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HART
HONOLULU AUTHORITY for RAPID TRANSPORTATION

IN REPLY REFER TO:
HRT7/11-426455

Kenneth Toru Hamayasu, P.E.
INTERIM EXECUTIVE DIRECTOR

BOARD OF DIRECTORS
Carrie K.S. Okinaga, Esq.
CHAIR
Ivan M. Lui-Kwan, Esq.
VICE CHAIR
William "Buzz" Hong
Donald G. Horner
Keslie W. K. Hui
Damien T. K. Kim
Glenn M. Okimoto, Ph.D.
David K. Tanoue
Wayne Y. Yoshioka

July 25, 2011

Mr. Lance Wilhelm
Managing Partner
Kiewit/Kobayashi Joint Venture
650 Iwilei Road, Suite 202
Honolulu, Hawaii 96817

Dear Mr. Wilhelm:

Subject: Contract No. CT-DTS-10A0449, RFP-DTS-261611
Maintenance and Storage Facility Design-Build Contract
Honolulu High-Capacity Transit Corridor Project

Attached is a fully executed copy of the subject contract and Amendment No. 1 for your records.

If there are any questions regarding this matter, please contact Wes Mott at (808) 768-6155.

Sincerely,

Kenneth Toru Hamayasu
Interim Executive Director

Attachments

CITY AND COUNTY OF HONOLULU, Alii Place, Suite 1700, 1099 Alakea Street, Honolulu, Hawaii 96813
Phone: (808)768-6159 Fax: (808)768-5110 www.honolulutransit.org

CONTRACT NO. CT-DTS-10A0449

HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT
AGREEMENT FOR DESIGN-BUILD SERVICES
CONTRACT NO. CT-DTS-1000449
AMENDMENT NO. 1

THIS AMENDMENT NO. 1, dated June 30, 2011 (this "Amendment No. 1"), is made and 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, hereinafter referred to as the "CITY," and KIEWIT/KOBAYASHI, A JOINT VENTURE, a [business entity], whose principal place of business and mailing address is 650 Iwilei Road, Suite 202, Honolulu, Hawai'i 96817 (the "DESIGN-BUILDER"). The CITY and the DESIGN-BUILDER are hereafter collectively referred to as the "Parties" and either may be referred to individually as a "Party," all as governed by the context in which such words are used.

WITNESSETH THAT:

WHEREAS, the Parties entered into an Agreement for Design-Build Services dated _____, 2011 (the "Contract"), to undertake design and construction of the Maintenance and Storage Facility for the Honolulu High-Capacity Transit Corridor Project in Honolulu, Hawai'i (the "PROJECT" as defined in the Special Provisions);

WHEREAS, the CITY now desires to update certain clauses in the Contract with respect to the required dates in the Schedule of Milestones; and

WHEREAS, the CITY recognizes that DESIGN-BUILDER reserves the right to claim an adjustment pursuant to the terms of the Contract for any eligible costs incurred due to this Amendment No. 1 for schedule date changes. Any changes in the proposed contract baseline schedule, and cost, as a result of the above, will be processed pursuant to the terms of the Contract. It is also recognized that the notice, changes, and claims provisions of the Contract will need to be adjusted by mutual agreement in writing between the Parties to provide appropriate time for analysis and response to the schedule date changes.

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

1. Special Provisions SP-4.1(b) is deleted in its entirety and replaced with the revised SP-4.1(b) contained in Exhibit A, attached hereto.

2. By signing below, the DESIGN-BUILDER hereby certifies that, to the best of its knowledge and belief, cost or pricing data, as defined in HAR Section 3-122-122, and submitted pursuant to HAR Section 3-122-125, either actually or by specific identification in writing to the Officer-in-Charge in support of this Amendment No. 1, is accurate, complete and current as of the Request for Proposal Part 2 submittal date.

3. In the event of any conflict or inconsistency between the provisions of this Amendment No. 1 and any provisions of the Contract, the provisions of this Amendment No. 1 shall govern in all aspects.

4. All other terms and conditions of the Contract, not inconsistent with the terms and conditions of this Amendment No. 1, shall remain in full force and effect.

IN WITNESS WHEREOF, the CITY and the DESIGN-BUILDER have executed this Amendment No. 1 to the Contract by their duly authorized officers or agents, effective as of the day and year first written above.

APPROVED AS TO CONTENT:
Department of Transportation Services

By: Its Director
Department of Transportation Services

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

CITY & COUNTY OF HONOLULU

By: Michael R. Hansen
By: Director of Budget and Fiscal Services

DESIGN-BUILDER.
KIEWIT/KOBAYASHI, A JOINT VENTURE

By: no seal
Its: Managing Partner

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 24th day of June, 2011, before me appeared Lance K. Wilhelm, to me personally known, who, being by me duly sworn or affirmed, did say that such person~~(s)~~ executed the foregoing instrument as the free act and deed of such person~~(s)~~, and if applicable in the capacity~~(s)~~ shown, having been duly authorized to execute such instrument in such capacity~~(s)~~.

SHERI L.F. MAU NOTARY 06-34 PUBLIC STATE OF HAWAII

Sheri L.F. Mau
Notary Public, State of Hawaii
Notary's Printed Name: Sheri L. F. Mau
My commission expires on January 15, 2014

Doc. Date: 6-24-11 # Pages: 2
Name: SHERI L.F. MAU 1st Circuit
Doc. Description: Contract No. CT-DTS-1000449 Amendment 1
Sheri L.F. Mau 6-24-11
Signature Date
NOTARY CERTIFICATION

SHERI L.F. MAU NOTARY 06-34 PUBLIC STATE OF HAWAII

EXHIBIT A

Honolulu High-Capacity Transit Corridor Project

SPECIAL PROVISION

CHAPTER SP-4 – PERFORMANCE

SP-4 1 TIME IS OF THE ESSENCE

Chapter 4, Section 4 1, of the GCDB is amended by adding the following as paragraph (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 Maintenance and Storage Facility DB Contract:

Item	Event Description	Proposed Required Dates
1a	Delivery of the following for WOFH Guideway DB:	
1a-1	Direct Fixation Fasteners for Mainline	Nov 5, 2012*
1a-2	Running Rail and Precurved Running Rail	Nov 5, 2012*
1a-3	Restraining Rail – Concrete Crosstie & Direct	Nov 5, 2012*
1a-4	Concrete Crosstie & Direct Fixation Trade	Dec 5, 2012*
1a-5	Ballasted Special Trackwork	Dec 5, 2012*
1a-6	Direct Fixation Special Trackwork	Dec 5, 2012*
1a-7	Direct Fixation Special Trackwork Switch Machine	Dec 5, 2012*
1a-8	Third Rail	Jan 5, 2013*
2	Delivery of balance of System Trackwork	Jan 15, 2015*
3	Turnover to MSF Phase 1 in Storage Yard from WOFH Guideway	Feb 18, 2014
4	Turnover to MSF Phase 2 in Storage Yard from WOFH Guideway	Apr 21, 2014
5	Allow access to OSB and MOW Building for Core Systems Installation	Jul 20, 2014
6	MSF Substantial Completion	Dec 20, 2014
7	MSF Contract Complete (Track and Contact rail materials turnover to the City)	Feb 15, 2015
(*) Core Systems Contract will require some access to Storage Yard prior to December 2012. This access and coordination shall be coordinated between the guideway contracts.		

Authorization to begin Preliminary Engineering Design (NTP1) **July 08, 2011**
Authorization to begin Final Design & Rail Purchase (NTP2) **September 15, 2011**
Authorization to begin Construction (NTP3) **October 15, 2011**

CONTRACT NO. CT-DTS-10A0449

AGREEMENT FOR DESIGN-BUILD SERVICES
CONTRACT NO. CT-DTS-1000449

THIS CONTRACT FOR DESIGN-BUILD SERVICES dated June 30, 2011, 2011 (the "Contract"), is entered into by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawai'i, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawai'i 96813 (the "CITY"), and KIEWIT /KOBAYASHI, A JOINT VENTURE, a [business entity], whose principal place of business and mailing address is 650 Iwilei Road, Suite 202, Honolulu, Hawai'i 96817 (the "DESIGN-BUILDER").

WITNESSETH THAT:

WHEREAS, the CITY desires the DESIGN-BUILDER to undertake design and construction of the Maintenance and Storage Facility for the Honolulu High-Capacity Transit Corridor Project in Honolulu, Hawai'i (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 applicable 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 set forth in the Contract Documents as hereinafter described, shall furnish all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of the PROJECT and work contemplated under the Contract Documents (the "Work"), and the DESIGN-BUILDER shall receive and accept as full compensation for all of the Work the price for the various items of the Work as hereinafter set forth.

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

a. Part 1 - This Agreement;

b. Part 2 - The Special Provisions and any attachments and exhibits thereto (collectively, "Special Provisions");

c. Part 3 - The General Conditions of Design-Build Contracts for the City and County of Honolulu, dated February 2009 ("GCDB");

d. Part 4 - The Design Criteria;

e. Part 5 - The Engineering Data;

f. Part 6 - The Request For Proposal Drawings as modified by the DESIGN-BUILDER's proposal plans;

g. Part 7 - The Standard Specifications;

h. Part 8 – The Standard and Directive Drawings, the Plans Standards, the RFP and all corresponding RFP addenda; and

i. Part 9 - The DESIGN-BUILDER's proposal, dated February 17, 2010;

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

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

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

The first written NTP ("NTP #1") will be for Work required to perform preliminary engineering and associated site investigation, coordination and integration with other Honolulu High-Capacity Transit Corridor Project ("HHCTCP") contracts.

The second written NTP ("NTP #2") will be issued for Work required to perform final design, coordination and integration with other HHCTCP contracts.

The third written NTP ("NTP #3") will be issued for Work required to construct and complete all other Contract requirements.

Subsequent NTPs may be issued for Work identified in Contract amendments.

Unless specifically addressing NTP #1, NTP #2, or NTP #3, whenever reference is made to "the NTP" it shall be understood that what is intended by the reference is the applicable NTP

as determined by the context. In the event the context is not clear, the reference shall be assumed to refer to NTP #3.

5. This is a firm fixed-price contract, and subject to the provisions of this paragraph and in accordance with Chapter 6 of the GCDB, the CITY agrees to pay the DESIGN-BUILDER, for the satisfactory performance and completion of the Work, the payments in accordance with the Schedule of Milestones. The aggregate amount of these lump sum payments shall not exceed ONE HUNDRED NINETY-FIVE MILLION TWO HUNDRED FIFTY-EIGHT THOUSAND AND 00/100 DOLLARS ($195,258,000.00). The lump sum payments for services and the Work performed under the Contract are all inclusive of direct labor, overhead, general and administrative expenses, other direct costs, subcontractor costs, fixed fees, and all applicable taxes including State general excise and use tax ("GET") and county one-half percent (0.5%) GET Surcharge.

In accordance with the paragraphs above, the total aggregate amount of ONE HUNDRED NINETY-FIVE MILLION TWO HUNDRED FIFTY-EIGHT THOUSAND AND 00/100 DOLLARS ($195,258,000.00) is established as the maximum payable under this Contract and is subject to the Special Provisions and the GCDB, including the provisions thereof relating to reducing or increasing the compensation of the DESIGN-BUILDER.

6. By signing below, the DESIGN-BUILDER hereby certifies that, to the best of its knowledge and belief, cost or pricing data, as defined in Section 3-122-122, HAR, and submitted pursuant to Section 3-122-125, HAR, is accurate, complete, and current as of the Request for Proposals Part 2 submittal date.

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

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

Attention: Director

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

Kiewit/Kobayashi, a Joint Venture
650 Iwilei Road, Suite 202
Honolulu, HI 96817

Attention: Lance K Wilhelm, Managing Partner

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.

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: _____
Its Director of Budget and Fiscal Services

Date JUL 21 2011

DESIGN-BUILDER
KIEWIT/KOBAYASHI, A JOINT VENTURE

By: _____ No seal
Its Managing Partner

By: _____
Its

APPROVED AS TO FORM AND LEGALITY

By: _____
Deputy Corporation Counsel

From BFS - 74
(Mar. 1996)

Certificate

The attached contract for Maintenance and Storage Facility for the Honolulu High-Capacity Transit Corridor Project in Honolulu, Hawaii

$195,258,000.00

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- 10A0449

FUND Transit Fund (690)

Transit Improvement Bond Fund (695)

ACCOUNT NO.	
690/7801-09-D (4124)	$ 26,184,851.00
695/7801-10-D (4124)	199,630.00
690/7801-09-C (4102)	27,225,082.00
695/7801-10-C (4102)	141,648,437.00
	$195,258,000.00

HONOLULU, HAWAII
JUL 21 2011

Michael R. Hansen

Director of Budget & Fiscal Services

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 24th day of June, 2011, before me appeared Lance K. Wilhelm, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity(s) shown, having been duly authorized to execute such instrument in such capacity(s).

SHERI L.F. MAU NOTARY 06-34 PUBLIC STATE OF HAWAII

Sheri L.F. Mau
Notary Public, State of Hawaii
Notary's Printed Name: Sheri L. F. Mau
My commission expires on January 15, 2014

Doc. Date: 6-24-11 # Pages: 4
Name: SHERI L.F. MAU 1st Circuit
Doc. Description: Agreement for Design Build Services Contract
Sheri L.F. Mau 6-24-11
Signature Date
NOTARY CERTIFICATION

SHERI L.F. MAU NOTARY 06-34 PUBLIC STATE OF HAWAII

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

Bond No. 105553730

KNOW TO ALL BY THESE PRESENTS:

That Kiewit / Kobayashi, a Joint Venture, 55 Merchant Street, #1500 Honolulu, HI 96813,
(Full Legal Name and Street Address of Contractor)

as Design-Builder, hereinafter called Principal, and Travelers Casualty And Surety Company Of America One Tower Square 2S2B Hartford, CT 06183
(Name and Street Address of Bonding Company)

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

its successors and assigns, hereinafter called Obligee, in the amount of ONE HUNDRED THIRTY MILLION SEVENTY ONE THOUSAND ONE HUNDRED EIGHTY AND 00/100 DOLLARS ($130,061,180.00), 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 _____, for the following project:

CONTRACT NO. CT-DTS-1000449, RFP-DTS-213102

Maintenance and Storage Facility Design-Build Contract
Honolulu High-Capacity Transit Corridor Project
for the City and County of Honolulu

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

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

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

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

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

Signed this 24th day of June, 2011.

(Seal) No seal

Klewit / Kobayashi, a Joint Venture
Name of Principal (Contractor)

*
Signature

Managing Partner
Title

(Seal) Travelers Casualty And Surety Company Of America
Name of Surety

*
Signature

Steven Shinohara
Title Attorney-in-Fact

*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

Travelers Casualty and Surety Company of America

SURETY BOND RIDER TO PERFORMANCE BOND

Rider to be attached to and form a part of Performance Bond No: 105553730 and dated June 24, 2011

executed by Travelers Casualty and Surety Company of America (the "Surety")

on behalf of Kiewit/ Kobayashi, A Joint Venture (the Principal")

in favor of City & County of Honolulu (the "Obligee") in the amount of $130,061,180.00 Dollars.

It is hereby understood and agreed that the conditions of the Performance Bond are amended as follows:

1. In no event shall the Surety be liable under the Performance Bond to Owner for any design services or design work furnished by the Principal, or its engineers, architects or consultants in connection with this Contract.

2. In no event shall the Surety be liable under the Performance Bond to Owner for the procurement and installation of rail and rail fixtures that are not intended to be installed within the boundaries of the Maintenance Storage Facility. Specifically, the scope of the Performance Bond does not extend to the procurement, installation, and distribution of the rail, special trackwork, and contract rail for the entire first project of 20 miles, as is provided at A1.0 of Attachment A to Special Provisions SP-1 of the Contract.

This change is effective June 24, 2011. All other term and conditions remain unchanged.

Signed, sealed and dated this 24th day of June, 2011.

WITNESS OR ATTEST:

Kiewit/ Kobayashi, A Joint Venture
(Principal)

By: _____ (Seal) no seal

Travelers Casualty and Surety Company of America

By: _____ (Seal)
Attorney-in-Fact Steven Shinohara

[OWNER]

By: _____ (Seal)

STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Hawaii)
) S.S.
City & COUNTY OF Honolulu)

On this 24th day of June, 2011, before me appeared Lance K. Wilhelm, ~~and~~ _____, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/~~she/they~~ is/~~are~~ ~~the~~ Managing Partner ~~and~~ _____ of Kiewit/Kobayashi, a Joint Venture the CONTRACTOR named in the foregoing instrument, and that he/~~she/they~~ is/~~are~~ authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/~~she/they~~ executed said instrument as the free act and deed of the CONTRACTOR.

PAMELA M. KAGAWA NOTARY PUBLIC 90-285 STATE OF HAWAII

(Notary Stamp or Seal)

Pamela M. Kagawa
(signature)

Pamela M. Kagawa
(Print name)

Notary Public, State of Hawaii

My Commission Expires: 12-26-14

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

Document Identification or Description: Performance Bond (Surety); Bond No. 105553130 Surety Bond Rider Power of Attorney - Steven Shinohara

Undated at time
Doc. Date: of notarization No. of Pages: 6 Jurisdiction: First Circuit

PAMELA M. KAGAWA NOTARY PUBLIC 90-285 STATE OF HAWAII

(Notary Stamp or Seal)

Pamela M. Kagawa 06-24-11
Signature of Notary Date of Certificate

Pamela M. Kagawa
Printed Name of Notary

1/11/95
(Acknowl2.frm)

SURETY ACKNOWLEDGMENT

[FOR USE BY SURETY]

STATE OF Hawaii)
: SS.
City & COUNTY OF Honolulu)

On this 24th day of June, 20 11,
before me personally came Steven Shinohara
to me known, who, being by me duly sworn, did depose and say that he
resides in Honolulu, Hawaii, that he is the
Attorney-in-Fact of Travelers Casualty And Surety Company Of America,
the corporation described in and which executed the attached instrument; that
he is duly appointed under power of attorney, dated December 10, 2010,
which said power of attorney is attached hereto, is now in force and effect;
that he knows corporate seal of the said corporation; that the seal
affixed to the said instrument is such corporate seal; and that it was so
affixed by order of the Board of Directors of the said corporation; and that
he signed his name thereto by like order.

(Notary Seal)

APRIL RUSH NOTARY PUBLIC Comm No. 11-125 STATE OF HAWAII

April Rush
Notary Public April Rush
State of Hawaii

My commission expires: May 8, 2015

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

Document Identification or Description:

Performance Bond No. 105553730
Surety Bond Rider To Performance Bond No. 105553730
Power of Attorney - Steven Shinohara

Doc. Date: Undated at the time of notarization No. of Pages: 6 Jurisdiction: First Circuit

April Rush
Signature of Notary

6/24/2011
Date of Certificate

April Rush
SURETY ACKNOWLEDGMENT

APRIL RUSH NOTARY PUBLIC Comm No. 11-125 STATE OF HAWAII

(Official Stamp or Seal)

TRAVELERS

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. 214294

Certificate No. 003999443

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

Brian K. Hart, and Steven Shinohara

of the City of Honolulu, State of Hawaii, 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.

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

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 10th day of December, 2010.

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: George W. Thompson, Senior Vice President

On this the 10th day of December, 2010, 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.

MARIE C. TETREAULT NOTARY PUBLIC CONNECTICUT

Marie C. Tetreault, Notary Public

58440-4-09 Printed in U.S.A.

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.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 24th day of June, 20 11

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.

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

Bond No. 105553730

KNOW TO ALL BY THESE PRESENTS:

That Kiewit / Kobayashi, a Joint Venture, 55 Merchant Street, #1500 Honolulu, HI 96813,
(Full Legal Name and Street Address of Contractor)

as Design-Builder, hereinafter called Principal, and Travelers Casualty And Surety Company Of America One Tower Square 2S2B Hartford, CT 06183,
(Name and Street Address of Bonding Company)
as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the City and County of Honolulu,
(State/County Entity)

its successors and assigns, hereinafter called Obligee, in the amount of ONE HUNDRED THIRTY MILLION SEVENTY ONE THOUSAND ONE HUNDRED EIGHTY AND 00/100 DOLLARS ($130,061,180.00), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

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

CONTRACT NO. CT-DTS-1000449, RFP-DTS-213102

Maintenance and Storage Facility Design-Build Contract
Honolulu High-Capacity Transit Corridor Project
for the City and County of Honolulu

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

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

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

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

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

Signed this 24th day of June, 2011.

(Seal) Kiewit / Kobayashi, A Joint Venture
Name of Principal (Contractor)

* _____
Signature

Managing Partner
Title

(Seal) Travelers Casualty And Surety Company Of America
Name of Surety

* _____
Signature

Steven Shinohara
Title Attorney-in-Fact

*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

Travelers Casualty and Surety Company of America

SURETY BOND RIDER TO PAYMENT BOND

Rider to be attached to and form a part of Payment Bond No: 105553730 and dated June 24, 2011

executed by Travelers Casualty and Surety Company of America (the "Surety")

on behalf of Kiewit/ Kobayashi, A Joint Venture (the Principal")

in favor of City & County of Honolulu (the "Obligee") in the amount of $130,061,180.00 Dollars.

It is hereby understood and agreed that the conditions of the Payment Bond are amended as follows:

1. In no event shall the Surety be liable under the Performance Bond to Owner or any Claimant for any design materials, design services or design work furnished by any Claimant, Principal, or any engineers, architects or consultants in connection with this Contract.

2. In no event shall the Surety be liable under the Payment Bond to Owner or any Claimant for the procurement and installation of rail and rail fixtures that are not intended to be installed within the boundaries of the Maintenance Storage Facility. Specifically, the scope of the Payment Bond does not extend to the procurement, installation, and distribution of the rail, special trackwork, and contract rail for the entire first project of 20 miles, as is provided at A1.0 of Attachment A to Special Provisions SP-1 of the Contract.

This change is effective June 24, 2011. All other term and conditions remain unchanged.

Signed, sealed and dated this 24 day of June 2011.

WITNESS OR ATTEST:

Kiewit/ Kobayashi, A Joint Venture
(Principal)

By: _____ (Seal) no seal

Travelers Casualty and Surety Company of America

By: _____ (Seal)
Attorney-in-Fact Steven Shinohara

[OWNER]

By: _____ (Seal)

STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Hawaii)
City & COUNTY OF Honolulu) S.S.

On this 24th day of June, 2011, before me appeared Lance K. Wilhelm, ~~and~~ _____, to me known, to be the person(s) described in and, who, being by me duly sworn, did say that he/~~she/they~~ is/~~are~~ the Managing Partner ~~and~~ _____ of Kiewit/Kobayashi, a Joint Venture the CONTRACTOR named in the foregoing instrument, and that he/~~she/they~~ is/~~are~~ authorized to sign said instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as the free act and deed of the CONTRACTOR.

PAMELA M. KAGAWA NOTARY PUBLIC 93-286 STATE OF HAWAII

(Notary Stamp or Seal)

Pamela M. Kagawa
(signature)

Pamela M. Kagawa
(Print name)

Notary Public, State of Hawaii

My Commission Expires: 12-26-14

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

Document Identification or Description: Labor and Material Payment Bond (Surety); Bond No. 105553730 Surety Bond Rider Power of Attorney - Steven Shinohara

Undated at time

Doc. Date: of notarization No. of Pages: 6 Jurisdiction: First Circuit

Pamela M. Kagawa 6-24-11
Signature of Notary Date of Certificate

Pamela M. Kagawa
Printed Name of Notary

PAMELA M. KAGAWA NOTARY PUBLIC 93-286 STATE OF HAWAII

(Notary Stamp or Seal)

1/11/95
(Acknowl2.frm)

SURETY ACKNOWLEDGMENT
[FOR USE BY SURETY]

STATE OF Hawaii)
: SS.
City & COUNTY OF Honolulu)

On this 24th day of June, 20 11,

before me personally came Steven Shinohara

to me known, who, being by me duly sworn, did depose and say that he

resides in Honolulu, Hawaii; that he is the

Attorney-in-Fact of Travelers Casualty And Surety Company Of America,

the corporation described in and which executed the attached instrument; that

he is duly appointed under power of attorney, dated December 10,2010,

which said power of attorney is attached hereto, is now in force and effect;

that he knows corporate seal of the said corporation; that the seal

affixed to the said instrument is such corporate seal; and that it was so

affixed by order of the Board of Directors of the said corporation; and that

he signed his name thereto by like order.

(Notary Seal) APRIL RUSH NOTARY PUBLIC Comm No. 11-125 STATE OF HAWAII

April Rush
Notary Public April Rush
State of Hawaii

My commission expires: May 8, 2015

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

Document Identification or Description:

Labor and Material Payment Bond No. 105553730

Surety Bond Rider To Payment Bond No. 105553730

Power of Attorney - Steven Shinohara

Doc. Date: Undated at the time of notarization No. of Pages: 6 Jurisdiction: First Circuit

April Rush
Signature of Notary

June 24, 11
Date of Certificate

April Rush
SURETY ACKNOWLEDGMENT

APRIL RUSH NOTARY PUBLIC Comm No. 11-125 STATE OF HAWAII

(Official Stamp or Seal)

TRAVELERS

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. 214294

Certificate No. 003999444

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

Brian K. Hart, and Steven Shinohara

of the City of Honolulu, State of Hawaii, 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.

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

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 10th day of December, 2010.

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: George W. Thompson, Senior Vice President

On this the 10th day of December, 2010, 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.

Marie C. Tetreault, Notary Public

58440-4-09 Printed in U.S.A.

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.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 24th day of June, 20 11.

Kori M. Johanson, Assistant Secretary

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

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

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

The Special Provisions 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-20 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.

Whenever "Division 1" or a specific Division 1 Section is referenced in the Standard Specification or Standard Drawings it refers to the associated requirements in these Special Provisions and/or the GCDB.

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 deleting the Chapter in its entirety and substituting in lieu therefore the following Chapter SP-1.1, consisting of sections SP-1.1 through SP-1.6:

SP-1.1 DEFINITIONS

Wherever the following terms or pronouns are used in the Contract Documents or City correspondence, 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; or

(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.

"**Ancillary Area / Ancillary Space**" means the non-public areas or spaces of the stations used to house or

contain operating, maintenance, or support equipment and functions.

"**Annunciator**" means a unit containing one or more indicator lamps, alphanumeric displays, computer monitor, or other equivalent means on which each indication provides status information about a circuit, condition, system, or location. An annunciator can signal audibly, visually, or both to indicate a change of status.

"**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.

"**At-Grade Station**" means a station that is any at-grade or unroofed station other than an elevated or underground station.

"**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 Section 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 that are used for reasons of economy (e.g. non-stocked 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 GCDB Section 3.3.

"**Calculations**" means numerical computations performed to demonstrate compliance with the Contract Documents.

"**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.

"**Cat5**" means four twisted pairs of single cable jacket. Also referred to as Category 5 cables. This use of balanced lines helps preserve a high signal-to-noise ratio despite interference from both external sources and other pairs (this latter form of interference is called crosstalk). It is most commonly used for 100Mbit/s networks, such as 100BASE-TX Ethernet.

"**Central Supervising Station**" (CSS) means the principal manned location in the OCC where fire and intrusion alarm, supervisory and trouble signals are displayed, and where personnel are in attendance at all times to supervise the circuits, monitor signals, and immediately retransmit any signal indicative of a fire to the public Fire Department communication center.

"**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.

"**Communications**" means radio, telephone, video and data services throughout the system and particularly at the central supervising station and command post.

"**Component**" means any device having distinct electrical or mechanical characteristics and having connection points to be connected to other components to form a sub-assembly.

"**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 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 Data Requirement List**" (CDRL) means items to be provided by the Contractor to the City as defined by these Contract Documents.

"**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.

"**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 remains, 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-Operate-Maintain**" (DBOM) means a Project's delivery methodology under which the City contracts with a single entity that has responsibility for the design, construction, commissioning, operations and maintenance of the Project.

"**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 Plans**" means the plans 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 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 that 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.

"**Elevated Station**" means a station greater than one story in height not otherwise defined as an at-grade or underground structure.

"**Elevated Structure**" means a structure not otherwise defined as a surface or underground structure.

"**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 environmental provisions of the Contract.

"**Environmental Resource**" means the physical and biological components of the human and natural environment.

"**Equal**" means whenever the words "equal" or "approved equal" are used in connection with make or quality of material or equipment in these Contract Documents, the Responsible Engineer recommends and the City accepts as to whether any material or equipment proposed is equal to that specified material or equipment; such recommendation shall be binding and final on both the Contractor and the City.

"**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.

"**First Article**" means the first one of any production component of a particular core system or subsystem that is produced. The Contract Documents provide that production components not be manufactured prior to drawing approval, so the First Article shall have been made to approved drawings.

"**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, 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.

"**HAR**" means the Hawai'i Administrative Rules of the State of Hawai'i, as amended.

"**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);

(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);

(m) December 25 (Christmas Day);

(n) All election days in the City, except primary and special election days; and

(o) 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 Saturday, the Friday preceding shall be observed as a holiday.

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

"**HRS**" means the Hawai'i Revised Statutes of the State of Hawai'i, as amended.

"**HSS**" means the State of Hawai'i Department of Transportation Standard Specifications.

"**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.

"**Indicated**" means (as used in Contract Documents) as shown in the RFP Drawings or Standard Drawings or as described in the Contract Documents.

"**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 Plans 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 responsible for inspecting 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.

"**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. Packagers, brokers, manufacturer's representatives or other persons who arrange or expedite transactions are not Material Suppliers

"**Mean Cycles Between Failures**" (MCBF) means the number of operating cycles between successive independent failures.

"**Mean Time Between Failures**" (MTBF) means the mean operating time interval between successive independent failures.

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

"**Modular**" means a standardized, interchangeable unit, designated to facilitate maintenance and repair.

"**Necessary Basic Project Configuration Change**" means material changes in the Basic Project Configuration that 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 that 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 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 ensure 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 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:

(a) Have submitted a Qualifications Proposal in response to the RFP Part 1; and

(b) 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.

"**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 that 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 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 of money set by the City and so designated in the Pricing Information serving to provide for payment for specified items of Work or an expenditure that 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" (QA) 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.

"Quality Control" (QC) 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. The QC includes 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, additionally, 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 that 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.

"Reliability" means the probability of performing a specified function without failure and within design parameters for the period of time or the number of cycles specified under actual service conditions.

"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.

"Responsible Architect" means an architect, 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 that 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.

"Safe" means secure from liability to harm, injure, danger or risk; free from danger or risk.

"Safety" means the condition in which persons are free from threat of danger, harm, or loss arising from improper design, manufacture, assembly, function, or failure of a system or any of its components or elements.

"Safety Plan" means the plan that sets out the Design-Builder's means of complying with its obligations in relation to project safety. The 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 that establishes 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 are provided with the Design-Builder's Price Proposal. The Schedule of Prices becomes part of the Contract and is 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.

"**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 where 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. The 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).

"**Station**" means a place designated for the purpose of loading and unloading passengers, including patron service areas and ancillary spaces associated with the same structure.

"**Station Platform**" means the area of a station used primarily for loading and unloading passengers.

"**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 stage or designated portion of the Project, or Section, that 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.

"**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 that 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.

"**Tight**" (used as a suffix) means an apparatus designated as watertight, dust tight etc., when so constructed that the enclosing case shall exclude the specified material.

"**Time-Out**" means when a prescribed amount of time has elapsed during which a specified action has not occurred.

"**Time Related Dispute**" means any dispute arising from any event not within the Design-Builder's control, performance, action, force, or factor that 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.

"**Traction Power Substation**" (TPSS) means a fixed facility within the rail system where electrical equipment is located for the specified purpose of receiving and converting or transforming incoming electrical energy to usable electrical energy.

"**Trainway**" or "**Trackway**" means that portion of the transit guideway in which the passenger vehicles operate.

"**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.

"**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 that are either part of the Contract or established during the Contract execution that form a basis of understanding between affected parties.

"**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.

"**Work Site Access**" means that the contractor is provided access by the Work Site Controller to perform limited and focused construction work per a mutually established schedule between contractors. This work is coordinated with the Work Site Controller so as not to interfere with that contractor's work.

"**Work Site Control**" or "**Work Site Controller**" means the contractor that controls the construction activity on a shared work site. For transit properties this may be the Core Systems Contractor when they plan to energize an element within the Work Site either temporarily for testing purposes or permanently. The contractor that controls the work site is held responsible for all activities on that work site in terms of safety, security, and overall management. Work Site Control may transfer between contractors, if necessary, to maintain project schedules but must be established prior to any work commencing by two or

more contractors in a given work site.

"**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, but not limited to, the following:

(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, unless otherwise modified in these Special Provisions.

(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
AREMA	American Railway Engineering and Maintenance of Way 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
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
CS	Core Systems
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
DSC	Differing Site Conditions
DVD	Digital Video Disk
ECP	Environmental Compliance Plan
EEI	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
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration, U.S. Department of Transportation
FLS	Fire & Life Safety
FONSI	Finding of No Significant Impact
FS	Federal Specifications
FTA	Federal Transit Administration
GBR	Geotechnical Baseline Report
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
HBCTCA	Hawai'i Building and Construction Trades Council Affiliates

HDOT	State of Hawai'i Department of Transportation
HHCTCP	Honolulu High-Capacity Transit Corridor Project
HST	Hawai'i Standard Time
HSS	State of Hawai'i Department of Transportation Standard Specifications
HRS	Hawai'i Revised Statutes
IA	Independent Assurance
IM	Interface Manager
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
LEED AP	Leadership in Energy and Environmental Design Accredited Professional
LEED V2.2	Leadership in Energy and Environmental Design Version 2.2
LLC	Limited Liability Company
LLP	Limited Liability Partnership
LOI	Letter of Interest
MIL	Military Specifications
MOT	Maintenance of Traffic
MOW	Maintenance of Way
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
NFPA	National Fire Protection Association
NHS	National Highway System
NPDES	National Pollutant Discharge Elimination System
NTP	Notice to Proceed
O&SB	Operating and Servicing Building
OSHA	Occupational Safety and Health Administration, United States Department of Labor
PA/CR	Public Awareness and Community Relations
PCA	Pre-Construction Assessment
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
RTSA	Rapid Transit Stabilization Agreement
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
TWF	Train Wash Facility
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.
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
USGBC	United States Green Building Council
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
WOFH	West O'ahu / Farrington Highway Design-Build Contract
WTF	Wheel Truing Facility

SP-1.3 DESIGN-BUILDER'S REPRESENTATIONS

(a) License. The Design-Builder is represented as a business entity that 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 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

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

(b) 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.

(c) 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 four (4) attachments to this Special Provision SP-1:

(a) Attachment A - contains an abbreviated Scope of Work and description of roles and responsibilities for the City and the Design-Builder;

(b) Attachment B - contains the FTA required clauses;

(c) Attachment C - contains the Rapid Transit Stabilization Agreement; and

(d) Attachment D - contains the Rapid Transit Stabilization Agreement Hawai'i Building and Construction Trades Council Affiliates.

SPECIAL PROVISION

CHAPTER SP-2 – GENERAL PROVISIONS

SP-2.6 COPYRIGHT AND PATENT

Chapter 2, Section 2.6, of the GCDB is amended by deleting the section in its entirety.

SP-2.8 OWNERSHIP OF PROPERTY

Chapter 2, Section 2.8, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

(a) 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:

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 deleting the section in its entirety and substituting in lieu thereof the following:

(a) The Design-Builder shall defend, indemnify and save harmless the 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 Design-Builder, the 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 the 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 its officers, consultants, representatives, employees or agents, and 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 its 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 paragraphs (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 **October 1, 2013**. 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 paragraph (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.

SP-2.20 GOVERNING LAW, VENUE AND DISCOVERY

Chapter 2, Section 2.20, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

(a) The provisions of this Contract shall be interpreted in accordance with the laws of the State of Hawai'i 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, Hawai'i. 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, Hawai'i. All discovery between the parties undertaken pursuant to federal, state, or local rules shall be conducted within Honolulu, Hawai'i, 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, Hawai'i, 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.

(1) "**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.

(2) "**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.

(3) "**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 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. The 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 the 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. The 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 it's 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, but not limited to, 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. The 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 and Employer's Liability Insurance. Workers' Compensation and Employer's Liability Insurance shall be provided with 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. 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;
- $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. Excess Liability Insurance shall be provided with the following limits:

(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 twenty-five thousand dollars ($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 and Employer's Liability, Commercial 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 at any time. 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 OCIP, has been terminated, if the 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; and

(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.

(4) Coverage shall include the following:

(A) Occurrence Basis;

(B) Premises Operations;

(C) Contractual Liability;

(D) Products/Completed Operations;

(E) Broad Form Property Damage; and

(F) 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.

(5) 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.

(6) Coverages and Terms:

(A) Excess of General Liability;

(B) Excess of Employer's Liability; and

(C) 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. The 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-Builder. Completed operations coverage will remain in effect for not less than one (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.

(9) Certificates of Insurance for Design-Builder Provided Coverage:

(A) 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 this paragraph (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, the 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 City 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.

(10) Evidence of Insurance: The Design-Builder shall provide certified copies of all insurance policies required within ten (10) days of the City's written request for said copies.

(i) **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.

(j) **Design-Builder Responsibilities.** The Design-Builder will cooperate with, and will require all subcontractors to cooperate with, the City and/or the City 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 the 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 City 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.

(k) **The 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.

(l) **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 the 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.

(m) **Waiver of Subrogation and Other Rights of Recovery.** The 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.

(n) **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.

(o) **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.

(p) **Coverage to be provided by the 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 affect all insurance coverages specified in above paragraphs covering all Work performed under this Contract.

(q) **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 deleting the section in its entirety and substituting in lieu thereof the following:

(b) Bonding requirements. For this Contract, performance and payment bond amounts shall be one hundred percent (100%) of the Construction component 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, of the GCDB is amended by adding the following as paragraph (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 Maintenance and Storage Facility DB Contract:

Item	Event Description	Required Dates
1a	Delivery of the following for WOFH Guideway DB:	
	Direct Fixation Fasteners for Mainline	July 10, 2011
	Running Rail and Precurved Running Rail	July 10, 2011
	Restraining Rail – Concrete Crosstie & Direct	July 10, 2011
	Concrete Crosstie & Direct Fixation Trade	Aug 10, 2011
	Ballasted Special Trackwork	Aug 10, 2011
	Direct Fixation Special Trackwork	Aug 10, 2011
	Direct Fixation Special Trackwork Switch Machine	Aug 10, 2011
	Third Rail	Sep 10, 2011
1b	Delivery of System Trackwork to Kamehameha Highway Guideway DB	Feb 01, 2013
2	Delivery of balance of System Trackwork	June 01, 2014
3	Turnover to MSF Phase 1 in Storage Yard from WOFH Guideway	Dec 01, 2012
4	Turnover to MSF Phase 2 in Storage Yard from WOFH Guideway	Feb 01, 2013
5	Allow access to OSB and MOW Building for Core Systems Installation*	April 01, 2013
6	MSF Substantial Completion	Oct 01, 2013
7	MSF Contract Complete (Track and Contact rail materials turnover to the City)	June 15, 2014
(*) Core Systems Contract will require some access to Storage Yard for December 2012 Shuttle Service support. This access and coordination shall be coordinated between the 3 contracts.		

SP-4.2 COMMENCEMENT REQUIREMENTS

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

Delete paragraph (c) in its entirety.

Delete paragraph (d) in its entirety.

Delete paragraph (g), in its entirety and replace with the following:

(g) Design-Builder provided facilities, services and equipment. The 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:

(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; and

(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 thirty (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 the 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 twenty (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 twelve (12) 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;

(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 seventy (70) and seventy-five (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 fifteen (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	5	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 10 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.

Design-Builder shall equip the field office with:

(A) Either a twenty-four (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;

(B) A conference room with a large table and twenty (20) chairs; and

(C) Individual office file cabinets and twenty-five (25) total commercial grade 5 drawer vertical lockable file cabinets for project files.

(6) Computer Hardware and Software. The 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 "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 Dual Core Processor (2.25 GHz);

(C) Microsoft Vista Operating System;

(D) 2.0 GB Ram;

(E) 19-inch Flat Panel Monitor;

(F) 160 GB Hard drive with 8 MB Cache;

(G) USB Mouse;

(H) Lead-free Motherboard;

(I) 16X DVD+/-RW and 48X CD with Roxio Creator or equivalent;

(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), of the GCDB is amended by adding the following as paragraphs (11) through (15):

(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.

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

(14) Work on any state facility or in any area adjacent to a state street where traffic is impeded shall be performed in consultation with HDOT.

The Design-Builder shall prepare a plan to include mitigation of flow of traffic in and out of the MSF site, submit to HDOT and the City for review and approval, and obtain a permit for construction within a State Highway.

The Design-Builder is to obtain authorization from HDOT for access from Farrington Highway at the west end of the Project limits.

(15) The Design-Builder is to coordinate with the Leeward Community College for any road closures on Ala Ike Street.

SP-4.7 QUALITY MANAGEMENT

Chapter 4, Section 4.7, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

(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 with 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) The 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;

(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. It is understood by the City that details of many of these forms and checklists require the design to be advanced prior to completing the specifics within the form or checklist. 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 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 the Design-Builder's management, design, construction, environmental compliance, and maintenance activities; the 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 thirty (30) days following NTP, the Design-Builder shall submit a draft Quality Plan that describes the QC/QA activities provided and managed for the design and permitting activities. The Design-Builder shall submit the final Quality Plan for acceptance within thirty (30) days of receipt of the City's comments.

At least sixty (60) days prior to the expected construction date, the Design-Builder shall submit for City Review and Comment, a draft Quality Plan that describes how QA/QC will be provided and managed for all construction activities. The Design-Builder shall submit the final Quality Plan for acceptance within thirty (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 fifteen (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. It shall be the Design-Builder's sole responsibility to provide Project Plans, Working Plans, and Project Specifications of such a nature to deliver the finished construction Work is in accordance with all Contract requirements. City Review and Comments pertaining to design documents shall not relieve Design-Builder of that responsibility.

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

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) The 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;

(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 Assurance and Quality Control; 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. The 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 prior to final design 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.

(k) 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.

(l) Design Reviews - 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. The Design-Builder shall include the MSF Integrations Manager and the City participation 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 the Design-Builder of its responsibility for the satisfactory completion of the Work in accordance with all Contract requirements.

(m) The 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. The Design-Builder shall prepare and distribute minutes from the review meetings within ten (10) working days after the meeting. 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 RFP

Drawings 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 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) The proposed concepts are constructible;

(D) Proposed concepts to meet the interface requirements of the Project;

(E) Required materials and equipment are available;

(F) The proposed concepts have been reviewed according to the 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; and

(G) That proposed concepts comply with permits and environmental compliance plan requirements.

If the design is amended subsequent to the Definitive Design review by the City, the Design-Builder shall re-check and re-certify the design as an additional Definitive Design review. Substantive changes to Plans and Specifications initiated by the 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. The 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. The Design-Builder shall notify the City if Interim Design reviews are necessary and shall schedule the necessary design reviews following an independent review by the Quality Manager. Workshops, meetings and "over-the-shoulder" reviews are means to facilitate Interim Design reviews by the City.

(4) The 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. The 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 and the Plans are ready for construction. The 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.

(6) The 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. The Design-Builder shall verify pertinent dimensions in the field prior to conducting a Working Plan review. The 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) The 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.

(n) Construction Quality Management. The Design-Builder shall develop and implement a Quality Program for all phases of the construction Work. The 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 the 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 the Design-Builder's forms as defined in the QC plan.

(2) Construction QC Testing. The 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 for the applicable tests. This certification shall be valid for one (1) year from date of issue. Laboratories performing QC Testing may be the 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. The 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. The 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. The 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.

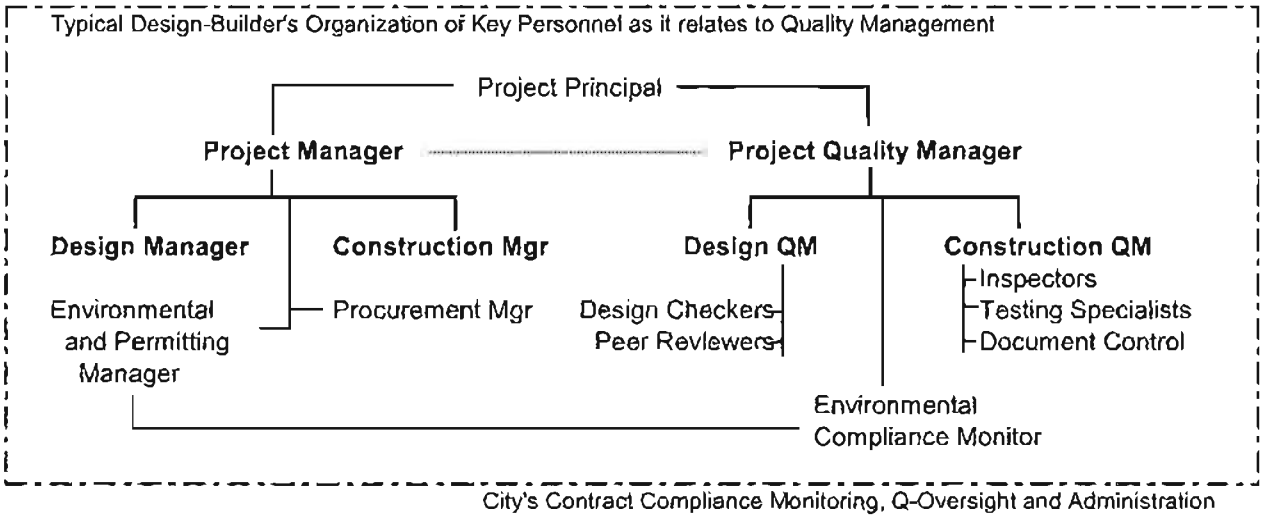
(7) City Quality Assurance (QA) testing laboratories shall perform independent assurance (IA) or verification tests of field-tested materials in coordination with the QC testing laboratories performing QC tests of materials on behalf of the Design-Builder. QA laboratories shall be either City laboratories 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 the Design-Builder's QC test results, unless a potential for conflict of interest exists with the City's designated "referee" laboratory. The services of the "referee" laboratory may be requested by either the City or the 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 the 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) The 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.

(o) 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 (the design, procurement and construction activities) is as follows:



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-Builder's 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-Builder's PM:

(1) Quality Assurance by the Design-Builder. The Design-Builder's 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-Builder's stated quality policy and objectives. Executive management reviews will be held at least at three (3) month interval;

(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-Builder's 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 Architect(s) and/or Engineer(s) for each Design-Builder-designated Design Unit (construction Milestone). The Responsible Architects(s) or Engineer(s) will sign and seal design reports, Project Plans, and Project Specifications for the assigned Design Unit(s). The Responsible Architect or Engineer will review Working Plans for conformance with final design and oversee as-built documentation. Each Responsible Architect or Engineer must be licensed to practice in the State of Hawai'i as a professional architect or engineer; and

(6) The Responsible Architect or Engineer must be present in the Project vicinity as necessary to coordinate the Work on assigned Design Units. The Responsible Architect or Engineer must be present in the Project area for, and attend all Design Reviews for, assigned Design

Unit(s); and participates and resolves design conflicts during construction. The Responsible Architect or Engineer witnesses final testing and acceptance.

SP-4.8 CHARACTER OF WORKERS, METHODS AND EQUIPMENT

Chapter 4, Section 4.8, of the GCDB is amended by adding the following paragraphs (b) through (f):

(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. The Design-Builder shall staff the Project with appropriate personnel to perform all Work, including the design, LEED certification, environmental and permitting services, architectural, interface management, 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. The 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. The Design-Builder shall be responsible for ensuring 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. The Design-Builder commits that the personnel resources listed in the Agreement shall be available to the extent within the Design-Builder's control, and 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 twenty-four (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 forty-eight (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. The Design-Builder shall not substitute Key Personnel. Notwithstanding the procedures set out herein, the 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; and

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

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

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

(C) The reason for the proposed change. If the City elects to consider the request, the 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 the City's election to not consider the request.

(4) City Written Consent Required. The 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 the Design-Builder shall not change Key Personnel or Major Subcontractors except upon receipt of such written consent from the City. The City may require additional explanation from the Design-Builder as to the reason for the replacement.

(f) Key Personnel Qualifications. In the qualifications section below, the word "shall" indicates a mandatory 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 the 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 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-Build experience and shall have at least five (5) years of experience in Quality Management, including Quality Assurance/Quality Control activities, 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 or architect 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 maintenance and storage facilities 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 industrial facility 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) Track Construction Manager. Shall have a minimum of ten (10) years of demonstrated experience in managing trackwork construction of similar size and complexity as this Project.

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

(8) Construction Quality Manager. Shall have a minimum of five (5) years of experience in Quality Assurance/Quality Control activities (including the management of construction QC programs). Should have demonstrated experience on rail transit and/or maintenance and storage facility construction projects that have incorporated the type of construction proposed for the Project.

(9) 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 five (5) years of experience as a transit safety technician or supervisor.

(10) Environmental Compliance Manager (ECM). 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. The ECM should have experience with rail transit and the building industry and possess skills 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, and with water discharge outfalls.

(11) LEED Accredited Professional. Shall have a minimum of five (5) years of experience in large industrial building projects; and remain on the project through closeout.

(12) Interface Manager (IM). The systems to fixed facilities interface is critical to the performance of the Work. As such, the Design-Builder shall provide an Interface Manager (IM) with a minimum of five (5) years of experience on rail transit projects, maintenance and storage facilities and yard. In addition, Interface Manager for this Project is to collaborate and coordinate on a weekly basis in support of other on-going and future contracts, specifically the Core Systems system-wide contract. All contracts will have a position similar to this and the City will have a "facilitator" that will form an Interface Management Team to maintain communication, collaboration and coordination across the HHCTCP contracts.

(13) 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, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

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 unnecessary delay or hindrance of their respective contracts.

(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 through a committee of Interface Managers assigned within each and every contract. Dates of construction are estimated and are subject to change.

TABLE 4.9.1 COORDINATION WITH OTHER HHCTCP CONTRACTORS

Contract No.	Description	Anticipated Schedule	Location Of Work
MI920	Core Systems DBOM	Work starts May 2010 with construction completion anticipated in April 2018. O&M by operating segments commencing in Dec 2012 with full operation in late 2018.	Systemwide. OCC design and build-out, as well as core systems installation in MSF will require close coordination.
SV240	Farrington Stations Design	Work starts Feb 2010 and completes Feb 2011	Coordinate Design of LCC Station.
DBB270	Farrington Stations Construction	Work starts September 2011 with an estimated completion date of September 2013. LCC and Waipahu Stations to be complete by Sep 2012.	3 Stations from West Loch to LCC along Guideway. At-grade LCC Station construction should be coordinated with MSF interface.
DB1200	West O'ahu Farrington Highway (WOFH) Guideway	Work starts December 2009 with estimated completion date of July 2013.	From East Kapolei to Pearl Highlands, approx. 6.5 miles interfacing with MSF at LCC Station.
Refer to SP-4.1, 4.2 and 10.4 for this Contract's Schedule Requirements 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, improvements, , 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; and

(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.

SP-4.10 WAGES AND HOURS

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

(l) On November 7, 2009, the City entered into the Raid Transit Stabilization Agreement and Rapid Transit Stabilization Agreement Hawai'i Building and Construction Trades Council Affiliates, attached as Exhibits C and D respectively hereto,, and collectively referred to as Rapid Transit Stabilization Agreement ("RTSA") to ensure timely and efficient completion of the Project without delay due to labor disputes and to establish uniform working conditions for all signatory construction trades and crafts. Upon Award, the awarded Offeror, and all Subcontractors at any tier identified in Exhibit 4 of the awarded Offeror's Proposal, shall agree to be bound by the terms of the RTSA by executing the Letters of Assent attached thereto as Attachment A, prior to the execution of the Contract by the City. After execution of the Contract, it shall be the continuing obligation of the Design-Builder to obtain executed Letters of Assent from all Subcontractors at any tier who were not identified in Exhibit 4 of the Proposal. Neither awarded Offeror nor Design-Builder is required to obtain executed letters of assent from Subcontractors that are tiered solely to perform work specified in Section 3.3 o the RTSAs.

SP-4.13 DISCOVERY OF HAZARDOUS MATERIALS

Chapter 4, Section 4.13, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

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

(b) If hazardous materials are encountered, the 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 the City (and therefore confirm such notice in writing). The City shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.

(c) The Design-Builder shall not be required to resume construction in connection with such hazardous material or in any such affected area until after the 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 the 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 the Design-Builder, the process as further specified in GCDB Section 6.10 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:

(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 the 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. The 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, the Design-Builder shall indemnify and hold harmless the City, its elected and appointed officials, agents, employees, volunteers, the 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 the Design-Builder or anyone for whom the Design-Builder is responsible.

(f) Safeguards, Signs and Notices. The 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, of the GCDB is amended by adding the following as paragraphs (g) through (i):

(g) The Design-Builder shall submit, for approval by the City, 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 (see

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 Waipahu High School and Leeward Community College facilities.

SP-4.16 RUBBISH

Chapter 4, Section 4.16, of the GCDB is amended by adding the following as paragraphs (b) and (c):

(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, of the GCDB is amended by adding the following as paragraphs (b) through (e):

(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-4.20 UTILITIES, UNDERGROUND

Chapter 4, Section 4.20, of the GCDB is amended by adding the following as paragraph (e):

(e) The City will provide Composite Plans – Existing Utilities Drawings. These drawings shall 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) The Design-Builder shall promptly give a written notice to the 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;

(2) The Design-Builder shall have the responsibility to supplement the utility investigations, perform analysis and interpret all as-builts and perform field investigations, post-Award and prior to construction commencing. Should there be any material differences between the Composite Plans – 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;

(3) The 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; and

(4) No request by the 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 (c) (4) are not intended to apply to a Hazardous Material Condition uncovered or revealed at the Site.

SP-4.26 GUARANTEE

Chapter 4, Section 4.26 (c), of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

(c) Materials and equipment. The Design-Builder also guarantees all materials and equipment furnished or installed under the Contract against defects and poor workmanship and to be in operable condition upon substantial completion 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.

Chapter 4, Section 4.26 (e), of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

(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 (1) year upon substantial completion of the Work and shall include all labor, materials, equipment and parts. The City 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 Design-Builder shall provide a new certificate of guarantee for the extended one-year period.

SP-4.28 PROJECT MANAGEMENT / CONSTRUCTION MANAGEMENT

Chapter 4, of the GCDB is amended by adding a new section SP-4.28 to include the following:

(a) The 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. The 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. The 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. The 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. The Design-Builder shall prepare and submit monthly progress reports covering the current period performance and the next period's planned work progress. 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. The 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. The 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 SP-4.9).

(6) Management of Labor, Material, and Equipment. The 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. The 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, the Design-Builder shall submit the following to City for its timely review:

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

(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; and

(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, the Design-Builder will arrange a conference attended by the Design-Builder, City and others as appropriate to review for acceptability of the Schedules submitted. The 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 the 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 the Design-Builder from its full responsibility;

(B) The 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; and

(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 "applicable" Notice to Proceed.

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

(A) The 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; and

(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.

(5) 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, the Design-Builder, active Subcontractors, and all other such representatives concerned with current progress or involvement in planning, design, coordination, or future critical activities.

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

(7) Schedule updating. After each progress 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.

(8) The Design-Builder shall use Primavera P6 scheduling software for the development and maintenance of the Project schedule. Both electronic and hard copies of the initial baseline and each subsequent update shall be provided to the City.

(9) 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); and

(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. The 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) and (2):

(1) The City acknowledges and agrees that the Contract is based on baselines provided by the City in its RFP Part 2. The Design-Builder is obligated to use the RFP Part 2 as a firm baseline, unless the Design-Builder demonstrates to the City that a change is necessary to this these baseline standards. If the request for change to a baseline standard is approved by the City, the City will issue a Change Order according to the procedures set forth herein; and

(2) Acceptance of RFP Part 2. The 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 that affect the duration of a Critical Path resulting from such discrepancies or inaccuracy shall be the responsibility of the Design-Builder.

Chapter 5, Sections 5.3 (b) and (c), of the GCDB are amended by deleting these sections in their entirety and substituting in lieu thereof 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 SP-6.8 Failure of the parties to agree to an adjustment in Contract Price shall be resolved in accordance with the price adjustment clause included in SP-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 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, the Design-Builder shall submit detailed cost breakdowns in the format attached in the GCDB as Exhibit "F," for material, equipment and labor, including addition 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.

(c) 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 SP-6.8.

Chapter 5, Section 5.3, of the GCDB is amended by adding the following as 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

nature, or any other reason whatsoever. For suspension of Work see GCDB Section 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;

(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; and

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

SP-5.4 CLAIMS BASED ON ORAL DIRECTIVES

Chapter 5, Section 5.4, of the GCDB is amended by adding the following as paragraph (c):

(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 the Design-Builder's notice to Surety shall be delivered simultaneously to the City. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

SP-5.5 OVERTIME INSPECTIONS

Chapter 5, Section 5.5, of the GCDB is amended by deleting the section in its entirety.

SP-5.6 DELAY; TIME EXTENSIONS; UNFORESEEABLE DELAYS; SUSPENSION

Chapter 5, Section 5.6 (d), of the GCDB is amended by deleting the sections in its entirety and substituting in lieu thereof the following:

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

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

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

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

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

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

(C) The suspension, termination, interruption, denial or failure to obtain, or nonrenewal of any permit, license, consent, authorization, or approval (including all Governmental Approvals other than Environmental Approvals) that 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) that 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;

(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 that 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 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 that was within the contemplation of the parties at the time of entering into the Contract; and

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

(4) The foregoing limitations shall not affect 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), of the GCDB is amended by adding the following as subparagraphs (G) through (M):

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

(H) Delays that affect 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), of the GCDB is amended by adding the following as subparagraphs (1) through (5):

(1) The parties agree that the occurrence of an excusable delay to the overall project completion may not result in additional compensation paid to the Design-Builder. No additional compensation will be paid to the 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 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%) mark up for both overhead and profit and the Design-Builder and any Subcontractors above that tier are entitled to a total of three percent (3%) mark up each for overhead and profit. Any other cost or consequential damage, including, but not limited to costs incurred on other construction projects, is not compensable.

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

SP-5.7 VARIATIONS IN ESTIMATED QUANTITIES

Chapter 5, Section 5.7 (a), of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

(a) Where the quantity of a Price Item in the Contract is an estimated quantity and where the actual quantity of such Price Item varies more than fifteen percent (15%) above or below the estimated quantity stated in the Contract, an adjustment in the Contract Price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the City shall, upon receipt of a timely written request for an extension of time, prior to final payment of the Contract, ascertain the facts and make such adjustment for extending the completion date should the judgment of the City and the findings justify. Any adjustment in the Contract Price shall be in accordance with SP-6.8. [HAR 3-125-10]

SP-5.8 VALUE ENGINEERING INCENTIVE

Chapter 5, Section 5.8, of the GCDB is amended by deleting the section in its entirety.

SP-5.9 ESCROWED PROPOSAL DOCUMENTS

Chapter 5 of the GCDB is amended by adding a new section SP-5.9 to include the following:

(a) Upon Award of the Contract, designated representatives of the City and Design-Builder shall jointly retrieve the Escrowed Proposal Documents from the designated escrow agent, and shall deliver to the City one (1) copy of all documentary information used in preparation of the 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 herein. Concurrently with submission of quotations or revisions to quotations provided in connection with formally proposed Amendments to this Contract and concurrently with approval of each Change Order, if appropriate, one copy of all documentary information used in preparation of the quotation or Change Order shall be added to the cabinet to be held with the other Escrowed Proposal Documents. The Escrowed Proposal Documents will be held in such cabinet or otherwise maintained subject to Paragraph (b) below until all of the following have occurred:

(1) One hundred eighty days (180) 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 herein.

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 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 Paragraph (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 Paragraph (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 PROVISIONS

CHAPTER SP-6 – PAYMENT; PRICE ADJUSTMENTS

Chapter 6, Sections 6.1 through 6.3, of the GCDB are amended by deleting these sections in their entirety and substituting in lieu thereof the following:

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 the Contract execution, 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.

(c) 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:

(d) 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.

(e) 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 – The Design-Builder shall itemize this Section into construction Milestones relating to traffic control activities;

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

(E) Public Information / Coordination – The 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;
- O&S Building;
- MOW Building;
- 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, material delivery and construction Milestones (SP-6.1(e)(1)(C), SP-6.1(e)(1)(D) and beyond) and fixed monthly values for project-wide activities (SP-6.1(e)(1)(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 SP-6.1(e)(1)(B), SP-6.1(e)(1)(C), SP-6.1(e)(1)(D) and beyond. SP-6.1(e)(1)(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 SP-6.1(e)(1)(A) activities:

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

- When five percent (5%) of the total contract price is earned, fifty percent (50%) of the mobilization amount will be paid;
- When ten percent (10%) of the total contract price is earned, seventy-five percent (75%) of the mobilization amount will be paid; and
- When twenty percent (20%) of the total contract price is earned, one hundred percent (100%) of the mobilization amount will be paid.

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

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

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

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

(F) Environmental compliance shall not exceed a fixed total of two percent

(2%) of construction value, spread out over equal monthly installments.

(G) Public information support and coordination shall not exceed a fixed total of one half percent (0.5%) of construction value, spread out over equal monthly installments.

(H) Monthly installments for SP-6.1(e)(1)(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.

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

(g) 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 SP-6.17.

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 that will equal the contract lump sum price at project end.

(b) The Design-Builder shall develop and submit the PPS-C to the City within forty-five (45) Working Days of "applicable" 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 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 (20%) inclusive of any administrative costs, overhead / profit, bond fee, and applicable taxes.

Chapter 6, Sections 6.8, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

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 SP-5, herein. 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. Additionally, 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; and

(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.

Chapter 6, Section 6.9, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

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 (also see SP-6.1(b)).

Chapter 6, Sections 6.12, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

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 ten (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 SP-6.5).

(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 adding a new section SP-6.15 to include the following:

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 SP-5.

Chapter 6 of the GCDB is amended by adding a new section SP-6.16 to include the following:

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 (7) 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 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, including but not limited to, of the following types in electronic format on CD-ROM or DVD and one reproducible hard copy set:

(1) Civil, Site and Grading;

(2) Landscaping;

(3) Architectural;

(4) Structural;

(5) Mechanical, Electrical, Plumbing;

(6) Equipment / Utilities; and

(7) Fixture, Furnishings & Equipment.

(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.

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

SP-6.17 SCHEDULE OF MILESTONES TABLE, SAMPLE

(Next Page)

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

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

Notes on SM Pay Items:

(A) Items can be further broken down as long as they represent a verifiable portion of completed work

(B) Materials delivered to site may be listed as SM Pay Items

(C) Items listed as SM Pay Items must be included in Design-Builder's Baseline Schedule

(D) The SM Pay Items and Baseline Schedule shall utilize the Project WBS (provided by City at NTP)

Notes on Restrictions:

(1) Total Mobilization NTE 6% of Construction Value

(2) Total Payment NTE 10% of Construction Value

(3) Total Payment NTE 5.0% of Construction Value

(4) Total Payment NTE 2.5% of Construction Value

(5) Total Payment NTE 1.0% of Construction Value

(6) Total Payment NTE 2.5% of Construction Value

SPECIAL PROVISIONs

CHAPTER SP-7 – DISPUTES AND REMEDIES

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

SP-7.2 TERMINATION FOR DEFAULT FOR NONPERFORMANCE OR DELAY; DAMAGES FOR DELAY

(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. 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 or 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 a acceptance by the City of the Surety's determination of the total amount due and payable by the in Surety; or (2) Deny liability in whole or in part and notify the City citing reasons therefore.

(1) 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.

(2) If the Surety does not assume the Contract and commence performance of the Work within a reasonable time not to exceed fifteen (15) days after receiving the City's notice and demand, or fails to 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 to 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 of the Work and an itemized demand for payment from the City, all costs and damages incurred by the City in excess of the amount unpaid under 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 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 subcontractors made in connection with the Work. All subcontracts and supplier contracts of any tier shall contain language permitting the City to assume such contracts 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 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.

Chapter 7, Section 7.4, of the GCDB is amended by deleting the section in its entirety and substituting in lieu thereof the following:

SP-7.4 AUTHORITY TO RESOLVE CONTRACT AND BREACH OF CONTRACT CONTROVERSIES

(a) Decision by the Officer–in-Charge. Any question or dispute concerning any provision of the Contract that 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.

(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 ($50,000); ninety (90) calendar days after receipt of the claim.

(2) For claims exceeding fifty thousand dollars ($50,000): Ninety (90) calendar days after receipt of the claim; provided that if a decision is not issued within ninety (90) calendar days, the Contracting Officer shall notify 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 ($50,000) is not made within ninety (90) calendar days after receipt, or if a decision is not made within the time promised for a claim in excess of fifty thousand dollars ($50,000), 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 form 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 that 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 (6) 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 a new section SP-7.5 to include the following:

SP-7.5 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. 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 "applicable" 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; and

(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.

CITY AND COUNTY OF HONOLULU

HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT

NO. RFP-DTS-213102

MAINTENANCE AND STORAGE FACILITY DESIGN-BUILD CONTRACT

REQUEST FOR PROPOSALS (PART 2)

SPECIAL PROVISIONS (8-20)

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SPECIAL PROVISION

CHAPTER SP-8 PUBLIC AWARENESS AND COMMUNITY RELATIONS

SP-8.1 GENERAL

Communications, community involvement, and minimizing impacts to businesses, residents and traffic are critical components to the successful development of the HHCTCP. The City has developed a system-wide set of goals and objectives pertaining 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 provide technical support to the City's Public Awareness / Community Relations (PA/CR) Program. Should an event or activity occur whereby the surrounding businesses are affected, the Design-Builder will coordinate with the City to mitigate the impact. The Design-Builder will advise the City of construction activities that could impact the surrounding community.

Developing and implementing an effective PA/CR Program will require a team effort involving the HHCTCP team comprised of the City, stakeholder' representatives from 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 the 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.

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 a designated member of the Design-Builder's PA/CR staff. Notification shall also include a written notice to the affected parties.

Table 8.1 – Table of Notifications

Notice	Requirement
Critical Utility Shut-off/Diversion	Written notice of at least 72-hours in advance of, but not more than 96 hours before, shut-off and/or diversions.
72-hour Business/Commercial Utility Shutdown	Written notification of utility shutdown for business and commercial property.
48-hour Residential Utility Shutdown	Written notification of utility shutdown for residential property.
Weekly Heavy Construction Updates	A construction update will be provided to each business or resident fronting a Heavy Construction Zone. The update shall be a personal visit from the Public Involvement Team.
Emergency Unforeseen Utility Disruptions, Hazardous Conditions, Traffic Signal Emergencies, Security and Loss of Access	See GCDB 4.11 for more detail.
Road and Driveway Closures	Written notice and personal contact at least 72 hours in advance of, but not more than seven (7) days prior to closure.
Construction Schedule	One (1) month prior to start of construction.

SP-8.2 COMMUNITY UPDATES/NEIGHBORHOOD BOARDS

The Design-Builder will be required to meet with the Waipahu and Pearl City neighborhood boards to discuss issues affecting these neighborhoods. Community updates must be hosted once every six (6) months starting one (1) 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 scheduling staging, maintenance of traffic and access, and any other project information. The stakeholders will be provided the opportunity to participate in all community updates, which are to be advertised no less than ten (10) Working Days before the event.

The Design-Builder shall accompany City representatives to all Neighborhood Board meetings to serve as a resource when City representatives present project updates.

SP-8.3 PROJECT IDENTIFICATION BOARDS

The Design-Builder will install signs to be placed in prominent auto traffic zones where construction is occurring and at the Design-Builder's main office and at all field offices. The signs will identify the rail transit project and will comply with 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 appropriately for the speed limit in the area using MUTCD size guidelines and be consistent with applicable City sign ordinance(s).

SP-8.4 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-8.5 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.

Neither the Design-Builder nor any Subcontractor nor their employees shall conduct or participate in media interviews and events, or 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-8.6 PUBLIC NOTICES

The Design-Builder shall prepare public notices for radio, broadcast and cable television and for the Honolulutransit.org web site to notify the public of inconveniences caused by the Project works, including, but not limited to, traffic and utility disruptions. Public notices for scheduled disruptions shall be submitted to the City fifteen (15) 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.

SPECIAL PROVISION

CHAPTER SP-9 DESIGN AND ACCESS

SP-9.1 MSF SITE ACCESS

The limits of the Design-Builder's Work are shown on the RFP drawings. The WOFH DB Contractor is doing initial grading work on the MSF site to the Phase 1 limit line and shall maintain access to both the west and east ends of the MSF yard to this limit line for the Design-Builder and other HHCTCP contractors working at the proposed MSF yard site. The WOFH DB Contractor shall complete this grading by the "Running Rail Delivery" Milestone date listed in Section SP-4.1.

The WOFH DB Contractor will be providing an area to the Core Systems Contractor for vehicle servicing by the "Turnover to MSF Phase 2 in Storage Yard from WOFH Guideway" Milestone date listed in section SP-4.1. The Design-Builder will need to continue providing access to this area for the Core Systems Contractor's use once the "Phase 2 area" is relinquished to the Design-Builder by the WOFH DB Contractor. In addition, the Design-Builder will need to establish a new eastern access point to the MSF site for its own use and for use by other HHCTCP contractors working at the site as track work is completed by the WOFH DB Contractor and access via the old Ala Ike St. is lost. The Design-Builder and the WOFH DB Contractor will need to coordinate the actual date required for the change over in access location but it should be anticipated to occur near the "Running Rail Delivery" Milestone date. Coordination will need to continue for the western access point until the completion of the WOFH DB Contract, at which time the Design-Builder shall assume control of the western access point.

As the WOFH DB Contractor is grading the Phase I and II limit areas of the MSF site, it will be generating a surplus of soil material that will be stockpiled in the area shown on the RFP drawings as "Stockpile Area". This stockpiled material will become the responsibility of the Design-Builder to incorporate into the grading of the remainder of the MSF site.

The Design-Builder shall provide space to accommodate four double-wide office trailers and parking for twenty vehicles for use by the Core System Contractor by the "Turnover to MSF Phase 1 in Storage Yard from WOFH Guideway" Milestone date listed in Section SP-4.1.

SP-9.2 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 the initial Geotechnical Data Report (GDR).

(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 Project's 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 Project Design Criteria, the Design-Builder will also submit a geotechnical report which documents geotechnical interpretations, analyses, and recommendations.

SP-9.3 PEARL HARBOR BIKE PATH

To meet the City's requirement for temporary impacts during construction to a 4(f) resource (public recreation area), the Design-Builder will need to mitigate construction impacts to the Pearl Harbor Historic Trail (designated bike trail). This resource will be impacted during construction of the outfall pipe from the MSF near LCC to Middle Loch Pearl Harbor. The Design-Builder will keep this bike path open during

construction. Closure of the bike path is limited to when the pipe is installed into the trench; however, a temporary bike path must be provided to maintain connectivity of the bike path. Upon completion of construction, the Design-Builder will pave over the bike path to restore it to its original state (asphalt).

SP-9.4 LCC OBSERVATORY

The Design-Builder shall coordinate with LCC for lighting, noise and vibration requirements so as not to impact the LCC Observatory. For one of the mandatory LEED credits, light pollution, the Design-Builder shall be sensitive to the two observatories located in the adjacent property. The Design-Builder may need to coordinate directly with LCC on final positioning of light fixtures.

SP-9.5 PHOTOVOLTAIC POWER SERVICES

The Design-Builder shall provide, if authorized by the City, a complete grid-tie, non-storage, solar-photovoltaic (PV) power-generation system with the following requirements:

(a) Design the PV system to deliver two and a half percent (2.5%) of the facility's total building system energy consumption under actual conditions at the site, including the month-to-month average daily sun-hours as reported in the Weather Bureau Army/Navy (WBAN) identifier 22521 for Honolulu, Hawaii (available from National Renewable Energy Laboratory; www.nrel.gov);

(b) Comply with requirements from energy and atmosphere credit #2 of version 2.2 of the LEED rating system to obtain one LEED point;

(c) Solar photovoltaic collectors shall be permitted only on the roof, except the area of green roof and the single-ply roof, which is specifically excluded; use of all other roof areas, including the sheet metal area above the single-ply roof area, shall be permitted for solar collectors;

(d) Ensure that the installed PV system does not void or alter the roof warranty;

(e) Ensure that roof and other building structure design is modified to accommodate the additional dead load and wind load of roof mounted PV components;

(f) Integrate the PV system with the facility electrical three-phase distribution and comply with the National Electrical Code, local codes and requirements and recommendations of the local Utility for a grid-tie, non-storage PV system;

(g) Provide kW-Hr metering to monitor energy delivered by the PV system and electrical energy consumed by the facility. Also provide metering interface to the Building Management System to monitor energy delivered by the PV system; and

(h) Obtain and pay for all permits.

SPECIAL PROVISION

CHAPTER SP-10 INTERFACE MANAGEMENT AND COORDINATION

SP-10.1 GENERAL

The Design-Builder shall be responsible for all Work required to design, manufacture, install and construct the Maintenance and Storage Facility (MSF). This Section addresses the interface management and coordination processes between the MSF elements provided by the Design-Builder, the Core Systems Contractor, the West O'ahu/Farrington Highway (WOFH) DB Contractor and any infrastructure, facilities, services, data or other work provided by others. These processes apply at the onset of final design and continue throughout the life of the Contract. The Design-Builder shall identify and produce a comprehensive interface plan and procedures document as it pertains to the MSF Work and share this information with the City. The Design-Builder shall also review documentation and drawings provided by the City, and coordinate with the City to identify and successfully comply with all interface requirements in order to perform all Work required to complete the MSF that fulfills the provisions of the Contract.

SP-10.2 INTERFACE MANAGEMENT COMMITTEE

The City will assemble and facilitate an Interface Management Committee (IMC). The IMC shall consist of representatives from the following design and construction contracts:

(a) Maintenance and Storage Facility Design-Build;

(b) West O'ahu/Farrington Highway Guideway Design-Build;

(c) Core Systems DBOM;

(d) West Oahu Stations; and

(e) Farrington Highway Stations.

Initially, the IMC will consist of the Interface Managers and select staff from each of these contracts and will be facilitated by the City. The Core Systems Contractor shall have a lead role on the Committee given the system-wide interface management responsibilities assigned. The Design-Builder shall serve an active role on the IMC as well as coordinate all MSF related design, construction and testing activities with the Core Systems Contractor, given the integrated nature of the Work. Additional members will be added to the committee as the HHCTCP project progresses. Any issues that impact the system-wide interfaces between contracts shall be raised at the periodic and ad hoc meetings. Action plans shall be prepared that define interface management responsibilities between the members of the IMC.

SP-10.3 SYSTEMWIDE INTERFACES

System-wide interfaces that may affect the MSF Work shall be addressed by the IMC and include, but are not limited to:

(a) Configuration Control issues based on City-provided plans and contract requirements, designs that progress through definitive to final design, and construction planning means and methods. Changes and/or impacts to the HHCTCP configuration shall be discussed in the IMC, and if determined to be significant, brought to the appropriate person(s) for resolution following the City's configuration control process.

(b) Design issues affecting the contract interfaces from City-performed Design Reviews, shall be brought to the IMC for discussion and possible resolution. For example, design treatment of common areas, signage, graphics and landscaping should be discussed at the IMC. Should these issues become so significant that they impact Design-Builder's Contract performance, they are to brought to the appropriate Person(s)

following the change process defined in section SP-5, with corrective actions to minimize impacts to all parties;

(c) Procurement of materials and equipment that affect the Design-Builder's Work. Items that require input from other contractors or designers should be identified and be part of the IMC discussions and actions;

(d) Construction planning, staging and sequencing that may require coordination and work by others should be part of the IMC discussions and actions;

(e) Testing and turnover of systems and facilities that require other contractor participation and/or input should be part of the IMC discussions and actions; and

(f) Routinely scheduled meetings shall be established by the City and attendance of the IMC members is mandatory. Ad hoc meetings to resolve interface conflicts or actions of the affected parties, if necessary and appropriate, shall be attended by the Design-Builder.

SP-10.4 INTERFACES SPECIFIC TO THE MAINTENANCE AND STORAGE FACILITY CONTRACT

(a) The interfaces and integration of work between the Design-Builder, the Core Systems Contractor, and WOFH DB Contractor shall require a detailed Interface Control Manual that includes all interfaces as they pertain to design, procurement of equipment and materials, construction, and testing / turnover. The Interface Control Manual is a work product of the Core Systems Contractor and will require the Design-Builder to provide input and coordination with MSF-specific design and construction. The Design-Builder shall prepare an interface plan and procedures document that reflects all Work associated with completing the MSF and supporting the transit operations that follow. This interface document shall include work and input from other designers and contractors that impact the MSF Work.

(b) Enclosed with the Reference Documents is a system-wide Draft Interface Control Manual that is provided to serve as guidance to the Design-Builder and to illustrate the extent of detail that the Design-Builder shall include in its interface plan and procedures document. The Design-Builder may design its interface document according to the organization of the Work, technologies, design, and business practices, provided that the interface document includes the same or greater levels of detail and breakdowns indicated in the City-provided document. It is neither intended nor implied that the items indicated in the City-provided document are complete or that it contains every item that may be included in the Design-Builder's interface plan and procedures document.

(c) The Design-Builder shall coordinate and obtain written confirmation from the Core Systems Contractor prior to procurement, that the equipment listed below is suitable for the on-going maintenance of the Core Systems:

(1) Wheel truing machine;

(2) Passenger vehicle washer;

(3) In-floor and free standing passenger vehicle lifts (jacks);

(4) Overhead cranes;

(5) In-floor turn tables; and

(6) All other equipment required to be procured by the Design-Builder for installation in the Maintenance and Storage Facility.

The Design-Builder shall provide the Core Systems Contractor a minimum of fourteen (14) Calendar Days to review the procurement documents. The Design-Builder shall provide initial provisioning (providing spare

parts) for equipment supplied under this Contract.

(d) The Interface Control Manual and contract-specific interface plan and procedure documents are meant to be "living documents" that are to be updated periodically by the responsible fixed facility or Core Systems contractor, as the designs of the Design-Builder and Core System Contractor progress. Copies of the updated the information are to be distributed to the appropriate entities to insure that the latest information is being used to assure the facilities and systems interfaced elements are compatible, coordinated, and consistent with the intended use and function.

(e) This process is intended to be a "pro-active" effort by the Design-Builder, the Core Systems Contractor, and the City such that all design efforts can be progressed as efficiently as possible.

SP-10.5 MATERIAL STORAGE AND TRANSFER OF MATERIALS

(a) The Design-Builder is responsible for the procurement, receipt of materials, acceptance, inspection, material handling, storage, security and inventory control of all trackwork, special trackwork w/switch machines, contact rail, and associated fasteners and insulators for the System.

(b) The Design-Builder shall maintain accurate and detailed inventory for all materials. The Design-Builder may store these materials at alternative site(s), but at final transfer, the materials shall be located at the MSF site.

(c) The Design-Builder shall coordinate the transfer of materials to the WOFH DB Contractor, recording the transfer and obtaining written acceptance of the materials transferred.

(d) The Design-Builder shall be responsible for any loss or damage to the material in inventory due to the actions of the Design-Builder or any third party.

(e) Rail and contact rail scrap generated by normal fabrication and installation practices shall be collected and inventoried by the Design-Builder. The City will have ownership of all rail and contact rail scrap generated by the Project. The City may dispose of the scrap materials during the life of the Contract.

(f) At the end of the Contract, the Design-Builder shall hire an independent firm to inventory the materials for transfer to the City. The Design-Builder will provide to the City a complete accounting of the materials procured for the System, including materials transferred to the WOFH DB Contractor, breakage, and waste. The Design-Builder shall be responsible for any loss between the initial procurement and the final end of Contract audit.

SP-10.6 BUILDING SYSTEMS INTERFACE

The MSF consists of building systems that service the yard and structures within the MSF and Core Systems that service the transit operations. The building systems are the responsibility of the Design-Builder with the following exceptions:

(a) **Fire Detection and Alarm.** The system includes detection devices, fire alarm control panels, mimic annunciation display panels and interface devices. The Core Systems Contractor is responsible for the overall design, supply and installation of the system. The Design-Builder is responsible for providing conduits, pull boxes and space for panels and devices as shown in the RFP Documents.

(b) **Administrative, Passenger and Train Emergency Phone/LAN Network**. This system includes plugs, cabling, termination boards and interface devices. The Core Systems Contractor is responsible for the overall design, supply and installation of the system. The Design-Builder is responsible for providing conduits, boxes and space for panels and devices as shown on the RFP Documents. The Design-Builder will provide the building interconnection conduit and the connection between any terminal boards and the main hub.

(c) **Access Control and Intrusion Detection**. This system includes alarm devices, access readers, termination boards and interface devices. The Core Systems Contractor is responsible for the overall design, supply and installation of the system. The Design-Builder is responsible for providing conduits, pull boxes and space for panels and devices.

(d) **Closed Circuit Television.** This system includes cameras. The Core Systems Contractor is responsible for the overall design, supply and installation of the system. The Design-Builder is responsible for providing conduits, pull boxes and space for panels and devices as shown on the RFP Documents.

(e) **Public Address and Variable Message Signs.** This system includes control centers, display signs, amplifiers and speakers. The Core Systems Contractor is responsible for the overall design, supply and installation of the system including speaker locations. Multiple use operation is to be coordinated by the Core Systems Contractor. The Design-Builder is responsible for providing conduits, pull boxes and space for panels and devices for speakers in each building as well as the yard.

(f) **Environmental (Seismic and Wind Monitoring).** The system includes seismic detection devices, anemometers and processing terminals. The Core Systems Contractor is responsible for the overall design and procurement of the system. The Design-Builder is responsible for installing the seismic detector and anemometer, and providing any supporting elements, conduits, and pull boxes.

SP-10.7 CORE SYSTEMS INTERFACE

The Design-Builder is responsible for designing, procuring, installing and constructing duct banks, embedded conduits and raceways that house the Core Systems cables. The Design-Builder is also responsible for designing, procuring, installing and constructing foundations, ground grids and other infrastructure required to support Core Systems installations. This requires design input from the Core Systems Contractor. As part of the Interface Management process, the Design-Builder is required to meet with the Core Systems Contractor and coordinate the design development such that all systems (building and core) are integrated with appropriate work responsibilities. Refer to the RFP Documents provided by the City for the basis of the Contract.

The Core Systems Contractor defines the requirements for the particular system and designs, furnishes and installs each system in the facility. The Design-Builder will incorporate the requirements for each system element in the facility design, including conduits, pull boxes and support devices in accordance with the Draft Interface Control Document for the Project.

TABLE SP-10-1: DIVISION OF RESPONSIBILITY

Codes:
D= Design; F= Furnish; I= Integration / Coordination
A= Rough-in; B= Finish; C= Test;

Item	Description	MSF Responsibility	City (or Others) Responsibility
A 1 2	**Trackwork** Track & 3rd Rail Supply Switch Machines	a) Supply for HHCTCP b) Store and Handle (Furnish) to Guideway Contractors c) Maintain Inventory Control d) Yard Track Installation & Tests	a) Guideway Design Coordination b) Guideway Installation & Test
B 3 4 5 6 7 8 9	**Core Systems** - Communications - Train Control - Traction Electrification - Fare Vending - Security System - Access Control - Fire Detection	a) Coordinate Design with City/CSC b) Furnish & Install Ductbanks and Conduit System (within MSF Yard) c) Furnish & Install cable trays & conduit within MSF Buildings d) Witness Core Systems Tests	a) CSC provides Systems design to City b) Core Systems Design Integration c) Furnish & Install Cable d) System Connections and Tests e) PreOps Tests & Acceptance
C 10 11 12 13 14 15 16	**Building Systems** - Fire Supression - Potable Water Supply / Gas Service - Sanitary Sewer System - Building Automation System - Electrical Power Service - Lighting - Communications (non-CS)	D,F,A,B,C and I	a) Coordinate / Integrate with MSF Designers b) Witness Tests & Acceptance
D 17 18	**Landscaping** - Irrigation System - Landscaping	D,F,A,B,C and I	
E 19 20 21 22	**Operations & Service Building (OSB)** - Foundation & Exterior - Interior - Equipment (Supply) - Equipment (Install and Test)	D,F,A,B,C and I	a) Coordinate / Integrate with MSF Designers b) Witness Tests & Acceptance
F 23 24 25 26	**Maintenance of Way (MOW)** - Foundation & Exterior - Interior - Equipment (Supply) - Equipment (Install and Test)	D,F,A,B,C and I	a) Coordinate / Integrate with MSF Designers b) Witness Tests & Acceptance
G 27 28 29 30	**Train Wash Facility (TWF)** - Foundation & Exterior - Interior - Equipment (Supply) - Equipment (Install and Test)	D,F,A,B,C and I	a) Coordinate / Integrate with MSF Designers b) Witness Tests & Acceptance
H 31 32 33 34	**Wheel Truing Facility (WTF)** - Foundation & Exterior - Interior - Equipment (Supply) - Equipment (Install and Test)	D,F,A,B,C and I	a) Coordinate / Integrate with MSF Designers b) Witness Tests & Acceptance
J 35 36	**Other** - New City Road - Photovoltaic System (Option)	D,F,A,B,C and I	a) Witness Tests & Acceptance

SPECIAL PROVISION

CHAPTER SP-11 UTILITIES COORDINATION

SP-11.1 COORDINATION

(a) 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.

(b) To ease or streamline the Work, the Design-Builder may ask the 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.

(c) The utility notes on the RFP Drawings represent general requirements provided by the utility owners that relate 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.

(d) All Work shall be performed and completed in accordance with the Utility Standards of the jurisdiction in which the utilities are being constructed. The Design-Builder shall be responsible for obtaining all such standards and for compliance with such standards as applicable.

(e) Electrical and communications service connections to transit facilities have been preliminarily coordinated with the utility owners and shown on the site utilities RFP Drawings. The Design-Builder shall further coordinate with the Systems designer and also the utility owners for final design.

SP-11.2 RESPONSIBILITIES / AGREEMENTS

(a) The City 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 in Addenda 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 the Table 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 owner.

SP-11.3 UTILITY SERVICES REQUIRED FOR CONSTRUCTION

The Design-Builder shall make arrangements for utilities such as electricity, water, sewer, etc., required for their operations. All costs for these utilities shall be borne by the Design-Builder.

SP-11.4 VERIFICATION OF UTILITY LOCATIONS

Utilities indicated on the RFP Drawings have been identified based on available records. Existing utilities known to be abandoned may not have been indicated. The RFP Drawings may not show all underground utilities and the 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. The 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.

Table 11.1 Honolulu High-Capacity Transit Corridor 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 167, WAAF, Schofield Barracks, HI 96857	Communication	Army Telephone	B / B	Walter Selders	(808) 656-0066	(808) 656-0069	walter selders@us army mil
Navy	400 Marshall Road Pearl Harbor, HI 96860-3139	Petroleum / Water	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 96853-5293	Petroleum	Fuel	B / B	John A Camara (Civ USAF PACAF 15 CES/CEP)	(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) 831-6888		
C & C Department of Design and Construction	650 South King St, 9th Floor, Honolulu, HI 96813	Street Lighting	C & C Street Lights	B / B	Mechanical/Electrical Division	808-768-8431		
C & C Board of Water Supply	630 south Beretania Street, Honolulu, HI 96843	Water	C & C Water	B / B	Engineering Construction	(808) 748-5730		
C & C Department of Design and Construction	650 South King 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 698, Kapolei, HI 96707	Drainage	State Storm Drain	B / B	Robert Shin	(808) 489-0639 cell	(808) 483-7298	mbilit 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) 768-8936		
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@hecc com
Hawaiian Electric Company, Inc	P O Box 2750, Honolulu, HI 96841	Petroleum	Fuel	B / A+B	Cyril Ohtai	(808) 543-4396 (808) 690-0969 cel		cyril ohtai@hecc com
Hawaiian Telcom, Inc.	P O Box 2200MC A-4 Honolulu, HI 96841	Communication	Telephone (voice and data)	B / A+B	Inspection	(808) 840-5923		
Oceanic Time Warner Cable	200 Akainanui Street, Mililani, HI 96789	Communication	Cable (voice, data, and video)	B / A+B	Moki Place (Inspector)	(808) 217-0344 (c)		
TW Telecom, Inc.	2069 Kilihau Street, Honolulu, HI 96819	Communication	Telephone (voice and data)	B / A+B	Mitchell Miyoshi	(808) 441-3520		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		rkaneyk@sandwichisles com
AT&T Corporation	P O Box 995, Waianae, HI 96792	Communication	Telephone (voice and data)	B / A+B	Alex Vitay & Rosemary Hamill	(808) 455-1010 (925) 977-2413	(808) 455-7028 (267) 564-5585	avitay@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	Walter K Nakashima	(808) 547-3830	(808) 873-3451	wnakashima@tsocorp com
The Gas Company	P O Box 3000, Honolulu, HI 96802	Gas	Gas	B / A+B	Kevin Yamamoto	(808) 594-5574		kyyamamoto@hawaiigas com

* 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 additional rights-of-way needs, easement and premises.

SP-12.2 CONSTRUCTION ACTIVITIES

The Design-Builder shall confine construction activities to areas within property lines, rights-of-way, limits of easement and limits of Construction Permits as shown or specified in the Construction Permits 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, the Design-Builder shall file with the City, written permission from the property owner(s).

Properties will be in "as is" condition. Any demolition, site work, remediation and/or 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 rights-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.

Schedule of ROW Availability for the MSF

Type of Facility	Tax Map Key Number	Take	Date Available
MSF	1-9-4-008-025	partial	03/05/10
MSF	1-9-4-008-010	partial	03/05/10
MSF	1-9-6-003-044	partial	03/05/10
Utility Easement	1-9-4-008-030	partial	03/05/10
Utility Easement	1-9-6-001-001	partial	03/05/10
Utility Easement	1-9-6-003-001	partial	03/05/10

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 Leeward Community College events, Waipahu High School events, cultural festivals, fairs, concerts, athletic events, parades, etc., which will increase traffic volumes on the roadways in the vicinity of the MSF yard.

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 may impact deliveries and hauling. 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 traffic on these events.

SP-13.4 SCHEDULE

For the purposes of the Baseline Schedule, the Design-Builder shall take into consideration the events indicated in section SP-13.5 that may impact or prohibit Work at the site or in the rights-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-Builders 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 requirements of the Contract Documents and any permit requirements, the more stringent requirements 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 entitled City Provided Permits in section SP-14.3 within the time frame noted. 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 be responsible for submitting applications for obtaining permits required to facilitate the MSF construction. This is inclusive of any variances or waivers, after review by the City, or for any other permits required.

City Provided Permits

Permit Or Agency Submittal	Agency	Date Expected	Comments
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)	Available at NTP	Design-Builder will develop a site-specific BMP plan, based on general BMPs in the City provided DA permit and submit the site-specific BMPs and other contractor information to the Department of the Army as required.
Section 401 Water Quality Certification (WQC)	State of Hawaii Dept of Health (DOH), Clean Water Branch (CWB)	Available at NTP	Design-Builder will develop a site-specific BMP plan, based on general BMPs in the City provided WQC permit and submit the site-specific BMPs and other contractor information for DOH approval
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)	Available at NTP	Design-Builder will develop a site-specific BMP plan, based on general BMPs in the City provided NGPC and submit the site-specific BMPs and other contractor information for DOH approval
Community Noise Permit	State of Hawaii Dept of Health (DOH), Environmental Health Service Division; Noise, Radiation, & Indoor Air Quality Branch	Available at NTP	Design-Builder will obtain equipment-specific permits to use equipment that exceeds any of the decibel restrictions in the general noise permits provided by the City
Community Noise Variance	State of Hawaii Dept of Health (DOH), Environmental Health Service Division; Noise, Radiation, & Indoor Air Quality Branch	Available at NTP	Design-Builder will obtain equipment-specific permits to use equipment that exceeds any of the decibel restrictions in the general noise permits provided by the City
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)	Available at 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	
Occupancy & Use of State Highway Right-of-Way/Conditional Use Permit	Hawaii Department of Transportation (HDOT), Highways Division	Available at NTP	
Subdivision/Easement	City and County of Honolulu, DPP-SDD/Subdivisions	Available at 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)	Available at NTP	

SPECIAL PROVISION

CHAPTER SP-15 OUTSIDE AGENCY THIRD PARTY AGREEMENTS

The City is in the process of negotiating and obtaining agreements with Federal, State, and City agencies. Anticipated agreements with Utility Agencies are described in SP-11.2. No other third party agreements are anticipated to be required. Copies of any draft agreements will be provided in the Reference Documents when available.

SPECIAL PROVISION

CHAPTER SP-16 SAFETY AND SECURITY

SP-16.1 GENERAL

The purpose of the Project Safety and Security Certification (SCC) 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 SCC Program throughout the duration of the Contract. At a minimum, the Design-Builder shall:

(a) Comply with the Project Safety and Security Certification Plan (SSCP) for the final design, construction, and testing phases of the Project, attached to and made part of these Special Provisions, in conformance with the City's Project Safety and Security Program Management Plan and the FTA document, Handbook for Transit Safety and Security Certification. The SSCP describes the:

(1) Organizational structure for administration and execution of the SSCP;

(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) Participate 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;

(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; and

(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. The 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. The 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 results 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 section SP-14 for permits requirements. It is the responsibility of the Design-Builder to obtain permits in a timely manner such that obtaining these permits is not a cause for claim for delay due to impacts to Baseline Schedule. 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 HHCTCP 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 the following:

(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; and

(f) Identification of all required environmental permits and approvals, including:

(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, including:

(1) Implementation schedule, including key construction dates;

(2) Estimated dates and length of construction activities in or near environmentally sensitive areas; 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, including:

(1) Description of required regulatory authority involvement, if any, including attendance at project meetings;

(2) List of regulatory authorities to receive monitoring reports, newsletters, or project updates; and

(3) Identification of technical lead responsible for substantive contacts with regulatory/resource agencies.

(i) Design-Builder's Organization - Levels of responsibility and authority of:

(1) On-site staff (e.g., Project Manager, Project Quality Manager, Construction Manager, Environmental Compliance Monitors);

(2) Other local office staff;

(3) Environmental Manager; and

(4) Environmental Team (reports to the Design-Builder's Environmental Manager).

(j) 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.

(2) Prevention of Invasive Species;

(3) Procedures for inspection, monitoring, corrective, and preventative actions including:

(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.

(4) Procedures for environmental emergency response, including:

(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.

(5) 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. 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.

(2) Design Review Meetings. The Design-Builder shall meet with the City at both Definitive Design Review and Final Design Review to review the design submittals. The Design-Builder will present the design that either incorporates the environmental compliance requirements and permit conditions or will present a design deviation request for environmental compliance requirements and permit conditions. During the design review meetings, the City will review the design to determine if environmental compliance requirements, permit conditions and approvals, and environmental controls and mitigation methods have been incorporated into the design.

(3) Compliance Coordination Meetings. Compliance coordination meetings are to be performed after submittal of the draft ECP and after any modifications to the ECP after acceptance by the City. 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 the City's acceptance. The meeting shall be held within ten (10) Working Days of

draft ECP (or ECP revision) submittal. The Design-Builder shall ensure that the following Design-Builder team members participate in the meeting:

(A) Project Manager;

(B) Design Manager;

(C) Construction Manager;

(D) Environmental Manager; and

(E) Quality Manager.

(4) Pre-Construction Assessment. 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.

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 a 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 for Review and Comment.

(5) 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 monitoring reports, photographs, and all applicable environmental permits, programmatic agreements, orders, opinions, clearances, and authorizations. All digital 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) General comments;

(M) Description of 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) Established photo points as appropriate;

(Q) General project area views (e.g., staging areas, geographic constraints);

(R) Detail views (e.g., vegetation feature); and

(S) Label on each photo with date, time, project name, photographer's name, and subject comment.

In the event an incident of noncompliance is noted, the Environmental Manager shall immediately bring the deficiency to the attention of the Design-Builder's Project Manager, Construction Manager, Design-Builder's senior management, and the City. The Environmental Manager shall work with the Design-Builder's Project Manager and Construction Manager to determine corrective measures and to establish the earliest feasible time frame for implementation of the corrective measures. Implementation of the corrective measures is to be documented during subsequent inspections. Monitoring reports are to be completed within fourteen (14) Calendar Days of each monitoring inspection.

(6) Environmental Post-Construction Monitoring and Reporting. Post Construction, the Design-Builder shall ensure that disturbed areas are restored to their preconstruction contours and re-vegetated 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 thirty (30) Calendar Days after the final inspection and submitted to the City.

(l) 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 forty-five (45) Calendar Days prior to start of construction;

(2) Environmental Compliance Plan (final) – finalized and accepted by the City prior to start of construction;

(3) Permit applications – ten (10) Calendar Days prior to submittal to permitting agency;

(4) Environmental permits and authorizations – upon receipt;

(5) Draft Pre-Construction Assessment (PCA) – at least thirty (30) Calendar 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 – thirty (30) Calendar 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, who may be assigned other duties, must be a LEED Accredited Professional or possess equivalent experience and training and have a full understanding of sustainability construction processes and programs.

The Design-Builder shall develop a Sustainability Action Plan for City Review and Comment prior to submittal of Final Design.

The Sustainability Action Plan will include coordination with the activities and recommendations of the project Commissioning Agent.

SP-18.2 SUSTAINABILITY GOALS AND OBJECTIVES

The following general sustainability goals and objectives have been established for the Project, based on the U.S. Green Building Council's (USGBC) LEED Green Building Rating System and the HHCTCP Systemwide Sustainability Report. The Design-Builder is to notify the City if conflicts arise between performance of the work and these sustainability goals and objectives. These provisions are not intended to limit alternative means of achieving these goals; suggestions and input from the Design-Builder for implementing these goals are encouraged.

(a) Use resources efficiently in construction, operation, and ultimately, reuse or removal. The Maintenance and Storage Facility should be optimized to eliminate unnecessary use of energy, water, and raw materials. The buildings that comprise the facility shall be designed to:

(1) Maximize energy efficiency;

(2) Conserve water resources and reduce water usage;

(3) Increase the use of recycled and reused materials;

(4) Be durable and consistent with expected current and future uses; and

(5) Utilize materials and construction methods that require a minimum of energy, water, and raw materials.

(b) Provide a healthy and productive indoor environment. To achieve this goal, the buildings that comprise the facility shall be designed to:

(1) Minimize the potential for water accumulation in conditions in which mold and mildew can flourish;

(2) Utilize daylight as a primary source of illumination, while minimizing glare and extreme contrast;

(3) Provide optimal amounts of clean, fresh air to occupied spaces;

(4) Release a minimum of unhealthy pollutants from building components, fixtures, and furnishings;

(5) Remove pollutants generated by occupant activities in the building; and

(6) Provide for controllability of lighting and thermal comfort systems.

(c) Enhance, restore, and protect the site. The placement and construction of the buildings should support the natural systems in and around the affected area. The building, infrastructure, and landscaping shall be designed to:

(1) Support and utilize natural water flow patterns and minimize the need for intrusive stormwater management systems;

(2) Support native plants and the habitat they create for beneficial insects, birds, and animals; and

(3) Minimize the release of harmful emissions into the soil, water, and air.

(d) Enhance, restore, and protect the environment: The Maintenance and Storage Facility shall be designed to minimize the use and release of pollutants. Objectives to achieve this goal include:

(1) Minimizing the release of carbon dioxide (CO_2) from fuels burned on site or fuels burned off site to supply electricity to the building;

(2) Avoiding the release of ozone-depleting compounds, such as HCFCs from refrigerants or foam insulation materials; and

(3) Selecting building materials that are the least damaging to the environment in their extraction, processing, use, and ultimate disposal, based on an overall life-cycle assessment.

In support of the overall goals listed above, specific material selection and construction process goals have been identified for the material selection and construction process. These goals should be considered as a guideline. In the event of a conflict, any specific requirements in technical specifications take precedence. Tradeoffs and compromise are inevitable in the pursuit of these goals, but the Design-Builder is expected to take all reasonable actions to further these goals. The Design-Builder shall notify the City of any performance requirements that conflict unnecessarily with these goals and objectives.

(e) Use resources efficiently:

(1) Select materials that use resources efficiently;

(2) Use construction practices that achieve the most efficient use of resources and materials;

(3) Recycle or reuse job-site waste;

(4) Select high recycled-content materials; and

(5) Select materials that can be recycled.

(f) Avoid using scarce, irreplaceable, or endangered resources:

(1) Select materials that are replaceable, renewable, or can be replenished; and

(2) Select materials that minimize damage to natural habitats.

(g) Use durable materials:

(1) Select materials with the longest usable life;

(2) Select materials that can be reused; and

(3) Select materials with low maintenance requirements.

(h) Create spaces that are healthy for their occupants:

(1) Select low-toxic products and materials;

(2) Select materials without toxic maintenance requirements; and

(3) Specify mechanical equipment that will provide fresh air and will not trap water or pollutants.

(i) Use energy efficiently:

(1) Select materials with low embodied energy;

(2) Select materials that save energy during building operations; and

(3) Select products and equipment that save energy during building operations.

(j) Use water efficiently:

(1) Use construction practices that achieve the most efficient use of water;

(2) Select water-conserving appliances and equipment;

(3) Landscape for water conservation; and

(4) Capture and utilize rainwater.

(k) Select materials that generate the least amount of pollution. Consider pollution and toxins generated during harvesting, mining, manufacturing, transport, installation, use, and disposal.

SP-18.3 SUSTAINABLE BUILDING REQUIREMENTS

(a) It is the City's intention for this Project to be designed and executed to comply with the sustainable building principles established by the USGBC and to achieve LEED™ Silver Certification. This project has been registered as a LEED v.2.2 project.

(b) Salvage, reuse and project waste management shall be incorporated into the work of this Project.

(c) Where choices exist, preference will be given to materials with recycled content, resource efficient characteristics and those produced from renewable resources.

(d) The specification general requirements shall include sustainable building environmental procedures including requirements for:

(1) Environmental Controls:

(A) Compliance with governing environmental regulations; and

(B) Protection of natural resources.

(2) Quality Assurance:

(A) Sustainable issues compliance and coordination; and

(B) Compliance with the Sustainability Criteria.

(3) Delivery Storage and Handling:

(A) Prevention of development of mold and mildew; and

(B) Recycling and reuse of packaging materials.

(4) Project Conditions:

(A) No smoking regulations;

(B) Construction ventilation to eliminate VOCs and dust infiltration. Preconditioning to eliminate odors from VOCs and off gassing; and

(C) Protection of products to prevent accumulation of moisture. Disposal of materials showing signs of mold, mildew, and moisture stains.

(5) Sequencing:

(A) To avoid materials absorbing odors and VOCs; and

(B) Flushing-out of building prior to Substantial Completion.

(6) LEED™ Administration Requirements:

(A) Application of LEED™ certification;

(B) LEED™ certification process;

(C) LEED™ measurement system; and

(D) City's Sustainable Goals and Objectives and participation required by Trade Contractor(s), suppliers, and manufacturers.

(7) Protection:

(A) Protection of interior materials to prevent water intrusion; and

(B) Protection of installed products to prevent growth of molds and mildew.

SP-18.4 OWNER'S GENERAL REQUIREMENTS

Incorporate in the City's Requirements for:

(a) As-Built Drawings and Guarantees / Warranties:

(1) Operating and Maintenance instructions and procedures; and

(2) As-Built Drawings, submittal, and certification procedures.

(b) Commissioning Agent.

SP-18.5 OWNER'S MANDATORY REQUIREMENTS

See the LEED for New Construction v2.2, Registered Project Checklist form, as follows, for eleven (11) mandatory points, indicated in the "Yes" column, that are required for this Project.

LEED for New Construction v 2.2
Registered Project Checklist

Project Name: Maintenance and Storage Facility Design Build Contract DB-200

Project Address: Between Waipahu High School and Leeward Community College (off Farrington Hw

Yes	?	No		
11			Project Totals (Pre-Certification Estimates)	69 Points
			Certified: 26-32 points **Silver**: 33-38 points **Gold**: 39-51 points **Platinum**: 52-69 points	

Yes	?	No			
1			Sustainable Sites		14 Points
Yes			Prereq 1	**Construction Activity Pollution Prevention**	Required
			Credit 1	**Site Selection**	1
			Credit 2	**Development Density & Community Connectivity**	1
			Credit 3	**Brownfield Redevelopment**	1
			Credit 4.1	**Alternative Transportation**, Public Transportation	1
			Credit 4.2	**Alternative Transportation**, Bicycle Storage & Changing Rooms	1
			Credit 4.3	**Alternative Transportation**, Low-Emitting & Fuel Efficient Vehicles	1
			Credit 4.4	**Alternative Transportation**, Parking Capacity	1
			Credit 5.1	**Site Development**, Protect or Restore Habitat	1
			Credit 5.2	**Site Development**, Maximize Open Space	1
			Credit 6.1	**Stormwater Design**, Quantity Control	1
			Credit 6.2	**Stormwater Design**, Quality Control	1
			Credit 7.1	**Heat Island Effect**, Non-Roof	1
			Credit 7.2	**Heat Island Effect**, Roof	1
1			Credit 8	**Light Pollution Reduction**	1

Yes	?	No			
2			Water Efficiency		5 Points
			Credit 1.1	**Water Efficient Landscaping**, Reduce by 50%	1
1			Credit 1.2	**Water Efficient Landscaping**, No Potable Use or No Irrigation	1
			Credit 2	**Innovative Wastewater Technologies**	1
1			Credit 3.1	**Water Use Reduction**, 20% Reduction	1
			Credit 3.2	**Water Use Reduction**, 30% Reduction	1

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LEED for New Construction v 2.2
Registered Project Checklist

Yes	?	No			
4			Energy & Atmosphere		17 Points
Yes			Prereq 1	**Fundamental Commissioning of the Building Energy Systems**	Required
Yes			Prereq 1	**Minimum Energy Performance**	Required
Yes			Prereq 1	**Fundamental Refrigerant Management**	Required

***Note for EAc1:** All LEED for New Construction projects registered after June 26, 2007 are required to achieve at least two (2) points.

2			Credit 1	**Optimize Energy Performance**	1 to 10
				Credit 1.1 10.5% New Buildings / 3.5% Existing Building Renovations	1
			-->	Credit 1.2 14% New Buildings / 7% Existing Building Renovations	2
				Credit 1.3 17.5% New Buildings / 10.5% Existing Building Renovations	3
				Credit 1.4 21% New Buildings / 14% Existing Building Renovations	4
				Credit 1.5 24.5% New Buildings / 17.5% Existing Building Renovations	5
				Credit 1.6 28% New Buildings / 21% Existing Building Renovations	6
				Credit 1.7 31.5% New Buildings / 24.5% Existing Building Renovations	7
				Credit 1.8 35% New Buildings / 28% Existing Building Renovations	8
				Credit 1.9 38.5% New Buildings / 31.5% Existing Building Renovations	9
				Credit 1.10 42% New Buildings / 35% Existing Building Renovations	10
			Credit 2	**On-Site Renewable Energy**	1 to 3
				Credit 2.1 2.5% Renewable Energy	1
				Credit 2.2 7.5% Renewable Energy	2
				Credit 2.3 12.5% Renewable Energy	3
1			Credit 3	**Enhanced Commissioning**	1
			Credit 4	**Enhanced Refrigerant Management**	1
1			Credit 5	**Measurement & Verification**	1
			Credit 6	**Green Power**	1

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LEED for New Construction v 2.2
Registered Project Checklist

Yes	?	No		Materials & Resources	13 Points
1					

Yes	?	No			
Yes			Prereq 1	**Storage & Collection of Recyclables**	Required
			Credit 1.1	**Building Reuse,** Maintain 75% of Existing Walls, Floors & Roof	1
			Credit 1.2	**Building Reuse,** Maintain 95% of Existing Walls, Floors & Roof	1
			Credit 1.3	**Building Reuse,** Maintain 50% of Interior Non-Structural Elements	1
1			Credit 2.1	**Construction Waste Management**, Divert 50% from Disposal	1
			Credit 2.2	**Construction Waste Management**, Divert 75% from Disposal	1
			Credit 3.1	**Materials Reuse**, 5%	1
			Credit 3.2	**Materials Reuse**, 10%	1
			Credit 4.1	**Recycled Content**, 10% (post-consumer + 1/2 pre-consumer)	1
			Credit 4.2	**Recycled Content**, 20% (post-consumer + 1/2 pre-consumer)	1
			Credit 5.1	**Regional Materials**, 10% Extracted, Processed & Manufactured	1
			Credit 5.2	**Regional Materials**, 20% Extracted, Processed & Manufactured	1
			Credit 6	**Rapidly Renewable Materials**	1
			Credit 7	**Certified Wood**	1

Yes	?	No		Indoor Environmental Quality	15 Points
2					

Yes	?	No			
Yes			Prereq 1	**Minimum IAQ Performance**	Required
Yes			Prereq 2	**Environmental Tobacco Smoke (ETS) Control**	Required
			Credit 1	**Outdoor Air Delivery Monitoring**	1
			Credit 2	**Increased Ventilation**	1
1			Credit 3.1	**Construction IAQ Management Plan,** During Construction	1
1			Credit 3.2	**Construction IAQ Management Plan**, Before Occupancy	1
			Credit 4.1	**Low-Emitting Materials**, Adhesives & Sealants	1
			Credit 4.2	**Low-Emitting Materials**, Paints & Coatings	1
			Credit 4.3	**Low-Emitting Materials**, Carpet Systems	1
			Credit 4.4	**Low-Emitting Materials**, Composite Wood & Agrifiber Products	1
			Credit 5	**Indoor Chemical & Pollutant Source Control**	1
			Credit 6.1	**Controllability of Systems**, Lighting	1
			Credit 6.2	**Controllability of Systems**, Thermal Comfort	1
			Credit 7.1	**Thermal Comfort,** Design	1
			Credit 7.2	**Thermal Comfort,** Verification	1
			Credit 8.1	**Daylight & Views,** Daylight 75% of Spaces	1
			Credit 8.2	**Daylight & Views,** Views for 90% of Spaces	1

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LEED for New Construction v 2.2
Registered Project Checklist

Yes	?	No			
1			Innovation & Design Process		5 Points
			Credit 1.1	**Innovation in Design:** Provide Specific Title	1
			Credit 1.2	**Innovation in Design:** Provide Specific Title	1
			Credit 1.3	**Innovation in Design:** Provide Specific Title	1
			Credit 1.4	**Innovation in Design:** Provide Specific Title	1
1			Credit 2	**LEED® Accredited Professional**	1

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SPECIAL PROVISION

CHAPTER SP-19 DESIGN-BUILDER STAGING AND STORAGE AREAS

SP-19.1 GENERAL REQUIREMENTS

This Chapter 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 storage area requirements for the Project. No storage areas will be provided by the City. The Design-Builder shall make all necessary agreements with property owners for storage areas and will be responsible for acquiring any permits necessary for that use.

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 storage areas. Waste materials, debris, and rubbish from the site shall be removed as soon as such materials become unfit for use.

Restoration of Storage Area. Upon completion of the Work, the Design-Builder shall restore the staging area to a condition equal to or better than existing conditions. All damages shall be repaired by the Design-Builder at no cost to the City.

SP-19.2 USE

Storage areas shall be primarily used for field offices, Equipment and Materials storage, and 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.

SPECIAL PROVISION

CHAPTER SP-20 INVASIVE SPECIES

SP-20.1 GENERAL

This Chapter describes the best management practices for the prevention, identification and reporting of noxious and invasive plants.

Weeds are opportunistic species and have adapted to establish in disturbed soils rapidly. Vehicles and construction equipment associated with construction activities can introduce seeds and or rhizomes (horizontal stems) of noxious weeds to the Site. Educating construction workers about the importance of weed management, and implementation of preventative measures to control the spread of noxious weeds, are the most cost-effective management approaches.

The Design-Builder shall be solely responsible for the cost for prevention and complete eradication of all noxious and invasive weeds not confirmed in the ROW prior to construction that are listed in State of 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-20.2 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). The 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 City, 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. The Design-Builder and botanists should send information about the presence and treatment of weeds and invasive plant species to the City for their records including GPS points (northing and easting) with species names.

The Design-Builder shall submit an 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 ensure that it is applied by a licensed

commercial applicator. The label for herbicides being used must be in the applicator's 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 be solely 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-20.3 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, the Design-Builder may arrange for City 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-20.4 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. The 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-20.5 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-20.6 TRAINING

Prior to commencement of clearing and grubbing activities, the 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-20.7 UNANNOUNCED INSPECTIONS

The Design-Builder shall provide access to the site for the Oahu Invasive Species Committee and Department of Agriculture staff for the purpose of site inspection for noxious or invasive plant detection or monitoring.

SP-20.8 NEW PLANTING REQUIREMENTS

Refer to Chapter 11 of the HHCTCP Compendium of Design Criteria for additional requirements on Invasive Species.

(02/09)

GENERAL CONDITIONS
OF DESIGN-BUILD CONTRACTS
CITY AND COUNTY OF HONOLULU

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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.

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;

(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.

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.

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;

(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

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

(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.

(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.

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) 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.

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.

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

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.

(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 section6.9(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

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 <u>**Noise control**</u>. (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.

(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

(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

(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.

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 <u>As-built drawings</u>. 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.

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,

(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.

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:

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;

(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

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.

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.

(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.

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

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

(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.

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 "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.

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.

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"

Signed and sealed this _____ day of _____, 20_____.

_____
(Contractor) (Seal)

*By _____
Its

*By _____
Its

*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC.

EXHIBIT "E"

[ ] Treasurer's Check No. _____, dated _____ drawn on _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union

Administration, payable at sight or unconditionally assigned to ___ _____;

[ ] Official Check No. _____, dated _____ drawn on _____ a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to ___ _____;

[ ] Certified Check No. _____, dated _____ accepted by a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

WHEREAS:

The Contractor has by written agreement dated _____, entered into a contract with Obligee for the following Project: _____ _____ _____ _____.

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

NOW, THEREFORE:

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, and shall promptly pay all persons supplying labor and materials for the performance of the Contract, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in

EXHIBIT "F"

ESTIMATE FOR CHANGE ORDER WORK

PROJECT:_____

CONTRACTOR:_____

Reference: PCD No._____ Other_____

MATERIALS

Description	Qty.	Unit Price	Subtotal
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____

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)

EXHIBITG.WK4

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)
					TOTAL FOR PART A		TOTAL FOR COLUMN (9)	

*Worker's Compensation, PL/PD, RCA, TDI, Federal/State Unemployment Compensation

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%)x(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.)

Sheet _____ of _____ sheets

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 _____ _____ are in full force and
(insert previous name)
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)

E. TIME EXTENSION:

F. VALIDATION OF CHANGE ORDER

Recommended for approval:

CONSTRUCTION ENGINEER

Approved:

DEPARTMENT HEAD

Distribution:

DATE

G. REJECTION OF CHANGE ORDER

CONSTRUCTION ENGINEER

Disapproved:

DEPARTMENT HEAD

Distribution:

DATE

REASONS FOR REJECTION:

(VECP3.WPD)

EXHIBIT "J"

VALUE ENGINEERING CHANGE PROPOSAL (VECP)
City and County of Honolulu
(Contractor Summary Submittal)

From: _____ Date: _____
To: _____ VECP No. _____
Project No./Title: _____ Contract No. _____

SUMMARY OF CHANGE (Description - compare advantages and disadvantages. Include all information required by the Contract and Section 3-132-4, HAR for value VECPs)

BEFORE: (Sketch, when applicable.) AFTER:

ESTIMATED COST SUMMARY: (Costs shall be estimated in accordance with the change provisions of the Contract. Attach cost estimating form, for detailed estimate whenever applicable.)

		QTY.	UNIT COST	TOTAL
A.	Original	_____	$_____	$_____
B.	Proposed	_____	$_____	$_____
C.	Gross savings (A-B)			$_____
D.	Contractor's implementing cost			$_____
E.	Total estimated decrease (C-D)			$_____
F.	City's implementing cost		$_____	
G.	Difference (E-F)		$_____	
H.	½ Difference (E-F divided by 2)			$_____
I.	Reduction in Contract Price (E-H)			$_____

Date by which a change order must be issued so as to obtain maximum cost reduction: _____

CONTRACTOR'S REPRESENTATIVE:

_____ _____ _____
NAME SIGNATURE DATE

Received by: _____
DEPARTMENT

_____ _____ _____
NAME SIGNATURE DATE

EXHIBIT "L"

City and County of Honolulu · Department of Budget and Fiscal Services · Division of Purchasing

REPORT OF EQUIPMENT PURCHASED WITH CONSTRUCTION CONTRACTS

INSTRUCTIONS

1. Request For BFS Approval/Processing – Agency to complete Section I - Attach 1 copy of this form to **every** construction contract document that requires BFS approval or processing; i.e. construction contract drafts and finals, bid referrals, addendums, change orders, and requests for payment. This policy is applicable to consultant contracts only when it includes equipment, as defined in Item No. 3.
2. Request For Payment Of Equipment – Contractor and agency to complete Section II *only* **when there is a request for payment of equipment**, as defined in Item No. 3.
3. Equipment That Must Be Reported On This Form: Equipment that is **movable** or that is **removable with a hand tool**, which will hereafter be referred to as "equipment".

SECTION I *(Agency to complete and attach to all documents requiring BFS approval/processing)*

Contract No._____ Invoice No._____ Job/Project No. _____

Agency _____ Agency Project Manager _____ Phone _____

Project _____

_____ Contractor_____

Check the appropriate box:

4. ☐ Contract **does not include** equipment, as defined in Item No. 3.
5. ☐ Contract **includes** equipment, as defined in Item No. 3.
   (Note to Fiscal Services: If Item No. 5 is checked and there is a request for payment of equipment, completion of Section II is a prerequisite for payment)

Comments:

_____ Signature of department head or representative _____ Date

SECTION II *(Contractor and Agency to complete only when there is a request for payment of equipment as defined in Item No. 3 above)*

Contractor:

6. Two (2) copies of the detailed list of equipment are attached and includes the following information: description, make, model, serial number, quantity, cost, indication of whether or not it is movable or removable, and the specific location of the equipment such as the room number. See Item No. 9 for a sample of the detailed list.

_____ Signature of contractor or representative _____ Date

Agency: Check the appropriate box:

7. ☐ Federal funds **are not** being used to partially or totally reimburse, or pay, for the equipment.
8. ☐ Federal funds **are** being used to partially or totally reimburse, or pay, for the equipment.

_____ Signature of department head or representative _____ Date

For additional information: Contact the Property Management & Disposal Section, Purchasing Division, BFS, 808-523-4781.

Form BFS-P-79 6/01/04 misc/construction.eqpmt rpt.doc

Distribution at payment from Fiscal to: 1) Purchasing/Property Management & Disposal Section only if Section II is completed. Transmit with invoice & eqpmt list.
2) Pre-Audit

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: _____