Site office and City’s and any City field office on the Project at 10:00 A.M. and 3:00 P.M. each working day or as mutually agreed by Design-Builder and the City.

The Design-Builder shall provide e-mail addresses for its main Site office and all Key Personnel.

The Design-Builder shall pay all charges for provision of the facilities and services specified herein.

Chapter 4, Section 4.2 (o), Traffic control, is amended to add the following subparagraphs:

(11) Work on any City street or in any area adjacent to a City street where traffic is impeded shall be performed in consultation with the City’s Department of Transportation Services.

(12) 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.

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(13) Vehicle load restrictions shall be in accordance with the City and State of Hawai'i Department of Transportation (HDOT) requirements, unless the Design-Builder has obtained an over-legal load permit from the appropriate agency.

(14) The Design-Builder shall conduct operations in a manner that minimizes inconvenience to traffic, and shall have under construction no greater amount of work than it demonstrates that it can handle properly with due regard for the rights of the public.

(15) 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. The Design-Builder shall prepare final MOT plans including signage, phasing, ITS and public involvement, and final TMP to the City and HDOT for final approval. The 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.

A traffic analysis evaluation study shall be performed by the 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.

The Design-Builder shall prepare final Design Plans, including final MOT plans, submit the design documents to the City and HDOT Oahu District for review and approval, and obtain a permit for construction within a State Highway.

(16) Intelligent Transportation System. As part of the TMP, the Design-Builder shall design, procure, install, and maintain Intelligent Transportation System (ITS) equipment along Farrington Highway that integrates information into the State's ITS system.

(17) 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 Farrington Highway:

(A) The Design-Builder may have up to four (4) restricted lane "Work Zones" in operation on Farrington Highway at any one time. None of the individual restricted lane "Work Zones" shall exceed 1000-ft in length.

(B) A minimum of two (2) – 11-ft wide through lanes shall be provided on each side of the "Work Zone", except for a segment that is approximately 3,000-ft long that is located 600-ft east of Pa'iwa Street and 1,600-ft east of Kahuali'i Street.

(C) For the 3,000-ft long segment between 600-ft east of Pa'iwa Street and 1,600-ft east of Kahuali'i Street, a minimum of two (2) 11-ft-wide lanes on the makai side and one (1) 11-ft-wide lane on the mauka side of the "Work Zone" shall be provided. During the PM peak period, traffic in the segment shall be contra-flowed to provide two (2) westbound lanes.

(D) The 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.

(E) Additional details of the MOT concept are shown on RFP Drawings.

(F) The Design-Builder shall obtain State approval to close additional lanes, left-turn movements, and cross street movements not shown in the MOT concept plans. These closures shall be implemented only during non-peak traffic periods.

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(18) Coordination with HDOT and City and County of Honolulu Police Department. The Design-Builder shall coordinate work with HDOT throughout the alignment on a daily basis. The Design-Builder shall use the details contained therein as templates to develop traffic plans for specific construction operations in accordance with the following:

(A) Provide a 30-day advance notice to HDOT for any and all traffic restrictions on a State Highway lane or ramp.

(B) Coordinate with HDOT on all details of access and egress to the Work from HDOT right-of way, and all details of construction staging areas within HDOT right of way

(C) Submit all construction Work plans and erection procedures to HDOT (and City) 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 H-1 and H-2 and Fort Weaver Rd.

(D) A copy of a draft project work agreement with HDOT is will be provided when it becomes available.

(E) Approval for all lane closures or restrictions on all HDOT State Highways, lanes, or ramps proposed by the Design-Builder shall be obtained by the Design-Builder from HDOT.

(F) The following “lane rental fee” applies to violations of HDOT traffic restrictions. Design-Builder shall be charged a lane rental fee of \$500.00 per hour, not to exceed \$5,000 per day, when Work extends beyond authorized lane closures.

(19) The 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.

SP-4.7 Quality Management

Chapter 4, Section 4.7, Quality of materials and equipment, of the GCDB is amended by being deleted in its entirety and replaced with the following Special Provision SP-4.7, Quality Management:

(a) Design-Builder shall establish and implement a Quality Management Program. The purpose of the Quality program is to: ensure that Design-Builder provides the City a completed project that meets Contract requirements; prevent the occurrence of design and construction non-conformances through active and effective monitoring of processes; create organizational independence from the design and construction delivery of the Contract; and assure that Design-Builder manages the Work such that the City has the ability to substantiate that the requirements of the Contract are being met and substantiate that appropriate payments for the Work are made.

(b) Quality Management Plan. The Design-Builder shall development, maintain and implement a comprehensive Quality Plan that reflects the Contract requirements and the Design-Builder’s processes and procedures for effectively performing the quality management for the Project.

(c) Quality Plan shall reflect the overall quality approach, philosophy, and a discussion of methods that will be used to assure that the contracting and subcontracting relationships will support the City’s and Design-Builder’s quality objectives. The Quality Plan shall be organized in accordance with, and should include the topics set out in the following outline:

(1) Project Quality Management, including but not limited to:

(A) Quality Policy Statement;

(B) Organizational Requirements with contact information of Quality Team;

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- (C) Roles and Responsibilities of the Quality Team;
 - (D) Administrative processes and procedures common to both design and construction quality management; and
 - (E) Quality Records management processes and procedures
- (2) Design Quality Assurance and Control, shall include but not be limited to:
- (A) Processes and procedures for Design development including checking, peer review, cross-discipline coordination for developing Project Plans, Project Specifications and Estimates with supporting technical documentation;
 - (B) Plan/Processes and procedures for managing Design Reviews and changes during design and construction;
 - (C) Plan/Process for Independent Design Checks for major permanent structural components;
 - (D) Plan/Protocols for Design Decision Making;
 - (E) Plan/Protocols for Design Communication, Coordination, and Collaboration;
 - (F) Plan/Protocols for Managing City Reviews and Responses to submittals, Work Change Directives, and Change Requests;
 - (G) Design and engineering support during construction, witnesses tests, reviewing quality inspection and test records, responding to RFIs and field changes; and
 - (H) Plan/Protocols for Independent Auditing of Design Quality Management.
- (3) Construction Quality Assurance and Control, including but not limited to:
- (A) Plan/Processes for Construction management and administration;
 - (B) Plan/Protocols for Tracking, Measuring and Documenting Construction Progress;
 - (C) Plan/Protocols for Construction Decision Making;
 - (D) Plan/Protocols for Inspection, Testing and maintaining quality certifications;
 - (E) Plan/Protocols for Payment Request and Tracking;
 - (F) Plan/Protocols for Managing Reviews and Responses to Construction Documentation (RFIs, RFCs, Field Changes, Design Changes during Construction);
 - (G) Plan/Protocols for Managing and Tracking Approved Construction Changes;
 - (H) Plan/Protocols for Managing and Controlling Construction Schedule;
 - (I) Plan/Protocols for Construction Communication, Coordination, and Collaboration; and
 - (J) Plan/Protocols for Independent Auditing of Construction Quality Management as well as quality oversight processes and procedures.
- (4) Project Quality Management Forms and Checklists to be used to facilitate and document QA/QC efforts. The details of many of these forms and checklists require the design to be advanced. One of the key checklists to be included in the Design-Builder's Quality Plan is the pre-work activity checklist that depicts all items required to perform the particular construction effort that can be used at a pre-construction meeting by the Design-Builder to review with all participants, including the City's quality oversight personnel, the construction means and methods, subcontractor

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involvement, materials and inspection / testing requirements. This meeting typically includes a review of safety and security protocols as well as environmental controls.

(5) The City has the right to perform quality inspections and audits of Design-Builder's management, design, construction, environmental compliance, and maintenance activities; Design-Builder's Quality Management activities; the quality of materials and fabricated products; and the quality of workmanship of the completed project.

(d) Quality Plan Acceptance and Revisions. Within 30 days following NTP, the Design-Builder shall submit the Quality Plan that describes the QC/QA activities provided and managed for the design and permitting activities. The Design-Builder shall submit a Quality Plan for acceptance within 30 days of receipt of the City's comments.

At least 60 days prior to the expected construction date, the Design-Builder shall submit for City Review and Comment, a Quality Plan that describes how QA/QC will be provided and managed for all construction activities. The Design-Builder shall submit a Quality Plan for acceptance within 30 days of receipt of the City's comments.

Revisions and updates to the Quality Plan may be proposed by the Design-Builder as the Work progresses. Changes to the Quality Plan shall be provided to the City no later than 30 days prior to the Work to which the revision applies. The City will have 15 days to review and comment. These revisions and updates may occur in one or more iterations. The Design-Builder shall not initiate any Work that is impacted by such a program change unless and until the City has reviewed and accepted the change.

(e) Design Quality Management. Design Quality Management shall be Design-Builder's sole responsibility to provide Project Plans, Working Plans, and Project Specifications of such a nature to deliver the finished construction Work in accordance with all Contract requirements. City Review and Comments pertaining to design documents shall not relieve Design-Builder of that responsibility.

(f) Design-Builder shall not begin construction Work until all City comments on the Final Design are resolved to the satisfaction of the City. Design-Builder shall perform each of the following:

(1) Manage the design and design quality of the Work;

(2) Coordinate with and obtain necessary approvals from authorities regarding temporary road diversions and detours, shutdowns, temporary traffic diversions, utility relocations, and all other matters for which authorization may be required;

(3) Document how permit requirements are met in accordance with the Environmental Compliance Plan and that appropriate permits are obtained;

(4) Ensure that the responsible Design Professionals complete the necessary reviews, evaluations and quality checks in accordance with the procedures set out in the Quality Plan and file appropriate documentation and certifications; and

(5) Ensure that the Quality Manager certifies that quality procedures have been followed in accordance with all Contract documents and the Quality Plan.

(6) The same procedures used for checking the design of permanent components of the Project also apply to design of major temporary components and construction sequences of the Work that affect the permanent components.

(g) Design Manager shall be responsible for the supervision and quality of all design Work and design processes, including but not limited to each of the following:

(1) Accuracy;

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- (2) Adequacy;
- (3) Conformance to professional standards of practice;
- (4) Compliance with all legal requirements and contractually-mandated Standards and other Contract requirements;
- (5) Cost effectiveness;
- (6) Quality; and
- (7) Fitness for purpose and function as specified or implied in the Contract Documents.

(h) Design Workshop. Within 45 days of NTP, the Design-Builder shall arrange a design workshop to familiarize the Designer's personnel and the City (and Stakeholders, if invited by the City) review personnel with the design concepts, issues, status, and review procedures. The City and Design-Builder will jointly develop the agenda of the workshop and how it will be organized (i.e., by Design Unit and engineering discipline). Consensus will be determined during the Design Workshop on the use of Interim Design reviews for project elements that pose complex or entail additional conflict resolution effort. The workshop will also discuss the extent of City review of Working Plans. The agenda will include developing agreements regarding time allowed for design reviews. The intent of the workshop is to make the subsequent Design Reviews more effective and efficient for all parties.

(i) Design Review Plan. The Design Review Plan shall be part of the Quality Plan and be submitted for City Review and Comment prior to the start of design. The Design Review Plan shall include both the quality responsibilities of the Design Manager and the independent responsibilities of the Design Quality Manager. The Design Review Plan shall be specific to each stage of design development. Design-Builder shall make a single comprehensive design check and Design Review for developed plans and specifications for each of the five (5) stages of design development:

- (1) Definitive Design;
- (2) Interim Designs;
- (3) Final Design;
- (4) Working Plans; and
- (5) As-Built Plans and Specifications.

(j) The Design-Builder shall carry out independent design checks by senior engineers not involved in the production of the design being reviewed that have equal or greater qualifications and experience as the Responsible Engineer for the design being checked. The Design-Builder shall provide to the City a plan / process and written procedures for this Independent Design Check and shall include, as a minimum, the following structural components:

- (1) Erection gantry(s) used for the placement of segmental sections of the guideway;
- (2) Typical guideway foundation, column and superstructure for a minimum of three consecutive spans; and
- (3) Major structures crossing Interstate H1, streams and other roadways that have atypical design elements or due to their clear span length have non-typical construction methods.

(k) Independent design checks are comprised of design assessment and analytical checks as follows:

- (1) Design Assessment – is a review of general compliance with the requirements of the Contract, taking into consideration the following areas:

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- (A) Project design criteria;
- (B) Applicable codes and standards;
- (C) Methods of analysis;
- (D) Computer software and its validation;
- (E) Interface requirements;
- (F) Maintenance requirements;
- (G) Materials and material properties;
- (H) Durability requirements;
- (I) Constructability;
- (J) Context Sensitivity; and
- (K) Environmental Compliance.

(2) Analytical Check – using separate calculations (and without reference to Designer’s calculations) to establish the structural adequacy and integrity of critical structural members. This includes, but not limited to the following:

- (A) Structural geometry and modeling;
- (B) Material properties;
- (C) Member properties;
- (D) Loading intensities;
- (E) Foundation loads; and
- (F) Structural boundary conditions.

(l) Design Exceptions. All design exceptions from specified Standards and/or Industry practices shall be provided by the Design-Builder, stating why exceptions are being proposed with supporting documentation; and shall be submitted prior to City Review and Comment of the Definitive Design.

(m) Design Reviews. Design review meetings and participation – Design Reviews and meetings shall be conducted by the Design Manager. The Quality Manager, the Design Manager, Responsible Engineer, and any Design Professionals having significant input into the design or review shall be present. Design-Builder shall notify and invite the City to participate in all design reviews. At a minimum, the Design Manager shall organize and facilitate design review workshops with the City to discuss the Definitive and Final Design submittals. The City may also invite stakeholders to attend. The City’s participation in design reviews shall not relieve Design-Builder of its responsibility for the satisfactory completion of the Work in accordance with all Contract requirements.

(n) Design-Builder shall provide or make available to review meeting participants all design documents (e.g., drawings, reports, specifications, Basis of Design Memorandums and other technical memorandums as necessary to support design decisions) pertinent to the design review, including all prior comments and actions resulting there from. Design-Builder shall prepare and distribute minutes from the review meetings. Design Reviews shall be conducted for the following:

(1) Definitive Design Review shall be the first design review requiring participation of the City, and is intended to verify that the concepts proposed by the Design-Builder meet Concept Documents provided by the City or provide substantiated reason for change and that the Definitive Design complies with the Contract requirements. The Quality Manager shall verify in writing the

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compliance and completeness of the design submittal prior to presenting the Definitive Design to the City for review. The following issues shall be discussed:

- (A) All contract requirements applicable to the proposed concept documents, including all applicable standards and legal requirements and environmental permit conditions, have been identified, and the proposed designs are in compliance
- (B) The proposed concepts are substantiated and justified by adequate site investigation and analysis
- (C) Right of Way requirements have been identified
- (D) The proposed concepts are constructible
- (E) Required materials and equipment are available
- (F) The proposed concepts meet all quality requirements, and all required Quality Plan procedures have been followed including for site maps and concept drawings and draft specifications for any materials or methods that are not industry standard
- (G) That proposed concepts comply with permits and environmental compliance plan requirements.

If design is amended subsequent to the Definitive Design review by the City, Design-Builder shall re-check and re-certify the design as an additional Definitive Design review. Substantive changes to Plans and Specifications initiated by Design-Builder and already checked by the Design Professional and certified by the Quality Manager shall be subjected to the Design Review process as an entirely new design. Design-Builder shall not be entitled to any increase in Contract Amount or additional Contract Time for the re-check and re-certification except when the amended design results from a Change Order initiated by the City for reasons other than design non-compliance.

(2) The Design-Builder's Responsible Engineer shall provide a Draft Basis of Design Memo with Definitive Design plans that documents the issues above as well as provides a report that describes, at a minimum, the design alternatives considered, material choices, and construction means and methods that leads to the solution proposed.

(3) Interim Design Reviews are optional and intended to resolve conflicts and unresolved comments from the Definitive Design and prior to Final Design. The Design-Builder should use Interim Design Reviews to remedy conflicts, account for exceptions, and incorporate betterments. Design-Builder shall notify the City if Interim Design reviews are necessary and shall schedule the necessary design reviews following independent review by the Quality Manager. Workshops, meetings and "over-the-shoulder" reviews are means to facilitate interim design reviews by the City.

(4) Design-Builder shall also use Interim Design reviews to verify that the concepts and parameters established and represented by Definitive Design are being followed, and that all Contract requirements continue to be met. Design-Builder shall specifically highlight, check, and bring to the attention of the City any information differing from or supplemented to that presented at the Definitive Design review.

(5) Final Design Reviews shall verify that the concepts and parameters established and represented by Definitive Design and any Interim Design are being followed and that all Contract requirements continue to be met. Design-Builder shall specifically highlight, check, and bring to the attention of the City any information differing from or supplemental to that presented previously. Prior to scheduling the Final Design review with the City, the Quality Manager's independent review shall have been completed.

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(6) Design-Builder shall be responsible for demonstrating that any proposed specifications meet or exceed the minimum Contract and permit requirements, as determined by City in its sole discretion, and are suitable and appropriate to control the Work.

(7) Working Plans reviews are the responsibility of the Design-Builder to assure conformance with the Final Design plans and specifications and in accordance with the Contract requirements. Design-Builder shall verify pertinent dimensions in the field prior to conducting a Working Plan review. Design-Builder shall check, review, and certify Working Plans prior to their use in fabrication and/or construction. Approved working plans shall be maintained in the Design-Builder's file and available if requested by the City. Discrepancies or changes shown in the Working Plans require the responsible Engineer, the Design Manager, and the Quality Manager's reviews, approvals, and certifications. The Quality Manager shall notify the City in writing of any authorized changes to the Working Plans from the Final Design.

(8) As-built (Record Documents) Design Review shall be performed initially by the Design-Builder to assure "red-lines" and authorized changes to the Final Design and Working Plans are properly notated on the record plans and specifications and that quality documents and project records indicating variances or changes have been reflected on the plans and specifications. Once the Design-Builder has completed their review the Record Documents are submitted to the City for review and acceptance.

(9) Design Quality Records shall be maintained by the Design-Builder in an auditable format according to the Quality Plan procedures. The City has the right to audit the quality records for compliance with the Quality Plan and the Contract requirements. Upon completion of the Project, the Quality Records are turned over to the City.

(o) Construction Quality Management. Design-Builder shall develop and implement a Quality Program for all phases of the Work. Design-Builder, through the Quality Plan, shall be responsible for the quality of Work, including the workmanship and products of Subcontractors, fabricators, suppliers, and vendors both onsite and off-site. Responsibility for the quality of Work includes environmental compliance monitoring per the Environmental Compliance Plan that is included in the Quality Plan.

The Quality Manager shall oversee, manage, certify and perform Quality Management activities as defined in the Quality Plan and the Contract requirements.

(1) Construction Quality Control (QC) Inspection – All construction processes, procedures, and workmanship shall be inspected by Design-Builder's QC Inspectors. Inspection shall include the observations, measurements, and documentation specified in the Design-Builder's Quality Plan and the Contract Documents. Inspection, observations, verification of conformance to specified requirements, measurements, results, non-conformances, and required corrective actions shall be documented on Design-Builder's forms as defined in the QC plan.

(2) Construction QC Testing – Design-Builder's QC Inspectors shall perform sampling and testing of field-tested materials in accordance with the Quality Plan and the Contract requirements. QC Inspectors shall be certified to the level appropriate for the Work being sampled/tested, and shall provide the City the names, telephone numbers, and copies of certifications for all personnel performing field testing. Testing requirements shall be defined in the Quality Plan supported by a recognized national organization, and shall mean the latest version of that test method or Contract Specification for the Work in effect on the day the testing is performed, unless otherwise directed by the City in writing. The Quality Plan shall address failing tests, retests and unsuitable test results.

(3) Certified Testing Laboratory – QC laboratory testing of field-tested materials shall be conducted by testing laboratories that are certified by the City or by national recognized organization

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for the applicable tests. This certification shall be valid for one (1) year from date of issue. Laboratories performing QC Testing may be Design-Builder's own, the material supplier's, or an independent testing laboratory as long as certifications are current and available for the City's review.

(4) Field-Tested Materials – Design-Builder is responsible for providing QC sampling and testing, furnishing materials of the quality specified, and furnishing quality level analysis during production when required by the Quality Plan or Contract specifications. Design-Builder's construction QC testers shall perform sampling and testing for process control and QC consistent with the Quality Plan and Contract specifications. Any deviations from the sampling and testing methods and frequencies indicated in the Quality Plan or the Contract specifications shall require City concurrence prior to the start of the Work.

(5) Non-Field Tested Materials – Design-Builder shall provide materials meeting all Contract requirements, along with all material's conformance and quality compliance documents. Quality compliance documents shall be in the form of test results certifications, quality compliance certificates, and equipment lists and drawings. Non-field tested materials shall be accepted for use according to the Contract specifications and the Quality Plan.

(6) 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.

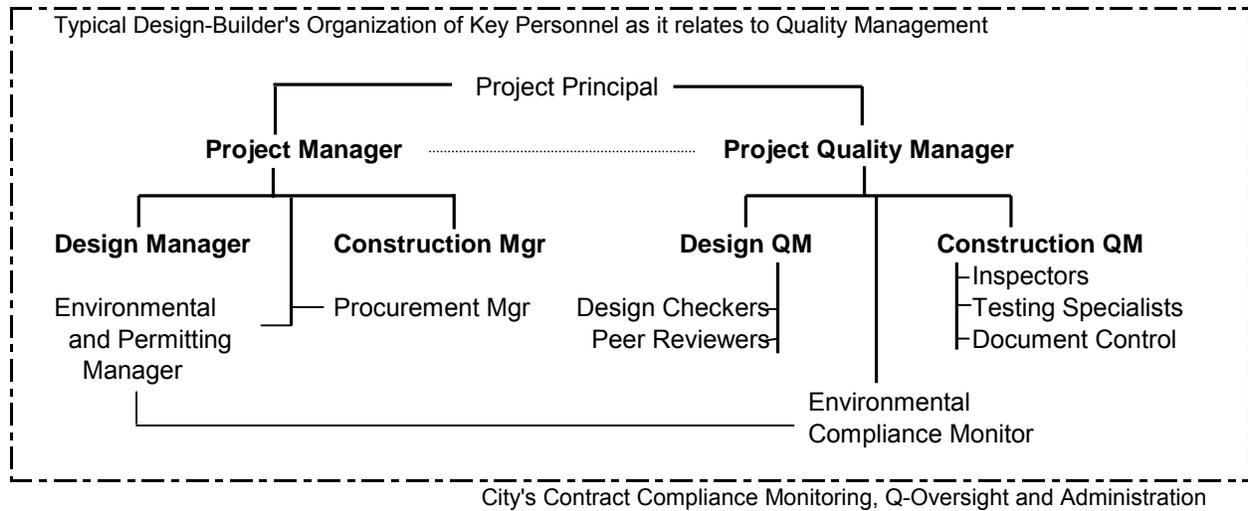
(7) City Quality Assurance (QA) testing laboratories shall perform independent assurance (IA) or verification tests of field-tested materials in coordination with the QC testing laboratories performing QC tests of materials on behalf of the Design-Builder. QA laboratories shall be either City laboratories or City-contracted independent testing laboratories.

(8) Independent Referee Laboratory – The City's designated independent testing laboratory shall act as a "referee" laboratory for resolution of disputes regarding the City's verification sampling and testing results from a non-referee laboratory and Design-Builder's QC test results, unless a potential for conflict of interest exists with the City's designated "referee" laboratory above. The services of the "referee" laboratory may be requested by either the City or Design-Builder. The sampling and testing results determined by the "referee" laboratory shall be final and binding on both Parties. The Party whose sampling and testing results are not confirmed or supported by the "referee" laboratory shall be responsible for payment for the "referee" services. If Design-Builder is the unsuccessful Party, the cost of the "referee" laboratory services shall be deducted from monies due or to become due the Design-Builder under the Contract.

(9) Design-Builder shall have documentation that materials and equipment conform to all Contract requirements available at the Project Site no less than 24-hours prior to installation or use of such materials or equipment. This documentation shall be retained at the Project Site office.

(p) Quality Team Organization, Key Personnel. The Design-Builder, at minimum, shall identify the Project Quality Manager, Design Quality Manager, and the Construction Quality Manager as part of the key personnel. The other key member of the on-site quality team is the Environmental Compliance Manager and the Project Principal. The typical organization of the quality team as it relates to the production team is as follows:

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Organizationally the “checks and balances” are established with production and quality being separate and independent. There is however close coordination and communication required making this on-site operation effective. The Design-Builders Project Principal must be able to keep the two sides of the operation in balance and both effectively performing their responsibilities. The communication remains point-to-point however, the City’s quality oversight personnel will directly interface with the Project Quality Manager while the City’s PM will deal with the Design-Builders PM.

- (1) Quality Assurance by Design-Builders. The Design-Builders executive management will review the quality system at defined intervals sufficient to ensure its continuing suitability and effectiveness in satisfying the requirements of this standard and the Design-Builders stated quality policy and objectives. Executive management reviews will be held at least at three-month intervals.
- (2) Records of such reviews will be maintained. Minutes will be taken of the review meetings and these minutes will be maintained as quality records. Copies of minutes will be provided to the City on request.
- (3) Design-Builders Design Organization. Appoint a suitably qualified and experienced Designer to undertake the design of the temporary and permanent components of the Project.
- (4) The Designer shall establish an office in the Project vicinity and maintain all necessary representation throughout the duration of the Contract to ensure the Designer can meet all its obligations under the Contract.
- (5) The Designer will assign a Responsible Engineer(s) for each Design-Builders-designated Design Unit (construction Milestone). The Responsible Engineer(s) will sign and seal design reports, Project Plans, and Project Specifications for the assigned Design Unit(s). The Responsible Engineer will review Working Plans for conformance with final design and oversee as-built documentation. Each Responsible Engineer must be a Hawai‘i-licensed Professional Engineer.
- (6) Responsible Engineers must be present in the Project vicinity as necessary to coordinate the Work on assigned Design Units. The Responsible Engineer must be present in the Project area for, and attend all Design Reviews for, assigned Design Unit(s). Participates and resolves design conflicts during construction. The Responsible Engineer witnesses final testing and acceptance.

SP-4.8 Character of Workers, Methods and Equipment

Chapter 4, Section 4.8, Character of Workers, Methods and Equipment, of the GCDB is amended by

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adding the following paragraphs:

(b) The Design-Builder shall replace any Key Personnel who leave the Project due to circumstances beyond the control of the Design-Builder. Replacement of any Key Personnel shall be by an individual with equivalent or greater experience and skills as required by the position. Key Personnel replacements will be subject to concurrence by the City.

(c) Key Personnel. Design-Builder shall staff the Project with appropriate personnel to perform all Work, including the design, environmental and permitting services, community outreach, and construction supervision, and inspection to competently and efficiently provide the design-build services in accordance with the Contract Documents, devoting such attention thereto and applying such skills and expertise as may be necessary. Design-Builder shall be solely responsible for the means, methods, techniques, sequences and procedures of Construction and shall perform the Work in a workmanlike manner. Design-Builder shall be responsible to see that the completed Construction complies accurately with the Contract Documents and shall keep City advised as to the quality and progress of the Work.

The Design-Builder shall provide personnel that meet the requirements specified in this section. Design-Builder commits that the personnel resources listed in the Agreement shall be available to the extent within Design-Builder's control, and Design-Builder commits to undertake all reasonable efforts to provide the Key Personnel identified in the Contract Documents, on a full-time basis for all periods necessary to fulfill Contract obligations.

The Design-Builder's Project Manager, designated in the Contract Documents shall serve as the Design-Builder's representative and single point of contact with the City. The Design-Builder's Project Quality Manager shall interface and coordinate with the City's Quality oversight team during the execution of Work providing independent QA/QC services. Refer to the Quality Management requirements in Section SP-4.7.

The Design-Builder's Project Manager and Project Quality Manager shall be located on or near the Project Site for the duration of the Project.

(d) Personnel Directory. Within fifteen (15) Calendar Days after NTP, the Design-Builder shall submit to the City a directory and organizational chart showing all of its Key Personnel. The directory shall be updated throughout the Contract as changes occur. The directory shall include the names, titles, areas of responsibility, office address, office telephone, facsimile numbers, and cellular and/or pager numbers of Key Personnel. The Design-Builder shall provide information sufficient for the City to contact any of the Key Personnel on a 24-hour basis for the duration of the Contract. The directory shall be incorporated into the Quality Plan.

(e) Temporary Absence of Project Manager and Project Quality Manager. If the Project Manager or the Project Quality Manager is planning to be absent from the Project Site for more than 48-hours, the Design-Builder shall inform the City in writing in advance of the person substituting for either of these two key persons.

(1) Substitution of Key Personnel. Design-Builder shall not substitute Key Personnel. Notwithstanding the procedures set out herein, City will have no obligation to consider or approve a request to substitute, but may, in its sole discretion, do so.

(2) Proposed Replacements. To seek to add, delete, or substitute any Key Personnel or a major subcontractor, Design-Builder must submit to City a request at least thirty (30) Calendar Days in advance of any desired replacement.

(3) Required Information. Design-Builder shall submit with any request for substitution:

(A) The name and qualifications of the proposed replacement Key Personnel or Major Subcontractor;

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(B) The same selection evaluation information as was specified for inclusion in the Proposal; and

(C) The reason for the proposed change. If City elects to consider the request, City, in its sole discretion, will determine whether the proposed substitute is appropriately qualified or otherwise acceptable, and will notify Design-Builder of its determination whether or not to allow the substitution within fourteen (14) Calendar Days of the original request. Failure of City to respond within the response period shall indicate City's election to not consider the request.

(4) City Written Consent Required. City, in its sole discretion, will determine whether or not to consider or authorize the replacement of any Key Personnel, which decision shall be final. Any authorization will be in writing, and Design-Builder shall not change Key Personnel or Major Subcontractors except upon receipt of such written consent from City. City may require additional explanation from Design-Builder as to the reason for the replacement.

(f) Key Personnel Qualifications. In the qualifications section below, the word "shall" indicates a required minimum requirement. The word "should" indicates the City's preferred qualifications, but such qualifications is not a mandatory requirement.

(1) Project Principal. Shall be a Senior Manager that has overseen projects of similar size and complexities and carries responsible charge authority within the Design-Builder's organization. The Project Manager and Project Quality Manager report to the Project Principal and as such shall balance all project objectives to deliver the Project to the City's complete satisfaction.

(2) Project Manager. Shall be Design-Builder's representative and single point of contact for the duration of the Contract. Shall have demonstrated experience in construction and management of construction on rail transit projects and on projects with similar size, complexity, and challenges as this Project. Should have Design-Build experience and extensive project management experience.

(3) Project Quality Manager. Shall be a Hawai'i-registered professional engineer and should have demonstrated design and/or construction experience in rail transit on aerial structures and shall have at least five (5) years' experience in Quality Management, including Quality Assurance/Quality Control activities, including preparation and implementation of Quality Plans and procedures for design and/or construction. Should have Design-Build experience and experience with City's Quality Assurance system.

(4) Design Manager. Shall be a Hawai'i-registered professional engineer who is an employee of the Designer. Shall have demonstrated experience in managing design for multi-disciplinary rail transit projects with similar scope and complexity as this Project. Should have experience with the design of aerial structures of similar size and type as those involved in this Project and have Design-Build experience.

(5) Construction Manager. Shall have demonstrated experience in construction and management of construction on rail transit and/or aerial structure projects and on projects with similar size and complexity, and challenges as this Project. Should have Design-Build experience and extensive project management experience.

(6) Design Quality Manager. Shall be a Hawai'i-registered professional engineer with a minimum of five (5) years experience in Quality Assurance/Quality Control activities on rail transit and aerial structure design projects with similar scope and complexity as this Project.

(7) Construction Quality Manager. Shall have a minimum of five (5) years experience in Quality Assurance/Quality Control activities (including the management of construction QC

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programs). Should have demonstrated experience on rail transit and/or aerial structure guideway construction projects that have incorporated the type of construction proposed for the Project.

(8) Safety Manager. Shall be a Work Zone Safety Supervisor, as certified by the American Traffic Safety Service Association or any City or firm certification program, approved by the City. Shall have a minimum of 5-years experience as a roadway (highway) safety technician or supervisor.

(9) Environmental Compliance Manager. Shall have demonstrated experience related to environmental compliance monitoring and reporting during construction and post-construction activities and experience preparing and reviewing pre-construction assessments. Should have experience with rail transit and aerial structure engineering drawings and concepts and experience working cooperatively and effectively with design engineers and construction staff. Should have experience with Pacific Island environmental issues including: experience in wetland and riparian restoration with plants native to Hawai'i.

(10) Geotechnical Design Manager. Shall be a Hawai'i-registered professional engineer who has demonstrated experience in characterization of ground conditions that relate to aerial structure construction, including in marine environments.

(11) Aerial Structure Design Manager. Shall be a Hawai'i-registered professional engineer who has demonstrated experience in aerial structure design, specifically in the method of aerial structure design proposed, including in difficult subsurface conditions and/or in marine environments.

(12) Aerial Structure Construction Manager. Shall have demonstrated experience in construction and superintendence of aerial structures construction, specifically in the method of aerial structure construction proposed, including in difficult subsurface conditions and/or marine environments. Should have experience with Design-Build projects.

(13) Public Involvement Manager. Shall have at least 5 years experience planning, organizing, developing and implementing public/community outreach and information programs. Serving as liaison between the public and governmental agencies with skills to listen and respond to community concerns and questions and use tact and diplomacy in dealing with sensitive situations and upset individuals is desirable. Knowledge, skills and abilities in/of:

(A) Addressing issues of public concern and conflict;

(D) Developing materials such as news releases, fact sheets, flyers for both community and media audiences;

(E) Public notification and record keeping protocols; and

(F) Technical knowledge of construction projects.

(14) Project Controls Manager. Shall have demonstrated experience in project controls for projects with similar scope and complexity as this Project.

SP-4.9 Coordination

Chapter 4, Section 4.9, Other Contracts, is amended by being deleted in its entirety and replaced with Special Provision SP-4.9 Coordination (as follows):

The Design-Builder shall coordinate its operations with those of the 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 un-necessary delay or hindrance of their respective contracts. Any difference or conflict which may arise between the Design-Builder and other contractors of the City in regard to their

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projects shall be resolved by the City.

(a) **Weekly Meetings.** The Design-Builder shall report progress, schedule status, submittal status, procurement status, precast segmental production progress, safety status, and issues associated with coordination with others to the City at weekly progress meetings (*See* Section SP-4.28).

The Design-Builder is responsible for weekly coordination meetings with other agencies, City departments, and utilities.

(b) **Coordination with Others.** In its performance of services authorized and required under the contract, the Design-Builder shall assist the City in coordination activities with governmental, public and private agencies as required by the City. Such coordination assistance shall include attending meetings in connection with the work pursuant to the contract with governmental, public, or private agencies or others interested in the Project as may be authorized and required by the City. The Design-Builder shall prepare and submit to the City meeting minutes of all such meetings attended within ten (10) working days after the meeting. The Design-Builder shall promptly bring to the attention of the City by written notice any significant requests of decision arrived at during coordination with such agencies.

The Design-Builder is advised that other HHCTCP contractors will be performing Work on the same Site as this Contract. These other contracts will affect the Work and will require frequent coordination meetings to minimize the overall impacts. The following table of known HHCTCP Contracts is provided. This schedule may change. The City makes no assertion that this list is complete, or will not change during this Contract. The Design-Builder shall coordinate its Work with all HHCTCP contractors. Dates of construction are estimated and are subject to change.

TABLE 4-2 COORDINATION WITH OTHER HHCTCP CONTRACTORS

Contract No.	Description	Anticipated Schedule	Location Of Work
DB200	Maintenance & Storage Facility, (MSF)	Work starts March 2010 with an estimated completion date of April 2014	Site is at the east end of Contract on the site of the former Navy Drum Yard. Coordinate site access, traffic control, and shared staging areas with this Contract.
DBB270	Farrington Stations, (FSC)	Work starts September 2011 with an estimated completion date of September 2013.	There are 3 station sites as referenced in the RFP Plans. Coordinate site access, traffic control, and shared staging areas with this Contract.
DBB170	West Oahu Stations, (WOSC)	Work starts June 2012 with an estimated completion date of May 2014	There are 3 station sites as referenced in the RFP Plans. Coordinate site access, traffic control, and shared staging areas with this Contract.
DBB275	Pearl Highlands Station and Garage, (PHSC)	Work starts October 2011 with an estimated completion date of May 2014	At the west end of Contract across H1 the transition from this Contract to Kamehameha Guideway occurs. Coordinate site access, traffic control, and shared staging areas.

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TABLE 4-2 COORDINATION WITH OTHER HHCTCP CONTRACTORS

Contract No.	Description	Anticipated Schedule	Location Of Work
DBB360	Kamehameha Guideway, (KGC)	Work starts December 2011 with an estimated completion date of December 2014	At the west end transition from this Contract across H1. Coordinate site access, traffic control, and shared staging areas.
MI920	Core Systems DBOM	Work starts July 2010 with an estimated completion of March 2019	Guideway DB Contract must schedule access for Systems installation work in support of the phased operations (openings). Coordinate site access, traffic control, and shared staging areas.
Refer to SP-4.1 for this Contract's Schedule Requirements and SP-10.4 for Design Coordination.			

(c) Other Contractor Advisory (Non-HHCTCP). The Design-Builder shall coordinate with other public agencies, public and private utilities and/or their contractors may be performing work simultaneously in the vicinity of the Site. These other contracts may affect the Work and will require frequent coordination meetings.

(d) Coordination with Adjacent Property Owners. The Design-Builder shall protect private or public property on, or in the vicinity of, the Work site. The Design-Builder shall ensure that no property is removed, damaged, destroyed, or prevented from being used unless the Contract so specifies. Property includes land, utilities, trees, landscaping, irrigation systems, street furniture, improvements legally on the right-of-way, markers, monuments, buildings, structures, pipe, conduit, sewer or water lines, lighting, signal systems, signs, and other property of all description whether shown on the Design Documents or not. The Design-Builder shall install protection, acceptable to the City, for property that is subject to damage by the construction process.

(1) The Design-Builder shall advise each property owner of upcoming Work that will have a direct impact on the property and shall schedule the Work to minimize as much, as practical, these impacts.

(2) The Design-Builder is responsible for obtaining any Temporary Construction Easements (TCE) necessary to complete the work.

(3) The Design-Builder shall advise the City's Director of Public Information whenever property owners are notified and if the Design-Builder obtains any TCEs. Additional coordination items shall include, but not be limited to: underground utility service connections, access or driveway reconstruction, utility disruption, water service, grounding work, demolition, landscape protection, landscape restoration, fencing, mail delivery, and refuse collection.

(4) Driveway and pedestrian access to all properties (residences and businesses) shall be maintained at all times unless prior written approval of the property owner is received by the Design-Builder and provided to the City. If the Design-Builder proposes to close a driveway or pedestrian access, it is the Design-Builder's responsibility to make the necessary arrangements with the property owner and to inform the City's Public Information staff. The arrangements may include working at night, providing alternative access, or providing temporary structures. The costs of all arrangements with the property owners shall be borne solely by the Design-Builder.

(5) Coordinate the Project schedule and work hours on a daily basis with the needs of local businesses and customers. This may include the Design-Builder and The City's Public Information staff checking with businesses abutting the construction site each day concerning that day's construction activities and determining the access needs for that day.

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(6) Coordinate staging operations with the tenants of all adjacent properties to facilitate movement of trucks and equipment by others adjacent to the staging areas.

(e) Coordination with Public Transit Division. The Design-Builder shall coordinate its work with the City Department of Transportation Services, Public Transit Division (PTD) throughout the work. The Design-Builder shall be responsible for assuring that current levels of public transportation service and physical accommodation are maintained for all public transportation operations which include but are not limited to TheBus, TheHandivan and TheBoat. There shall be no claims by the Design-Builder for delay, interference, or other impacts due to the presence and operation of buses along the alignment or the presence of City employees or their representatives performing work on their facilities concurrent with this Contract. Coordination with PTD shall include:

(1) Allowing for salvage, relocation and/or installation of bus stop shelters, bus stop signs, bus stop trash receptacles, or other City facilities.

(2) Accommodation for public transportation operations and infrastructure when the Design-Builder is modifying traffic patterns. When such accommodation involves the rerouting of buses or the relocation of infrastructure a written agreement will be required with DTS Director.

(3) Attendance at meetings with PTD to coordinate operations with the construction of this Contract. The Design-Builder should plan to attend on average one meeting related to this Contract every two (2) weeks during the course of the Contract.

(4) Temporary relocation of bus stops and restoration of permanent bus zones. When the Design-Builder's upcoming Work will interfere with the use of any existing public transportation infrastructure in the corridor including existing bus zones (bus stops), the Design-Builder shall identify temporary public transportation infrastructure proposals such as bus zone locations and designs as part of a written agreement with PTD with sufficient lead time to preclude delays to the Work. A development agreement for any proposed temporary infrastructure locations will be required with any and all impacted property owners and tenants addressing the proper installation and maintenance of any infrastructure including a temporary bus shelter. This development agreement must clearly describe responsible parties for maintaining all infrastructure including the bus shelter, public fixtures and information displays. All infrastructures shall be maintained in a clean and safe condition. The Design-Builder shall insure that the City is granted sufficient time to apply, process and seek approval for any needed permits or agreements related to public transportation operations and/or infrastructure. The Design-Builder shall construct approved temporary infrastructure including bus zones at no additional cost to the City with the following requirements:

(A) A raised landing of 6-inch curb height;

(B) Accessible for wheelchair lift deployment;

(C) Provide safe and ADA compliant walkways to adjacent cross streets;

(D) Lighted for night use with the same level of illumination or better than the location being replaced;

(E) At least as long as the curb length of the bus zone being replaced but no less than 75 feet long; and

(F) At least as wide as the bus zone being replaced but no less than 10 feet wide.

(5) The City will provide and install signage and rider alert information at no cost to the Design-Builder. Existing bus shelters, bus stop signage, and related items will remain the property of the City. The Design-Builder may be responsible for removal and installation of these items as determined by the agreement with the City.

SP-4.10 Wages and Hours

Chapter 4, Section 4.10 (k) of the GCDB is amended by adding the following subsection:

(1) A large number of workers of various skills will be needed by the City contractors and their subcontractors for the performance of the construction work for the Honolulu High-Capacity Transit Corridor Project. On a project of this magnitude, with multiple contractors and the potential for multiple union bargaining units on the job site at the same time over an extended period of time, the City finds that there is a significant potential for substantial delays, uncertainty and work disruption in connection with the DB Project. As a result, the City finds that it is in the best interest of the general public and the City, and therefore, the City expects and intends that the awarded Design-Builder for the West O'ahu/Farrington Highway Guideway Design-Build Contract (DB Project) will utilize a so-called project labor agreement in accordance with Section 8(f) of the National Labor Relations Act in the performance of the Contract to ensure that there are no labor disputes and disruptions of any sort on the DB Project and so that the wages, hours and working conditions for the construction Work are determined in advance of the commencement of Design-Builder's Work on the DB Project. Pricing for Design-Builder's Work on the DB Project shall be calculated with the assumption that a project labor agreement will be in place by the time the Notice to Proceed is issued to the awarded Design-Builder.

SP-4.13 Discovery of Hazardous Materials

Chapter 4, Section 4.13, Discovery of hazardous materials, is amended by deleting in its entirety and replacing with the following:

(a) Design-Builder will not be financially responsible for any hazardous materials encountered at the site which was not identified in the Contract Documents to be within the scope of the Work. Design-Builder shall be responsible for Materials creating a hazardous materials condition by any Materials brought to the Site by the Design-Builder, Subcontractors, suppliers, or anyone else for whom Design-Builder is responsible.

(b) If Design-Builder encounters hazardous materials, Design-Builder shall immediately:

(1) Secure or otherwise isolate such condition;

(2) Stop all construction in connection with such condition and in any areas affected thereby (except in an emergency); and

(3) Notify City (and therefore confirm such notice in writing). City shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.

(c) Design-Builder shall not be required to resume construction in connection with such hazardous material or in any such affected area until after City has obtained any required permits related thereto and delivered to the Design-Builder written notice:

(1) Specifying that such condition and any affected area is or has been rendered safe for the resumption of construction; or

(2) Specifying any special conditions under which such construction may be resumed safely. If City and Design-Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Time as a result of such construction stoppage or such special conditions under which construction is agreed to be resumed by Design-Builder, the process as set forth in Section 6.10 of the GCDB shall govern.

(d) If, after receipt of such special written notice, Design-Builder does not agree to resume such construction under such special conditions, the City may:

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(1) Terminate the Contract; or

(2) Order such portion of the Work that is related to such hazardous material to be deleted from the Work. If City and Design-Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Time as a result of terminating the Contract or deleting such portion of the Work, then the Design-Builder may make a Claim therefore as provided in SP-5.3. City may have such deleted portion of Work performed by City's own forces or by a third party as determined by the City.

(e) To the fullest extent permitted by law, Design-Builder shall indemnify and hold harmless the City, its elected and appointed officials, agents, employees, volunteers, City's consultant and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such hazardous environmental condition created by Design-Builder or anyone for whom Design-Builder is responsible.

(f) Safeguards, signs and notices. Design-Builder 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 and notices against hazards, promulgating safety regulations and notifying owners and users of adjacent site and utilities.

SP-4.15 Noise Control

Chapter 4, Section 4.15, Noise Control, is amended to add the following paragraphs:

(g) The Design-Builder shall submit site specific noise monitoring equipment to be used for the Work, as well as develop and implement a best management practices plan as part of the Permit process.

(h) The Design-Builder shall develop and abide by the Environmental Compliance Plan (SP-17) for specific committed noise mitigation measures required by the FEIS ROD.

(i) The Design-Builder shall take special care to mitigate noise in the vicinity of the elementary, high school and community college facilities along the alignment.

SP-4.16 Rubbish

Chapter 4, Section 4.16, Rubbish Disposal, of the GCDB is amended to add the following paragraphs:

(b) Salvage of Materials. All materials such as signs, fencing, lava rock curb, traffic control lights, street lights, and guardrails belonging to public agencies shall be salvaged by the Design-Builder in substantially similar condition and returned to the appropriate agency as directed by the City or disposed of by the Design-Builder if directed by the City.

(c) All other salvage materials are assumed to be the property of the Design-Builder.

SP-4.18 Historical and Archaeological

Chapter 4, Section 4.18, Historical and archaeological finds, is amended to add the following paragraphs:

(b) The City shall provide an archaeological monitor who shall be present and be on-site inspecting excavation as stipulated by the State Department of Land and Natural Resources, Historic Preservation Division (SHPD).

(c) Design-Builder shall be responsible for its equipment operators and laborers involved in excavation activities to receive training in identification and response to inadvertent archaeological discovery.

(d) In the event of discovery of burials, the Design-Builder shall immediately stop work and

contact the City, Honolulu Police Department and the SHPD.

(e) All work in the immediate vicinity of the site shall cease until the site is cleared by the SHPD. The SHPD will make a determination of appropriate treatment within the required timeframe.

SP-4.19 Surface and Subsurface Conditions

Chapter 4, Section 4.19 (a) Surface and subsurface conditions is amended to add the following at the end of the paragraph:

The City will provide a Geotechnical Baseline Report (GBR) along with its supporting Geotechnical Data Report (GDR) documenting the investigations, analysis and geotechnical interpretation of the ground conditions. The GBR shall serve as a basis for proposing on this Contract and serve as the geotechnical baseline that material differences will be measured against during the Design-Builder's final design and construction.

Chapter 4, Section 4.19 (b), Surface and subsurface conditions, is amended to delete paragraph 4.19 (b) in its entirety and replace with the following:

- (b) Differing site conditions. Design-Builder shall promptly give a written notice to City of :
- (1) Subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents; or
 - (2) Unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the work of the character called for by the Contract Documents.

DB Special Provisions SP-9.6 provides the City's Geotechnical Baseline Report (GBR). The GBR is representative of the preliminary investigations and, to the best of the City's knowledge, the information represented by the borings and tests taken by City and accurate at the location of the borings and test sites. The GBR will serve as the basis of the Design-Builder's Proposal. The Design-Builder shall have responsibility to supplement the geotechnical investigations, perform analysis and interpret all the geotechnical data to finalize foundation design and prepare a Geotechnical Final Design Report (GFDR), post-Award and prior to construction commencing. Should there be any material differences between the GBR and the GFDR, the Design-Builder will so notify the City. The GFDR and associated final design plans and specifications, once agreed upon, will serve as the new basis for design and construction of the Project foundations.

City will investigate the Site conditions promptly after receiving the notice. If the conditions do materially differ and cause an increase or decrease in the Design-Builder's cost of, or the time required for, performing any part of the Work, whether or not the Work actually changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price and Times modified in writing by Change Order in accordance with SP-5.3.

No request by Design-Builder for an equitable adjustment shall be allowed unless Design-Builder has given the written notice required. The provisions of this paragraph SP-4.19 (b) are not intended to apply to a Hazardous Material Condition uncovered or revealed at the Site.

SP-4.20 Utilities, Underground

Chapter 4, Section 4.20, Utilities, underground, is amended to add the following paragraph:

- (e) The City will provide Composite Plan – Existing Utilities Drawings. These drawings shall

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serve as a basis for proposing on this Contract and serve as the existing utility baseline that material differences will be measured against during the Design-Builder's final design and construction.

(1) Design-Builder shall promptly give a written notice to City if the actual utility location is different from that shown on the Composite Plans – Existing Utilities Drawings by more than five (5) feet horizontally.

The Design-Builder shall have responsibility to supplement the utility investigations, perform analysis and interpret all as-built and perform field investigations, post-Award and prior to construction commencing. Should there be any material differences between the Composite Plan – Existing Utilities Drawings, and the analysis of the Design-Builder, the Design-Builder will so notify the City. The Design-Builder's final design plans and specifications, once agreed upon, will serve as the new basis for design and construction of utility relocations for the Project.

(2) City will investigate the differences claimed promptly after receiving the notice. If the conditions do materially differ and cause an increase or decrease in the Design-Builder's cost of, or the time required for, performing any part of the Work, an equitable adjustment shall be made under this clause and the Contract Price and/or Times modified in writing by Change Order in accordance with SP-5.3.

(3) No request by Design-Builder for an equitable adjustment shall be allowed unless Design-Builder has given the written notice required. The provisions of this paragraph SP-4.20 (e) (1) are not intended to apply to a Hazardous Material Condition uncovered or revealed at the Site.

SP-4.21 Materials and Equipment

Chapter 4, Section 4.21, Materials and equipment, is amended to add the following paragraphs:

(b) City Supplied Materials. The following materials will be made available to the Design-Builder and supplied by the City for this Contract.

MATERIAL PROVIDED BY CITY	DAYS AFTER NTP AVAILABLE
Waipahu / Leeward Section (approximately 4-track miles)	
Direct Fixation Fasteners for Mainline	591
Running Rail and Pre-curved Running Rail	591
Restraining Rail - Concrete Cross Tie and Direct Fixation Track	591
Ballasted Special Trackwork	622
Direct Fixation Special Trackwork	622
Direct Fixation Special Trackwork Switch Machine	622
Third Rail	653
East Kapolei to Pearl Highlands Section (approx. 10-track miles)	
Direct Fixation Fasteners for Mainline	591
Running Rail and Pre-curved Running Rail	591
Restraining Rail - Concrete Cross Tie and Direct Fixation Track	591
Ballasted Special Trackwork	622
Direct Fixation Special Trackwork	622
Direct Fixation Special Trackwork Switch Machine	622
Third Rail	653

(c) Price Adjustment for Short Supply Materials. The City recognizes that certain items of material to be incorporated into the Project and/or consumed in the prosecution of the Project are temporarily in short supply, beyond the control and without the fault of the Design-Builder. The effect of such shortages has, among other things, resulted in periodic fluctuations in the posted prices of such short supply materials.

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The only materials considered to be in short supply are asphalt cement, Portland cement, reinforcing steel, structural steel, galvanized steel and prestress/post T tension strands (the “short supply materials”).

(1) **Procedure for Adjustment.** The ENR BCI Index on Cost shall be the basis for determining an adjustment in price of such short supply Material. If the ENR BCI Index on Cost increases or decreases by more than 10% from the value of the index on the Proposal Due Date, the Design-Builder may submit to the City, prior to the completion of that Contract item requiring the short supply Material, a written request for a price adjustment. The Design-Builder’s request for price adjustment will be determined based on the index value in effect at the time of delivery.

(2) No price adjustment will be allowed when the increase or decrease in the index is less than 10% of the original index value.

(3) If the index value is 10% or more below the original index value, the City will be credited.

(4) When a price adjustment is made in accordance with this Section, the price adjustment will be allowed only so long as the ENR BCI Index on Cost remains at least ten percent (10%) more or less than the original index value.

(5) **Compensation Formulas.** Computation for the adjusted compensation will be as follows:

(A) Monthly Asphalt Cement Material Price = MACMP;

(B) Monthly Portland Cement Material Price = MPCMP; and

(C) Monthly Steel Material Price = MSMP.

(D) Original Price is the ENR BCI Index Price on the Year/Month Proposal is due.

(E) Adjustment Price is the ENR BCI Index Price on the Year/Month Material is delivered.

(F) No adjustment is made if the MACMP, MPCMP, and/or MSMP is within \pm 10% of the Base Price (Base).

(G) If MACMP, MPCMP, or MSMP is more than one hundred ten percent (110%) of Original the Adjustment Factor (AF) = $\frac{MACMP}{Base} - (1.10 \times Base)$ or $\frac{MPCMP}{Base} - (1.10 \times Base)$ or $\frac{MRSMP}{Base} - (1.10 \times Base)$;

(H) If MACMP, MPCMP, or MSMP is less than ninety percent (90%) of Original the Adjustment Factor (AF) = $\frac{MACMP}{Base} - (0.90 \times Base)$ or $\frac{MPCMP}{Base} - (0.90 \times Base)$ or $\frac{MRSMP}{Base} - (0.90 \times Base)$; and

(I) Price Adjustment = AF x Quantity Installed (not to exceed total quantity provided with Proposal or prior to construction start, unless adjusted via Change Order).

(6) **Design-Builder must provide the total quantity of short supply Materials prior to start of construction.**

SP-4.28 Project Management / Construction Management

Chapter 4, Section 4.28 of the GCDB is added as a new Section of the GCDB:

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(a) Design-Builder shall provide project and construction management services for the scope of Work defined in the Contract. This shall include, but not be limited to, the following activities:

(1) Project Management Plan – Design-Builder shall develop and implement a Project Management Plan that reflects the scope of Work and the processes to be implemented to manage the delivery of the Project. The plan shall include such items as project organization chart, description of the project management tools and processes, communication protocols and processes, progress reporting requirements, and a project personnel contact listing. As a “living document” this plan may require updates periodically to reflect changes and improvements.

(2) Weekly Coordination Meetings – Design-Builder will conduct and document weekly coordination meetings that will be held at the jobsite with the City and other stakeholders participating in the Project. The meetings will cover items of Work completed the previous week and planned for the next two (2) weeks (3-Week Look Ahead Schedule) and any current issues of concern, resolution of conflicts, and other meetings requiring City participation. Design-Builder will maintain an action items log that reflects assigned responsibilities and due dates for actions raised in the meeting. Special meetings may be necessary to maintain schedule delivery on all aspects of the Design-Builder’s Work. Typically these special meetings include, but are not limited to, design workshops, design reviews, utility coordination, public involvement, environmental clearances, construction easements, and traffic management and control.

(3) Monthly Progress Reports – Design-Builder shall prepare and submit monthly progress reports covering the current period performance and the next period’s plan. The report shall include progress photos, schedule updates, and areas of concern. Progress photos shall include, but not be limited to, the photographic condition of active construction, utility protection, environmental protection, and traffic management. Photo documentation shall also be used for pre-construction surveys.

(4) Risk Management Participation / Assistance – Design-Builder shall support the City in risk assessment and mitigation workshops that will occur during the design and construction of the Project. This support may include development of position papers or design support for identified risk items of significance. Workshops will be scheduled quarterly upon the commencement of Work, but may require special meetings depending on the risk significance and responsible party.

(5) Coordination with Other Work – Design-Builder shall coordinate the Work with all other adjacent work and follow-on work to be performed by others. This coordination may include special meetings and workshops to efficiently and effectively resolve conflicts and / or interface issues associated with the Project. (*See* Section SP-4.9 of the Special Provisions).

(6) Management of Labor, Material, and Equipment – Design-Builder is responsible for managing the labor, material, and equipment required to efficiently and effectively perform the Work. Should decisions be necessary to maintain the performance of Work, the Design-Builder will actively engage all affected parties and facilitate resolution.

(7) Submittal Management – Design-Builder is responsible for managing all contract submittals, maintaining submittal logs, and follow-up responses/actions to City-comments until satisfactorily resolved. The Design-Builder shall use Primavera “Contract Manager” or equivalent accepted by City.

(b) Schedule Control and Reporting – Within ten (10) days after Contract Award , Design-Builder shall submit the following to City for its timely review:

(1) An updated Baseline Schedule indicating the times (number of days or dates) for starting and completing the various activities associated with the Work, including design and construction Milestones in support of the Contract.

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(2) Schedule of Milestones that depicts the pay item number, description, pay item value, planned achievement date, and cross-reference to the Design-Builder's Baseline Schedule. This document shall be used for the monthly pay request and a further breakdown of the Schedule of Prices.

(3) Initial Acceptance of Baseline and Milestone Schedules. At least ten (10) days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), but after NTP, Design-Builder will arrange a conference attended by Design-Builder, City and others as appropriate to review for acceptability of the Schedules submitted. Design-Builder shall have an additional ten (10) days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design-Builder until the schedules are submitted to and accepted by the City:

(A) The Baseline Schedule shall include an orderly progression of the Work to completion within any specified Price Item and the Contract Times. Acceptance will not impose on City responsibility for the Baseline Schedule, for sequencing, scheduling or progress of the Work nor interfere with nor relieve Design-Builder from Design-Builder's full responsibility.

(B) Design-Builder's Schedule of Prices or corresponding Schedule of Milestones shall include a reasonable allocation of the Contract Price to all component parts of the Work.

(C) Both the Baseline Schedule and the Periodic Payment Schedule shall incorporate the City's work breakdown structure (WBS) for the Project. The City will provide the project-wide WBS at Notice to Proceed.

(2) Design-Builder shall adhere to the Baseline Schedule established, as it may be adjusted from time to time as provided below:

(A) Design-Builder shall submit to City for acceptance proposed adjustments in the Baseline Schedule that will not change the Contract Time. Such adjustments will conform generally to the Baseline Schedule then in effect.

(B) Proposed adjustments to the Baseline Schedule that will change the Contract Time (or Milestones) shall be submitted in accordance with the requirements of the Changes in Contract Time clause. Such adjustments may only be made by a Change Order.

(3) Progress Meetings. Progress meetings will be conducted at least on a bi-monthly basis during design and weekly during construction with the City, City's Representative, Design-Builder, active Subcontractors, and all other such representatives concerned with current progress or involvement in planning, design, coordination, or future critical activities.

(4) Construction schedule. Design-Builder shall review progress since the last meeting and determine the status of each activity in relation to the Project schedule. Design-Builder shall determine how to expedite construction activities that are behind schedule and secure commitments from parties involved. Design-Builder shall discuss revisions required to ensure subsequent activities will be completed within the construction schedule requirements.

(5) Schedule updating. After each meeting the Project schedule will be revised as appropriate, update and distribute the revised schedule with the meeting's minutes and an explanation / justification for the schedule

(6) Design-Builder shall use Primavera scheduling software for the development and maintenance of the Project schedule. Both electronic and hard copies shall be provided to the City of the initial baseline and each subsequent update.

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(7) Cost Control and Reporting. The Design-Builder shall be required to maintain cost control records that provide monthly reporting to the City against the City-provided work breakdown structure (WBS). At a minimum the following reports shall be submitted to the City:

(A) Monthly Budget Report – reflecting the pay items and those agreed upon breakdowns that are established to effectively measure Contract performance. The report should summarize to the Schedule of Prices / Milestones established in the Contract. As part of the Budget Report, the Design-Builder shall provide and maintain a cash disbursement plan that charts actual expenditures (progress payments).

(B) Quarterly WBS Reports – provide cost information in a City-defined format consistent with the WBS.

(c) Communication and Collaboration. The Design-Builder shall develop and implement a project communication plan that defines the process to effectively communicate project information to all stakeholders. The plan shall include communication protocols and clear understanding as to where someone goes to get timely information about the Project and the Work. For work elements that require coordination and collaboration, the Design-Builder shall establish appropriate communication links and discussions to maintain project schedules and clarity of information.

(d) Document Management. Design-Builder shall be responsible for maintaining the Project records system. Develop a listing of all required meetings and reports and provide to the City for Review and Comment. These records will be made available for the City to review and audit periodically throughout the Contract term. All Project records shall be turned over to the City upon Project completion. Refer to the quality management requirements in SP-4.7 for further definition of the Project quality records that are to be maintained, available for audit, and serve as the official record of the quality control activities provided on the Project by the Design-Builder.

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). The Design-Builder is obligated to use the Basic Project Configuration and GBR standards as a firm baseline, unless the 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 the 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, the 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 the Design-Builder.

Chapter 5, Section 5.3 (b) of the GCDB is amended to delete paragraph 5.3 (b) in its entirety and replace with the following:

(b) Adjustments of price or time for performance. If any change order increases or decreases the 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 6.8 of this Special Provision, "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 6.8 pursuant to HAR § 3-125-13(a)(1)(E). Failure of the parties to agree to an adjustment in time shall not excuse the Design-Builder from proceeding with the Contract as changed, provided that the City, within 14 days after the changed Work commences, makes such provisional adjustments in time as the City deems reasonable. The right of the Design-Builder to dispute the Contract Price or time required for performance or both shall

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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, Design-Builder shall submit detailed cost breakdowns in the format attached in the GCDB as Exhibit “F,” for material, equipment and labor, including additional or reduction in time, for the City’s Review and Comment, within thirty (30) working days or within such further time as the City may allow, from the time the Design-Builder is informed of the Work to be performed or of any changes. The substantiation shall include the Design-Builder’s and subcontractor’s cost breakdown to a level of detail acceptable to the City.

Should the Design-Builder delay or refuse to submit detailed cost breakdown for the changed Work, the City may pay the Design-Builder in accordance with Section 6.8, “Price adjustment.”

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 the 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 7.1.

(1) When the Design-Builder believes it is entitled to be paid more than that provided for in the Contract, the Design-Builder shall notify the City in writing as soon as the Design-Builder becomes aware of the event. Claims must be made within thirty (30) days after giving written notice to the City. The 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; and
- (D) The date upon which the condition occurred or was observed.

(2) When an event occurs that the Design-Builder believes entitles it to more time to complete the Work than Contract Time permits, the Design-Builder shall notify the City in writing as soon as the Design-Builder becomes aware of the event. Claims must be made within thirty (30) days after giving written notice to the City. The 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; and
- (D) The date upon which the condition occurred or was observed.

(3) The City may request additional documentation from the 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 the Design-Builder’s Claim to which the additional documentation relates.

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(4) If the 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.

(5) If the City agrees with the 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, the Design-Builder shall continue promptly with the Work.

(6) Should the Design-Builder disagree with the City's determination of the claim, the Design-Builder may pursue remedies as set forth in 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 Overtime inspections 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 the 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 the Design-Builder, not due to an act or omission of the Design-Builder, any Subcontractors, their employees, agents and officers or any other Person for whom the 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 the Design-Builder. [HAR 3-125-18]

(2) Additional Compensation. The City will issue Change Orders to compensate the 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, at the sole discretion of the City. The term "force majeure" is limited to the following:

(A) Any floods (fifty (50)-year or greater) within one 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

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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 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 the Design-Builder or any Subcontractor, and could not have been avoided or prevented by due diligence and use of reasonable efforts by the Design-Builder;

(2) 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 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;

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(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 the Design-Builder's design, submission, action or inaction, or means and methods of construction;

(H) Restraining orders, injunctions, or judgments issued by a court which were caused by the 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.

(3) The foregoing limitations shall not affect the 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), No time extension, of the GCDB is amended by adding the following subsections:

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

Chapter 5, Section 5.6 (g) is amended by adding the following subsections:

(1) The parties agree that the occurrence of an excusable delay that delays overall project completion may not result in additional compensation paid to the Design-Builder. No additional compensation will be paid to Design-Builder for excusable delays that are not the fault of either the Design-Builder or City, the Design-Builder is only entitled to an adjustment of Contract Time.

(2) No additional compensation will be paid to the Design-Builder for any time period when the overall project completion date is delayed as a result of concurrent delay. Delays are

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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 of Contract Time for the length of the concurrent delay.

(3) Additional compensation shall be paid to the 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.

(4) When the Design-Builder is entitled to additional compensation as stated above, the 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 the 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 the Design-Builder and any Design-Builders above that tier are entitled to a total of three percent (3%) 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.

Chapter 5, Section 5.7 (a) of the GCDB is amended to delete paragraph 5.7 (a) in its entirety and replace 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 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 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 6.8, "Price adjustment." [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 following new Section 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 copy of all documentary information used in preparation of the Proposal Price, which shall be held in a locked fireproof cabinet supplied by the Design-Builder and located in the City's offices, with the key held only by the Design-Builder. Notwithstanding the foregoing, at the Design-Builder's option and at the 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

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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) One hundred eighty days have elapsed from Final Acceptance or termination of the Work, as applicable;
- (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 the Design-Builder.

(b) **Availability for Review.** The Escrowed Proposal Documents shall be available during business hours for joint review by the 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 the 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 the 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 the Design-Builder, subject to the City's right to review the Escrowed Proposal Documents as provided herein. The City acknowledges that the 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 the Design-Builder's business; is known only to a limited extent and by a limited number of Employees of the Design-Builder; is safeguarded while in the Design-Builder's possession; and may be valuable to the Design-Builder's construction strategies, assumptions, and intended means, methods, and techniques of construction. The City further acknowledges that the 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 the Design-Builder's request, confidentiality agreements will be executed and delivered to the Design-Builder by the City's employees or agents who review or have access to the Escrowed Proposal Documents.

(d) **Representation.** The 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. The 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

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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 the 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 the Design-Builder's usual format. The Design-Builder's allocation of plant and Equipment, indirect costs, contingencies, markup, and other items to each 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 the Design-Builder to arrive at the Proposal Price 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 the Design-Builder in preparing its Proposal. It is not intended that the Design-Builder perform any significant extraordinary work in the preparation of these documents prior to the Proposal Due Date. However, the 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 the Design-Builder and that they meet the requirements of Section (e) above and are adequate to enable a complete understanding and interpretation of how the Design-Builder arrived at its Proposal Price. The 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 the 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 the 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, the Design-Builder shall provide such data within three business 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. The 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. The Design-Builder shall require each Subcontractor and /or supplier to submit to the Design-Builder 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 the 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 PROVISION

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) The 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, the 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. The 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. The 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 the Design-Builder and the City:

(c) Relationship to the Baseline Schedule and City-provided WBS. The Pay Item itemization is based on the 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.

(d) General requirements for establishing SM Pay Items:

(1) The Project shall be divided into Sections, as follows:

(A) Preliminary and General Requirements:

- Mobilization;
- Project Management / Construction Management (PM/CM);
- Quality Management; and
- Safety & Security.

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

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

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

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

- Site Preparation;
- Utility Relocations;
- Foundation below grade;
- Column(s);
- Superstructure;
- Rail Installation; and
- Site Restoration.

(G) Construction Milestone 2;

(H) Construction Milestone 3; and

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

(2) Pay item measurement and payment shall be based on lump sum values assigned to engineering and design Milestones (Section "B" items), material delivery and construction Milestones (Section "C", "D" and beyond) and fixed monthly values for project-wide activities (Section "A" items) as defined in the Design-Builder's Schedule.

(3) Completion of Milestones, established for each pay item, shall serve as the basis of payment for Sections B, C, D and beyond. Section A items 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.

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

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

(A) When five percent (5%) of the total contract price is earned, fifty percent of the mobilization amount will be paid;

(B) When ten percent (10%) of the total contract price is earned, seventy-five percent of the mobilization amount will be paid; and

(C) When twenty percent (20%) of the total contract price is earned, one hundred percent of the mobilization amount will be paid.

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

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

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(8) 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.

(9) 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.

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

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

(12) 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.

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

(f) City Processing Progress Payment Request. The 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-6.15.

SP-6.2 Contract Periodic Payment Schedule

(a) The 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. The 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.

SP-6.3 Schedule of Values and Unit Prices

(a) The City may accept Exhibit 17, Schedule of Values. In accepting Exhibit 17, 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 17 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 17. 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.

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(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 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, the 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 inclusive of any administrative costs, overhead / profit, bond fee, and applicable taxes.

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 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 the 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) The Design-Builder shall be required to submit cost or pricing data if any adjustment in Contract Price is subject to the provision of HRS 103D-312, or the City considers that such price is not reasonable. The submission of any cost or pricing data shall be made subject to the provisions of HAR Chapter 3-122, Subchapter 15. 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.

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(d) Price adjustment pertaining to material changes to the Geotechnical Baseline Report (GBR) and Differing Site Conditions provisions, 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-6.9 Contract Payments

(a) Payments to the 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 the 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 the 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 the Design-Builder by the City or its designee concerning the Work or Material. See also Section SP-6.1(B).

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

SP-6.12 Subcontractor Payment

(a) The 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) The Design-Builder shall pay each Subcontractor for satisfactory performance of the subcontract no later than 10 days from the receipt of each payment the 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 the Design-Builder from its subcontractors of any tier shall not be more than the same percentage of retainage as that of the Design-Builder (*See* Section SP-6.5).

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(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 the 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 the Design-Builder in connection with the Subcontractor information or payments.

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 the Design-Builder, eliminate such items from the Contract.

(b) When the 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 allowance, except as provided herein, will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits claimed by the 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 Section SP-5.

SP-6.16 Acceptance and Substantial Completion

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

Within fourteen (14) Calendar Days of receipt of the Design-Builder's written application for a certificate of Substantial Completion, the City, in the company of the 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.

The 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.

Within seven Calendar Days of the 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 the 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

Honolulu High-Capacity Transit Corridor Project

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, the 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 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 the 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 the 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, the 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 the 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 the 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.

SP-6.17 Schedule of Milestones Table, Sample

(Next Page)

Honolulu High-Capacity Transit Corridor Project

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							Period Ending: _____		
SM	Pay Item	Description	Unit of Meas	SM Value	Restrictions	Planned Achievement	Schedule Activity ID	Current Month Achievement	Cumulative Achievement
				[Dollar Amt]		[Date]		[Actual \$\$ Amt]	[Actual \$\$ Amt]
1	a	Mobilization @ 5% Complete	1 LS		} See Note 1				
	b	Mobilization @ 10% Complete	1 LS				991001		
	c	Mobilization @ 20% Complete	1 LS						
2	a	Design- Investigations	1 LS				991003		
	b	Design- Utilities DD	1 LS				041011		
	c	Design- Utilities FD	1 LS				041012		
	d	Design- Foundations DD	1 LS				051011		
	e	Design- Foundations FD	1 LS				051012		
	f	Design- Columns DD	1 LS				061011		
	g	Design- Columns FD	1 LS				061012		
	h	Design- Superstructure DD	1 LS				071011		
	i	Design- Superstructure FD	1 LS				071012		
	j	Design- Rail DD	1 LS				081011		
	k	Design- Rail FD	1 LS				081012		
3	a	Quality Plan, Draft	1 LS				022011		
	b	Quality Plan, Final	1 LS				022012		
	c	Environmental Compliance Plan, Draft	1 LS				022021		
	d	Environmental Compliance Plan, Final	1 LS				022022		
	e	Safety & Security Plan, Draft	1 LS				022031		
	f	Safety & Security Plan, Final	1 LS				022032		
4	a	PM / CM	30 Mo		See Note 2	Starting Month	021011		
	b	Quality Management	30 Mo		See Note 3	Starting Month	021021		
	c	Coordination	30 Mo		See Note 4	Starting Month	021031		
	d	Public Relations	30 Mo		See Note 5	Starting Month	021031		
	e	Environmental Compliance	24 Mo		See Note 6	Starting Month	021041		
5	a	Site Preparation, WP 1	1 LS				101011		
	b	Site Preparation, WP 2	1 LS						
	c	Site Preparation, WP 3	1 LS						
	d	Site Preparation, WP 4	1 LS						
6	a	Utilities Relo, WP 1	1 LS				102011		
	b	Utilities Relo, WP 2	1 LS						
	c	Utilities Relo, WP 3	1 LS						
	d	Utilities Relo, WP 4	1 LS						
7	a	Foundation- Below Grade, WP 1	1 LS				103011		
	b	Foundation- Below Grade, WP 2	1 LS						
	c	Foundation- Below Grade, WP 3	1 LS						
	d	Foundation- Below Grade, WP 4	1 LS						
8	a	Foundation- Columns, WP 1	1 LS				103021		
	b	Foundation- Columns, WP 2	1 LS						
	c	Foundation- Columns, WP 3	1 LS						
	d	Foundation- Columns, WP 4	1 LS						
9	a	Superstructure Segments, WP 1	1 LS				104011		
	b	Superstructure Segments, WP 2	1 LS						
	c	Superstructure Segments, WP 3	1 LS						
	d	Superstructure Segments, WP 4	1 LS						
10	a	Rail Installation & Testing, WP 1	1 LS				105011		
	b	Rail Installation & Testing, WP 2	1 LS						
	c	Rail Installation & Testing, WP 3	1 LS						
	d	Rail Installation & Testing, WP 4	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 PROVISION

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 the Design-Builder and the Surety on its Performance Bond demanding satisfactory compliance with the Contract. Upon receipt of such demand, Surety shall, with reasonable promptness, but in no event more than fifteen (15) days elect to either (1) Assume the Contract by: (i) Arranging for the Design-Builder, with consent of the City, to perform and complete the Contract; or (ii) Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or (iii) 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 the Design-Builder's default; or (iv) Waive its rights under (i), (ii) and (iii) above, and with reasonable promptness under the circumstances, determine the amount for which it may be liable to the 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. i) If the Surety assumes the Contract, all money which may become due the Design-Builder shall be payable to the Surety as the Work progresses, subject to the terms of the Contract. ii) If the Surety does not assume the Contract and commence performance of the Work within a reasonable time not to

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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 the Design-Builder and its Surety and may be deducted from any money due or becoming due from the Design-Builder. If the amount unpaid under the Contract is insufficient for completion, the 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:

(a) Decision by the Officer-in-Charge. Any question or dispute concerning any provision of the Contract which may arise during the 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 \$25,000 or more, and payment, shall be made only with the approval of the Contracting Officer.

(b) If the Design-Builder does not agree with the decision of the Officer-in-Charge, the 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.

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(c) All controversies between the Officer-in-Charge and the 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 the Design-Builder 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 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 the Design-Builder's supporting data and other relevant factors.

(3) 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 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 the 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. The 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 the 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 the Design-Builder 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 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 the 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 Sections 7.5 [Reserved] and 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 the 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.

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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 principals of project partnering as identified below.

(b) To implement the partnering initiative, a team-building or partnering workshop 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 the 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 City. The Design-Builder will be responsible for the salaries, travel, and subsistence costs of its own attendees.

(c) Costs associated with implementing any follow-on programs will be shared equally between the City and 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 performance of the Work.

SPECIAL PROVISIONS (CHAPTERS 8-23)
CONFORMED

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, stakeholder's 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 30 days of the 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 three 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) Maintenance and Storage Facility;

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- (2) West Oahu/Farrington Highway Stations;
- (3) Utility Relocations being performed by others; and
- (4) Systems Installation Contracts.

The Design-Builder will notify the City of issues that arise within and adjacent to the geographical limits of this Contract. 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 OF NOTIFICATIONS

Notice	Requirement
30-day Heavy Construction Notification	Written notification of Heavy Construction shall be given 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 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,

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TABLE OF NOTIFICATIONS

Notice	Requirement
	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 commercial property.
48-hour Residential Utility Shutdown	Written notification of utility shutdown for businesses and commercial 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 GDBC 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, 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 in the staffing of this hotline 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 hotline will be staffed from 7 a.m. to 7 p.m. every Monday through Friday and at all times when scheduled construction is occurring. During those hours when the hotline is not staffed, the public must be provided the opportunity to leave a voice message and receive directions on what to do in the case of an emergency. 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, fax);
- (5) A brief description of the nature of the contact; and
- (6) A brief description of handouts.

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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 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 and 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 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 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.

Door Hangers. The Design-Builder may use door hangers to inform particular property owners/residents about day to day construction progress and disruption.

(a) 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 7 days prior to construction where a business or residence is impacted.

(b) 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 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.

(c) 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.

(d) 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 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 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 and 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 15 (fifteen) calendar 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 expediently 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 Honolulu's two 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 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 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 Relocation of Portable Buildings and Site Work at LCC and Waipahu

(a) Waipahu High School. The Design-Builder shall relocate two existing portable buildings at Waipahu High School. Existing building locations are shown on the RFP drawings. The Design-Builder shall coordinate with Waipahu High School for the relocated site for these buildings. These buildings must remain in place and functional during the school year. In addition, the Design-Builder shall furnish and install 2 portable air conditioning units per classroom, for up to 20 classrooms on the Waipahu High School campus. Air conditioning units shall be not less than 14,000 BTU's. All associated utility connections shall be provided by the Design Builder.

A third existing portable building will require that the Design Builder relocate the existing central air conditioning unit and ductwork from one side of the building to the other side.

The Design-Builder shall maintain access to Waipahu High School at all times. See RFP drawings for proposed location of access road.

The Design-Builder's Work shall not interfere with Waipahu High School events, including but not limited to Athletic Events.

(b) Leeward Community College (LCC). The limits of Work at LCC shall be as shown on the RFP drawings. The Design-Builder shall relocate existing portable buildings as shown on the RFP Drawings. At the Design-Builder's option, these buildings can be replaced in kind. The Design-Builder shall coordinate with LCC regarding the relocation site and the scheduling of the work for these buildings.

The Design Builder shall perform required clearing and grubbing, grading and paving necessary to replace the auxiliary parking/motorcycle training area. See RFP drawings for further detail. Motorcycle training area shall comply with the Motorcycle Safety Foundation standards.

SP-9.2 MSF Site Access and Interface

The limits of the Design-Builder's Work is as shown on the RFP drawings. The Design-Builder shall maintain access to both the west and east ends of the MSF yard for the other HHCTCP contractors working at the proposed MSF yard. HDOT has not yet given authorization for access off from Farrington Highway at the west end of the MSF yard. Phase I limits of clearing and grubbing, grading and drainage improvements shall be as shown on the RFP Drawings. The Design-Builder shall complete this grading by the "Rail Assembly Yard Access to Guideway Contract" date listed in Section SP-4.1.

The Design-Builder shall provide an area for the vehicle servicing by 760 Days after NTP. See RFP drawings for location of vehicle servicing area. At this time the contractor will relinquish the indicated area to the vehicle/system contractor and reduce his working area to the Phase II area shown on the RFP Drawings. A temporary working pad for vehicle servicing shall be located at Top of Rail Elevation and is shown on the RFP Drawings. The size of this area shall be as indicated on the RFP Drawings. The Design-Builder shall remove this pad and restore to standard track section when directed by the City and prior to completion of the contract.

By 1096 Days after NTP, the Design-Builder shall relinquish sufficient area of the Phase II area to allow the MSF Design-Builder to construct the west yard lead and track servicing the Maintenance of Way Building.

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Sufficient area as it relates to paragraph SP 9.2 is defined to be 15 feet from the center line of the track. The Design-Builder shall relinquish all of the Phase II area by 1257 Days after NTP in order that the MSF Design-Builder can complete their trackwork.

Design-Builder shall stockpile soils from the Phase I grading limits in the area shown on the RFP Drawings. No other additional soils from the project shall be brought onto site nor stockpiled at this location.

SP-9.3 Demolition of Existing Structures and Temporary Landscaping

(a) Existing Structures located on the properties listed by Tax Map Key (TMK) numbers below shall be demolished per the Standard Specifications.

(b) TMK numbers:

- (1) 1-9-4-048-046;
- (2) 1-9-4-048-047;
- (3) 1-9-6-003-012;
- (4) 1-9-6-003-013;
- (5) 1-9-6-003-014; and
- (6) 1-9-6-004-006.

The City will acquire the above listed properties. Refer to SP – 12 Right of Way for additional Right of Way requirements.

(c) 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. 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.

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.

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.

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, containerize plants, and maintain plants 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

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.

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.

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

The clearance distance to adjacent structures or appurtenances shall include dimensional variances in the structural member or appurtenances, construction tolerances from the designed position, and the effects of chord construction techniques relative to the curve alignment.

The minimum clearance between the outside of guideway, including sound walls and other mitigation installations, to adjacent structure is 5 feet.

Clearance to power lines shall be in conformance with the requirements of Hawaiian Electric Company (HECO).

SP-9.6 Foundation Design and Construction

(a) An initial subsurface investigation has been performed by the City. Data and information generated from this investigation have been summarized and presented in an initial Geotechnical Data Report (GDR). The City has also provided a Geotechnical Baseline Report (GBR) which presents interpretations of the anticipated ground conditions which will serve as contractual bases for comparison with actual conditions encountered during foundation construction.

(b) The Design-Builder, in conformance with the Project's Design Criteria will supplement the investigations provided by the City to complete the foundation design. As required by the Design Criteria, the Design-Builder will submit a Geotechnical Data report which, together with the City-provided GDR, will provide the subsurface data to support the Design-Builder's final design. As required by the Design Criteria, the Design-Builder will also submit a geotechnical report which documents geotechnical interpretations, analyses, and recommendations.

(c) Following submittal of the geotechnical report, the Design-Builder shall prepare and submit a Geotechnical & Foundation Design Report (GFDR). The purpose of the GFDR is to document the Design-Builder's assessment of the variations from the baselines established in the GBR, and to provide a summary of the Design Builder's foundation design. At a minimum, the GFDR shall include the following elements:

(1) A summary of station reaches where the Design-Builder asserts that subsurface conditions vary from the GBR baselines, with details of the variation from the baseline. Subsurface conditions shall be evaluated for the following station reaches, or for alternative reaches as mutually agreed to by the Design-Builder and the City:

SP-9.7 Sound Absorption Material

Design-Builder shall design, furnish and install sound absorptive materials on the inside face of both sound barriers and in the track beds from Sta 604+00 to 612+00 of the guideway. Sound absorptive materials shall provide a minimum Noise Reduction Coefficient of 0.7.

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 Track Alignment Shift at UH West Oahu Station

It is necessary to shift the guideway alignment at UH West Oahu Station in order to clear some of the station elements from the HECO 138-kV electric lines. The new alignment will shift the station tangent track 10-feet in the southeasterly direction and parallel to the existing track alignment.

This alignment shift will not affect the spiral lengths and curve radii on either side of the station nor the station tangent length. The shift will affect track alignment and pier locations between approximately Stations 412+09 to 467+96. There is also no affect on the utility relocations.

This alignment shift is not shown on the "Issued for Bid" drawings. The Design-Builder shall incorporate this alignment change into the final design of the WOFH Guideway contract.

SPECIAL PROVISION

CHAPTER SP-10 SYSTEM AND STATION INTERFACES AND COORDINATION

SP-10.1 Guideway Systems

The Design-Builder is responsible for providing and installing all aspects of the guideway, including the items shown in the RFP Drawings. This shall include the equipment, attachments and other appurtenances such as running surfaces, lateral guidance surfaces, switches, emergency walkways, interfaces for electrical power, controls, and communication, so that all of the requirements of the Contract are met.

SP-10.2 Systems Interface Plan

(a) The Design-Builder shall submit a Systems Interface Plan to provide a detailed description of the integration of all Design-Builder-provided construction, equipment, installation, and testing with all facilities, vehicles, equipment, and data provided by others. This document shall confirm that all facilities and systems provided by the systems and station contractor are designed and constructed to comprise a fully integrated, automated rail system. The Systems Interface Plan shall further confirm that any facilities, equipment, and data provided by other contractors will be accommodated by the Design-Builder.

(b) The Interface Plan shall list all major System elements and define which elements have a direct or indirect interface or interaction. The Interface Plan shall, as a minimum, define:

(1) The entity within the Design-Builder's organization responsible for managing and engineering the interface;

(2) The agreed interface arrangement (physical installation, power supply, transfer characteristics, and other factors);

(3) The functional, performance, reliability, maintainability, and safety requirements of the individual elements forming the interface; and

(4) The proposed method and schedule for verifying the interface integrity, the individual element performance, and the combined System performance, with appropriate pass/fail criteria for each.

(c) The Design-Builder shall be responsible for identifying and resolving all system interfaces which contribute to attainment of the overall System performance requirements or other Contract requirements. A preliminary list of interfaces to be addressed includes:

(1) Guideway/Revenue Vehicle;

(2) Track/Revenue Vehicle (Wheel/Rail);

(3) Track/Train Control;

(4) Guideway/Maintenance and Storage Facility;

(5) Guideway/ Stations;

(6) Traction Power Distribution/Traction Power Supply Substations; and

(7) Traction Power Substation Site Work/Traction Power Substation.

(d) The Design-Builder shall add other interfaces as the design and system integration process proceeds.

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(e) The following paragraphs provide additional guidance on the contents of the Systems Interface Plan.

(f) For each of the interfaces identified by the Design-Builder, the Design-Builder shall, at an early stage of the design and procurement processes, investigate the interaction between interfacing elements, to verify that the design characteristics of the individual elements have been correctly specified.

(g) If the Design-Builder fails to provide necessary interface information, or if such information provided by the Design-Builder is incorrect or subsequently changed by the Design-Builder, the Design-Builder shall be responsible for all facility and equipment redesign and rework, whether the impacted facility and equipment are the responsibility of the Design-Builder or others, or for modifying its Work or any Design-Builder-provided subsystem to match the facility, or for modifying any facility, systems, or subsystems to match systems or subsystems provided by the Design-Builder. The Design-Builder shall also be responsible for any delay to others caused by delaying the furnishing of information, by furnishing incorrect information, or by subsequently changing information for which the Design-Builder is responsible. The Design-Builder shall notify the City as soon as any interface information changes or is found to be incorrect.

(h) The Design-Builder shall participate in coordination meetings with the City and its representatives to develop and finalize all designs and interfaces as required. Updates of the Systems Interface Plan shall be provided by the Design-Builder whenever significant changes are made to the Work or the Baseline Schedule.

SP-10.3 Trackwork and Contact Rail

(a) The Design-Builder is responsible for the design and installation of running rail, restraining and safety rail, fasteners, special trackwork, switch machines, and contact rail, and interfaces with Traction Power System, Train Control System and Communication System, as described and in the Design-Builder's Systems Interface Plan, so that all of the requirements of the Contract are met.

(b) The horizontal alignment, vertical profile, and longitudinal and lateral grades of the System trackbed are contained in the RFP Drawings. Minor adjustments may be made by the Design-Builder to suit a specific technology and alignment, except that grades shall not be increased nor curve radii decreased from those on the RFP Drawings. Any deviation from the preferred track alignment shown in the RFP Drawings shall be identified in the Design-Builder's Systems Interface Plan and submitted for Review and Comment by the City.

(c) The Design-Builder shall confirm the Contract Design Criteria and construction tolerances for the trackbed, including superelevation with the systems contractor (vehicle and transit systems provider) to ensure compatibility and ride quality of the constructed guideway. The Design-Builder shall verify the accuracy of the constructed track.

SP-10.4 Coordination and Collaboration

(a) Close coordination and collaboration shall be provided throughout the Project delivery. The following design input shall be provided by Others:

	<u>No Later Than</u>
(1) Vehicles and Systems Structural Design	336 Days After NTP
(2) Vehicles and Systems Embeds & M/E Design	336 Days After NTP
(3) Farrington Stations Structural Design	166 Days After NTP
(4) Farrington Stations Embeds & M/E Design	166 Days After NTP

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- | | | |
|-----|---|--------------------|
| (5) | W. Oahu Stations Structural Design | 411 Days After NTP |
| (6) | W. Oahu Stations Embeds & M/E Design | 411 Days After NTP |
| (7) | Kamehameha G/W Structural Design | 258 Days After NTP |
| (8) | Pearl Highlands Station & Garage Design | 380 Days After NTP |
| (9) | Pearl Highlands H2 Ramps Design | 411 Days After NTP |

(b) Final designs from the Guideway Contract to be shared with other contracts for coordination and checking (schedule dates to be determined by Design-Builder):

- (1) Utility Relocation Final Design for Section A;
- (2) Foundation Final Design for Section A;
- (3) Superstructure Final Design for Section A;
- (4) Utility Relocation Final Design for Section B;
- (5) Foundation Final Design for Section B; and
- (6) Superstructure Final Design for Section B.

(c) Refer to SP-4.1 for contractual required dates for the Guideway Work.

SPECIAL PROVISION

CHAPTER SP-11 UTILITIES

SP-11.1 General

The following special provisions are in addition to the coordination requirements contained in GCDB Section 4.20, 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, and 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 11.1 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 11.1 Honolulu High-Capacity Transit Project (HHCTCP) Utility Relocation Contacts and Responsibility Agreement Category

Utility Agencies/Companies		Type of Utility	Type of Services	Agreement Category *	Utility Agency/Company Contacts for Construction Coordination			
Agency/Company Name	Official Mailing Address				Office or Person Name	Telephone Number	Fax Number	Email Address if Applicable
Directorate of Information Management (a.k.a. Army Signal Corps)	148 Curtis Loop, Room 157, WAAF, Schofield Barracks, HI 96657	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	Petroleum	Fuel / Water	B / B	James Ebisu (NAVFAC Hawaii)	808 474-3726		james.ebisu@navy.mil
Air Force	15 CES/CER, 75 H Street, Hickam AFB, HI 96853-5233	Petroleum	Fuel	B / B	John A Camara (Civ USAF PACAF 15 CES/CER)	(808) 448-2710		John.Camara@hickam.af.mil
HDOT Highway Division	727 Kakoi Stree, Honolulu, HI 96819	Street Lighting	State Hwy Lights	B / B	Victor Chan (HWY-OL)	(808) 831-6886		
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 Steet, honolulu, HI 96843	Water	C & C Water	B / B	Engineering Construction	(808) 748-5730		
C & C Department of Design and Construction	650 South King St, 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	Construction coordination is 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 South King Street, Honolulu, HI 96813	Traffic Signaling	C & C Traffic Signal	B / B	Ty Fukumitsu	(808) 768-8388		tfukumitsu@honolulu.gov
HDOT Highway Division	727 Kakoi Stree, Honolulu, HI 96819	Irrigation	State Landscape	B / B	Oahu District Office	(808) 831-6703	(808) 831-6725	
DPP Urban Design Branch	650 So. King St, 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	Marc Miyaki	(808) 543-7207	(808) 203-1675	marc.miyaki@heco.com
Hawaiian Electric Company, Inc.	P.O. Box 2750, Honolulu, HI 96841	Petroleum	Fuel	B / A+B	Cyril Ontai	(808) 543-4396 (808) 690-0969 cell		cyril.ontai@heco.com
Hawaiian Telcom, Inc.	P.O. Box 2200MC: A-4, Honolulu, HI 96841	Communication	Telephone (voice and data)	B / A+B	Inspection	(808) 840-5823		
Oceanic Time Warner Cable	200 Akamaiui Street, Mililani, HI 96789	Communication	Cable (voice, data, and vedio)	B / A+B	Moki Place (Inspector)	(808) 217-0344 cell		
TW Telecom, Inc.	2669 Kilihau Street, Honolulu, HI 96819	Communication	Telephone (voice and data)	B / A+B	Mitchell Miyoshi	(808) 441-8520		mitch.miyoshi@twtelecom.com
Sandwich Isles Communications, Inc.	1003 Bishop Street, Suite 2700, HI 96813	Communication	Telephone (voice and data)	B / A+B	Rodney Kaulupali	(808) 540-5751		rodneky@sandwichisles.com
AT&T Corporation	P.O. Box 898, Waianae, HI 96792	Communication	Telephone (voice and data)	B / A+B	Alex Viray & Rosemary Hamill	(808) 455-1010 (925) 977-2413	(808) 455-7026 (281) 664-5685	aviray@att.com & rhamill@att.com
Pacific LightNet, Inc.	1132 Bishop Street, Suite #800, Honolulu HI 96813	Communication	Telephone (voice and data)	B / A+B	Steven Brock	(808) 791-3042		sbrock@pacificlight.net
Chevron Products Company	91-480 Malakole Street, Kapolei, HI 96707	Petroleum	Fuel	B / A+B	Matt Hammer	(808) 682-3105		mhmw@chevron.com
Tesoro Hawaii Corporation	431 Kuwili Street, 2nd floor, Honolulu HI 96817	Petroleum	Fuel	A / A	Wade K. Nakashima	(808) 547-3830	(866) 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		kkyamamo@hawaiigas.com

A = Utility Owner; B = Design Builder - See SP11.2 for Category Description.

SP-11.3 Coordination

(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 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 RFP Drawings and 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: (i) notify the City in a timely fashion with action plan; and (ii) aggressively pursue remediation with utility owner.

SP-11.4 Maintenance of Traffic (MOT) Plans for Utility Work

MOT plans have been included in the RFP Drawings for guideway foundation and column construction only. Where relocation of utilities is required and involves maintenance of traffic, MOT plans shall be prepared by the Design-Builder or its utility Subcontractor and submitted to the City for review and comment. MOT plans shall be submitted in accordance with the RFP Drawings. 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 Verification of Utility Locations

Utilities indicated on the RFP Drawings have been identified based on available records. Existing utilities known to be abandoned may have not been indicated. It is to be expected that the RFP Drawings may not show all underground utilities and that actual location of utilities may vary from locations indicated. The Design-Builder shall confirm locations of underground utilities by probing, potholing or other appropriate methods and with input from the utility owner. Design-Builder is responsible for coordinating all utility

relocations whether indicated on the RFP drawings or not and shall work with the utility owners to relocate all utilities as required.

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 near Pearl Highlands and North South Road

The guideway alignment passes above H-1 Freeway and beneath 138KV, 46KV and 12KV OH lines near Pearl Highlands Station. The 46KV and 12KV 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. These lines are at an elevation approximately 33ft above top of rail (TOR). The Design-Builder shall take the proximity of these lines into account when developing their construction methods for the foundations, substructure and superstructure elements at this location and coordinate all Work activities and schedule with HECO.

The guideway alignment parallels the existing 138KV overhead lines, HECO proposed 46KV overhead lines, and the Kaloi Drainage Channel along North South road. The Design –Builder shall take into account the proximity of these lines when developing their design and construction methods for their Work.

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. Specific requirements for abandoning utilities in place are shown on the RFP Drawings; however, 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’ 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 11.2, for each submittal to public and private utilities. The Design-Builders are 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

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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 Clearances

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 Oahu only: 10 feet for water mains 16 inches or larger.***

The Design-Builder is advised that the RFP Reference Drawings for Board of Water Supply (BWS) are not consistent with this requirement. 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.

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Table 11.2 Honolulu High-Capacity Transit Corridor Project (HHCTCP) Utility Relocation Design Review

Utility Agencies/Companies		Type of Utility	Type of Services	Agreement Category *	Utility Relocation Design (Y/N)	Utility Owner Review Cycle (Days)	Remarks
Agency/Company Name	Official Mailing Address						
Directorate of Information Management (a.k.a. Army Signal Corps)	148 Curtis Loop, Room 157, WAAF, Schofield Barracks, HI 96657	Communication	Army Telephone	B / B	Y	60	
Navy	400 Marshall Road Pearl Harbor, HI 96860-3139	Petroleum / Water	Fuel / Water	B / B	Y	60	Removal of the existing abandoned fuel lines only
Air Force	15 CES/CER, 75 H Street, Hickam AFB, HI 96853-5233	Petroleum	Fuel	B / B	Y	60	Removal of the existing abandoned fuel lines only
HDOT Highway Division	727 Kakoi Stree, Honolulu, HI 96819	Street Lighting	State Hwy Lights	B / B	Y	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	Y	60	At the new Ala "Ike Street (proposed City) near LCC Station
C & C Board of Water Supply	630 south Beretania Steet, honolulu, HI 96843	Water	C & C Water	B / B	Y	60	
C & C Department of Design and Construction	650 South King St, 14th Floor, Honolulu, HI 96813	Sewerage	C & C Sanitary Sewer	B / B	Y	60	
HDOT Highway Division	601 Kamokila Blvd, Rm 636, Kapolei, HI 96707	Drainage	State Storm Drain	B / B	Y	60	
C & C Department of Design and Construction	650 South King St, 15th Floor, Honolulu, HI 96813	Drainage	C & C Storm Drain	B / B	Y	60	At the new Ala "Ike Street (proposed City) near LCC Station
HDOT Highway Division	Construction coordination is entrusted to C & C Dept. of Transportation Services	Traffic Signaling	State Traffic Signal	B / B	Y	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	N	60	No facility within Transit WOFH D-B Contract corridor
HDOT Highway Division	727 Kakoi Stree, Honolulu, HI 96819	Irrigation	State Landscape	B / B	Y	60	
DPP Urban Design Branch	650 So. King St, Honolulu, HI 96813	Irrigation	Street Trees	B / B	N	60	No facility within Transit WOFH D-B Contract corridor
Hawaiian Electric Company, Inc.	P.O. Box 2750, Honolulu, HI 96840	Electrical	Power	A+B / A+B	Y	60	
Hawaiian Electric Company, Inc.	P.O. Box 2750, Honolulu, HI 96841	Petroleum	Fuel	B / A+B	N	60	Working near HECO Waiau pipeline
Hawaiian Telcom, Inc.	P.O. Box 2200MC: A-4, Honolulu, HI 96841	Communication	Telephone (voice and data)	B / A+B	Y	60	
Oceanic Time Warner Cable	200 Akamainui Street, Milliani, HI 96789	Communication	Cable (voice, data, and vedio)	B / A+B	Y	60	
TW Telecom, Inc.	2669 Kilihau Street, Honolulu, HI 96819	Communication	Telephone (voice and data)	B / A+B	N	60	No facility within Transit WOFH D-B Contract corridor
Sandwich Isles Communications, Inc.	1003 Bishop Street, Suite 2700, HI 96813	Communication	Telephone (voice and data)	B / A+B	N	60	Conflict with the approved design of an future SIC line and to be resolved through future design coordination with SIC
AT&T Corporation	P.O. Box 898, Waianae, HI 96792	Communication	Telephone (voice and data)	B / A+B	Y	60	
Pacific LightNet, Inc.	1132 Bishop Street, Suite #800, Honolulu HI 96813	Communication	Telephone (voice and data)	B / A+B	N	60	No facility within Transit WOFH D-B Contract corridor
Chevron Products Company	91-480 Malakole Street, Kapolei, HI 96707	Petroleum	Fuel	B / A+B	N	60	Working near Chevron pipelines
Tesoro Hawaii Corporation	431 Kuwili Street, 2nd floor, Honolulu HI 96817	Petroleum	Fuel	A / A	N	60	Working near Tesoro pipelines
The Gas Company	P.O. Box 3000, Honolulu, HI 96802	Gas	Gas	B / A+B	Y	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 to the Design-Builder and addresses additional right-of-way needs, easement and premises.

SP-12.2 Construction Activities

The Design-Builder shall confine construction activities within property lines, right-of-way, limits of easement 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 right-of-way 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.

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TYPE OF FACILITY	W OAHU/FARRINGTON GUIDEWAY & STATIONS LISTED WEST TO EAST	TAKE	EXPECTED DAYS AFTER NTP
GW, Sta & TPSS	1-9-1-016-109	partial	136
GW, Sta & TPSS	1-9-1-017-004	partial	136
GW & P&R	1-9-1-017-086	partial	136
Straddlebent, & Sta	1-9-4-048-046	full	366
Straddlebent, TPSS & Sta	1-9-4-048-047	full	366
GW & TPSS	1-9-4-008-020	partial	166
GW	1-9-4-008-025	partial	166
GW, & MSF	1-9-4-008-010	partial	166
GW, & MSF	1-9-6-003-044	partial	166
GW & Sta	1-9-6-003-048	partial	166
GW	1-9-6-003-049	partial	166
GW, TPSS & columns	1-9-6-003-043	partial	166
GW & P&R	1-9-6-003-012	full	366
GW & P&R	1-9-6-003-013	full	366
GW, P&R & Sta	1-9-6-003-014	full	366
GW & P&R	1-9-6-003-015	full	366
GW & P&R	1-9-6-004-006	full	366

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 no work 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) Waipahu High School Homecoming Parade (Mid September);
- (b) Waipahu Christmas Parade (Mid December); and
- (c) Pearl City High School Homecoming Parade (Mid September).

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 requirements, 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 the table 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.

SP-14.3 Design-Builder Provided Permits

The Design-Builder shall obtain all other permits required for the performance of the Work

TABLE 14-1 CITY PROVIDED PERMITS		
Permit Or Agency Submittal	Agency	Date Expected
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)	120-days following NTP
Section 401 Water Quality Certification (WQC)	State of Hawaii Dept. of Health (DOH), Clean Water Branch (CWB)	120-days following NTP
Stream Channel Alteration Permit (SCAP)	State of Hawaii Dept. of Land and Natural Resources (DLNR), Commission on Water Resource Management (Water Commission)	120-days following NTP
Section 10 Bridge Permit	U.S. Coast Guard; US Army Corps of Engineers	120-days following NTP
CWA Section 402 -- National Pollutant Discharge Elimination System (NPDES) for Stormwater Associated with Construction Activity - Notice of General Permit Coverage (NGPC)	State of Hawaii Dept. of Health (DOH), Clean Water Branch (CWB)	Notice of General Permit Coverage (NGPC) at NTP
Community Noise Permit	State of Hawaii Dept. of Health (DOH), Environmental Health Service Division; Noise, Radiation, & Indoor Air Quality Branch	Available at NTP

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TABLE 14-1 CITY PROVIDED PERMITS		
Permit Or Agency Submittal	Agency	Date Expected
Community Noise Variance	State of Hawaii Dept. of Health (DOH), Environmental Health Service Division; Noise, Radiation, & Indoor Air Quality Branch	Available at NTP
Hawaii Coastal Zone Management (CZM) Program Certification for Section 404/Section 10 Department of Army Permit	State of Hawaii Dept. of Business, Economic Development and Tourism (DBEDT), Office of Planning (OP)	60-days following NTP
Hawaii Coastal Zone Management (CZM) Program for FTA Funds	State of Hawaii Dept. of Business, Economic Development and Tourism (DBEDT), Office of Planning (OP)	Available at NTP
Special Management Area (SMA)	City and County of Honolulu, DPP-LUPD	30-days following NTP
Public Infrastructure Map (PIM)	City and County of Honolulu, DPP-Planning/Policy Planning Branch (PPB)	Complete
Municipal Separate Storm Sewer System (MS4) - construction, dewatering, and operation	HDOT, Highways Division	60-days following NTP
Municipal Separate Storm Sewer System (MS4) - construction, dewatering, and operation	University of Hawai'i	60-days following NTP
Occupancy & Use of State Highway Right-of-Way/Conditional Use Permit	HDOT, Highways Division	60-days following NTP
Subdivision/Easement	City and County of Honolulu, DPP-SDD/Subdivisions	60-days following NTP
Land Use Waivers (Structures in Yard, Height Limit, Signs, Parking, Floor Area, etc.)	City and County of Honolulu, DPP-Land Use Permits Division (LUPD)	60-days following NTP
Flood Zone Variance	City and County of Honolulu, DPP-SDD/Subdivisions	60-days following NTP

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 in the Reference Documents.

SP-15.1 Federal

- (a) US Army; and
- (b) US Navy.

SP-15.2 State

- (a) DHHL - Department of Hawai‘ian Homelands;
- (b) DLNR - Department of Land and Natural Resource;
- (c) HDOT – Highways Division;
- (d) HDOT – Airport Division;
- (e) HDOT – Harbors Division;
- (f) DAGS – Department of Administrative General Services;
- (g) HDE - Hawai‘i Department of Education; and
- (h) HDH - Hawai‘i Department of Health.
- (i) U of H - University of Hawaii

SP-15.3 City

- (a) Board of Water Supply.

SPECIAL PROVISION

CHAPTER SP-16 SAFETY AND SECURITY

SP-16.1 General

The purpose of the Project Safety & Security Certification Program is to ensure that:

(a) The designs, construction, fabrication, installation, testing, and commissioning of all safety critical elements (civil, structural, and systems) have been evaluated for conformance with the safety and security requirements and to verify their readiness for operational use; and

(b) The rail system is operationally safe and secure for customers, employees, emergency responders, and the general public.

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.

SP-16.2 Safety and Security Certification Process Requirements

The Design-Builder shall participate in the Project Safety & Security Certification Program throughout the duration of the Contract. At a minimum, the Design-Builder shall:

(a) Develop a Design-Builder Safety and Security Certification Plan for the final design, construction, and testing phases of the Project in conformance with the Project Safety and Security Management Plan and the Federal Transit Administration (FTA) document, Handbook for Transit Safety and Security Certification. The Plan shall describe the:

- (1) Organizational structure for administration and execution of the Plan;
- (2) Roles and responsibilities of the design team and constructor in the certification process;
- (3) Process for updating the Certifiable Items List;
- (4) Process for developing and completing the conformance checklists for the design, construction, and testing phases;
- (5) Internal reporting process; and
- (6) Coordination with the City, City's consultants, other City contractors, and any other project stakeholders.

(b) Participation in the Project Safety and Security Oversight and Review Committee (SSORC) by providing status updates on the safety and security certification effort.

(c) Maintain and update the Certifiable Items Listed provided to the Design-Builder for this Contract.

(d) Demonstrate that the final design complies with the safety requirements.

(e) Demonstrate that the construction, fabrication, and installation comply with the safety requirements.

(f) Conduct tests and inspections to demonstrate and document compliance with the safety requirements.

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- (g) Maintain a document management system that enables retrieval of documentation that demonstrates design, construction, and fabrication approvals, inspections, tests, and certificates have been achieved for each certifiable item.
- (h) Cooperate in providing the required verification documentation to the City.
- (i) Assign a Certification Program representative to manage and oversee compliance with the identified safety requirements, maintenance of the Certifiable Items List, and maintenance of the verification documentation system.

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.

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 location and extent of wetlands, waterways, floodplains, habitats, historical, archaeological and cultural resources, ordinary high water mark, and other sensitive environmental resources.
- (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) Identify environmental compliance team roles, responsibilities and authority, and communication protocol for environmental matters.

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- (f) Identification of all required environmental permits and approvals, include:
 - (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 approval obtained; 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:
 - (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, include:
 - (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;
 - (3) Identification of technical lead responsible for substantive contacts with regulatory/resource agencies; and
- (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) Specific Controls and Methods to be addressed in the ECP 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) Noise control; and
 - (H) Hazardous material/waste management.

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- (I) Prevention of Invasive Species
- (2) Procedures for inspection, monitoring, corrective, and preventative actions include:
 - (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:
 - (A) Names of contacts in project team and regulatory Authorities, and 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:
 - (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 to be addressed in the ECP are the responsibility of the Design-Builder and contain:
 - (1) Status reports and meetings (as described later in this Section);
 - (2) Design review meetings to be performed at Definitive Design Submittal and Final Design Submittal (as described later in this Section);
 - (3) Compliance coordination meetings to be performed after submittal of the draft ECP and after any modifications to the ECP after acceptance by the City (as described later in this Section); and
 - (4) Pre-construction assessment 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 (as described later in this Section).
- (l) 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) Calendar Days of the meeting:
 - (1) Design Review Meetings. During design review, the Design-Builder shall be meeting 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

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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.

(2) **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.

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 10 Business Days of draft ECP (or ECP revision) submittal. The Design-Builder shall ensure that the following Design-Builder team members participate in the meeting:

- (A) Project Manager;
- (B) Design Manager;
- (C) Construction Manager;
- (D) Environmental Manager; and
- (E) Quality Manager.

(3) **Pre-Construction Assessment.** 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 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.

(4) **Environmental Compliance Monitoring and Reporting Program during Construction.** 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.

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.

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

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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.

As a minimum, the Environmental Construction Monitoring Report shall contain the following elements:

- (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 responsibility 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

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measures is to be documented during subsequent inspections. Monitoring reports are to be completed within 14 Calendar Days of each monitoring inspection.

(5) 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. 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.

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 30 Days after the final inspection and submitted to the City.

(m) Submittals. The Design-Builder shall submit the following to the City and appropriate regulatory agencies as needed:

(1) Environmental Compliance Plan (draft) – by date required in the Baseline Schedule but no later than 45 Days prior to start of construction.;

(2) Environmental Compliance Plan (final) – finalize and accepted by the City prior to start of construction;

(3) Permit applications – 10 Days prior to submittal to permitting agency;

(4) Environmental permits and authorizations – upon receipt;

(5) Draft Pre-Construction Assessment (PCA) – at least 30 Days prior to start of construction;

(6) Final Pre-Construction Assessment (PCA) – prior to construction.

(7) Bi-weekly Status/Compliance Reports – Bi-weekly;

(8) Environmental Construction Monitoring Report(s), frequency and content as determined in the Environmental Compliance Plan; and

(9) Environmental Post-Construction Monitoring Report, by Work location – 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 90 days after NTP 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; and
- (c) Address how components of the “HHCTCP –Systemwide Sustainability Report” are to be incorporated.
- (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 owner.

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.

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. 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.

SPECIAL PROVISION

CHAPTER SP-20 DESIGN-BUILDER STAGING AREAS

SP-20.1 General Requirements

This Section includes general requirements for locating, permitting, establishment, operation and restoration of 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

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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 Area. 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 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 indicated on the RFP drawings. In addition the Design-Builder shall construct access to the yard.

SPECIAL PROVISION

CHAPTER SP-21 PRECAST YARD

SP-21.1 General requirements

This Section includes general requirements for locating, permitting, establishment, operation and restoration of 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 Oahu.

The Design-Builder shall allow for temporary office space of up to 3 City QA/QC staff. This space is in addition to the field office space defined in section 4 of these SPs.

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 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

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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 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 Oahu only. These specs are provided below in their entirety.

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.*

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.

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 Hawaii 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.*

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- (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*

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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.

(B) 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:

Module Size	Icon Height	Icon Width	Countdown Height	Countdown Width	Countdown Segment Width
<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.

(C) 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.

(D) 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).

(E) 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

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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.

(F) 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:

TABLE 770.05-1 – CONTROLLER ASSEMBLY REQUIREMENTS	
<u>Item</u>	<u>Quantity</u>
Model 170 Controller	1
Model 412C Prom Module	1
Model 400 Modem	1
332A Aluminum Cabinet	1
Model 200 Load Switches	12
Model 204 Flasher	All
Model 242 Isolators	2
Model FS/ST Isolator	All
Flash Transfer Relays	All
Model 210 Conflict Monitor	1
Model 262C Detector Amplifiers (Rotary Sw Type)	8
Model M752 Preempt. Car (Non-QPL)	2
Model GPS Time Source (Non-QPL)	1

(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 (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 includes 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.

(1) *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.*

(2) *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.*

(3) *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.*

(4) *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 (33mm), 2-inch, 3-inch and 4-inch single or multi-cell polyester/nylon textile subduct containing 1250lb 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

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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.

A) 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 Hawaii 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 Hawaii 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 should 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 Oahu Invasive Species Committee, 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 Oahu 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-23.7 Unannounced Inspections

Design-Builder shall provide access to the state right-of-way (ROW) to Oahu Invasive Species Committee 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.

**ATTACHMENT TO
SPECIAL PROVISIONS SP-1**

ATTACHMENT “A”

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

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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 and construction of a portion of the HHCTC guideway alignment from its initial station at East Kapolei and continuing approximately 6.8-miles to a point just east of the planned Pearl Highlands station. The route runs along the east side of North South Road. This portion of the guideway is being identified as the “West O‘ahu / Farrington Highway Design-Build Contract” (“Contract”). The guideway is mostly comprised of a two-track aerial structure with a 0.3-mile portion of twin single-track guideways and a 0.3-mile of guideway at grade. In order to construct the guideway along this alignment, utilities will need to be relocated, the highway median and left turn pockets will need to be reconfigured and reconstructed, traffic signals will be relocated, some roadway widening is required, construction of an access road through the planned community of Ho‘opili will be done, landscaping will be removed, saved, & temporary landscaping installed, box culverts constructed, retaining walls built, and associated grading will be included in the scope of work.

b) The Contract starts at the East Kapolei Station in the vicinity of the intersection of the proposed East-West Road and along the east side of North-South Road. The route continues northward parallel to North-South Road, towards the proposed UH-West O‘ahu Station site. The alignment then turns to the east across Kolai Channel and continues through the planned community of Ho‘opili until reaching Farrington Highway. The alignment continues east along the mauka side of the rural section of Farrington Highway. The guideway alignment crosses into the median of Farrington Highway in the vicinity of Fort Weaver – Kunia Road where Farrington Highway has been improved to 2 through lanes in each direction with a center median. The alignment continues along the median of Farrington Highway until crossing the outbound lanes near Waipahu High School. After crossing Farrington Highway, the areal guideway comes down to grade just west of the proposed Maintenance & Storage Facility site. The alignment continues at-grade through the Maintenance and Storage Facility site and Leeward Community College (LCC) campus. The route leaves the campus and continues on an areal guideway structure across the H-1/H-2 (Waiawa) Interchange turning in an easterly direction parallel to Kamehameha Highway as it approaches the proposed Pearl Highlands station and ends approximately 400-feet east of the station.

c) Utility relocations will involve both public and private utilities. There will be water, storm sewer, sanitary sewer, natural gas, fuel, electrical (both underground & overhead), communication (both underground & overhead), traffic signals & conduits, and some abandoned fuel lines that are identified as needing to be relocated and removed or capped. Utilities will require varying degrees of relocation efforts from the Design-Builder. The utility relocation work varies from Design-Builder required to perform all work to relocate with oversight inspection; to place new conduits for the utility to pull cable; to digging the ditch and backfilling after the utility’s installation; to hiring a utility’s approved sub-contractor to perform the relocation; to providing coordination for the utility’s staff to relocate. The levels of responsibilities are further described in the Contract Documents.

d) The placement of guideway columns in the median of Farrington Highway will require that the medians be reconfigured. Widening in some locations and shifting in other locations are schematically shown in the RFP Drawings. There is a requirement to design and locate the columns and shifting of the medians to allow for the future widening of Farrington to 3-lanes in each direction. Roadway re-construction and alterations will also require the relocation of traffic signal systems at the intersections along Farrington Highway.

e) The Design-Builder will be required to coordinate the continued movement of traffic through the construction zone(s). Preliminary level maintenance-of-traffic (MOT) plans have been developed based on assumed column locations. These preliminary-level plans will need to be finalized along with MOT plans for the other phases of the work. Hawai‘i Department of Transportation (HDOT)

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is sensitive about keeping traffic flowing through the area and will be looking to have an active community awareness plan in-place as part of the MOT plans.

f) Along a portion of the project, the future development of Ho‘opili is planned which will include a network of roads. The guideway alignment has been designed to coincide with these future roadways as best as is known at this time. These roadways may not be developed prior to the anticipated completion of the guideway. If these roadways are not constructed, it will be necessary for the Design-Builder to construct an all-weather emergency access road along the guideway through this section of the Project.

g) The existing median is landscaped along most of Farrington Highway. With the reconfiguration of the median and installation of the guideway in the median, the existing landscaped median will be disturbed due to the construction. It will be necessary to remove the existing landscaping and install temporary landscaping until such time as a final landscaping plan is developed for the stations and median.

h) As the alignment approaches Leeward Community College, the guideway alignment traverses from the median of Farrington Highway to the makai side of the highway where it transitions to an at-grade guideway section. In this section, it is anticipated that retaining walls and under crossing structures will be required. Once at grade, the entrance(s) to the Maintenance and Storage Facility are encountered. The guideway crosses Ala Ike Road, at two locations where the roadway passes under the guideway alignment in box-culverts. At the Leeward Community College Station, a station plaza area is planned to allow passengers to walk under the guideway to access either platform. The Design-Builder will be responsible to design and construct this plaza and the box-culverts as well as the remainder of the at-grade portion of the guideway alignment.

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) Guarantee period as further described in GCDB 4.26;
- 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;

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- 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

APPENDIX 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 30 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 fully race neutral annual overall DBE goal for Fiscal Year 2009. Therefore, the City has not established a DBE contract goal for this Contract. Nonetheless, DBEs shall have an equal opportunity to participate in the Contract. The Design-Builder agrees to 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 Hawaii State Department of Transportation before it's 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 ____.

(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 X(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.

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B1.8 Lobbying

The "CERTIFICATION REGARDING LOBBYING," as executed by the Design-Builder in Exhibit ___ 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

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at 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

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constructively made or 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 work 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 benefit or an hourly cash equivalent thereof.

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(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 submission of copies of payrolls by all subcontractors.

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(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 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

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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 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

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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,

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from 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) Appendix 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.

(02/09)

**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 confidentiality agreements.

(1) Contractor certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

(2) Contractor certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

(A) The personal information collected, used, or maintained by the Contractor will be treated as confidential;

(B) Access to the personal information will be allowed only as necessary to perform the Contract; and

(C) Use of the personal information will be restricted to uses consistent with the services 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 Contractors 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) Contractors 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 unfiled. 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

EXHIBIT "B"

**PERFORMANCE 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 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 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 _____ 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 Oblige 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 Oblige, 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 Oblige, 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)

EXHIBIT F.WPD

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

Type or Class	Hours	Hourly Rate	Subtotal
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

TOTAL FOR EQUIPMENT..... \$ _____(10)

SUBCONTRACTOR

Name	Amount (11)	O.H. & Profit, HAR 3-125-13(12)
_____	\$ _____	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 % 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 _____

GENERAL CONDITIONS
FOR DESIGN BUILD CONTRACTS (2/09)

EXHIBIT "G"
CITY AND COUNTY OF HONOLULU

(DEPARTMENT)

DAILY FORCE ACCOUNT REPORT

Contract No. _____ Contractor: _____ Date: _____
Project _____ Covering change order no.: _____

PART A

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)
*Worker's Compensation, PL/PD, PICA, TDI, Federal/State Unemployment Compensation						TOTAL FOR PART A		TOTAL FOR COLUMN (9)

PART B

MATERIALS	UNIT	UNIT PRICE (10)	NO. OF UNITS (11)	TOTAL (12)=(10)x(11)
TOTAL FOR PART B				

PART C TOTAL FOR PART C (TOTAL PART A + TOTAL COLUMN (9) + TOTAL PART B):

--

PART D CONTRACTOR'S MARKUP (HAR 3-125-13), NOT TO EXCEED 20% OF PART C:

--

PART E

EQUIPMENT	TYPE OR CLASS	RATE (13)	HOURS (14)	TOTAL (15)=(13)x(14)
TOTAL FOR PART E				

PART F

SUBCONTRACTOR	AMOUNT (16)	ALLOWANCE (17)=(10%)(16)	TOTAL (18)=(16)+(17)
TOTAL FOR PART F			

PART G GROSS EARNED (PARTS C THROUGH F, INCLUSIVE):

--

PART H BOND FEE _____ % OF PART G:

--

PART 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

(Submit in triplicate, signed by both parties immediately after the day's work, with invoices, etc.)
DF-49 (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 "I"
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 _____

(VECP1.WPD)

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: _____
Project: _____

VECP No. _____
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

- 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.
- 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.
- 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:

- Contract does not include equipment, as defined in Item No. 3.
- 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:

- 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:

- Federal funds are not being used to partially or totally reimburse, or pay, for the equipment.
- 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)

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

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

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

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

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

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

Signature: _____

Print Name: _____

Title: _____

Date: _____