(02/09)

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

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

The General Conditions of Design-Build contracts of the City and County of Honolulu, incorporated by reference in the Request for Proposals and referred to as the "GCDB" or "General Conditions," represent the City's policy and requirements relating to design-build projects as authorized by Hawaii Revised Statutes (HRS), Chapter 103D, and the Hawaii Administrative Rules (HAR), Title 3, Department of Accounting and General Services (collectively referred to as "Procurement Code and Rules"). Related provisions from HAR, Title 3, Department of Accounting and General Services, are presented for convenience only and may not be complete. Should any contractual term herein be inconsistent with the Procurement Code and Rules, the Procurement Code and Rules shall govern. Offerors and contractors should familiarize themselves with HRS Chapter 103D and HAR.

The separate parts of the Request for Proposals (RFP), as defined below, including the plans and specifications, are intended to complement each other. Unless it is apparent that a different order of precedence is intended, the most recent addenda shall govern over all other previously issued addenda and other contract documents; plans shall govern over the City's Standards and Specifications, which are detailed in §1.2(c) of GCDB and these General Conditions; special provisions shall govern over plans, the City's Standards and Specifications, and the General Conditions. Where there is a discrepancy between the Final Proposal, as defined below, and other parts of the RFP, the Final Proposal shall govern.

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

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

CHAPTER 1 - DEFINITIONS; REFERENCES

1.1 Definitions.

Terms as used in these General Conditions and the Contract, unless the context requires otherwise, shall have the following meaning:

"**Addendum**" means a written document issued by the Contracting Officer during the RFP and Proposal period, involving changes to the RFP, which shall be considered and made a part of the RFP and the Contract.
"**Change order**" means an amendment or modification of the Contract signed by the Contracting Officer or, when delegated by the Contracting Officer, by the Officer-in-Charge directing the Contractor to make changes with or without the consent of the Contractor. [HRS 103D-104]
"**City**" means the City and County of Honolulu, State of Hawaii.
"**Construction**" means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term includes the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property. [HRS 103D-104]
"**Contract**" means all documents covering the construction of the Project and services in connection therewith for which award is made to the Contractor, including the furnishing of labor, materials and

equipment in connection therewith. It shall include the following documents and any amendments or addenda thereto: the RFP Final Proposal (see definition herein), the GCDB, change orders, bonds and plans, and the contract agreement, whether attached to or incorporated by reference.

"**Contract modification**" **or** "**Modification**" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of the Contract accomplished by mutual action of the parties to the Contract. [HRS 103D-104]

"**Contracting Officer**" means:

(1) For improvement district projects, the City Council Chair or any official of the City so designated by the City Council Chair;

(2) For the Board of Water Supply, the Manager and Chief Engineer of the Board of Water Supply or the Manager and Chief Engineer's delegated designee; and

(3) For all other projects, the Director of the Department of Budget and Fiscal Services of the City and County of Honolulu, or the Director's delegated Designee.

"**Contractor**" means any individual, partnership, firm, corporation, joint venture, or other legal entity undertaking the execution of the work under the terms of the Contract with the City, and acting directly or through its agents or employees. [HAR 3-120-2]

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

"**Designee**" means a person appointed by the Director of Budget and Fiscal Services or the Officer-in-Charge to act on its behalf with delegated authority.

"**Final Proposal**" means the final mutually-agreed terms of the proposal submitted by the awarded Offeror in response to the City's RFP or the Best and Final Offer accepted by the City in accordance with HAR §§3-122-53 and 3-122-54.

"**Guarantee**" **or** "**Warranty**" means a written agreement or assurance of the quality of or the length of use to be expected from equipment, material, device, or system offered, or work performed.

"**Hazardous materials**" mean and include any and all radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, hazardous wastes, toxic substances, and any and all other substances or materials defined as "hazardous materials," "extremely hazardous materials," "hazardous wastes" or "toxic substances" under or for the purposes of hazardous materials laws.

"**Hazardous materials laws**" mean and include all federal, state or local laws, ordinances, rules, regulations or codes, now or hereafter in effect, relating to environmental conditions, human health or industrial hygiene, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601, et seq., the Resource Conservation and Recovery Act, 42, U.S.C. section 6901, et seq., the Hazardous Materials Transportation Act, 42 U.S.C. section 1801, et seq., the Clean Water Act, 33 U.S.C. section 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. section 2601 - 2629, the Safe Drinking Water Act, 42, U.S.C. sections 300f - 300j, HRS Chapter 128D, Environmental Response Law, HRS Chapter 342B, Air Pollution Control, HRS Chapter 342D, Water Pollution, HRS Chapter 342H, Solid Waste Pollution, HRS Chapter 342J, Hazardous Waste, HRS Chapter 342L, Underground Storage Tanks, Chapter 342P, Asbestos, and any similar state or local laws or ordinances and the regulations now in effect or hereafter adopted, published or promulgated thereto.

"**HRS**" means the Hawaii Revised Statutes of the State of Hawaii, as amended.

"**Improvement district project**" means a project constructed pursuant to chapter 14, Revised Ordinances of Honolulu (ROH), entitled "Public Works Infrastructure Requirements Including Fees and Services."

"**Notice to Offerors**" means the publication or the notice of a solicitation for offers.

"**Notice to proceed**" or "**NTP**" means the document issued to the Contractor designating the official commencement date of the performance under the Contract.

"**Offer**" means the Proposal.

"**Offeror**" means any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, an offer for the goods, service, or construction contemplated. [HAR 3-120-2]
"**Officer-in-Charge**" means the department head of the agency with delegated authority for which construction is being procured or the Officer-in-Charge's delegated designee.
"**Procurement**" means buying, purchasing, renting, leasing, or otherwise acquiring any good, service, or construction. The term also includes all functions that pertain to the obtaining of any good, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. [HRS 103D-104]
"**Professional services**" means those services within the scope of the practice of architecture, landscape architecture, professional engineering, and surveying, real property appraisal, law, medicine, accounting, dentistry, or any other practice defined as professional pursuant to Sections 415A-2, HRS, or the professional and scientific occupation series contained in the United States office of personnel management's Qualifications Standard Handbook [HRS103D-104]
"**Project**" means work to be performed as set forth in the Contract, including furnishing all services, labor, goods, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of work contemplated under the Contract.
"**Proposal**" means the executed document submitted by an Offeror in response to the RFP.
"**Purchasing agency**" means the agency requesting the design-build project for the using agency.
"**Purchasing Division**" means the Division of Purchasing, Department of Budget and Fiscal Services, with delegated authority to solicit bids and award contracts.
"**Request for Proposals**" or "**RFP**" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.
"**Responsible Offeror**" means a person who has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability which will assure good faith performance. [HRS103D-104]
"**Responsive Offeror**" means a person who has submitted an offer which conforms in all material respects to the RFP. [HAR 3-120-2]
"**Solicitation**" means an invitation for bids, request for proposals, or a request for quotation issued by the City for the purpose of soliciting bids or proposals to perform under City contract. [HRS 3-120-2]
"**Specifications**" mean any description of the physical or functional characteristics, or of the nature of a good, service, or construction item. The term includes descriptions or any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery. [HRS 103D-104]
"**State**" means State of Hawaii.
"**Subcontractor**" means any person who enters into an agreement with the Contractor to perform a portion of the work for the Contractor. [HAR 3-120-2]
"**Working day**" means any day on the calendar, exclusive of State holidays, Saturdays, and Sundays. Unless another meaning is intended, "working days" shall mean consecutive working days.

1.2 References. (a) When reference is made to known Standards and Specifications, the most recently adopted and published edition of such standards and specifications on the date of the notice to contractors is contemplated, unless otherwise specified.

(b) Abbreviations. The following abbreviations shall refer to the technical society, organization, body, code, rules, or standards, listed opposite each abbreviation:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
ADAAG	Americans with Disabilities Act Accessibility Guidelines
AISC	American Institute of Steel Construction
AITC	American Institute of Timber Construction

ANSI	American National Standard Institute
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
AWS	American Welding Society
FHWA	Federal Highway Administration, U.S. Department of Transportation
FS	Federal Specifications
G06	General Order No. 6 of the Public Utilities Commission, Rules for Overhead Electric Line Construction
GRJP	General Rules for Joint Use of Poles
HAR	Hawaii Administrative Rules
HRS	Hawaii Revised Statutes
IES	Illuminating Engineering Society
NEC	National Electrical Code
UBC	Uniform Building Code
UL	Underwriters' Laboratories, Inc.
UPC	Uniform Plumbing Code
WCLA	West Coast Lumberman's Association

(c) City and County of Honolulu Standards and Specifications. The following are commonly referred to standards and specifications of the City and County of Honolulu which are available for purchase at the City's Library, Records Management and Bookstore Section of the Customer Services Department.

(1) Standard Details for Public Works Construction, September 1984, commonly referred to as standard details;

(2) Standard Specifications for Public Works Construction, September 1986, commonly referred to as standard specifications;

(3) Standard Details for Parks and Recreation Construction, May 1990; and

(4) Water System Standards, Volume I, Approved Material List and Standard Details for Water System Construction, Volume II, dated 2002, and Water System External Corrosion Control Standards, Volume III, dated 1991, of the Board of Water Supply, commonly referred to as water system standards.

1.3 **Contractor's Representations**.

(a) License. Contractor represents that Contractor is a business entity which is experienced and skilled in the design and construction of projects of the type described in the Contract and that the Contractor is licensed by the State of Hawaii to engage in the type of design and construction required by the Contract and is in compliance with all laws and regulations.

(b) Contractor's warranty. By the act of submitting its proposal in response to the RFP, the Contractor warrants that:

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

(2) The Contractor has investigated and examined carefully the site and the RFP and understands the nature, location and character of the project and the site;

(3) The Contractor and all workers, employees and subcontractors intended to be used are skilled and experienced in the type of design and construction represented in the RFP;

(4) Neither the Contractor nor any of the Contractor's employees, agents, suppliers, or subcontractors has relied upon any verbal representations from the City, its employees or agents, including architects, engineers or consultants, in assembling its proposal;
(5) The Contractor's proposal, including the proposed price, is based solely upon the RFP and properly issued written addenda and not upon any other written or verbal representation, and based upon the Contractor's own examination and investigation of surface and subsurface condition and availability of materials and equipment; and
(6) Contractor has no obligations, commitments or impediments of any kind that will limit or prevent performance of work as required by the Contract.

(c) Independent price determination; no collusion. Each offeror certifies that the price submitted was independently arrived at without collusion. [HAR 3-122-192.]

CHAPTER 2 -GENERAL PROVISIONS

2.1 Contract not binding unless funds available. (a) No contract shall be binding or of any force and effect without endorsement by the Director of the Department of Budget and Fiscal Services that there is an appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the Contract. Certification that there is an appropriation or balance of an appropriation sufficient to cover the amount required by the Contract as well as the application of federal funds, shall comply or be exempt under section 103D-309, HRS. [HAR 3-122-102]

(b) If a contract is a multi-term contract pursuant to Section 3-122-149, HAR, the Director of Budget and Fiscal Services shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts that is sufficient to cover the amount required to be paid under the contract during the current fiscal year or remaining portion of the current fiscal year of the first term of the multi-term contract. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

(c) Certification of a portion of funds. Notwithstanding the requirement for endorsement in subsection (a) above, certification of a portion of the total funds required for a contract may be permitted when an immediate solicitation will result in significantly more favorable contract terms and conditions to the City than a solicitation made at a later date; provided that certification for partial funding shall be permitted only if the Director of the Department of Budget and Fiscal Services states in the certificate that the availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special fund revenues. All contracts partially funded shall be enforceable only to the extent to which funds have been certified as available. [HAR 3-122-104(c)]

(d) Contracts involving federal funds. In any contract involving not only State or City funds, but supplemental funds from the federal government, HRS 103D-309 shall be applicable only to that portion of the contract amount obligated and payable out of State or County funds. Unless otherwise specified, the Contractor, by submittal of a Proposal and acceptance of an award, agrees that payment of that portion of the Contract amount that is supplemented or funded entirely by federal funds shall be payable upon receipt of those federal funds.

(e) In a contract involving funds from the federal government, no contract shall be binding or of any force and effect without an endorsement by the Director of the Department of Budget and Fiscal Services that such federal funding is available for the City.

2.2 Fiscal responsibility. (a) Every contract modification, change order, or contract price adjustment under a contract shall be subject to prior written certification by the fiscal officer for funding the project or the contract, as to the effect of the contract modifications, change order or adjustment in contract price on the total Project budget or the total contract budget. [HAR 3-122-241]

(b) In the event that any contract modification, change order, or adjustment results in an increase in the total budget or total contract budget, the Contracting Officer shall not execute or make any contract modification, change order, or adjustment in contract price unless sufficient funds are made available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the existing project budget or contract budget; provided, that with respect to the validity, as to the contractor, of any executed contract modification, change order or adjustment in contract price, which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the section. [HAR 3-122-241]

2.3 Nondisclosure of designated trade secrets or proprietary information. The Contractor shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential, that ***such material shall be clearly labeled as confidential and readily separable from other data in order to facilitate inspection of the nonconfidential portion of the Proposal and Contract.*** [HAR 3-122-46]

2.4 Confidential or proprietary information of City. Contractor understands and agrees that, in the performance of work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Contractor agrees that all information disclosed by the City to the Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent Contractor would use to protect its own proprietary data.

2.5 Personal information protection.

(a) Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

(1) Social security number;

(2) Driver's license number or Hawaii identification card number; or

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

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

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

(b) Confidentiality of material.

(1) All material given to or made available to the Contractor by the City by virtue of this Contract, which consists of personal information, shall be safeguarded by the Contractor and shall not be disclosed without the prior written approval of the City.

(2) Contractor agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

(3) Contractor agrees to implement appropriate "technological safeguards" that are acceptable to the City to reduce the risk of unauthorized access to the personal information.

(4) Contractor shall report to the City in a prompt and complete manner any security breaches involving personal information.

(5) Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor because of a use or disclosure of personal information by Contractor in violation of the requirements of this paragraph.

(6) Contractor shall complete and retain a log of all disclosures made of personal information received from the City, or personal information created or received by the Contractor on behalf of the City.

(c) Security awareness training and confidential agreements.

(1) Contractor certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

(2) Contractor certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

(A) The personal information collected, used, or maintained by the Contractor will be treated as confidential;

(B) Access to the personal information will be allowed only as necessary to perform the Contract; and

(C) Use of the personal information will be restricted to uses consistent with the services to this Contract.

(d) Termination for cause. In addition to any other remedies provided for by this Contract, if the City learns of a material breach by the Contractor of this paragraph by the Contractor, the City may at its sole discretion:

(1) Provide an opportunity for the Contractor to cure the breach or end the violation; or

(2) Immediately terminate this Contract.

In either instance, the Contractor and the City shall follow Chapter 487N, HRS, with respect to notification of a security breach of personal information.

(e) Records retention.

(1) Upon any termination of this Contract, the Contractor shall pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the City.

(2) The Contractor and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the Contractor on behalf of the City, and any cost or pricing data, for three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall not be disclosed without the prior written approval of the City. After the three (3) year retention period

has ended, the files, books, and records that contain personal information shall be destroyed pursuant to Chapter 487R, HRS.

2.6 Copyright or patent. If the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the right for such use shall be procured by the Contractor from the patentee or owner. The Contractor shall indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright in connection with the work to be performed under the contract, and shall indemnify the City and all of their officers, employees or agents, for any costs, expenses and damages which it may be obliged to pay by reason of any such infringement at any time during the prosecution or after the completion of the work, including but not limited to attorneys fees and costs incurred in defense of any such claims.

2.7 Work Made for Hire. All work products developed or prepared by the Contractor under the Contract, but not limited to deliverables, materials, documents, design plans, or blueprint, are the property of the City, and all right, title, and interest therein shall vest exclusively in the City and shall be deemed to be a "Work Made for Hire" under United States Copyright Laws (17 U.S.C. § 101 et seq.). To the extent that title to any such works may not, by operation of law, vest in the City or such works may not be considered to be work made for hire, Contractor hereby agrees that all right, title, and interest therein are irrevocably assigned to the City. All such work products shall belong exclusively to the City with the City having the right to obtain and to hold in its own name, copyrights, registrations or such other protection as may be appropriate to the subject matter, and extensions and renewals thereof. Contractor may make copies or reproduce the work products developed under this Contract for its file and reference. . Contractor further agrees to execute and deliver to the City all lawful documents, including without limitation, petitions, oaths, declarations, assignments, disclaimers, and affidavits, in form and substance as may be requested by the City in connection with this provision; execute and record all documents necessary to evidence the chain of title in or to, and City's ownership of, the Works Made for Hire described herein; and furnish to the City any and all documents in Contractor's possession or control, or in the possession or control of Contractor's agents, legal representatives, successors and assigns, which the City may deem useful for establishing the facts surrounding the creation, use or registration of the Work Product.

2.8 Ownership of results. Any interests of Contractor or its subcontractors, in drawings, plans, specifications, blueprints, studies, memoranda, computation sheets, computer files, and media or other documents prepared by the Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted by the City. However, Contractor may retain and use copies for references and as documentation of its experience and capabilities.

2.9 Assignment of antitrust claims for overcharges for goods and materials purchased. Contractor and owner (City) recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the owner. Therefore, Contractor hereby assigns to City any and all claims for such overcharges as to goods and materials purchased in connection with the order or contract, except as to overcharges which result from antitrust violations commencing after the price is established under this contract or any change order and which are not passed on to the City under an escalation clause. In addition, Contractor warrants and represents that each of its first tier suppliers and subcontractors shall assign any and all such claims to the City, subject to the same exception.

2.10 Assignment of contract; change of name. (a) Assignment of contract. When in the best interest of the City and upon written consent by the Contracting Officer, a successor in interest may be recognized in an assignment agreement in which the transferor, the transferee and the City agree that:

(1) The transferee assumes all of the transferor's obligations;

(2) The transferor remains liable for all obligations under the contract but waives all rights under the contract as against the City; and

(3) The transferor shall furnish all required bonds. [HAR 3-125-14]

(b) Change of name. When a Contractor requests to change the name in which it holds a contract with the City, the Contracting Officer shall, upon receipt of a document indicating such change of name (for example an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting Contractor to effect such a change of name. The agreement changing the name shall be in the form attached hereto as Exhibit "I" and shall specifically indicate that no other terms and conditions of the contract are thereby changed. [HAR 3-125-14]

2.11 Assignment of money. No money receivable under the contract is transferable, or otherwise assignable, without the written consent of the Director of Budget and Fiscal Services [HAR 3-125-14]. The rights of the assignee to monies due or to become due to the Contractor shall be subject to Section 6.13, "Authority to withhold money due or payable."

2.12 Independent contractor. The Contractor is an independent contractor and shall not be deemed to be an agent, servant, representative or employee of the City. The contract shall not be construed to create a partnership or joint venture between the City and the contractor.

2.13 Liability. CITY'S PAYMENT OBLIGATIONS UNDER THIS CONTRACT SHALL BE LIMITED TO THE PAYMENT FOR SERVICES UNDER THIS CONTRACT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, IN NO EVENT SHALL CITY BE LIABLE REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS CONTRACT.

2.14 Indemnification. Contractor shall defend, indemnify and save harmless City, including its elected and appointed officials, agents, employees, volunteers and Construction Managers, and any other entities required to be indemnified by the City under the Contract, and each of them (collectively referred to as "Indemnitees" and individually referred to as "Indemnitee"), of and from any and all claims, demands, causes of action in law or equity, damages, penalties, costs, expenses, actual attorneys' fees, experts' fees, consultants' fees, judgments, losses or liabilities, of every kind and nature whatsoever, including, without limitation, damages, losses or liabilities, of every kind and nature whatsoever, including, without limitation, damages from personal injury, bodily injury, emotional injury, sickness or disease, or death to persons (including, but not limited to any employees or agents of the Contractor, City or any other contractor or any person) arising out of or in any way connected or incidental to, the performance of the work or any of the obligations contained in this Contract. It is expressly acknowledged and agreed that each of the obligations set forth herein is independent of any obligations to procure insurance for the benefit of the City and that each shall be given effect. It is expressly acknowledged and agreed that the Contractor and any other responsible party shall be jointly and severally liable to the City with respect to

claims and/or losses. At its sole discretion, the City may determine which indemnitor or indemnitors City will look to for indemnification hereunder.

(b) Worker's compensation law. The Contractor shall save harmless the City its departments, and all of their officers, consultants, representatives, employees or agents, and the construction manager from all suits, actions or claims of any character brought on account of any claims or amounts arising or recovered under the Workers' Compensation Law or any other law, by-law, ordinance, order or decree.

2.15 Liquidated damages. (a) It is mutually understood and agreed by and between the parties to the Contract that time shall be of the essence in the completion of the work and all of the provisions of this Contract and that in case of failure on the part of the Contractor to complete the work under the Contract within the time fixed or agreed upon , the City will be damaged thereby, and the amount of said damages, inclusive of expenses for inspection, superintendence, and necessary traveling expenses, being difficult, if not impossible, of definite ascertainment and proof, it is hereby agreed that the amount of such damages shall be the amount set forth in the Contract as liquidated damages for each and every calendar day, including weekends and holidays, that the Contractor delays in finishing the work beyond the completion deadline established in the Contract; and the Contractor hereby agrees to pay the said sum as liquidated damages, and not by way of penalty, to the City and further authorizes the City to deduct the amount of the damages from monies due the Contractor under the Contract, computed as aforesaid. If the monies due the Contractor are insufficient or no monies are due the Contractor, the Contractor shall pay the City the difference or the entire amount, whichever may be the case, upon demand by the Contracting Officer.

The acknowledgment form, attached to the RFP and made a part of the RFP, shall be completed, signed by the Contractor and submitted with its Proposal. Failure to acknowledge and submit the form with the bid may be cause for rejection of the Proposal.

2.16 Audit and inspection of records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Contract. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Contract. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Contract or until after final audit has been resolved, whichever is later. [HAR 3-122-181]

2.17 Severability. If any term, condition, provision, covenant or agreement of the terms hereunder or under the Contract or the application thereof to any person or circumstance is rendered or held invalid, illegal or unenforceable under the laws of the State of Hawaii or the United States of America, such part of the terms hereunder or under the Contract as shall have been rendered or held to be invalid, illegal or unenforceable shall not affect the validity of the terms hereunder or under the contract as a whole or the remainder of the terms hereunder or under the contract and the application of such part to other persons and circumstances, but shall be given effect and enforced without such part to the greatest extent permitted by applicable law.

2.18 Laws, regulations. The Contractor shall keep itself fully informed of all present and new laws, regulations, and ordinances which affect the contract and the performance thereof, including but not limited to:

(1) Chapter 103, HRS, relating to expenditure of public money;

(2) Chapter 103D, HRS, relating to Hawaii procurement code;
(3) Chapter 104, HRS, relating to wages and hours of employees on public works;
(4) Chapter 378, HRS, relating to fair employment practices;
(5) Chapter 386, HRS, relating to worker's compensation;
(6) Chapter 396, HRS, relating to occupational safety and health; and
(7) Chapter 444, HRS, relating to licensing of contractors.

The Contractor shall comply with all such present and new laws, regulations and ordinances, including the giving of all notices necessary and incident to the performance of the contract. If any discrepancy or inconsistency is discovered between the Contract and any such law, regulation, or ordinance, the Contractor shall forthwith report the same in writing to the Contracting Officer or the Officer-in-Charge.

2.19 No reimbursement. The City shall not provide any reimbursement for the cost of developing or presenting proposals in response to the Request for Proposal unless specifically provided for. Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal.

2.20 Governing law and venue. The provisions of this document and the contract shall be interpreted in accordance with the laws of the State of Hawaii as those laws are construed and amended from time to time. All disputes arising out of or relating to this Contract shall be subject to the jurisdiction and venue of the state and federal courts in Honolulu, Hawaii.

2.21 Sexual Harassment.

(a) **General.** The Contractor must comply with Revised Ordinances of Honolulu (ROH) section 1-18 on sexual harassment. The Contractor shall have and enforce a policy prohibiting sexual harassment. The Contractor's sexual harassment policy must set forth the same or greater protection than those contained or required by the ordinance. Section 1-18, ROH, is on file and available for viewing in the Purchasing Division. Contractors needing a copy must pick up the copy from the Office of the City Clerk, Room 203, City Hall, 530 South King Street, Honolulu, Hawaii.

(b) **Applicability.** The ordinance is applicable to the employer's business and includes:
(1) Prohibitions against an officer's or employee's sexual harassment of the following:
(A) Another officer or employee of the employer;
(B) An individual under consideration for employment with the employer; or
(C) An individual doing business with the employer;
(2) A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under paragraph (1) above;
(3) A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;
(4) A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;
(5) Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;

(6) Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;
(7) A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard";
(8) Disciplinary actions which may be imposed on an officer or employee who committed a prohibited act; and
(9) For an employer with at least five employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

(c) **Policy term**. The policy required under this section shall be in effect for at least the duration of the Contractor's contract with the City.

(d) **Pledge and acceptance**. The action of the Contractor signing the contract shall constitute the Contractor's pledge and acceptance of the provisions for the sexual harassment policy as required by section 1-18, ROH.

2.22 ENERGY STAR products.

(a) Definitions.

"ENERGY STAR" is the joint program of the United States Environmental Protection Agency (EPA) and the United States Department of Energy designed to identify and promote energy efficient products.

"ENERGY STAR qualified product" means a product that has met strict energy efficiency guidelines set by the EPA and Department of Energy and is identified by the ENERGY STAR label.

(b) Required procurement of ENERGY STAR qualified products. The Contractor shall incorporate into its design and provide products that earn the ENERGY STAR and meet the ENERGY STAR specifications for energy efficiency, unless no comparable product is ENERGY STAR qualified or the life-cycle costs of all comparable ENERGY STAR qualified products are more than 105 per cent of the life cycle cost of a product that is not ENERGY STAR qualified.

2.23 Campaign Contributions by State and County Contractors. Contractors are hereby notified of the applicability of Section 11-205.5, HRS, which states that campaign contributions are prohibited from specified State or County government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body.

CHAPTER 3 - INSURANCE; BID SECURITY, PERFORMANCE AND PAYMENT BONDS

3.1 Insurance.

(a) Required coverages. The Contractor shall procure or cause to be procured and maintain (as provided herein), in a company lawfully authorized to do business in Hawaii, at Contractor's sole cost, during the life of this contract and any extensions thereof, or until such time as action against the

Contractor or subcontractor for death, injuries, losses and damages is barred by the provisions of Chapter 657, HRS, the following types of insurance to cover the operations under the contract, and all other insurance that may be required under the laws, ordinances or regulations of any governmental authority with the following minimum coverage provided below, except as otherwise set forth in the Special Provisions:

(1) Workers Compensation and Employers Liability Insurance. The Contractor shall maintain workers compensation and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability and/or commercial excess limits shall be not less than $1,000,000 each accident. Such policies shall include a waiver of subrogation in favor of the City.

(2) Commercial General and Excess Liability Insurance.

(A) Contractor shall maintain commercial general liability (CGL) insurance with limits of not less than $1,000,000 per occurrence, $2,000,000 general aggregate, and not less than $2,000,000 products-completed operations aggregate limit. CGL insurance shall be written on ISO occurrence form, CG 00 01 (or a substitute form providing equivalent coverage), and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, explosion, collapse and underground property damage (XCU) and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Such insurance shall include Contractors protective professional liability, using ISO forms CG 22 79 or CG 22 80 or equivalent. The City shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 (or equivalent), and under the commercial excess, if any. The City's Design Engineers, Architects and/or Surveyors, and Construction Manager shall be included as additional insureds, using ISO additional insured endorsement CG 20 32 (or equivalent).

(B) Continuing Completed Operations Liability Insurance: Contractor shall maintain products and completed operations insurance with limits of not less than $2,000,000 each occurrence for at least one (1) year following final acceptance of the work, or for such other period as specified in the Special Provisions. Such continuing insurance shall be written on ISO occurrence form CG 00 01 10 93 (or equivalent form) and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract. Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit. The City shall be included as an additional insured.

(3) Auto Liability Insurance. Contractor shall maintain auto liability (including no-fault coverage) insurance, either comprehensive or business automobile form, with limits of not less than $1,000,000 per accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used in the performance of this contract. Such auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, or CA 00 20, with appropriate Hawaii endorsements, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

(4) Umbrella Liability Insurance. Contractor shall provide Umbrella liability insurance, including

coverages in paragraphs (1), (2) and (3) above, with limits of not less than FIVE MILLION ($5,000,000) per occurrence. The City shall be included as an additional insured under such policy or policies.

(5) Professional Liability Insurance. Contractor shall provide professional liability insurance, covering the Contractor, any design professionals hired by Contractor, and or any subcontractors, and their respective employees and agents for liability arising out of errors, omissions, or negligence in the performance of professional services provided in connection with this Project.. Limits shall be not less than $1,000,000 per claim. Such insurance shall remain in full force and effect continuously for the period of design and construction of the work, and for an additional one (1) year period following Substantial Completion of Work set forth in the Contract.

(6) Contractor's Pollution Liability. Contractor will purchase a policy, with limits of not less than $2,000,000, covering third party injury and property damage claims including mold, cleanup costs, as a result of pollution conditions arising from Contractor's operations or completed operations, performed by or on behalf of Contractor. Completed operations coverage will remain in effect for not less than 1 year after Substantial Completion of the Work set forth in this Contract. Coverage will be provided by a carrier acceptable to Owner, name Owner as an additional insured, and be written on an occurrence form, including Gradual and Sudden/Accidental Pollution. If applicable, coverage will apply to liability arising out of transportation and non-owned disposal sites.

(7) Property Insurance. Contractor shall purchase and maintain in force Builder's Risk insurance in an amount equal to the full replacement cost of the work, or the contract sum including any subsequent modifications thereto, whichever is greater, with deductible amounts as the City may approve. Such property insurance shall be maintained in effect as required in the Contract documents. This insurance shall name as insured the City, the Contractor, and all subcontractors in the work. The City shall be included as Loss Payee on all required policies except coverage specified in subparagraph (D) below.

(A) Builder's Risk Insurance shall be on a "Special Form" policy form, covering all risks of physical loss or damage, including the perils of fire and extended coverage, including theft, vandalism, malicious mischief, collapse, explosion and underground ("XCU") perils, debris removal, and demolition occasioned by enforcement of any applicable legal requirements, and shall include coverage for reasonable compensation for architects' services and other expenses made necessary due to an insured loss. Coverage shall also be provided, as needed, for earthquake, flood and named storms. Builder's Risk insurance shall cover loss or damage to covered property, which shall include structures or buildings, and all fixtures, materials, supplies, machinery and equipment to be used in or incidental to the work, scaffolding, falsework, fences and temporary buildings located on the site, portions of the work located away from the site but intended to be used in the site, and portions of the work in transit, and Valuable Papers and Records and all documentation produced or used in connection with the Project (with sublimits of not less than $1,000,000, providing coverage against "Special Form" perils).

(B) Site work: Property insurance is not required for loss or damage to site work, defined as

new underground works, sidewalks, paving, excavation or site preparation and landscaping. Contractor is responsible for loss or damage to such site work, as defined, until final acceptance and it is the Contractors sole option to insure or self-insure this risk.

(C) Boiler and Machinery Insurance: The Contractor shall purchase and maintain Boiler and Machinery insurance if required by the contract documents or by law, covering insured objects during installation and testing and until final acceptance.

(D) Contractors Equipment: All Risk Equipment Insurance covering all risk of physical damage to equipment provided for use at the Project site by the Contractor, whether owned, leased, rented, borrowed or used at the Project site. Contractor agrees to waive and does hereby waive its rights of recovery against Owner, its elected or appointed officials representatives, employees and agents or its Construction Manager as to any damage or loss which may occur to its equipment to the extent covered by insurance. Contractor will have the insurance company specifically agree to this waiver. If uninsured, Contractor will hold harmless Owner, its elected or appointed officials representatives, employees and agents or its Construction Manager for loss or damage to its tools and equipment. Contractor shall be responsible for any and all loss or damage to Contractor's equipment, tools and other personal property.

(b) Partial occupancy or use of the work shall not commence until the insurance company or companies providing insurance as required have consented to such partial occupancy or use. Contractor shall take reasonable steps to obtain consent of the insurer(s) and Contractor and City agree to take no action, other than upon mutual written consent, with respect to occupancy for use of the work that could lead to cancellation, lapse, or reduction of insurance.

(c) General Conditions. General conditions applicable to all insurance herein required, unless otherwise specified above:

(1) As used herein, City shall mean the City and County of Honolulu, its elected and appointed officials, employees, agents, volunteers and Construction Manager (if any).

(2) Except for Professional Liability insurance required in Section 3.1(a)(4) above, Contractor waives all rights against the City for recovery of damages to the extent such damages are covered by the insurance required herein.

(3) All insurance required herein shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City.

(4) Subcontractors Insurance. Contractor shall either:

(A) Include all subcontractors as insureds under all insurance set forth in Section 3.1(a), above; OR

(B) Cause each subcontractor employed by Contractor to purchase and maintain in insurance of the types specified above on the same terms set forth above. Contractor shall obtain and maintain evidence of subcontractors' insurance, and if requested by City, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

(5) Cross-Liability coverage. If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

(6) The Contractor is responsible for paying any portion of any loss not covered because of the operation of any deductible applicable to the insurance required herein. If the City is damaged by the failure of the contractor to maintain insurance as required in this paragraph, then the Contractor shall bear all reasonable costs properly attributable to that failure.

(7) Evidence of Insurance.

(A) Upon execution of the contract by Contractor, Contractor shall furnish City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with insurance requirements set forth in paragraphs 3.1(a) above.

(B) With respect to continuing insurance as required under section 3.1(a)(2)(B) and 3.1(a)(4) above, Contractor shall provide certificate(s) of insurance evidencing such coverage at the time of final payment, and thereafter whenever requested by the City.

(C) If the Contractor has any self-insured retentions (SIR's) or deductibles under any of the required coverages, the Contractor must identify on the certificate of insurance the nature and amount of such self-insured retentions and deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions will be the Contractor's sole responsibility.

(D) All certificates shall provide for 30 days written notice to City prior to the cancellation or material change of any insurance referred to therein.

(E) Contractor shall provide certified copies of all insurance policies required above within 10 days of the City's written request for said copies.

(F) Failure of the City to demand such certificate or other evidence of full compliance with these insurance requirements or failure of City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligations to maintain such insurance.

(8) Failure to Maintain Required Insurance

(A) Failure to maintain the required insurance may result in termination of this contract at City's option.

(B) The City shall have the right, but not the obligation, of prohibiting Contractor or any of its subcontractors from entering the project site until Contractor has provided certificates or other evidence that insurance has been placed in complete compliance with these requirements and such certificates have been approved by the City.

(C) If the Contractor fails to maintain the insurance as set forth herein, the City shall have the right, but not the obligation, to purchase said insurance at Contractor's expense.

(9) No representation of coverage adequacy. By requiring insurance herein, the City does not represent that coverage and limits will necessarily be adequate to protect Contract, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the City under this contract.

(10) The City reserves the right to require additional insurance policies, additional or increased limits of coverage in existing policies and additional endorsements, including without limitation, project-specific liability insurance. Such additional insurance shall be in such amounts, on such policy forms and with such carriers as City may reasonably require.

3.2 Payment guarantee. The Contractor guarantees the payment of all just claims for materials, supplies, tools, labor and other just claims against the Contractor or any subcontractor in connection with this Contract, and shall deliver the project free and clear of any liens or potential lien applications, whether filed or unfiled. Contractor's bond, if required, will not be released by final acceptance and payment by the City unless all such claims are paid or released, or so much of the monies due or to become due the Contractor under the contract as shall be considered necessary by the Contracting Officer upon recommendation by the Officer-in-Charge may be retained by the City. Should any suit or claim be filed against the Contractor, the City upon consultation with its Corporation Counsel may retain, from any monies due to the Contractor, such amount or amounts as may be deemed necessary by the City until such suits or claims have been finally settled and determined and upon satisfactory evidence of such settlement of such suits or claims the money retained shall be paid to the Contractor.

3.3 Bid security, performance and payment bonds.

(a) Bid security required.

(1) In accordance with HAR 3-122-223, bid security shall be required with the submitted proposal when the price proposed is $25,000 or more and shall be in an amount equal to or at least five per cent (5%) of the total proposed amount.

(2) If an offeror fails to accompany its proposal with the bid security, the proposal shall be deemed nonresponsive in accordance with the definition of "responsive offeror," except as provided in subsection (3) below. [HAR 3-122-223]

(3) If a proposal does not comply with the security requirements of this section, the proposal shall be rejected as nonresponsive, unless the failure to comply is determined by the Contracting Officer to be nonsubstantial where:

(A) Only one proposal is received, and there is not sufficient time to re-solicit the contract;

(B) The amount of the bid security submitted, though less than the amount required by the request for proposal, is equal to or greater than the difference in the price stated in the next acceptable proposal plus an amount to cover administrative costs and expenses including the cost of re-soliciting the project, resulting from the failure of the bonded offeror to enter into a contract; or

(C) The bid security becomes inadequate as a result of the correction of a mistake in the proposal or modification to the proposal in accordance with HAR 3-122-31, if the offeror increases the amount of security to required limits within the time specified by the Contracting Officer. [HAR 3-122-223]

(4) Bid deposits of offerors shall be retained until execution of a contract and deposit of the proper performance and payment bonds by the successful contractor, after which time the bid deposits of the remaining offerors shall be returned.

(b) Contract performance and payment bonds. Performance and payment bonds shall be required when the price of the contract is $25,000 or more and each shall be in an amount equal to one hundred per cent (100%) of the amount of the contract price. The performance and payment bonds shall be delivered by the Contractor to the City at the same time the contract is executed. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's award shall be canceled, the Contractor shall be subject to a claim for all resulting damages, its bid security enforced, and the Contracting Officer may award the contract to the next ranked offeror in accordance with subchapter 11 of Chapter 122 of HAR. [HAR 3-122-224]

(c) Acceptable bid security, contract performance and payment bonds. Offerors and contractors shall be required to provide, at no cost to the City, bid security, contract performance and payment bonds. Acceptable bid security, contract performance and payment bonds shall be limited to:

(1) Surety bond in the form attached to the RFP underwritten by a company licensed to issue bonds in this State;

(2) Legal tender; or

(3) A certificate of deposit, credit union share certificate, or cashier's, treasurer's, teller's, or official check drawn by, or a certified check accepted by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, and payable at sight or unconditionally assigned to the Director of Budget and Fiscal Services, City and County of Honolulu.

(A) These instruments may be utilized only to a maximum of $100,000.

(B) If the required security amount totals over $100,000, more than one instrument not exceeding $100,000 each and issued by different financial institutions shall be accepted. [HAR 3-122-222]

(d) Bond forms. Failure to utilize the City's surety bid bond form (Exhibit "A") shall not relieve the offeror or contractor from liability or responsibility if it is discovered that the form utilized is not in compliance with the HAR. The Contractor shall execute the surety performance and payment bond forms provided with award of the contract (Exhibits "B" and "C"). If the offeror intends to submit other than surety bonds, the offeror may request of the agency issuing the RFP, the bond form to be submitted with security other than surety bond, or the offeror may submit the bid security or performance and payment security along with its own bond form which shall be in conformance with Exhibits "D" and "E." [HAR 3-122-228]

(e) Contracts with federal funds. In addition to the requirements of this section, whenever a contract is partially or fully funded with federal funds, the amount of the bonds shall be the amount required by the federal agency, and the surety companies shall be those listed in the latest issue of the U.S. Treasury Circular 570.

(f) Payment claims against the bond.

(1) Every person who has furnished labor or material to the Contractor for the work provided in the contract for which a payment bond or a performance and payment bond is furnished under this section, and who has not been paid amounts due before the expiration of a period of ninety days after the day on which the last of the labor was performed or material was furnished or supplied, for which a claim is made, may institute an action for the amount, or balance thereof, unpaid at the time of the institution of the action against the Contractor or Contractor and its sureties, on the payment bond and have their rights and claims adjudicated in the action, and judgment rendered thereon, subject to the City's priority on the bond.

As a condition precedent to any such suit, written notice shall be given by registered or certified mail to Contractor and surety, **within ninety days** from the date on which the person did or performed the last labor or furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed.

(2) Every suit instituted upon a payment bond shall be brought in the circuit court of the circuit in which the project is located, but no suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied for the work provided in the contract. The obligee named in the bond need not be joined as a party in any suit.

(3) If the full amount of the liability of the Contractor or the Contractor and its sureties on the security is insufficient to pay the full amount of the claims, then, after paying the full amount due the City, the remainder shall be distributed pro rata among the claimants. [HAR 3-122-227]

(4) Certified copies of bonds may be requested and obtained by any person upon payment of the costs of reproduction and certification of the bonds, and postage. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original. [HAR 3-122-228]

CHAPTER 4 - PERFORMANCE

4.1 Time is of the Essence. The parties hereto acknowledge that time is of the essence in the completion of the work and in all of the provisions of this Contract. Performance of the Contract shall commence on the commencement date designated in the Notice to Proceed and shall be completed within the number of days specified in the contract, except as modified by mutual agreement.

4.2 Commencement requirements.

(a) Notice to proceed. Upon execution of the contract by the Contracting Officer, the Officer-in-Charge may schedule a pre-work conference or issue a notice to proceed to the Contractor designating the official commencement date for performance of the contract. Unless otherwise specified in the RFP, the notice to proceed shall be issued **within 60 days** after execution of the Contract by the Director of the Department of Budget and Fiscal Services unless a later date is agreed to by mutual agreement. In the event that the notice to proceed is delayed beyond the 60 days or the time mutually agreed to, the contract amount may be adjusted in accordance with section 7.1, "Suspension of work," or the Contracting Officer may, upon recommendation by the Officer-in-Charge, terminate the contract for convenience.

(b) Commencement of work. Unless otherwise specified by the Officer-in-Charge, the Contractor shall begin work **within ten working days** from the official commencement date and shall diligently prosecute the same to completion within the contract time allowed. The Contractor shall notify the Officer-in-Charge at least **three working days before** beginning work. At any subsequent suspension and resumption of work, the Contractor shall notify the Officer-in-Charge at least **twenty-four hours before** beginning actual operations.

Unless otherwise specified in the contract or in any written order, the Contractor shall not proceed with any part of the Contract, such as ordering of any equipment or materials, or performing any work prior to the official commencement date.

Unless otherwise provided for in these provisions or in the RFP, the requirements in this section shall be considered incidental to the Contractor's performance of the Contract.

(c) Submittals.

(1) The Contractor shall screen, stamp and sign all submittals before submitting them to the Officer-in-Charge for acceptance in writing. Submittals shall be identified by project title and

appropriate specification section numbers or construction plan sheet numbers or both, and shall indicate all data necessary for evaluation. All nonapplicable data shall be blocked out and deviations from specifications shall be clearly marked and justified.

(2) If required, the Contractor shall submit six prints of working or shop drawings to the Officer-in-Charge for acceptance as to the method of construction and design prior to the commencement of the work under Contract or the delivery to the project site of any equipment or material covered by the drawings, whichever is later. The Officer-in-Charge may require the drawings to be resubmitted as often as necessary to render them complete, legible and free from extensive corrections. If a resubmittal is required, the Officer-in-Charge shall return one print to the Contractor who shall make all the corrections or additions shown thereon. The Contractor shall then resubmit six prints of the corrected drawings for written acceptance by the Officer-in-Charge.

(3) No working or shop drawings that have been approved shall be changed without the written approval of the Officer-in-Charge. After acceptance, the Contractor may proceed with the parts of the project called for in such drawings.

(4) The Contractor shall submit for the acceptance of the Officer-in-Charge, other submittals as required by the contract.

(d) Payment and performance schedules. **Within seven days** of the official commencement date or within such further time as the Officer-in-Charge may allow, the Contractor shall submit for acceptance in writing of the Officer-in-Charge:

(1) In addition to the schedule provided in the Final Proposal, a detailed performance schedule of the critical path method (CPM) type or approved equal, in the form of a network diagram and activity listing, unless otherwise specified in the specifications. The schedule shall show in sufficient detail and in orderly sequence all activities, their description, duration, relationship and dependencies necessary to the completion of the contract. It shall contain, but not be limited to, the sequence of all operations including procurement and mobilization of equipment, plant and materials to complete the work within the contract period. If the schedule is not accepted, it shall be revised as directed by the Officer-in-Charge. Changes in the schedule shall be made only with the written acceptance of the Officer-in-Charge. The schedule shall be used as a basis for establishing major construction operations and as a check on the progress of the work performed under the contract. Claims by the Contractor for delays including related time extensions may be considered only if the initial performance schedule has been accepted by the Officer-in-Charge.

Within seven days after receipt of recommended revisions to the performance schedule, the Contractor shall submit a revised schedule to the Officer-in-Charge for acceptance. Progress payments will be withheld until final approval of the schedule. At all times the schedule shall represent the Contractor's plan for orderly completion of the work. Any changes to the schedule shall require the written acceptance of the Officer-in-Charge. The Contractor shall update the schedule within 15 days of acceptance of any change to the schedule or deviation of 30 days between the Contractor's performance and the accepted schedule.

(2) The Contractor's work week schedule, in days and hours that the Contractor intends to work. Changes to the schedule shall not be made without written acceptance by the Officer-in-Charge.

(3) Payment schedule. Together with the performance schedule, the Contractor shall submit for the Officer-in-Charge's acceptance, an estimated payment schedule which coincides with the performance schedule. The schedule shall include an itemized breakdown of lump sum items. The schedule shall list the anticipated monthly payment and shall be used by the City for project budgeting purposes. Revised payment schedules shall be submitted for acceptance by the Officer-in-Charge immediately on acceptance of revised performance schedules.

(e) Personal supervision. The Contractor, at all times, shall be present in person, or be represented by the Contractor's superintendent with authority to act for the Contractor in connection with the contract during the performance of the contract. The Contractor shall submit to the Officer-in-Charge prior to start of work, the name of the person charged with the responsibility of all work. Pursuant to section 7.1, "Suspension of work," failure of the Contractor or its superintendent to be present at the job site may result in suspension of the work by the Officer-in-Charge.

The Contractor shall be available upon reasonable demand to discuss the progress of the services being performed under the Contract. The Contractor shall also remain available through any applicable alternative means of contact, such as pager or cellular phone, in the event of an emergency or other event that necessitates immediate communication with the Contractor. All questions arising during the performance of the Contract which must be resolved by the Officer-in-Charge shall be brought to the Officer-in-Charge's immediate attention. [added from?]

(f) Contractor's place of business. The Contractor shall maintain, for the duration of the Contract, a permanent place of business within the State where the Contractor may be served notice and legal process. Written notice may also be served on the Contractor or its superintendent on the project site personally, or via facsimile machine if the Contractor has one, or via mail to the local post office address or post office box. [HRS 444-14]

(g) Field office, field telephone.

(1) Field office. If required in the RFP the Contractor shall provide a field office for the Officer-in-Charge at a location approved by the Officer-in-Charge. It shall be available **within seven days after** the commencement of the work under the Contract. Unless otherwise specified in the RFP, the field office shall be weatherproof and not less than one hundred twenty square feet in gross floor area. The aggregate window areas of the office shall not be less than ten per cent of the floor area, and one exterior door shall be provided with a keyed cylinder-type lock. The office shall be furnished with one drafting table having a dimension of not less than 3' x 6' and a stool, adequate plan racks and hangers, one desk, two chairs, shelves, a broom, telephone service, electric outlets, electric lighting, paper towels, paper cups, soap, toilet paper, and potable water and shall be maintained in good repair and in a clean and sanitary condition by the Contractor. If the office is not equipped with a water closet and lavatory, the Contractor shall make other arrangements to provide such facilities for the Officer-in-Charge. The Contractor shall comply with the requirements of the Land Use Ordinance of the City and County of Honolulu, relating to Special Permit Use and ADAAG. Payment for the field office shall be as specified in the RFP.

(2) Field telephone. If required in the RFP, the Contractor shall provide a field telephone for the Officer-in-Charge. Such field telephone shall be placed at a convenient and accessible location and housed in a box provided with a door which may be secured by a keyed cylinder-type lock. Payment for field telephone shall be as specified in the RFP.

(3) The field office, equipment, and telephone shall be maintained in good repair and in a clean and sanitary condition by the contractor until final payment or an earlier date as determined by the Officer-in-Charge. The ownership of the field office, equipment, and telephone shall remain with the contractor and shall be removed when instructed by the Officer-in-Charge.

(h) Sanitation facilities. Sanitation facilities for the use of employees on the work site shall be provided and maintained by the Contractor and their exclusive use strictly enforced. These facilities shall comply with the requirements and regulations of the State Department of Health. Contractor's sanitation facilities shall be located so that it will be as inconspicuous as possible to the passing motorists and the facility visitors.

In parks and other sites where there are comfort stations and/or public facilities, the Contractor will not be required to provide sanitation facilities for use by its employees; however, the Contractor shall be responsible to keep the City facilities used by its employees clean and respectable.

(i) Project sign. If required in the RFP, the Contractor shall submit to the City for approval shop drawings of signs to identify the project. Upon approval, the signs shall be erected at locations approved by the Officer-in-Charge at the site of the project **upon commencement** of the work under the contract. Signs shall be properly erected and kept clean and legible. After completion of the work under the contract and final acceptance thereof, the Contractor shall remove the signs as the Contractor's property. Payment for the project signs will be as specified in the RFP.

(j) Permits, licenses. The Contractor shall obtain all permits and licenses, pay all charges, fees, and taxes, give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. These may include, but not be limited to, demolition permit, building permit, dumping charges, grading permit, excavation permit, traffic permit, community noise permit, City park right-of-entry permit, National Pollutant Discharge Elimination System (NPDES) permit and compliance with Rodent Control Requirements on Demolition of Structures and Clearing of Sites and Vacant Lots. All City building and grading permit fees are waived for the contract. All cost and work under this subsection shall not be paid for directly but shall be considered incidental and included in the Offeror's Proposal prices for the various items of work.

(k) Surveys and construction stakes, lines and grades. Drawings include site plan showing approximate existing and new finish elevations. Contractor shall verify all grades, lines, levels, and dimensions shown on drawings and shall report any errors or inconsistencies to the Officer-in-Charge before commencing work. Failure to do so shall make the Contractor responsible for any changes which may be required thereafter in connection therewith. The Contractor shall at his own expense furnish all stakes, templates, platforms, equipment, and labor that may be required in setting and cutting or laying out any part of the work. The Contractor will be held responsible for the proper execution of the work to such lines and grades as may be indicated by the Officer-in-Charge, and all stakes or other marks thus established shall be preserved by him until their removal is authorized by the Officer-in-Charge. The Contractor shall be responsible for laying out the project. [SP version]

The work required for construction shall be laid out and provided with grade stakes through the service of a registered land surveyor licensed in the State of Hawaii.

(l) Water removal. The Contractor shall examine the site of the project and make all necessary arrangements with affected property owners for removal of water from the site. The Contractor shall provide a bridge or other means to prevent water, flowing into adjacent streets as a result of the Contractor's activities, from interfering with the traffic on such streets. The Contractor shall be responsible for all permits which may be required for removal of water from the site, including but not limited to the National Pollutant Discharge Elimination System (NPDES) permit. All costs under this subsection shall be considered incidental and shall be included in the Offeror's proposal prices for the various items of work.

(m) Electrical and water services. Unless otherwise specified in the RFP, the Contractor shall pay for all utility service or connection charges against the Department of Design and Construction by the various public utility companies, including the Board of Water Supply and the Department of Environmental Services, and it shall be considered that the cost of the charges are included in the submitted proposal, and no extra compensation shall be paid to the Contractor thereof.

Where there are existing utilities serving the project site and upon approval from the Officer-in-Charge, the Contractor may make a temporary connection into the utility lines within the site for use during construction of this project. The Contractor shall furnish all labor, materials (including temporary meters), and equipment necessary for proper installation and the protection of existing improvements. The Contractor will be assessed a charge based on the usage indicated from the meter readings. Upon completion of the project, the Contractor shall remove all temporary installations and restore the site to the satisfaction of the Officer-in-Charge at no cost to the City. All assessed charges for temporary utility services shall be included as part of the proposal price and independent of other utility allowances.

(n) Work limitations, protective barriers, and warning signs. It may be necessary to confine the work to one area at any one time. The Contractor shall provide and maintain protective barriers, fencing, and whatever signs necessary to caution the visiting public. The cost of providing and maintaining the protective barriers and warning signs shall be considered incidental to the cost of the project and no extra compensation shall be made to the Contractor.

(o) Traffic control.

(1) The Contractor shall obtain the necessary permits from the City's Department of Transportation Services **prior to commencing operations**. The Contractor shall notify the Honolulu Police Department and the Honolulu Fire Department of the construction work in progress and the blocking of any street during construction. Warning signs of adequate size, wording, and construction shall be located and installed as directed by the City's Department of Transportation Services, and the Contractor shall abide by other directives which may be issued by the City's Department of Transportation Services to eliminate other traffic problems and hazards.

(2) Work on any City street or in any area adjacent to a City street where traffic is impeded shall be performed between the hours of 8:30 a.m. to 3:30 p.m., unless otherwise permitted by the City's Department of Transportation Services.

(3) Whenever possible, the Contractor shall maintain roadways suitable for two lanes of traffic while construction is in progress. Adequate traffic control as required by the approved permit shall be provided by the Contractor during working hours.

(4) When material excavated for substructure construction is placed adjacent to the trench or excavation, it shall be placed in such a manner as to economize space and minimize interference with traffic. If necessary, such material shall be confined by suitable bulkheads or other devices.

If the street is not of sufficient width to hold excavated material without using part of an adjacent walkway, a passageway in compliance with the requirements of the ADA shall be provided and kept open at all times.

(5) When substructure excavations cross street intersections, safe crossings for vehicles and pedestrians shall be provided and maintained. Pedestrian crossings shall be of a safe nonslip material, be separate from vehicle crossing and be provided with handrails except in areas opened for vehicular traffic.

(6) During nonworking hours, all excavations on the roadway shall be covered with a safe nonskid bridging material and all excavations in the sidewalk area shall be covered with a safe, nonslip surface.

(7) The Contractor shall provide paved detours as necessary.

(8) A roadway may be closed only with the express permission of the City's Department of Transportation Services.

(9) The Contractor shall cooperate with the Officer-in-Charge, the City's Department of Transportation Services and other authorized persons in locating all warning signs, lights, walkways and detours required under this subsection. If the Contractor fails to promptly provide adequate warning signs, lights, walkways and detours, the Officer-in-Charge may provide them at the Contractor's expense. The Contractor shall pay the cost of such work to the City, or the City may deduct the cost from any moneys due the Contractor from the City.

(10) All costs under this subsection shall be considered incidental and shall be included in the offeror's proposal prices for the various items of work.

4.3 Joint contractor; subcontractor. (a) If solicitations are issued pursuant to HRS 103D-302 or if specified in the RFP, the Contractor shall comply with HRS 103D-302, relating to the listing of joint contractors or subcontractors. [HAR 3-122-21]

(b) Specialty work. Joint contractors and subcontractors may perform only the specialty work for which they are listed.

(c) Changes. The Contracting Officer, upon recommendation by the Officer-in-Charge, or for informal bids, the Officer-in-Charge alone, may allow changes to the original listing of joint contractors and subcontractors only if justified by the Contractor for reasons such as the joint contractor or subcontractor:

(1) Files a petition in bankruptcy or is the subject of an involuntary petition in bankruptcy which is not dismissed within ten (10) days of filing;

(2) Is not performing in accordance with the subject contract;

(3) Is to perform additional work for which a joint contractor or subcontractor was not required to be listed in the proposal; or

(4) For any other reason that the Contracting Officer or the Officer-in-Charge may consider justified.

(d) Subcontractual relations. The Contractor shall be responsible under the contract for the acts and omissions of its subcontractors, suppliers, and persons either directly or indirectly employed by them, as fully as the Contractor is for acts and omissions of its own employees. Nothing in the contract shall create any contractual relation between any subcontractor or supplier and the City, or any obligation on the part of the City to pay any money to, or cause to be paid any money from any subcontractor or supplier.

4.4 Contract, plans and specifications to be kept on site. The Contractor shall keep a copy of the most current plans and specifications, contract and shop drawings on the site of the project readily accessible for reference.

4.5 Construction methods and equipment. The Contractor shall use proper and efficient methods and equipment for the performance of the contract. All equipment furnished by the Contractor and used on the work shall be of such size and of such mechanical condition that the work can be prosecuted in an acceptable manner at a satisfactory rate of progress and the quality of work produced will be satisfactory.

4.6 Access and inspection. (a) Circumstances under which the City may perform inspections include but are not limited to, inspections of the Contractor's, its subcontractor's, or supplier's plant, or site of the project in order to determine [HAR 3-122-166]:

(1) Whether the standards set forth in section 1.2(c) of the GCDB, "City and County of Honolulu Standards and Specifications," have been met or are capable of being met;
(2) If the contract is being performed in accordance within its terms;
(3) Whether the goods or services are acceptable by inspection of the goods or services;
(4) The accuracy of cost or pricing data by audit of its books and records pursuant to section 3-122-175, HAR; or
(5) Whether or not to debar or suspend a person from consideration for award of contracts pursuant to sections 3-126-11 through 3-126-18, HAR.

(b) During the performance of the contract, the Contractor shall provide the Officer-in-Charge with proper and safe facilities for access to the site of the project and the shops of the Contractor, its subcontractors or suppliers. The Contractor, its subcontractor, or supplier shall provide without charge, all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing. Such assistance may include but not be limited to installation of hoists and ladders necessary to inspect the plant or site of project.

(c) The presence or absence of an inspector shall not result in the waiver of any requirements of the contract, nor shall any act, statement or omission by an inspector constitute or be deemed a change unless the procedure for changes is followed.

(d) Other contractors of the City shall be permitted access to the site of the project when it is required for performance of their respective contracts.

(e) Covered work

(1) If a portion of the work is covered contrary to the request of the Officer-in-Charge or to requirements specifically expressed in the contract, it must, if required in writing by the Officer-in-Charge, be uncovered for the inspection and be replaced at the Contractor's expense without change in the contract time.
(2) If a portion of the work has been covered which the Officer-in-Charge has not specifically requested to inspect prior to its being covered or is not expressly required by the contract to remain uncovered for inspection, the Officer-in-Charge may request to see such work and it shall be uncovered by the Contractor. If such work is in accordance with the contract, costs of uncovering and replacement shall, by appropriate change order, be charged to the City. If such work is not in accordance with the contract, the Contractor shall pay such costs unless the condition was caused by the City or a separate contractor in which event the City shall be responsible for payment of such costs.
(3) The Contractor shall promptly correct work rejected by the Officer-in-Charge or failing to conform to the requirements of the contract, whether or not fabricated, installed or completed. The

Contractor shall bear all costs of correcting such rejected work, including additional testing and inspections and compensation for any consultant services and expenses incurred by the City made necessary thereby.

(4) The Contractor shall remove from the site portions of the work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

(5) If the Contractor fails to correct nonconforming work **within seven days**, or within the time specified in the written notice, the Officer-in-Charge may correct it in accordance with section 7.2, "Termination for default for nonperformance or delay; damages for delay." If the Contractor does not proceed with correction of such nonconforming work within the time fixed by written notice from the Officer-in-Charge, the City may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay the costs of such removal and storage **within ten days after** written notice, the City may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the any consultant services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the contract shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

(6) The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or other contractors caused by the Contractor's correction or removal of work which is not in accordance with the requirements of the contract.

(7) Nothing contained in this subsection shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the contract. Establishment of the time period of one year as described in section 4.27, "Guarantee," relates only to the specific obligation of the Contractor to correct work, and has no relationship to the time within which the obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct work.

4.7 **Quality of materials and equipment**. (a) Materials and equipment installed as part of any permanent construction shall be new, unless otherwise specified. The contract contemplates the use of first-class materials and equipment throughout the performance of the contract, and it is agreed that any material for which no particular specification is given shall be of the highest quality of its class or kind. For the purpose of this subsection, "new" shall mean purchased specifically for the project for which award was made.

(b) Samples. Whenever requested by the Officer-in-Charge, the Contractor shall furnish samples of materials to be used in the performance of the contract. Said samples, if accepted, will be retained by the Officer-in-Charge and shall be used as the standard with which all like materials furnished under the contract must conform. The acceptance of any sample tested by the Officer-in-Charge or the failure of the Officer-in-Charge to require the furnishing of samples shall not relieve the Contractor from performing the work in accordance with the contract.

(c) Samples and test specimens. When required by the Officer-in-Charge, test specimens or samples of materials, appliances and fittings to be used or offered for use in the performance of the contract shall be prepared and furnished by the Contractor in such quantities and sizes as may be required for proper

examination and tests, with information as to their sources. The Contractor shall furnish additional test specimens and samples as directed. Unless otherwise specified in the RFP, samples, test specimens, and tests, shall be considered incidental to the Contractor's performance of the contract.

(1) Test specimens and samples shall be submitted in ample time to enable the Officer-in-Charge to make such tests or examinations as may be necessary. Laboratory tests and examinations made in a laboratory other than that of the City shall be at the expense of the Contractor.

(2) Tests. Tests specified by the contract, statute, regulation or ordinance shall be made and the costs thereof shall be borne by the Contractor unless otherwise provided for in such contract, statute, regulation or ordinance. Such tests shall be conducted under the direction of the Officer-in-Charge and the Contractor shall repair any damage resulting therefrom.

(3) In addition, the Officer-in-Charge may require such tests as deemed necessary to carry out the Officer-in-Charge's duties during the performance of the work under the contract. When a test is required by the Officer-in-Charge, the Contractor under the direction of the Officer-in-Charge shall conduct such test and shall bear all of the costs, including the cost of tools, labor and materials necessary therefor.

4.8 Character of workers, methods and equipment. The Contractor shall employ persons who possess the skill required to properly perform the work under the contract. When required by the Officer-in-Charge, whose decision shall be final, the Contractor shall replace any employee who lacks the skill to perform the work assigned to the employee or is discourteous or disorderly while performing such work. If acceptable to the Officer-in-Charge, a person who has been so replaced may be assigned other work on the project. Any such acceptance by the Officer-in-Charge shall not relieve the Contractor from performing the work in accordance with the contract.

(1) All workers must have sufficient skill and experience to perform properly the work assigned to them. All workers engaged in special work or skilled work such as bituminous courses of mixtures, concrete pavement or structures, electrical installation, plumbing installation, or in any trade shall have sufficient experience in such work and in the operation of the equipment required to properly and satisfactorily perform all work. All workers shall make due and proper effort to execute the work in the manner prescribed in the RFP.

(2) Insufficient workers. Should the Officer-in-Charge find that the work is being performed with an insufficient number of workers, the Contractor shall be required to increase the number of workers on the project.

4.9 Other contracts. The Contractor shall coordinate its operations with those of other contractors who may be employed on adjacent or related projects of the City, shall avoid interference therewith, and shall cooperate with the other contractors so as to avoid unnecessary delay or hindrance in the performance of their respective contracts. Any difference or conflict which may arise between the Contractor and the other contractors of the City in regard to their projects shall be resolved by the Officer-in-Charge, whose decision shall be final and binding.

4.10 Wages and hours. (a) Contractors shall observe and comply with all the provisions of Chapter 104, HRS, relating to wages and hours of employees on public works. The Contractor shall pay all employees on any contract with the City, the minimum basic wage rate in conformance with applicable Federal and State laws.

(b) Minimum wages. The minimum wage shall be periodically increased during the performance of the contract in an amount equal to the increase in the prevailing wages for those kinds of work as

periodically determined by the State Director of Labor and Industrial Relations. Notwithstanding the provisions of the original contract entered into, if the Director of Labor and Industrial Relations determines that the prevailing wage has increased, the rate of pay of laborers and mechanics on the contract shall be raised accordingly. No additional compensation shall be made to the Contractor for failing to consider increases of the minimum wage during the duration of the contract.

(c) Overtime work. No laborer or mechanic employed on the job site shall be permitted or required to work on a Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day unless the laborer or mechanic receives overtime compensation for all hours worked on a Saturday, Sunday, and a legal holiday of the State or in excess of eight hours on any other day. For purposes of determining overtime compensation under this subsection, the basic hourly rate of any laborer or mechanic shall not be less than the basic hourly rate determined by the Director of Labor and Industrial Relations to be the prevailing basic hourly rate for corresponding classes of laborer and mechanics on projects of similar character in the State.

(d) Certified payrolls. Two (2) certified copies of all payrolls shall be submitted weekly to the Officer-in-Charge. The Contractor shall be responsible for the submission of certified copies of the payrolls of all subcontractors and lower tiered subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the Director of Labor and Industrial Relations, and that the classifications set forth for each laborer or mechanic conform with the work the laborer or mechanic performed. The payrolls shall contain the name of each employee, the employee's classification, rate of pay (basic rate and fringe benefits), daily and weekly number of hours worked on the project as well as hours performed on other projects, the deductions made and the actual wages paid.

(e) Maintain payroll records. Payroll records for all laborers and mechanics working at the site of the work shall be maintained by the Contractor and its subcontractors, during the course of the work and preserved for a period of three years thereafter. The records shall contain the name of each employee, the employee's correct classification, rate of pay, daily and weekly numbers of hours worked, deductions made and actual wages paid.

(f) Availability of Payrolls. The Contractor shall make payroll records available for examination within ten (10) days from the date of a written request by a governmental agency or any authorized representative thereof. Any Contractor who: (1) fails to make payroll records accessible within ten days; (2) fails to provide information requested for the proper enforcement of this chapter within ten (10) days; or fails to keep or falsifies any record required under this chapter; shall be assessed a penalty as provided in section 104-22(b) of the HRS.

(g) Violations. If the Officer-in-Charge finds that any laborer or mechanic employed on the job site by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate, or has not received the laborer's or mechanic's full overtime compensation, the Officer-in-Charge may take appropriate action in accordance with HRS 104-21, or the Contracting Officer may, upon recommendation of the Officer-in-Charge, by written notice to the Contractor, terminate the Contractor's right, or the right of any subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such or part by contract or otherwise, and the Contractor and its sureties shall be liable to the City for any excess costs occasioned thereby.

(h) Post wage schedule. The Contractor is required to post the applicable wage schedule in a prominent and easily accessible place at the job site. The Contractor shall give to each laborer and mechanic employed under the contract a copy of the rates of wages required to be posted.

(i) Federally funded or federally assisted projects. On federally funded or federally assisted projects, the current federal wage rate determination in effect at the time of advertising the RFP is incorporated as part of the contract, and both Federal and State wage rates shall apply. Where rates for any class of laborers and mechanics differ, the higher rates shall prevail. The minimum federal wage rates shall be those in the U. S. Department of Labor Wage Determination Decision and Modifications in effect ten days prior to the bid opening date.

A copy of the wage rate determination, (including any additional classification and wage rate conformed under 29 CFR 5.5a(1)(ii)) and Davis-Bacon poster (WH-1321) shall be posted at all times at the site of work in a prominent and accessible place where it can be easily seen by the workers.

Employee Interviews. The Officer-in-Charge and the State of Hawaii Department of Labor and Industrial Relations may interview employees during working hours on the job. Failure to allow employees to be interviewed may be assess penalties described under section 104-22(b) of the HRS.

(j) Failure to comply. Failure to comply with the requirements of this section may result in disqualification from bidding or submitting proposals on future projects.

(k) Inclusion in subcontract. The Contractor shall include this section in every subcontract for work under this Contract.

4.11 Safety and health. (a) The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

(b) Safety program. The Contractor shall comply with chapter 396, HRS, relating to the standards of occupational safety and health and all applicable Federal, State and City laws and regulations, including but not limited to section 396-18, HRS, relating to safety and health programs for contractors for City construction projects where the proposal amount is in excess of $100,000.

(c) Responsibility. The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Officer-in-Charge.

(d) Safeguards, signs. The Contractor shall erect and maintain, as required by existing conditions and performance of the contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

(e) No loading. The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

(f) Emergency. In an emergency affecting safety of persons or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. The Contractor shall notify the Officer-in-Charge in writing of such emergency and remedial steps taken as soon as reasonably feasible. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in 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

immediately stop work in the area affected and report the condition to the Officer-in-Charge in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the City and the Contractor if in fact the material is a hazardous material and has not been rendered harmless. The work in the affected area shall be resumed in the absence of any hazardous materials, or when it has been rendered harmless.

(c) Notice. The Contractor shall give any notices bearing on safety of persons or property or their protection from damage, injury or loss and any other required notices or reports and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities .

(d) Safeguards, signs. The Contractor shall erect and maintain, as required by existing conditions and performance of the contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent site and utilities.

4.14 Environmental pollution and hazardous materials control. (a) Environmental pollution prevention and hazardous materials control shall consist of the protection of humans and the environment from pollution during and as a result of construction operations under the contract. The control of environmental pollution and hazardous materials requires the consideration of air, water and land and involves noise, dust, and solid waste management as well as other pollutants. It is the responsibility of the Contractor to investigate and comply with all applicable hazardous materials laws, including but not limited to those relating to control and abatement. Unless otherwise specified in the RFP, the requirements in this section shall be considered incidental to and part of the Contractor's performance of the contract.

(b) Explosives, hazardous materials. When use or storage of explosives or hazardous materials or equipment or unusual methods are necessary to perform work, before doing so, the Contractor shall notify the Officer-in-Charge in writing of the nature of the hazardous material, its intended use, intended duration of its presence on the premises and method of maintenance on the premises. The Contractor shall exercise utmost care in maintaining and using the explosive or hazardous material and carry on such activities under supervision of properly qualified personnel.

(c) Protection of land resources. Land resources within the project area and outside the limits of permanent work performed under the contract shall be preserved in their present condition or be restored to a natural condition that will not detract from the appearance of the surrounding area. Except in areas marked on the drawings to be cleared, the Contractor shall maintain and water trees in the construction area. Except in areas marked on the drawings to be cleared, the Contractor shall not deface, injure or destroy trees or shrubs nor remove or cut them without approval. Any tree or other landscape features scarred or damaged by the Contractor's equipment or operations shall be restored as nearly as possible to its original condition at the Contractor's expense.

(d) Water pollution. The Contractor shall comply with the provisions of Chapter 54, Water Quality Standards and Chapter 55, Water Pollution Control, of Title 11, Administrative Rules of the State Department of Health during all phases of work. The Contractor shall not pollute water resources including streams and drainage systems with fuel, oils, bituminous materials, calcium chloride, acids, construction wastes, wash waters, or other harmful materials. Surface drainage from cuts and fills whether or not completed and from borrow and waste disposal areas shall, if turbidity producing materials are present, be held in suitable sedimentation ponds or shall be graded to control erosion to meet acceptable

limits. Objectionable construction discharges shall be processed, filtered, ponded or otherwise treated prior to their discharge into a waterway or drainage system. Disposal of any material, garbage, oil, grease, chemicals, trash, and other similar materials on areas adjacent to streams or drainage systems shall be subject to the acceptance of the Officer-in-Charge. Such acceptance shall not relieve the Contractor from obtaining permits and meeting any requirements under applicable statutes, ordinances, rules, regulations or guidelines.

(e) Protection of fish and wildlife. The Contractor shall at all times perform all work in such a manner as to prevent any interference or disturbance to fish and wildlife.

(f) Dust control. The Contractor shall maintain all excavation, embankment, stockpile and all other work within or adjoining the project site free from dust which would cause a hazard or nuisance. Sprinkling, chemical treatment, bituminous treatment, or similar methods will be permitted to control dust upon acceptance by the Officer-in-Charge. Sprinkling must be repeated at such intervals as to keep all pavements and disturbed areas at least damp enough to prevent dust nuisance at all times, and the Contractor shall have sufficient sprinkling equipment on the job. Wet cutting shall be required for cement masonry blocks, concrete and asphaltic concrete pavements unless attachments are used with dry cutting equipment to capture the dust created thereby. All grinding work shall be wet. No dry powder brooming will be permitted in unconfined areas--vacuuming, wet mopping, wet sweeping, or wet power brooming may be used upon acceptance by the Officer-in-Charge.

(g) Damages and loss. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the contract) to property caused in whole or in part by the Contractor, a subcontractor at any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under this section, except damage or loss attributable to acts or omissions of the City or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under section 2.14.

(h) Non-compliance. The Officer-in-Charge will notify the Contractor of any non-compliance with the foregoing provisions and the action to be taken. If the Contractor fails or refuses to comply promptly, the Officer-in-Charge, with the approval of the Contracting Officer, may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No extension of time or payment for excess costs or damages shall be made for the time lost due to such stop action. The cost of environmental pollution control shall not be paid for directly, but shall be considered incidental and included in the proposal prices for the various items of work.

4.15 Noise control. (a) The Contractor shall comply with the provisions of Chapter 43, Community Noise Control for Oahu, of the State Department of Health, Administrative Rules. When required, the Contractor shall obtain a community noise permit.

(b) Construction activities shall not create "excessive noise" when measured at or beyond the property line of the construction site for the hours before 7:00 am and after 6:00 p.m. of the same day.

(c) Construction activities which emit noise in excess of 95 dBA at or beyond the property line of the construction site shall be restricted to the hours between 9:00 a.m. and 5:30 p.m. of the same day.

(d) Construction activities which exceed 95 dBA at or beyond the property line of the construction site shall be prohibited on Saturdays.

(e) Construction activities which exceed the "allowable noise levels" at or beyond the property line of the construction site shall be prohibited on Sundays and on all holidays observed by the City.

(f) The costs and work covered by this section shall not be paid for directly, but shall be considered incidental and included in the proposal prices for the various items of work.

4.16 Rubbish disposal. All unusable debris and waste materials shall be hauled away to an appropriate off-site dump area. However, with prior approval of the State Department of Health, burning may be permitted.

4.17 Restoration and precautions. (a) The Contractor shall protect property adjacent to the site of the project from damage and shall immediately restore property damaged by the Contractor to the condition it was in prior to the damage. Unless otherwise specified in the RFP, the requirements in this section shall be considered incidental to the Contractor's performance of the contract.

(b) Buildings and other structures. If the site of the project passes close to or under buildings and other structures, the Contractor shall protect all such buildings and structures by suitable means from any and all damages.

(c) Dewatering.

(1) The Contractor shall be responsible for the water and its control and disposal during the construction of all work covered by the contract. Dewatering shall be accomplished by suitable means. The Contractor shall repair any and all damages to property including buildings, retaining walls, etc., resulting from such dewatering operation to the satisfaction of the owners of such property. Dewatering shall be prohibited in areas subject to substantial damages to adjacent buildings and properties resulting from settlement due to dewatering.

(2) All concrete pours shall be dewatered in accordance with applicable sections of the standard specifications.

(3) The Contractor shall construct and maintain all cofferdams, drains, sumps, temporary diversions and protective works; and shall furnish, install, maintain and operate all necessary pumping and other equipment for dewatering the various parts of the work, regardless of the source of water. The Contractor shall maintain a water-free foundation to properly perform the items of work. The Contractor shall maintain the work free from water for at least six hours following the placement of each unit of concrete, concrete unit masonry or concrete rubble masonry. All temporary protective works shall be removed in a manner satisfactory to the Officer-in-Charge.

(d) Pavement, curb and gutter. The Contractor shall replace, restore and repair pavements, gutters, and curbings damaged or removed by the Contractor.

(e) Fences. The Contractor shall replace fences removed by the Contractor. Precautions shall be taken to prevent livestock from escaping when fences enclosing them are removed.

(f) Grass. When lawns are disturbed by trenching, the area over the trench shall be carefully graded and replanted with similar grass spaced over the trench substantially similar to the condition it was in prior to the excavation.

(g) Trees and shrubbery. Trees and shrubbery which must be disturbed shall be transplanted under the direction of the owner or lessee of the property to some other site and, upon completion of the backfill, shall be replanted on the original site, to the satisfaction of the said owner or lessee.

(h) Property marks. The Contractor shall reference and replace marks, stakes, pipes, monuments of the property line, and similar objects which may be disturbed by the Contractor while performing the contract. Any such replacements shall be certified by a surveyor licensed by the State of Hawaii.

(i) Sidewalks, patios, driveways and other like concrete construction. When trenches are to be made across concrete sidewalks, patios, driveways, and other like concrete construction, the Contractor shall make neat cuts in the concrete with pavement saws, or other means acceptable to the Officer-in-Charge, and shall thoroughly compact the backfill and reconstruct such construction with concrete similar to the existing construction.

(j) Topsoil. Where private land under cultivation is disturbed, the Contractor shall place the upper twelve inches of topsoil to one side, which shall not be mixed with the general excavated material. After backfill has been made to within twelve inches of the surface, the topsoil shall be replaced.

(k) Excavated material. Unless other specified, all excavated material shall become the property of the Contractor and shall be hauled from the jobsite to a disposal site acceptable to the Officer-in-Charge. Hauling of wet, dripping material over public streets is not permitted.

(l) Walls, rock, and masonry. The Contractor shall replace rock and masonry walls removed by the Contractor.

(m) After the construction, the Contractor shall restore the premises used for its operations to its original condition.

(n) The cost of the work under this section shall not be paid for directly, but shall be considered incidental and included in the proposal prices for the various times of work.

4.18 Historical and archaeological finds. All items having any apparent historical or archaeological interest discovered in the course of construction activities shall be preserved. The Contractor shall leave the archaeological find undisturbed and immediately report the find to the Officer-in-Charge so that the proper authorities may be notified.

4.19 Surface and subsurface conditions.

(a) City representations. Where investigation of subsurface conditions has been made by the City in respect to foundation or other design, the Contractor may inspect the records of the City as to such investigation and examine any sample that may be available. Where such information is shown in the plans, said information represents only the statement by the City as to the character of material which has

been actually encountered by the City in its investigation and is included only for the convenience of Contractor and other offerors.

Any subsurface information or hydrographic survey data furnished are for the Contractor and other offerors' convenience only. The information and data furnished are the product of the Officer-in-Charge's interpretation of the facts gathered in investigations made at the specific locations indicated to aid in the design of the project, and the City assumes no responsibility whatever in respect to the sufficiency or accuracy of borings or of the log of test borings or other preliminary investigations, or of the interpretation thereof, and there is no guaranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work. In addition, no assurance is given that conditions found at the time of the subsurface explorations, such as the presence or absence of water, will be the conditions that prevail at the time of construction. The Contractor shall be solely responsible for all assumptions, deductions, or conclusions the Contractor may make or derive from the subsurface information or data furnished.

Making information concerning subsurface conditions available to Contractor and other offerors is not to be construed in any way as a waiver of the Contractor's responsibility to examine the RFP and site. Contractor must satisfy itself through its own investigation as to conditions to be encountered.

(b) Differing site conditions. Unless the parties agree to include HAR Section 3-125-11(1) in the Special Provisions in lieu of this section, the Contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the Contract can and will be performed under such conditions, and that all materials, equipment, labor, and other facilities required because of any unforeseen surface or subsurface conditions (physical or otherwise) shall be wholly at the contactor's own cost and expense, anything in this Contract to the contrary notwithstanding. [HAR 3-125-11(2)]

(c) The Contractor is alerted to its encountering obstacles whether shown on the plans or not, or which may differ in location from that shown or the plans which may interfere with his normal method of operations. The Contractor shall take into account any additional costs anticipated due to these conditions and shall have these costs included in the RFP items which it feels most appropriate. No separate additional compensation shall be made.

4.20 Utilities, underground.

(a) The Contractor shall be responsible for the protection of existing surface and subsurface utilities and facilities within and abutting the project site that the Contractor encounters during the progress of the work, such as telephone system, electric system, water system, sewer system, drainage system, and irrigation system, etc., whether or not shown on the plans. Such utilities and facilities shall not be disturbed or damaged unless otherwise instructed in the plans and specifications. The Contractor shall notify the Officer-in-Charge of the affected utility and/or facility immediately of any damage or disturbance to the utility and/or facility.

(b) The existing surface and subsurface utilities and facilities shown on the plans are approximate in their locations. The Contractor shall be fully responsible for any and all damages, injuries, death and expenses to property and persons from accidents to and from existing utilities and facilities under the following conditions:

(1) Utilities were show on the plan;
(2) Utilities were located and exposed on the job as it progressed;
(3) Utilities were pointed out to the Contractor in the field;
(4) The utilities' actual locations are within five feet of the centerline of the utility or facility as shown on the plan;
(5) The Contractor should have been made aware of through the Contractor's diligent personal investigation and inspection of records and drawings of owners of the utilities, supplemented by probing, actual digging, or by other means in the field if necessary, to have determined the actual locations of utilities with all their branch and services;
(6) The Contractor's failure to exercise reasonable care in the performance of the work, whether or not shown on the plans.

The Contractor shall immediately notify the Officer-in-Charge of any disturbance or damage to utility. The Contractor shall repair, restore or reconstruct at its cost any damage to the disturbed utilities and facilities to the pre-existing condition. Any damage claims due to the disruption of service caused by the utilities being damaged shall be paid by the Contractor, who shall save harmless the City from all suits, actions or claims of any character brought on account of such action.

(c) Should existing utilities and facilities not shown on the plans, not pointed out to the Contractor in the field, not located or exposed on the job as the work progressed, or not discovered through the Contractor's investigation and inspection of records and drawing of owners of the utilities, supplemented by probing, actual digging, or by other means in the field if necessary, be encountered during the performance of the work, the Contractor shall promptly notify the Officer-in-Charge for instruction. Failure to do so will constitute acceptance of the site conditions and the Contractor assumes responsibility for any and all damages arising from its operations. Upon notification of the encounter with unanticipated utilities, the Officer-in-Charge may instruct the Contractor to relocate or adjust the existing utilities or facilities which shall be considered additional work as covered by Chapter 5 of this Contract, "Modifications; change orders." Utilities which must be relocated due to construction and not so indicated in the Contract shall be considered additional work.

(d) Damage to sewer facility. The Contractor shall notify the Officer-in-Charge and the Department of Environmental Services Collection and Maintenance Division immediately whenever a sewer facility is damaged. All Contractor-related damages which are knowingly not reported immediately to Collection and Maintenance Branch, and results in sewer backups, spills, and overflow, shall be billed for the actual cost of the clean-up by the City. Any subsequent fines, imposed upon the City by the Environmental Protection Agency (EPA) and/or State Department of Health will be backcharged to the Contractor.

4.21 Materials and equipment. The City does not assume any responsibility for the availability of any materials or equipment required under this contract. Unless otherwise specified in the RFP, the offeror shall be considered as having taken into account when submitting a proposal the availability of materials or equipment required under the contract, except as provided for in section 5.6, "Delay; time extensions."

4.22 Maintenance of site and final cleanup. (a) The requirements in this section shall be considered incidental to the Contractor's performance of the contract.

(b) Maintenance of site. The Contractor shall maintain the site of the project in an orderly and clean condition, and shall at suitable intervals and upon completion of each phase of the project, remove

accumulations of rubbish or refuse materials, surplus concrete, mortar and excavated materials not required or suitable for backfill. Washings from concrete mixers or mixing boxes shall not be deposited in the drainage or sewer system of the City or on paved streets. The Contractor shall keep the project and surrounding area neat and free of dirt and dust by periodic blading, power brooming, watering or other approved means.

(c) Surplus excavated material. All surplus excavated materials from the project shall become the property of the Contractor unless otherwise specified. Excess material, debris, adobe and unacceptable material shall be hauled away. The cost of the work under this section shall be considered incidental and included in the proposal prices for the various items of work.

(d) Removal. Upon completion and before final acceptance by the Officer-in-Charge of the work performed under the contract, the Contractor shall remove rubbish, surplus or discarded materials, falsework, forms, temporary structures, field offices, project signs, signs not a part of the project, and Contractor's equipment and machinery, and shall leave the site and ground occupied by the Contractor in connection with the performance of the contract in an orderly and clean condition. Buildings constructed, altered, or worked in by the Contractor in the performance of the contract shall be left "broom clean," and stains and other blemishes resulting from the Contractor's operations, such as dropped or splattered concrete or mortar and paint, shall be removed from floors, walls, ceilings, windows, and all other exposed surfaces.

4.23 Partial acceptance of project. The Officer-in-Charge may accept and place parts of the project in service as completed and the Contractor shall give proper access to such portions for this purpose. Use by the public without permission of the Officer-in-Charge shall not in any way be construed as an acceptance of the work under the contract and shall not in any way relieve the Contractor from the Contractor's obligation under the contract.

4.24 Responsibility of the contractor prior to acceptance. (a) The Contractor shall repair, reconstruct, restore, and replace the work or any part thereof which is injured, damaged or vandalized prior to acceptance of the work by the Officer-in-Charge, by any cause whatsoever, except damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God, such as earthquakes, tsunamis, lava flows, and acts of the public enemy or governmental authorities.

(b) Occupancy prior to acceptance. The City may occupy or use any completed or partially completed portion of the work at any stage prior to acceptance when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the Contractor's insurer. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, air conditioning, utilities, damage to the project and insurance, and have agreed in writing concerning the period for correction of work and commencement of the guarantee required by the contract. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.

(c) Inspection. Immediately prior to such partial occupancy or use, the Officer-in-Charge and Contractor shall jointly inspect the area to be occupied or used in order to determine and record the condition of the area.

(d) No acceptance of non-complying work. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the project shall not constitute acceptance of work not complying with the requirements of the contract.

4.25 Final inspection. (a) Before notifying the Officer-in-Charge that the project is substantially complete including compliance with section 4.23, "Maintenance of site and final cleanup," the Contractor shall inspect the project and test all equipment with all of its subcontractors. The Contractor shall also proceed to obtain the documents required under the Contract such as but not limited to:

(1) All written guarantees;
(2) All "as-built" drawings;
(3) All certified payroll affidavits if not submitted earlier;
(4) Certificate of plumbing and electrical inspection;
(5) Certificate of building occupancy;
(6) Certificate of soil and wood treatments;
(7) Certificate of water system chlorination;
(8) Maintenance service contract;
(9) Two (2) copies of a list of all equipment installed; or
(10) All operating and maintenance manuals for equipment installed.

Prior to requesting a final inspection to determine substantial completion, Contractor shall also complete the following items:

(1) Arrange to deliver tools, spare parts, extra materials, and similar items to a location designated by the Contracting Officer. Label with manufacturer's name and model number, where applicable.
(2) Complete startup testing of systems.
(3) Submit test, adjust and balance records.
(4) Terminate and remove temporary facilities from Project site, along with mockups, construction tools, and similar elements.
(5) Advise the Contracting Officer of changeover in other utilities.
(6) Complete final cleaning requirements.

(b) "Substantially complete" means:
(1) All utilities are connected and in working condition;
(2) All air conditioning and other major equipment are in acceptable working condition;
(3) The building, structure, improvement, or site can be used for its intended purpose; and
(4) The completed work conforms to the specifications of the Contract, except for "minor discrepancies" as provided for in Section 4.25(f) of this Contract.

(c) After finding everything in order, the Contractor shall notify the Officer-in-Charge in writing that the project is substantially complete and ready for inspection.

(d) The Officer-in-Charge shall then make a determination as to whether or not the project is ready for inspection. If the Officer-in-Charge is not satisfied, the Contractor will be notified in writing of the items that require completion prior to inspection. After the Contractor complies with the Officer-in-Charge's instructions, the Contractor will again submit, in writing, a request for inspection.

(e) When the Officer-in-Charge determines that the project is substantially complete, a pre-final inspection will be conducted by the Officer-in-Charge along with representatives of other City agencies interested in the project, within seven days of receipt of the request from the Contractor.

(f) If the pre-final inspection discloses only minor discrepancies, the Officer-in-Charge shall accept the project as substantially complete and issue in writing, a list of the discrepancies that need to be corrected including all documents required by the Contract, hereinafter referred to as the "punch list," and the time in which the Contractor must complete the punch list. The date of acceptance of the project as substantially complete shall signify the end of the contract completion time.

(g) The Contractor shall, **within seven days** after receipt of the punch list, proceed to complete the items on the punch list. Upon completion, the Contractor shall submit a written request for a final inspection, after which, if the Officer-in-Charge finds that all discrepancies are satisfactorily corrected, the Officer-in-Charge will accept the project as completed, hereinafter referred to as "final acceptance."

(h) Noncompliance. If the Contractor fails to proceed or complete the punch list within the specified times, the Officer-in-Charge may proceed to have such work performed at the Contractor's expense, and the Contractor's sureties will be liable therefor. The City shall be entitled to reasonable attorneys' fees, consultants' fees and costs necessarily incurred by the Contractor's refusal to complete the contract and to pay such costs of corrective work.

(i) Upon final acceptance, the Contractor shall be relieved of its responsibility in maintaining and protecting the work and site and for injury to persons or property. Release of final payment shall be as specified in section 6.7, "Final Payment."

(j) Prior to release of final payment, the Contractor shall submit, **within thirty days after** final acceptance, or within such time as the Officer-in-Charge may allow, all remaining documents required by the Contract.

4.26 Guarantee. (a) This guarantee shall be deemed supplemental to guarantee provisions provided in other sections of the specifications for the individual units and systems of units so specified.

(b) Performance. The Contractor guarantees its performance and the performance of its subcontractors under the contract.

(c) Materials and equipment. The Contractor also guarantees all materials and equipment furnished or installed under the contract against defects and poor workmanship and to be in operable condition upon final acceptance of the work or portions of the work, and that all such materials and equipment conform to the requirements of this contract and be fit for the use intended.

(d) Design. The Contractor guarantees the design to meet the criteria and operating requirements specified and against failure to perform in accordance with such criteria and operating requirements.

(e) Guarantee period. Unless otherwise specifically stated in the RFP that a longer period is intended, the guarantee shall extend for a period of one year upon final acceptance of the work by the Officer-in-Charge and shall include all labor, materials, equipment and parts. The Officer-in-Charge may also determine the guarantee period to commence upon acceptance of the material or equipment installed, or

work performed. Furthermore, this period shall be extended from the time of correction of any defect or failure, corrected under the terms of this guarantee, for a like period of one year. The Contractor shall provide a new certificate of guarantee for the extended one-year period.

(f) Correction. The Contractor shall correct all defects or failures discovered within the guarantee period. The City will give the Contractor prompt written notice of such defects or failures following their discovery. The Contractor shall commence corrective work **within seven days** following notification and shall diligently prosecute such work to completion. The Contractor shall bear all costs of corrective work, which shall include necessary disassembly, transportation, reassembly and retesting, as well as repair or replacement of the defective materials or equipment and any necessary disassembly and reassembly of adjacent work.

(g) Noncompliance. If the Contractor fails to perform corrective work in the manner and within the time stated, the City may proceed to have such work performed at the Contractor's expense, and the Contractor's sureties will be liable therefor. The City shall be entitled to reasonable attorneys' fees, consultants' fees and costs necessarily incurred by the Contractor's refusal to complete the contract and to pay such costs of corrective work.

(h) Performance bond. Unless otherwise specifically stated in the RFP that a longer period is intended, the performance bond shall be in full force and effect for the duration of the contract and for a period of one year after final acceptance of the contract by the Officer-in-Charge.

(i) Rights and remedies. The rights and remedies of the City under this provision do not preclude the exercise of any other rights or remedies provided by this contract or by law with respect to unsatisfactory work performed by the Contractor.

4.27 As-built drawings. The Contractor shall maintain at the job site two (2) sets of full size contract drawings, marking them in red to show all variations between the construction actually provided and that indicated or specified in the contract documents, including buried or concealed herein, or where variations in scope or character of work from that of the original contract are authorized, the drawings shall be marked to define the construction actually provided. Where equipment installation is involved, the size, manufacturer's name, model number and power input or output characteristics, as applicable, shall be shown on the as-built drawings. The representations of such changes shall conform to standards and details as necessary to clearly portray the as-built construction.

The drawings shall be maintained and updated on a daily basis. Monthly and final payments to the Contractor shall be subject to prior approval of the updated drawings, including approved Change Order changes to design.

On completion of the work, both sets of marked-up drawings shall be delivered to the Officer-in-Charge and shall be subject to the Officer-in-Charge's approval before acceptance.

CHAPTER 5 – MODIFICATIONS; CHANGE ORDERS

5.1 Supplemental plans and specifications. The Officer-in-Charge may furnish by written order such supplemental plans and specifications, during the performance of the Contract, as may be necessary to clarify the Contract or define it in greater detail, and the Contractor shall comply with such supplemental plans and specifications. Such supplemental plans and specifications shall become a part of the Contract upon execution of a no-cost change order or otherwise.

5.2 Omission, errors or discrepancies in contract. (a) Omissions. Work incidental to the Contract, although not specifically referred to in the Contract, shall be furnished and performed by the Contractor without change in the contract price. Labor, materials and equipment directly or indirectly necessary to complete the construction of the project, whether or not the same may have been expressly provided for in the Contract, shall be furnished and performed by the Contractor without change in the Contract price.

(b) Errors or discrepancies. The Contractor shall notify the Officer-in-Charge in writing immediately upon discovery of any error, omission or discrepancy:

(1) In points or instructions furnished by the Officer-in-Charge; or

(2) Within the contract or any part thereof.

(c) After discovery of an error, omission, or discrepancy as described in subsections 5.2(a) and (b), the Contractor shall provide written notice of same in the manner and time prescribed above to the Officer-in-Charge. The Contractor shall proceed with the performance of the contract only after receiving written approval or instructions from the Officer-in-Charge.

5.3 Change Orders. (a) The Officer-in-Charge may at any time, without notice to any surety, issue a change order to make changes in the work within the scope of the contract as may be found to be necessary or desirable. Such changes shall not invalidate the contract or release the sureties, and the Contractor will perform the work as changed, as though it had been part of the original contract. Minor changes in the work may be directed by the Officer-in-Charge at no change in contract price or time. In the absence of a change order or written order, the Contractor will not be entitled to payment for any such extra work. [HAR 3-125-4(1)] The Contractor's cost of responding to requests for price or time adjustments is included in the contract price. No additional compensation will be allowed unless authorized by the Contracting Officer.

(b) Adjustments of price or time for performance. If any change order increases or decreases the Contractor's cost of, or the time required for performance of any part of the work under this contract, an adjustment may be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this section shall be determined in accordance with HAR § 3-125-13(a), which is included in Section 6.9 of this GCDB, "Price adjustment." Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with the price adjustment clause included in Section 6.9 pursuant to HAR § 3-125-13(a)(1)(E). Failure of the parties to agree to an adjustment in time shall not excuse a contractor from proceeding with the contract as changed, provided that the Contracting Officer, within 14 days after the changed work commences, makes such provisional adjustments in time as the Contracting Officer deems reasonable. The right of the Contractor to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the notice requirements for disputes and claims established by the Contract. [HAR 3-125-4(2)]

On any price adjustment, Contractor shall submit detailed cost breakdowns in the format attached herein as Exhibit "F," for material, equipment and labor, including additional or reduction in time, for the Officer-in-Charge's approval, **within three working days** or within such further time as the Officer-in-Charge may allow, from the time the Contractor is informed of the work to be performed or of any changes. The substantiation shall include the Contractor's and subcontractor's cost breakdown to a level of detail acceptable to the Officer-in-Charge.

Should the Contractor delay or refuse to submit detailed cost breakdown for the changed work, the Officer-in-Charge may pay the Contractor in accordance with Section 6.9, "Price adjustment."

(c) Time period for claim. Within thirty days after receipt of a written change order under subsection (a) above, unless such period is extended by the procurement officer in writing, the Contractor shall file a notice of intent to assert a claim for an adjustment. The requirement for filing a timely written notice cannot be waived and shall be a condition precedent to the assertion of a claim. [HAR 3-125-4(3)]

(d) Claim barred after final payment. No claim by the Contractor for an adjustment hereunder shall be allowed if written notice is not given prior to final payment under this Contract. [HAR 3-125-4(4)]

(e) Other claims not barred. In the absence of such a change order, nothing in this clause shall restrict the Contractor's right to pursue a claim arising under the contract or for breach of contract. [HAR 3-122-4(5)]

5.4 Claims based on oral directives. (a) Oral directives. Any oral order, direction, instruction, interpretation or determination from the Officer-in-Charge which, in the opinion of the Contractor, causes any change, can be considered as a change only if the Contractor gives the Officer-in-Charge written notice of its intent to treat the oral order, direction, instruction, interpretation or determination as a change directive. The written notice must be delivered to the Officer-in-Charge before the Contractor acts in conformity with the oral order, direction, instruction, interpretation or determination, but **not more than five days after** delivery of the oral order to the Contractor. The written notice shall state the date, circumstances, whether a time extension will be requested, and source of the order that the Contractor regards as a change. The written notice may not be waived and shall be a condition precedent to the filing of a claim by the Contractor. Unless the Contractor acts in accordance with this procedure, any oral order shall not be treated as a change and the Contractor waives any claim for an increase in the contract time or contract price related to the work. [HAR 3-125-16]

(b) Acknowledgment of oral directive. **Not more than five days after** receipt of the written notice from the Contractor, the Officer-in-Charge shall issue a change order for the subject work if the Officer-in-Charge agrees that it constitutes a change. If no change order is issued in the time established, it shall be deemed a rejection of Contractor's claim for a change. If the Contractor objects to the Officer-in-Charge's refusal to issue a change order, it shall file a written protest with the Officer-in-Charge **within thirty days after** delivery to the Officer-in-Charge of the Contractor's written notice of its intention to treat the oral order as a change. In all cases the Contractor shall proceed with the work. The protest shall be determined in accordance with the disputes provisions under section 8.7,"Authority to resolve contract and breach of contract controversies." [HAR 3-125-16]

5.5 Overtime inspections. (a) Written request. If the Contractor wishes to work at such time of the day which is during the period other than the regular business hours of the City, or on a Saturday, Sunday,

or legal State holiday, the Contractor shall make a written request for inspection services during such period.

(b) Notice. If such a request is made and granted, the Contractor shall notify the Officer-in-Charge **not less than twenty-four hours in advance** of the time when such inspection services are required. The Contractor shall pay the City in accordance with section 41-20.1, ROH, at the rate for the current fiscal year set by the Director, Department of Budget and Fiscal Services, or in the event that the City has retained a private construction manager, the Contractor shall pay the rate established by the private construction manager.

(c) Invoice.
(1) City inspector. The City shall invoice the Contractor for overtime inspection services rendered by City inspectors.
(2) Private construction manager. The private construction manager will invoice the Contractor at the construction manager's established rate for overtime inspection.

5.6 Delay; time extensions; unforeseeable delays; suspension. (a) Permits. For delays in obtaining the necessary building and/or grading permits which are extraordinary and beyond the control of the Contractor and will result in a delay of the commencement of work, the Contractor may be granted an extension of time for the performance of the contract corresponding to the delay, provided the Contractor notifies the Officer-in-Charge **immediately** upon first encountering the delay. The Contractor shall keep the Officer-in-Charge informed as to the estimated length of the requested delay.

(b) Increases in scope of work. For increases in the scope of work caused by alterations and additional work under this Agreement, the Contractor will be granted an extension of time only if the changes are on the critical path and affect the final completion date of the Contract. If the Contractor feels that an extension of time is justified, the Contractor must request it in writing when submitting the detailed cost breakdown for the change order. The Contractor must show how the final completion date will be affected based on the progress of the project and must also support the claim with schedules and statements from its subcontractors, suppliers, and/or manufacturers as to the extent of the delay.

(c) Delivery of materials and equipment.
(1) For delays in delivery of materials and equipment which occur as a result of unforeseeable causes beyond the control and without fault or negligence of either the Contractor, subcontractors or suppliers, the Contractor may be granted an extension of time provided that the Contractor complies with the procedures herein. No extension of time will be considered unless the material and equipment were ordered at the earliest possible date.
(2) No extension of time shall be granted for a delay caused by a shortage of materials unless the Contractor, **within ten days** from the beginning of the delay (unless the Officer-in-Charge grants a further period of time before the date of final payment under the contract), notifies the Officer-in-Charge in writing of the delay and submits proof that the Contractor has diligently made every effort to obtain the materials from all known sources, and further proof that the inability to obtain the materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Contractor's operations. [HAR 3-125-18]
(3) The extent of delay must be substantiated by submission of evidence and supported by specific reasons for the delay to the satisfaction of the Officer-in-Charge, which may include.

(A) State specifically the reason or reasons for delay. Also, explain as necessary, the effect of this delay to the other trades and to the specified completion date of the project.

(B) List the pertinent chronological events and their dates, for the project such as, but not limited to, the following:

(i) Notice to proceed
(ii) Sample or shop drawing submittal
(iii) Sample or shop drawing return
(iv) Purchase order
(v) Factory shipment
(vi) Arrival of ship
(vii) Delivery to job site
(viii) Material installation
(ix) Specified completion of project
(x) Actual completion of project
(xi) Pertinent correspondence, telegrams, meetings and telephone conversations.

(C) Submit copies of purchase order, factory invoice, bill of lading, shipping manifest, delivery tag and any other pertinent correspondence as evidence to support the delay.

(D) Cite the period of delay and the number of days requested therefore. The period of delay shall not exceed the difference between the originally scheduled delivery date at the job site versus the actual delivery date.

(d) Other unforeseeable delays. If any delay in the completion of the work arises from causes such as acts of God, acts of the public enemy, acts of the City and any other governmental entity in either a sovereign or contractual capacity, acts of another contractor (but not the Contractor's subcontractor) in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, unusually severe weather, or delays of subcontractors due to causes similar to those set forth above, then the Contractor shall be granted an extension of time provided that:

(1) The Contractor shall notify the Officer-in-Charge in writing, **within ten days** from the commencement of the delay (unless the Officer-in-Charge grants a further period of time before the date of final payment under the Contract), of the causes of the delay and, if possible, the possible effects such circumstances may have on the completion date of the Contract. Upon becoming aware of the extent of any such delay, the Contractor shall immediately inform the Officer-in-Charge in writing, stating specifically the reason or reasons for the delay and submit evidence to support its reasons. [HAR 3-125-18]

(2) The extent of any delay must be substantiated as follows:

(A) State specifically the reason or reasons for the delay. Also, explain as necessary, the effect of this delay to other trades and to the specified completion date of the project.

(B) List the pertinent chronological events for the project and their dates, such as, but not limited to, the following:

(i) Notice to proceed
(ii) Sample or shop drawing submittal
(iii) Sample or shop drawing return
(iv) Purchase order
(v) Delivery to job site
(vi) Material installation
(vii) Specified completion of project
(viii) Actual completion of project
(ix) Pertinent correspondence, telegrams, meetings and telephone conversations.

(C) Submit copies of purchase orders, delivery tags, and any other pertinent correspondence as evidence to support claim.
(D) Cite the period of delay and the number of days requested therefore.
(E) A statement either that the above circumstances have been cleared and normal working conditions restored as of a certain day or that the above circumstances will continue to prevent completion of the project.

(e) Other work. For subsections (b), (c), and (d), the Officer-in-Charge shall have the option of extending the contract time for only that portion of the work affected by the delay. If the Officer-in-Charge exercises this option, the Contractor shall defer work in the areas approved by the Officer-in-Charge and complete the remaining work within the time specified in the contract.

(f) Suspension.
(1) When the performance of work is totally suspended by the Officer-in-Charge for one or more days in accordance with paragraphs (1), (2), (3), or (5), of section 7.1, "Suspension of work," the contract completion date shall be revised accordingly.
(2) During periods of partial suspensions of the work, the Contractor will be granted an extension only if the partial suspension affects the final completion date of the contract. If the Contractor feels that an extension of time is justified, the Contractor must request it in writing **at least five working days before** the partial suspension will affect the critical operations in progress. The Contractor must show how the final completion date will be affected based on the progress of the project and must also support his claim with statements from his subcontractors.
(3) Evaluation. The Officer-in-Charge shall evaluate all time extension requests and shall ascertain the facts and extent of the time involved and the Officer-in-Charge's findings of the facts thereof shall be final and conclusive.
(4) No time extension will be considered for the following:
(A) Delays or suspension of work due to the fault of the Contractor, including the causes listed in paragraph (2) of section 7.1(a).
(B) Delays in arrival of materials and equipment due to the fault of the Contractor, its subcontractor or supplier in ordering, fabricating, delivery, etc.
(C) Delays caused by changes which the Officer-in-Charge determines unjustifiable due to the lack of supporting evidence or because the change is of such nature that the final completion date will not be affected.
(D) Delays caused by the failure of the Contractor to submit, on a timely basis, for approval by the Officer-in-Charge, shop drawings descriptive sheets, material samples, color samples, etc. except as covered in subsections 5.6(c) and 5.6(d).
(E) Failure to submit requests for clarification on a timely basis to avoid impacting the project schedule.
(F) Delays of weather unless unusually severe weather, or unless determined by the Officer-in-Charge to be justified.

(g) Additional rights and remedies. The rights and remedies of the City provided in the contract are in addition to any other rights and remedies provided by law. [HAR 3-125-18]

5.7 Variations in estimated quantities. (a) Where the quantity of a pay item in the contract is an estimated quantity and where the actual quantity of such pay item varies more than fifteen per cent above or below the estimated quantity stated in the contract, an adjustment in the contract price shall be made upon demand of either party. The adjustment shall be based upon any increase or decrease in costs due

solely to the variation above one hundred fifteen per cent or below eighty-five per cent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Officer-in-Charge shall, upon receipt of a timely written request for an extension of time, prior to final payment of the contract, ascertain the facts and make such adjustment for extending the completion date as in the judgment of the Officer-in-Charge the findings justify. Any adjustment in the contract price shall be in accordance with section 6.9, "Price adjustment." [HAR 3-125-10]

(b) All quantities appearing in the RFP are approximate, and those indicated in the RFP are prepared for the comparison of proposals only. The City does not, expressly or by implication, warrant that the actual quantities will correspond therewith. The Contractor understands and has included in its proposed prices, the entire cost of the performance of the contract, and it is understood and agreed that there is included in each lump sum or unit priced item, the entire cost of any and all items incidental to the performance of the contract covered by such lump sum or unit priced item. By submittal of its proposal, the Contractor certifies that it has verified these quantities in a manner deemed necessary or expedient.

5.8 Value engineering incentive. The Contractor may develop and submit value engineering change proposals for drawings, designs, specifications, or other requirements of the contract in accordance with HAR 3-132-1 et seq.. If any proposal is accepted and approved, in whole or in part, by the Officer-in-Charge, the contract shall be modified and shall include an equitable adjustment of the contract price in accordance with this section.

This section shall not apply to any cost reduction proposal that is not identified as a value engineering change proposal by the contractor at the time of its submission to the Officer-in-Charge.

Exhibit "J" titled "Value Engineering Change Proposal" may be used to initiate a value engineering change proposal.

CHAPTER 6 – PAYMENT; PRICE ADJUSTMENTS

6.1 Payment. (a) The Contractor shall be paid the contract price as full compensation for the performance of the contract. Should there be a discrepancy between the basis of payment outlined in the standard specifications and that called for in the Contract, the Contract shall govern. If an error, omission or misstatement shall be discovered in the quantities or measurements stated in the Contract, the same shall not vitiate the contract, or release the Contractor or his surety or sureties from performing the contract, or affect the price agreed to under the contract, or excuse the Contractor from any of the obligations or liabilities under the contract, or entitle him to damages or compensation, except as provided herein.

(b) Each application or request for payment shall be based upon the most recent schedule of payment submitted by the Contractor and accepted by the City in accordance with the terms of the Contract, the sum of which shall not exceed the total Contract amount. Each request shall be supported by data to substantiate its accuracy. The schedule of payment must be approved by the officer-in-charge, prior to any progress payments.

Requests for payment must include the following documents before the City is obligated to make any payment under this Contract:

(1) A copy of the City-approved schedule of payment;

(2) A certificate by the Contractor of the percentage of completion of each position of the work as well as the materials that have been obtained by the Contractor and accepted by the officer-in-charge as of the end of the period covered by the request for payment; and

(3) An updated monthly critical path method (CPM) schedule for the Project that shows:

(A) Any Contractor claimed event of delay;
(B) The impact of the event of delay on the critical path of the Project; and
(C) The current revised critical path based upon the event of delay.

(c) Lump sum contracts.

(1) For lump sum contracts, the contract price shall be the result obtained by first reducing the amount designated as the total sum proposed in the award by the amount included therein for allowances and contingencies, and adding thereto or deducting therefrom any extra cost or any reduction in cost, respectively, to the City as a result of supplemental agreements in writing and written orders.

(2) Lump sum contract prices include all materials, equipment, labor and all other incidental work required for the complete construction and installation of the lump sum product, all in accordance with the plans and specifications. Payment will be made only for the item in place complete, regardless of the amount of material, equipment and labor necessary to complete the same in a proper and workmanlike manner and in accordance with the plans and specifications.

(d) Unit priced items. Payment shall be made for the actual quantities of units incorporated into the contract multiplied by the unit prices of the contract items, when the unit work or items are in place complete, provided that where the quantity of any item varies more than fifteen per cent above or below the estimated quantity stated in the contract, payment shall be made at the adjusted unit price in accordance with section 5.7, "Variations in estimated quantities."

6.2 Allowance items. Payment for allowance items shall be included in the monthly estimate for progress payment upon submittal of paid invoices. Unless otherwise specified in the RFP, the Contractor shall be reimbursed from the allowance items as follows:

(1) For utility allowance, no markup of any kind will be allowed.

(2) For off-duty police officers, the reimbursement shall also include the administrative fees charged by the Honolulu Police Department, plus twenty per cent inclusive of any administrative costs, overhead/profit, bond fee, and applicable taxes.

6.3 Mobilization. (a) Mobilization shall consist of preparation work and operations, including but not limited to those necessary for the movement of personnel, equipment, supplies and incidentals to the project site; for the acquisition of all work materials; for the establishment of all offices; buildings, and other facilities, excluding field office and project site laboratories, necessary for work on the project; and

for all other work and operations which must be performed, or costs incurred, prior to beginning work on the various items on the project site.

(b) Maximum allowed amount for mobilization. Where there is an item in the RFP for mobilization, unless otherwise specified, the maximum offer allowed for this item is an amount not to exceed six per cent of the total sum of all items within the group of items in which the mobilization item is included, excluding the price of the mobilization item. If the proposal submitted by the offeror indicates an amount in excess of the allowable maximum, the amount or amounts submitted by the offeror shall be reduced to the allowable maximum, and the total sum offer shall be adjusted to reflect any such reduction. For the purpose of comparing offers and determining the contract price to be inserted in the contract awarded to the offeror, if any is so awarded, the sum of all items adjusted in accordance with the foregoing shall be used and the offeror's proposal shall be deemed to have been submitted for the amounts as reduced and adjusted in accordance herewith.

(c) Payment. Mobilization will be paid for on a lump sum basis. Partial payments will be made as follows:

(1) When five per cent of the total sum offer is earned, fifty per cent of the amount proposed for mobilization will be paid;

(2) When ten per cent of the total sum offer is earned, seventy-five per cent of the amount proposed for mobilization will be paid; and

(3) When twenty per cent of the total sum offer is earned, one hundred per cent of the amount proposed for mobilization will be paid.

Nothing herein shall be construed to limit or preclude partial payments otherwise provided for by the contract. The cost for demobilization shall be considered incidental to the mobilization and no further allowances will be made for such.

6.4 Payments during performance of work. Monthly estimate and payment. The Officer-in-Charge shall, not later than the fifteenth day of each month during the performance of the contract, make an estimate of the amount of work completed in accordance with the contract during the immediately preceding month for the construction items listed in the performance schedule described in section 4.2(d), "Payment and performance schedules." In arriving at an estimate of work completed during the month, the Officer-in-Charge shall deduct sufficient allowance for any incomplete or unprotected work or to provide for any contingencies for remedy of defects or damage to said work or for the necessity of performing any part of the work over again to cure defects or damage.

6.5 Retention. (a) Retention for satisfactory progress. Pursuant and subject to Section 103-32.1, HRS, if the Officer-in-Charge finds that satisfactory progress is being made:

(1) Progress payments to the Contractor for the work completed for the month shall be for a sum equal to ninety-five per cent of the above estimate (after accounting for any deductions and contingencies), less previous payments and sums withheld by the City pursuant to subsection (a).

(2) After the first fifty per cent of the work to be performed under the contract has been completed and progress is satisfactory, progress payments will be for one hundred per cent of the above estimate less:

(A) Five per cent withheld from the previous payments to the Contractor during the performance of the first fifty per cent of work required under the contract;

(B) Other sums withheld by the City pursuant to the contract; and
(C) Previous payments.

(b) Unsatisfactory progress. The Officer-in-Charge may continue to make progress payments to the Contractor for a sum equal to ninety-five per cent of the above estimates, less previous payments and sums withheld by the City pursuant to the contract until such time that satisfactory progress is achieved by the Contractor.

(c) The retention amount withheld by the Contractor from its subcontractors of any tier shall not be more than the same percentage of retainage as that of the Contractor, where a subcontractor has provided evidence to the Contractor of:

(1) A valid performance and payment bond for the project that is acceptable to the Contractor and executed by a surety company authorized to do business in this State;
(2) Any other bond acceptable to the Contractor; or
(3) Any other form of collateral acceptable to the Contractor. [HRS 103-32.1]

Where subcontractor does not provide the above-listed performance and payment bonds, retainage by the Contractor (of subcontractor's billings) shall be in accordance with HRS 103-32.1(e).

(d) A written notice of any withholding shall be issued to a subcontractor, with a copy to the Contracting Officer, specifying the following:

(1) The amount to be withheld;
(2) The specific causes for the withholding under the terms of the subcontract; and
(3) The remedial actions to be taken by the subcontractor to receive payment of the amounts withheld.

(e) Any retainage provided for in this Section or requested to be withheld by the Contractor shall be held by the Contracting Officer.

(f) A payment request made by a Contractor to the Officer-in-Charge that includes a request for sums that were withheld or retained from a subcontractor and are due to the subcontractor may not be approved under HRS 103-10.5(e), unless the payment request includes:

(1) Substantiation of the amounts requested; and
(2) Certification by the Contractor, to the best of the Contractor's knowledge and belief, that:
(A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
(B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
(C) The payment request does not include any amounts that the Contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

(g) Contractor shall comply with all provisions of HRS 103-32.1 relating to retainage requirements.

(h) Delay in completion of work. Upon written request from the Contractor, if the completion of the work under the contract is being delayed through no fault of the Contractor, the Contractor may request for the release of all or part of the amount withheld. The Contracting Officer, upon recommendation of the Officer-in-Charge, may make additional payments from the amount withheld to the extent that such amount withheld is not required for the protection of the City. The Contracting Officer may require the Contractor to submit tax clearances from the State and Internal Revenue Service and surety clearance as a condition to the release of any retention.

(i) Substitution with general obligation bonds. Pursuant to HRS 103-32.2, the Contractor may request, and the Contracting Officer, upon recommendation of the Officer-in-Charge, may enter into an agreement to allow the Contractor to withdraw from time to time the whole or any portion of the sums retained as set forth above upon depositing with the Contracting Officer any general obligation bond of the State or its political subdivisions with a market value not less than one hundred ten per cent of the sum to be withdrawn.

6.6 Payment for delivered materials or equipment. (a) No payment for any material or equipment that is affixed, movable or removable, delivered to the site of the work under the contract will be made until said material or equipment is incorporated into the parts of the project required to be constructed under the contract. Payment for the delivered material or equipment shall be included in the monthly progress payment under the appropriate cost item. Each progress payment shall include the completed "Report of Equipment Purchased with Construction Contracts" (Form BFS-P-79), Exhibit "L." Whenever payment is requested for delivered equipment that is movable or removable, two copies of the list of such equipment must be attached to the report. The list shall include the equipment description, make, model, serial number, quantity, cost, an indication of whether or not the equipment is movable or removable, and the specific location of the equipment such as the room number. The amount included for payment under this subsection shall be subject to the retention requirement. Approval of progress payment shall be contingent upon the submission of the report (Form BFS-P-79) and the equipment list.

(b) Specialized or special ordered materials, equipment. The Officer-in-Charge may, to the extent provided for in the contract, include in the monthly estimate for progress payment the delivered cost of specialized materials, special ordered materials or equipment usable only for the contract. Such inclusion in the monthly estimate will be allowed only if all costs are substantiated by evidence of delivery and payment, and only for such materials or equipment as are specifically described or referred to in the contract as being the subject matter for such inclusion in the monthly estimate for progress payment. *The progress payment shall include the "Report of Equipment Purchased with Construction Contracts" and a list of the movable and removable equipment as described in Section 6.6(a).* Payment to the Contractor shall not terminate the Contractor's responsibility or ownership of such materials or equipment until incorporated in place and accepted by the Officer-in-Charge. The Contractor shall be responsible for the safekeeping of such specialized materials or equipment until incorporated into the work and accepted by the Officer-in-Charge. The amount included for payment under this subsection shall be subject to the retention requirement.

(c) Movable or removable equipment. Movable or removable equipment as specified in subsection (a) is defined as any item that can be removed with a hand tool, or can be moved or transferred to another location, or can be tagged with an identification number. The City policy is that such equipment shall be

budgeted and purchased with equipment phase funds.

6.7 Final Payment. (a) Final Payment. After final acceptance by the Officer-in-Charge, the Contractor will be paid the balance due in accordance with the Officer-in-Charge's final estimate of the construction actually performed and approved by the Contractor, provided that final payment will be made only with the approval of the Contracting Officer or, for improvement districts, the City Council, and upon submittal of the following to the Contracting Officer:

(1) Completed form BFS-P-79, "Report of Equipment Purchased with Construction Contracts," in accordance with Section 6.6;

(2) Whenever the payment includes payment of movable or removable equipment, two copies of the list of equipment installed or provided under the contract, listing the description, make, model, serial number, quantity, cost, an indication of whether or not the equipment is movable or removable, and the specific location of the equipment such as the room number, in accordance with Section 6.6;

(3) Written consent of the surety or sureties on the Contractor's bonds;

(4) Completed form DF-P-65 (Exhibit "K"), acknowledging any outstanding claims arising out of the performance of the Contractor's work; and

(5) Evidence of continuing insurance as required in section 3.1.

(6) Contractor is required to submit a tax clearance certificate from the director of taxation from the State and the Internal Revenue Service. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to a tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), Exhibit "M," will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov. Select "Forms for Vendors/Contractors" from the Procurement of Goods, Services and Construction-Chapter 103D, HRS, menu.

(b) Failure to comply. If the Contractor delays or fails to comply with the requirements of this Section, the Contracting Officer, upon recommendation of the Officer-in-Charge and without further obligation to the Contractor, may take any or all of the following actions:

(1) Upon notice from the State Department of Taxation or Internal Revenue Service, assign payment to the appropriate tax agency.

(2) Unilaterally, use the final payment estimate of the Officer-in-Charge as the final payment to the Contractor.

(3) Determine the Contractor to be nonresponsible which may jeopardize the Contractor's future status as a qualified offeror.

(c) Upon final payment to the Contractor, full payment to all subcontractors shall be made in accordance with Section 6.11, "Prompt payment by contractors to subcontractors." [HRS 103-10.5; HAR 3-125-23]

6.8 Payment does not imply acceptance of work. The granting of any payment by the City, or the receipt thereof by the Contractor, shall in no way imply acceptance of work. The unsatisfactory character

of such work, equipment, components or workmanship that do not conform to the requirements of this Agreement may be rejected by the City and in such case must be replaced by the Contractor without delay.

6.9 Price adjustment. (a) Method and manner of reaching price adjustment. Any adjustment in contract price made pursuant to the contract shall be determined in one or more of the following ways [HRS 103D-501(b); HAR 3-125-13]:

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

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

(3)

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

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

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

(b) For mutually-agreed changes, the allowances for all overhead, extended overhead resulting from adjustments to contract time (including home office and field overhead) and profit combined, shall not exceed the percentages set forth below:

(1) For the Contractor, for any work performed by its own labor forces, fifteen percent of the cost;

(2) For each subcontractor involved, for any work performed by its own forces, fifteen percent of the cost;

(3) For the Contractor or any subcontractor, for work performed by their subcontractors, seven percent of the amount due the performing subcontractor.

(c) In the absence of agreement between the parties, where the Contractor and the Officer-in-Charge cannot agree to the price adjustment of any change in work:

(1) For change orders with value not exceeding $50,000 by documented actual costs of the work, allowing for twenty per cent (20%) of the actual costs for overhead and profit on work done directly by the Contractor and ten per cent (10%) on any subcontractor's billing to the Contractor for the Contractor's overhead and profit ("Force Account"); or

(2) For change orders exceeding $50,000 by a unilateral determination by the Officer-in-Charge of the costs attributable to the events or situations under clauses with adjustment of profit or fee, all as computed by the Officer-in-Charge in accordance with applicable sections Chapters 3-123 and 3-126 of the HAR ("Unilateral Determination"). [HRS § 103D-501(b)(5)(A)]

(d) Cost or pricing data.

(1) Application. Application for cost or price adjustment shall be made pursuant to HAR 3-122-121 et seq. For any adjustment exceeding $100,000, the Contractor shall submit cost or pricing data and certification of that data except as provided for in paragraph (3). Certification shall be in the form attached herein as Exhibit "H." For adjustments less than $100,000, the Officer-in-Charge may, upon written determination that the circumstances warrant submission of cost or pricing data, require cost or pricing data.

(2) Cost or pricing data defined. Cost or pricing data mean all facts as of the date of price agreement that prudent buyers and sellers would reasonably expect to affect price negotiation significantly. Such data are factual, not judgmental, and are therefore verifiable. They are facts that can reasonably be expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred including such facts as:

(A) Vendor quotations;
(B) Nonrecurring costs;
(C) Information on changes in production methods and in production or purchasing volume;
(D) Data supporting projections of business prospects and objectives and related operation costs;
(E) Unit cost trends such as those associated with labor efficiency;
(F) Make or buy decisions;
(G) Labor union contract negotiations; and
(H) Information on management decisions that could have a significant bearing on costs.

(3) Exceptions. Cost or pricing data are not required if the price is based on contract unit prices, adequate competition (as in receiving bids or quotations from various subcontractors or suppliers for changed work), established catalogue prices or market prices, or prices set by law or regulation. However, the Officer-in-Charge may request cost or pricing data if the Officer-in-Charge considers that such price is not reasonable.

(4) Submission of cost or pricing data and certification. The Contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provision of Section 103D-312, HRS. The submission of any cost or pricing data shall be made subject to the provisions of subchapter 15, Chapter 3-122. A fully executed change order or other documents permitting billing for the adjustment in price under any method listed in Section 6.9(a)(1)-(4) shall be issued witin 10 days after agreement on the method of adjustment. Cost or pricing data shall be submitted to the Officer-in-Charge prior to beginning price negotiations. The Contractor shall submit certification of that data in the form attached herein as Exhibit "H," as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of the date of reaching agreement on price. Certification constitutes a representation as to the accuracy of the data upon which the Contractor's judgment is based. A certificate of current cost or pricing data shall not substitute for examination and analysis of the Contractor's proposal.

(e) Defective cost or pricing data. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or not current as of the date stated in the certificate, the City is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data.

If the Contractor and the Officer-in-Charge cannot agree as to the existence of defective cost or pricing data or amount of adjustment due to defective cost or pricing data, the Officer-in-Charge shall set an amount in accordance with the provisions of HAR 3-122-121 et seq., and the Contractor may appeal this decision as a contract controversy under chapter 3-126, HAR.

6.10 Force account. When the Contractor and the Officer-in-Charge cannot agree to the price adjustment of any change in work, the Officer-in-Charge may, in accordance with section 6.9, "Price adjustment," require that the work be performed under force account until such time that an equitable adjustment can be agreed to by both parties, provided that the Officer-in-Charge promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. Payment for work under force account shall be as follows: [HAR 3-125-4, 3-125-13]

(a) Allowable costs. In force account, cost shall be the sum of the costs of the following:
(1) Labor. The Contractor shall receive the current wage rate including fringe benefits for actual work engaged by the hourly worker and foreman in charge of the specific force account work. Fringe benefits are required amounts established by the State Department of Labor and Industrial Relations, any collective bargaining agreement and other employment contract generally applicable to the classes of labor employed. The Contractor shall submit the fringe benefits for each class in writing to the Officer-in-Charge for acceptance before the force account work begins. The wages for labor shall not exceed the rate of wages paid for similar labor performed under the contract, as evidenced by the record of the Contractor's payroll on file with the Officer-in-Charge.

For salaried workers, the Officer-in-Charge will determine the hourly wage rate by dividing the monthly salary plus benefits by one hundred seventy-six hours. The Officer-in-Charge shall authorize salary workers to perform the work.

For overtime work, payment will be for one and a half times the hourly wage rate plus the actual hours of overtime for fringe benefits, and/or as required by any collective bargaining agreement. For authorized salaried workers, payment will be for the hourly wage rate times the actual hours of overtime.

(2) Materials. The Contractor will receive the actual cost of materials accepted by the Officer-in-Charge and entering permanently into the work under the contract including transportation charges as shown by the invoices submitted to the Officer-in-Charge.

For stock materials, used and incorporated into the work, the Contractor shall receive the actual cost as certified by the Contractor to the cost paid by the Contractor. The Officer-in-Charge will include transportation charges and taxes paid by the Contractor.

(3) Machinery and equipment, other than small tools and minor equipment, which may be necessary or desirable to perform the work. The Officer-in-Charge may reject any machinery or equipment which the Officer-in-Charge deems unnecessary, inefficient or inadequate for the work to be performed. The term "small tools and minor equipment" shall include individual equipment or tools having a replacement value of two hundred fifty dollars or less, whether or not they are consumed in the use thereof.
(A) The rate shall be the per-hour rental rate based on the monthly rate established for said machinery or equipment in the then-current edition of the Rental Blue Book for Construction Equipment including the estimated operating cost per hour, and regional correction provided therein.

The hourly rate will be determined by dividing the monthly rate by one hundred and seventy-six. The rate includes the estimated operating cost per hour and the regional correction factor. If no rate is listed for a particular kind, type or size of machinery or equipment, then the monthly, hourly rate shall be as agreed upon in writing by the Contractor and the Officer-in-Charge prior to the use of said machinery or equipment. The Contractor shall provide proof of the rental rates charged.

(B) For trucks not owned by the Contractor, rental rates as those established under the Hawaii State Public Utilities Commission will be used to determine the cost and will be paid for as a material item under paragraph (3).

(C) For Contractor-owned trucks not listed in the Rental Rate Blue Book, the rates shall be as agreed upon in writing by the Contractor and the Officer-in-Charge prior to the use of said trucks.

(D) Rental rates which are higher than those specified in the Rental Rate Blue Book may be allowed where such higher rate can be justified by job conditions such as work in water, on lava, etc. Request for higher rate shall be submitted in writing to the Officer-in-Charge for approval prior to the use of the machinery or equipment in question.

(E) All rental rates for machinery and equipment shall include the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs, maintenance, tire wear, depreciation, storage, and all other incidentals.

(F) Transportation and/or mobilization

(i) The location from which the equipment is to be moved or transported shall be approved by the Officer-in-Charge.

(ii) Payment will be made for mobilizing and transporting the equipment or machinery to the force account work site, including loading and unloading, and back to its original location or other site, whichever cost is less. The cost of transportation shall not exceed the rates established by the Hawaii State Public Utilities Commission. If rates are nonexistent, then the rates will be determined by the Officer-in-Charge based upon the prevailing rates charged by established haulers within the locale.

(iii) Payment for self-propelled equipment or machinery will be for the cost of moving the equipment by its own power to the force account work site and back to the original location or other site, whichever cost is less.

(iv) When transporting equipment or machinery by other than its own power, payment shall be made for the transporter, if owned by the Contractor, at the hourly rate including the estimated operational rate and the applicable regional correction factor. Payment for the transporter, if not owned by the Contractor, shall be by invoice cost and paid for as a material item. Payment for the equipment or machinery shall be at the rate of "idle time" under (G).

(v) Payment for mobilization and transportation will not be made if the equipment or machinery is used on the work in any other way than upon extra work paid for under force account.

(G) Rental period

(i) Idle time. Idle time herein means the period in which the machinery or equipment designated for the specific force account work is not in use for the work. The time period shall be for a working day (8 hours). Payment shall be fifty per cent of the hourly rate excluding the estimated operational cost per hour per working day.

(ii) Standby time. Standby time herein means the period in which the machinery or equipment are standing by for the specific force account work day. A work day shall not exceed eight hours (standby time plus the operating time) unless the Officer-in-Charge authorizes the overtime. Payment shall be at the hourly rate including the estimated operational cost per hour per working day.
(iii) The rental period shall begin at the time equipment reaches the site of work, shall include each day that the machinery or equipment is at the site of the work and shall terminate at the end of the day on which the Officer-in-Charge directs the discontinuance of the use of the machinery or equipment.
(iv) Less than thirty minutes of operation will be considered a half hour of operation.
(v) Rental time will not be allowed or credited for any day on which machinery or equipment is inoperative due to its breakdown. On such days, the Contractor will be paid only for the actual hours that the machinery or equipment was in operation.
(vi) When force account work is completed within less than 8 hours, payment shall be for 8 hours.
(vii) For the purpose of determining the rental period, the continuous and consecutive days shall be the normal 8-hour shift work day, Monday through Friday excluding Saturday, Sunday, and legal holidays. Any work day to be paid less than 8 hours shall not be considered as continuous, except for equipment removed from rental for fuel and lubrication.
(viii) Overtime shall be paid for each hour in excess of the normal 8-hour shift work day at the corresponding hourly rate for daily, weekly, and monthly rates.

(4) State excise and use tax. State excise tax not to exceed the current rate and will be added to the total sum of paragraphs (1) through (3).
(5) When work is performed by a subcontractor who has been approved pursuant to Section 4.3, "Joint contractors; subcontractors," the Contractor will receive an additional amount equal to ten per cent of the total cost of paragraphs (1) and (3), to which shall be added the State excise tax.
(6) Percentages for fee and overhead. Not more than three line item percentages for fee and overhead, not to exceed the maximum percentages shown in subsection 6.9(c), will be allowed regardless of the number of tier subcontractors. [HAR 3-125-13]
(7) Payment for the above shall be deemed payment in full for work done under force account including superintendence, overhead, use of tools, machinery and equipment for which no rental is allowed, profit, taxes, subcontracting and other costs in connection therewith which are not provided for herein. **No payment will be made until itemized records along with receipted invoices and appropriate documents have been submitted and approved.**

(b) Records. The Contractor shall submit records of the above to the Officer-in-Charge at the end of each day on Daily Force Account Report sheets (Form DF-49), Exhibit "G," issued by the Officer-in-Charge. Such records submitted shall be subject to the approval of the Officer-in-Charge as evidenced by the Officer-in-Charge's signature thereon. The Contractor shall submit a statement covering the cost of all of the above items not later than the tenth day of the month following the month in which the costs were incurred.

6.11 Prompt payment by Contractors to subcontractors.

(a) Any money paid to Contractor for work performed by a subcontractor shall be disbursed to the subcontractor within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the Contracting Officer has withheld payment.

(b) Upon final payment to Contractor, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

(c) Penalties. The Contracting Officer or the Contractor, as applicable, will be subject to a penalty of one and one-half per cent (1-1/2%) per month upon outstanding amounts due that were not timely paid by the responsible party under the following. Where a subcontractor has provided evidence to the Contractor of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in subsection (d) below, and:

(1) Has provided to the Contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or

(2) The following has occurred:

(A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to Contractor and the surety, as provided for in Section 103D-324, HRS; and

(B) The subcontractor has provided to the Contractor an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the Contractor, any other bond acceptable to the Contractor, or any other form of mutually-acceptable collateral.

Then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the Contracting Officer to the Contractor and subsequently, upon receipt from the Contracting Officer, by the Contractor to the subcontractor within the applicable time periods specified in subsection (b) and Section 103-10, HRS. The penalty may be withheld from future payment due to the Contractor, if the Contractor was the responsible party. If a Contractor has violated subsection (b) three or more times within two years of the first violation, the Contractor shall be referred by the Contracting Officer to the contractor license board for action under Section 444-17(14), HRS. [HRS 103-10.5(c); HAR 3-125-23.]

(d) A properly documented final payment request from a subcontractor, as required by subsection (c), shall include:

(1) Substantiation of the amounts requested;

(2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:

(A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

(B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the

proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

(C) The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

(3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The Contracting Officer shall return any fiscal payment request that is defective to the Contractor within seven days after receipt, with a statement identifying the defect.

(e) In the case of a construction contract, a payment request made by a contractor to the Contracting Officer that includes a request for sums that were withheld or retained from a subcontractor and are due to a subcontractor may not be approved under subsection (c) unless the payment request includes:

(1) Substantiation of the amounts requested; and

(2) A certification by the Contractor, to the best of the Contractor's knowledge and belief, that:

(A) The amounts requested are only for performance in accordance with the specifications, terms and conditions of the contract;

(B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

(C) The payment request does not include any amounts that the Contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

The Contracting Officer shall return any final payment request that is defective to the Contractor within seven days after receipt, with a statement identifying the defect.

(f) This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under subsection (c) of this section; provided that any such payments withheld shall be withheld by the Contracting Officer.

6.12 Payment in bonds. When the contract is for an improvement district project, payment to the Contractor may be made in either cash or improvement district bonds.

6.13 Authority to withhold money due or payable. (a) Withholding money due or payable. The City may withhold such amounts from the money due or to become payable under the contract to the Contractor, or any assignee under section 2.11, "Assignment of money," as may be necessary to:

(1) Protect the City from any liability resulting from the work performed under this contract;

(2) Satisfy any obligation of the Contractor to the City, State Department of Taxation or Internal Revenue Service, including obligations not relating to the contract as required by law, and the obligation of the Contractor to the workers, subcontractors, and suppliers who have performed

labor or furnished material and equipment under the contract as the Contracting Officer deems necessary, but only with the concurrence of or instructions from the Contractor's surety; or
(3) Repair, restore, or compensate for, any real or personal property located within the project site or in the vicinity thereof which was damaged as a result of the fault or negligence of the Contractor while performing the work under this contract.

(b) Making payment from money withheld. The City may make such payments from such amounts withheld for reasons specified in subsection (a); provided, that before making any payment for damages to property prescribed in subsection (a)(3), the Officer-in-Charge shall request the Contractor in writing to undertake the repair or restoration of the damaged property or make compensation therefor. If the Contractor fails or refuses to make such repair, restoration, or compensation to the satisfaction of the Officer-in-Charge **within seven days** after notification by the Officer-in-Charge, the Contracting Officer, upon recommendation of the Officer-in-Charge and upon the Contracting Officer's own findings that such recommendation is justified, may make the necessary payments.

6.14 Interest. Interest on amounts ultimately determined to be due to Contractor shall be payable at the statutory rate applicable to judgments against the State under Chapter 622 from the date the governmental body receives notice of the written notice through the date of decision or judgment, whichever is later; except that if an action is initiated in circuit court pursuant to Section 103D-711, interest under this section shall only be calculated until the time such action is initiated.

CHAPTER 7 - DISPUTES AND REMEDIES

7.1 Suspension of work. (a) The Officer-in-Charge may, by written order, suspend the work, either in whole or in part for periods as the Officer-in-Charge may deem necessary for any cause, including but not limited to:

(1) Weather or soil conditions considered unsuitable for prosecution of the work;
(2) Failure on the part of the Contractor to:
  (A) Correct conditions unsafe for the general public or for the workers;
  (B) Carry out orders given by the Officer-in-Charge;
  (C) Perform the work in strict compliance with the provisions of the contract;
  (D) Provide adequate supervision on the jobsite; or
  (E) Maintain current liability insurance coverages.
(3) Whenever a redesign that may affect the work is deemed necessary by the Officer-in-Charge;
(4) Unacceptable noise or dust arising from the construction even if it does not violate any law or regulation; or
(5) The convenience of the City. [HAR 3-125-7]

(b) Partial and total suspension. Suspension of work on some but not all items of work shall be considered a "partial suspension." Suspension of work on all items shall be considered "total suspension." The period of suspension shall be computed from the date set out in the written order for work to cease until the date of the order for work to resume. [HAR 3-125-7]

(c) Reimbursement to Contractor. In the event that the Contractor is ordered by the Officer-in-Charge in writing as provided herein to suspend all or part of the work under the contract in accordance with

subsections (a)(3), (a)(4), or (a)(5), the Contractor may be reimbursed for actual money expended towards the project during the period of suspension. No allowance will be made for anticipated profits. [HAR 3-125-7]

(d) Cost adjustment. If the performance of all or part of the work is suspended for reasons beyond the control of the Contractor, an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such suspension, and the contract modified in writing accordingly. However, no adjustment under this section shall be made for any suspension:

(1) To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or

(2) For which an adjustment is provided for or excluded under any other provision of the contract. [HAR 3-125-7]

(e) Claims for adjustment. Any adjustment in contract price made pursuant to this section shall be determined in accordance with the provisions on changes and claims for adjustment. Claims for compensation shall be filed in writing with the Officer-in-Charge **within thirty days** after the date of the order to resume work or the claims will not be considered. Together with the claim, the Contractor shall submit substantiating documents covering the entire amount shown on the claim. The Officer-in-Charge shall take the claim under consideration and may make such investigations as are deemed necessary and shall be the sole judge as to the equitability of the claim and the Officer-in-Charge's decision shall be final. [HAR 3-125-7]

(f) No adjustment. No provision of this section shall entitle the Contractor to any adjustments for delays due to failure of surety, for suspensions made at the request of the Contractor, for any delay required under the contract, for suspensions, either partial or whole, made by the Officer-in-Charge under the provisions in subsection (a)(2). [HAR 3-125-7]

(g) Contractor's responsibilities. In case of suspension in the performance of the work under the contract from any cause whatsoever, the Contractor in addition to being responsible for performing the work under the contract shall:

(1) Indemnify and save the City and its officers and employees harmless from liability for any injury or damage occurring during the period that the performance of the contract is suspended;

(2) Be responsible for all materials and equipment delivered to the site of the project, including materials and equipment for which Contractor has received partial payment;

(3) Properly store the materials and equipment which have been partially paid for by the City or which have been furnished by the City;

(4) Remove immediately as directed by the Officer-in-Charge all surplus materials, equipment, and rubbish;

(5) Neatly and compactly store all materials and equipment on the site of projects within public highways or streets so as not to impede traffic or interfere with the use of public utilities or facilities;

(6) Provide suitable drainage and erect such temporary structures as are necessary to protect the project or parts of the project from damage;

(7) Properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedlings, and sodding furnished under this contract; and

(8) Continue to maintain liability insurance coverages.

7.2 Termination for default for nonperformance or delay; damages for delay. (a) Default. If the Contractor refuses or fails to perform the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in the contract, or any agreed upon extension thereof, fails to complete said work within such time, or commits any other substantial breach of the contract, and further fails **within seven days** after receipt of written notice from the Officer-in-Charge to commence and continue correction of the refusal or failure with diligence and promptness, the Contracting Officer may, upon recommendation by the Officer-in-Charge, by written notice to the Contractor, declare the Contractor in breach and terminate the Contractor's right to proceed with the work or the part of the work as to which there has been delay or other breach of contract. In this event the City may take over the work and perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and the Contractor's sureties shall be liable for any damage to the City resulting from the Contractor's refusal or failure to complete the work within the time specified. [HAR 3-125-18]

Any of the following causes may be deemed by the City to be a default and result in Contractor's termination under the contract:

(1) Failure to commence work within the time specified in the notice to proceed;
(2) Failure to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work;
(3) Failure to comply with orders of the Officer-in-Charge;
(4) Discontinuation of the prosecution of the work;
(5) Failure to resume work which has been discontinued within a reasonable time after notice to resume;
(6) Insolvency or is declared bankrupt, or commits any act of insolvency or bankruptcy;
(7) Allows any final judgment to stand against the Contractor unsatisfied for a period of ten days;
(8) Assignment for the benefit of creditors;
(9) Unauthorized changes in the subcontractor listing submitted with the Contractor's proposal; or
(10) Failure to correct deficiencies or to complete the contract.

(b) Liquidated damages.
(1) Upon termination. If fixed and agreed liquidated damages are provided in the contract, and if the City so terminates the Contractor's right to proceed, the resulting damage will consist of the liquidated damages for the time as may be required for final completion of the work.
(2) In absence of termination. If fixed and liquidated damages are provided in the contract, and if the City does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted. [HAR 3-125-18]

(c) Time extension. The Contractor's right to proceed shall not be so terminated nor shall the Contractor be charged with resulting damage if the delay in the completion of the work was not the fault of the Contractor as in section 5., "Delay; time extensions." [HAR 3-125-18]

(d) Additional rights and remedies. The rights and remedies of the City provided in this section are in addition to any other rights and remedies provided by law or under this contract. [HAR 3-125-18]

7.3 Termination for convenience. (a) Termination. The Contracting Officer may, when the interests of the City so require, terminate the contract in whole or in part, for the convenience of the City. The Contracting Officer, upon recommendation by the Officer-in-Charge, shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective. [HAR 3-125-22]

(b) Contractor's obligations. The Contractor shall incur no further obligations in connection with the terminated work, and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the City's approval. The Officer-in-Charge may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the City. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so. [HAR 3-125-22]

(c) Right to construction and goods. The Officer-in-Charge may require the Contractor to transfer title and deliver to the City in the manner and to the extent directed by the Officer-in-Charge:

(1) Any completed constructions; and

(2) The partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "construction material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of the contract.

The Contractor shall protect and preserve property in the possession of the Contractor in which the City has an interest. If the Officer-in-Charge does not exercise this right, the Contractor shall use its best efforts to sell the construction, goods, and construction materials in accordance with the standards of section 490:2-706, HRS. This in no way implies that the City has breached the contract by exercise of the termination for convenience clause. [HAR 3-125-22]

(d) Compensation

(1) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by subchapter 15, chapter 3-122, HAR, bearing on such claim. If the Contractor fails to file a termination claim **within one year** from the effective date of termination, the Contracting Officer may, upon recommendation of the Officer-in-Charge, pay the Contractor, if at all, an amount set in accordance paragraph (3)(B).

(2) The Officer-in-Charge and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the City, the proceeds of any sales of construction, goods, and construction materials under paragraph (3)(C), and the contract price of the work not terminated.

(3) Absent complete agreement under paragraph (2), the Contracting Officer shall pay the Contractor the following amounts, provided payments under paragraph (2) shall not duplicate payments under this subsection for the total (without duplication of any items) of:

(A) The cost of all contract work performed prior to the effective date of the notice of termination plus a five per cent markup on actual direct costs on the portion of the work (the markup shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of the work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(B) Subject to the prior approval of the Contracting Officer, the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subsection (b). Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with subparagraph (A);

(C) The total sum to be paid the Contractor under this subsection shall not exceed the total contract price reduced by the amount of any sales of construction, goods, and construction materials under subsection (c), and the contract price of work not terminated.

(D) Cost claimed, agreed to, or established under paragraphs (2) and (3) of this subsection shall be in accordance with chapter 3-123, HAR, Cost principles. [HAR 3-125-22]

7.4 Authority to resolve contract and breach of contract controversies.

(a) Decisions of the Officer-in-Charge. Any question or dispute concerning any provisions of the Contract which may arise during its performance shall be decided by the Officer-in-Charge; provided, that decisions on questions or disputes relating to default or termination of the Contract, additional cost to the City where the cost is more than ten per cent of the original contract price or $25,000 or more, and payment, shall be made only with the approval of the Contracting Officer.

(b) All controversies between the Officer-in-Charge and the Contractor which arise under, or are by virtue of, the contract and which are not resolved by mutual agreement between the Officer-in-Charge and the Contractor, shall be decided by the Contracting Officer in writing, within the time limitations below, after receipt of a written request from the Contractor for a final decision:

(1) For controversies or for claims not exceeding fifty thousand dollars: **ninety calendar days** after receipt of the claim.

(2) For claims exceeding fifty thousand dollars: **ninety calendar days** after receipt of the claim; provided that if a decision is not issued within ninety calendar days, the Contracting officer shall notify the Contractor of the time within which the Contracting Officer will make the decision. The reasonableness of this time period will depend on the size and complexity of the claim and the adequacy of the Contractor's supporting data and other relevant factors.

If a decision on a controversy or a claim not exceeding fifty thousand dollars is not made within ninety calendar days after receipt, or if a decision is not made within the time promised for a claim in excess of fifty thousand dollars, the Contractor may proceed as if an adverse decision has been received.

The amount determined payable pursuant to the decision, less any portion already paid, normally should be paid without awaiting Contractor action concerning appeal. Such payments shall be without

prejudice to the rights of either party and where such payments are required to be returned by a subsequent decision, interest on such payments shall be paid at the statutory rate from the date of payment. [HAR 3-126-28]

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

(d) Cost of dispute. The Contractor shall pay to the City the amount of the City's costs to enforce the contract, including but not limited to amounts for attorneys' fees, consultants' fees and expenses.

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

The Contractor shall comply with any decision of the Contracting Officer and proceed diligently with performance of the contract pending final resolution by a circuit court of this State of any controversy arising under, or by virtue of, the contract, except where there has been a material breach of contract by the City; provided that in any event the Contractor shall proceed diligently with the performance of the contract where the Contracting Officer has made a written determination that continuation of work under the contract is essential to the public health and safety. [Chapter 3-126, subchapter 3, HAR]

EXHIBITS ATTACHED

EXHIBITA.WPD

EXHIBIT "A"

SURETY BID BOND

Bond No._____

KNOW TO ALL BY THESE PRESENTS:

That we, _____,
(Full name or legal title of Bidder)
as Bidder, hereinafter called Principal, and _____
_____,
(Name of bonding company)
as Surety, hereinafter called Surety, a corporation authorized to transact business as a Surety in the State of Hawaii, are held and firmly bound unto the **CITY AND COUNTY OF HONOLULU**, as Owner, hereinafter called Owner, in the penal sum of_____
DOLLARS ($_____), lawful money of the United States of America, for the payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS:

The Principal has submitted an offer for _____
_____
_____.
(Project number, if available, and description)

NOW, THEREFORE:

The condition of this obligation is such that if the Owner shall reject said offer, or in the alternate, accept the offer of the Principal and the Principal shall enter into a Contract with the Owner in accordance with the terms of such offer, and give such bond or bonds as may be specified in the solicitation or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof as specified in the solicitation then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed this _____ day of _____, 200___.

_____
(Principal)

By_____
Its

_____
(Surety)

By_____
Its Attorney-in-Fact

EXHIBIT "B"

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

KNOW TO ALL BY THESE PRESENTS:

That _____,
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Principal, and _____

_____
(Name and Street Address of Bonding Company)

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

its successors and assigns, hereinafter called Obligee, in the amount of _____

_____
DOLLARS ($_____), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed a Contract with Obligee on _____, for the following project:_____
_____
_____
_____
_____
_____
hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

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

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

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

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

Signed this _____ day of _____, _____.

(Seal) _____
Name of Principal (Contractor)

* _____
Signature

_____
Title

(Seal) _____
Name of Surety

* _____
Signature

_____
Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBIT "C"

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

KNOW TO ALL BY THESE PRESENTS:

That _____,
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Principal, and _____

_____,
(Name and Street Address of Bonding Company)
as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the _____,
(State/County Entity)
its successors and assigns, hereinafter called Obligee, in the amount of _____

_____
_____ Dollars ($_____), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed a Contract with the Obligee on _____ for the following project:_____
_____
_____
_____
_____
hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

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

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

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

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

Signed this _____ day of _____, _____.

(Seal) _____
Name of Principal (Contractor)

* _____
Signature

_____
Title

(Seal) _____
Name of Surety

* _____
Signature

_____
Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

EXHIBITD.WPD

EXHIBIT "D"

PERFORMANCE BOND

KNOW TO ALL BY THESE PRESENTS:

That we _____
(full legal name and street address of Contractor)
as Contractor, hereinafter called Contractor, is held and firmly bound unto **City and County of Honolulu**, its successors and assigns as Obligee, in the amount of_____
_____ Dollars ($_____), lawful money of the United States of America, for payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

[ ] Legal tender;

[ ] Share Certificate unconditionally assigned to or made payable at sight to _____,
Description:_____;

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

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

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

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

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

EXHIBIT "D"

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

WHEREAS:

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

_____

_____

_____,

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

NOW, THEREFORE:

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

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

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder.

EXHIBIT "D"

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

_____
(Contractor) (Seal)

*By _____
Its

*By _____
Its

*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC.

EXHIBIT "E"

LABOR AND MATERIAL PAYMENT BOND

KNOW TO ALL BY THESE PRESENTS:

That we _____
(full legal name and street address of Contractor)
as Contractor, hereinafter called Contractor, is held and firmly bound unto **City and County of Honolulu**, its successors and assigns as Obligee, hereinafter called Obligee, in the amount of _____
_____ Dollars ($_____),
lawful money of the United States of America, for payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

[ ] Legal tender;

[ ] Share Certificate unconditionally assigned to or made payable at sight to _____
_____
Description_____;

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

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

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

EXHIBIT "E"

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

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

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

WHEREAS:

The Contractor has by written agreement dated _____, entered into a contract with Obligee for the following Project: _____ _____ _____ _____, hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE:

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

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

EXHIBIT "E"

accordance with the terms thereof.

AND IT IS HEREBY STIPULATED AND AGREED that this bond shall inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in said work so as to give any and all such persons a right of action as contemplated by Sections 103D-324(d) and 103D-324(e), Hawaii Revised Statutes.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment of mechanics' liens which may be filed of record against the Project, whether or not claim for the amount of such lien be presented under and against this bond.

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

_____
(Contractor) (Seal)

*By _____
Its

*By _____
Its

*ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

EXHIBIT "F"

ESTIMATE FOR CHANGE ORDER WORK

PROJECT:_____

CONTRACTOR:_____

Reference: PCD No._____ Other_____

MATERIALS

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)

SUBTOTAL - MATERIALS & LABOR (1+4).....	$_____(5)
O.H. & Profit (___ %) of (5) (Per HAR 3-125-13, not to exceed 15%).....	$_____(6)
Ins. & Taxes (___%) of (3).....	$_____(7)
O.H. for Ins. & Taxes, 6% of (7).....	$_____(8)
TOTAL FOR MATERIALS & LABOR (5+6+7+8).....	**$_____(9)**

EQUIPMENT

Type or Class	Hours	Hourly Rate	Subtotal
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____
_____	_____	$_____	$_____

TOTAL FOR EQUIPMENT..... $_____(10)

SUBCONTRACTOR

Name	Amount (11)	O.H. & Profit, HAR 3-125-13(12)
_____	$_____	x 7% = $_____
_____	$_____	x 7% = $_____

Subtotal for Subcontractor.....$_____(11).....$_____(12)

TOTAL FOR SUBCONTRACTOR (11 + 12).... ..... $_____
(13)

TOTAL FOR MATERIAL, LABOR, EQUIPMENT, SUBCONTRACTOR (9+10+13)..	**$_____(14)**
Bond Fee __1__% on (14) **(If applicable)**.....	$_____(15)
Gross Income Tax (not to exceed 4.166%) on (14) + (15) minus (11).....	$_____(16)
TOTAL FOR THIS CHANGE ORDER (14+15+16).....	**$_____**

AUTHORIZED REPRESENTATIVE:

_____
CONTRACTOR

Date_____

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(6)x(8)
					TOTAL FOR PART A		TOTAL FOR COLUMN (9)	

*Worker's Compensation, PL/PD, FICA, 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)x(17)	
		TOTAL FOR PART F		

PART G	GROSS EARNED (PARTS C THROUGH F, INCLUSIVE):	
PART H	BOND FEE _____% OF PART G:	
PART I	4.712% STATE EXCISE TAX ON (PARTS G + H minus PART F COLUMN (16)):	
	GRAND TOTAL THIS REPORT (PARTS G + H + I):	

DESCRIPTION OF WORK:

_____

_____

_____

_____

_____

The above is a true statement of all force account work for this date.

_____
Project Inspector

_____
Contractor or Contractor's Representative

(Submit in triplicate, signed by both parties immediately after the day's work, with invoices, etc.)

DF-49 (10/2004)

Sheet _____ of _____ sheets

EXHIBITH.WPD

EXHIBIT "H"

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in section 3-122-122, HAR, and submitted pursuant to section 3-122-125, HAR; either actually or by specific identification in writing to the officer-in-charge in support of *_____

_____

are accurate, complete, and current as of **_____.
(Month, day, year)

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the City which are part of the proposal.

Firm: _____

Signature:_____

_____
(Print name & title of person signing)

***Date of execution:_____

* Describe the project and reference (i.e. project name, PCD No., field change, change order number, etc.).

** The date should be a mutually determined date prior to but as close to the date when price negotiations were concluded and the price was agreed to as possible.

*** Date of execution should be as soon after the date when price negotiations were concluded and the contract price was agreed to as practical.

EXHIBIT "I"

AGREEMENT

(NAME CHANGE)

Notification is given that the name of _____ _____ has been changed, effective _____, to _____.

In accordance with Section 3-125-14(3) of the Hawaii Administrative Rules, the corporation/sole proprietorship/partnership (circle one) of _____ _____
(insert new name and address)
hereby agrees that all other terms and conditions of the contract(s) listed below, entered into between the City and County of Honolulu and _____ _____ are in full force and effect. A copy of the Articles of Amendment to Change Corporate Name (or other document indicating the name change) is attached hereto.
(insert previous name)

Contract No.	PROJECT NAME AND DESCRIPTION

_____

By_____
Its

By_____
Its

Dated:_____

ACCEPTED:
CITY AND COUNTY OF HONOLULU

By_____
Director, Department of Budget
and Fiscal Services

Dated_____

(VECP1.WPD)

EXHIBIT "J"

VALUE ENGINEERING CHANGE PROPOSAL (VECP)
CITY AND COUNTY OF HONOLULU

	VECP NO.	DATE:
PROJECT TITLE:	PROJECT NO.	CONTRACT NO.
	CONTRACTOR:	

A. CHANGES: The following changes are to be performed in accordance with all contract stipulations and covenants (Specifications, drawings, special provisions, etc.):

B. CONTRACTOR'S QUOTATION: The changes included under Part A will be performed at a contract price decrease of $_____ in accordance with all terms of the contract documents. Six copies of our cost breakdown are attached herewith. We are aware that this VECP must be approved by the City in the designated space below and that no work is to be performed until an approved change order has been given us. In case of rejection of this VECP by the City, we will continue all work in accordance with the existing contract terms.

NAME	TITLE
AUTHORIZED SIGNATURE	DATE

C. STATEMENT OF FUNDS:

Original contract price.....$_____
Amended contract price.....$_____

D. SUMMARY DESCRIPTION AND POTENTIAL IMPACTS OF THE PROPOSED CHANGES:

(VECP1.WPD)

E. TIME EXTENSION:

F. VALIDATION OF CHANGE ORDER

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:

(VECP2.WPD)

EXHIBIT "J"

VALUE ENGINEERING CHANGE PROPOSAL (VECP)
City and County of Honolulu
(Contractor-required information)

From: _____
To: _____ VECP No._____
Project: _____ Contract: No._____

INFORMATION REQUIRED OF THE CONTRACTOR: (If answer to any of the following questions is "Yes", explain in "REMARKS" below.)

		YES	NO
1.	Does this proposed change affect the time of completion of the contract as stated in the Contract?		
2.	Has the Contractor submitted this proposed change previously to this office or any other government agency?		
3.	Does this change affect other costs to the government, such as government-furnished property or costs of contract-related items?		
4.	Does this proposed change increase the maintenance or operation costs of original or proposed items.		
5.	Is a subcontractor involved in this proposed change to the original contract?		
6.	Does the Contractor intend to restrict the government's right to use any data described in this proposed change?		
7.	Does this proposed change involve use of proprietary materials?		

CHANGES OR REVISIONS TO DRAWINGS AND SPECIFICATIONS: (Attach applicable contract drawings and specifications, including Contractor's or shop drawings or literature with all changes marked on the drawings and specifications.)

REMARKS:

CONTRACTOR'S REPRESENTATIVE:

NAME	SIGNATURE	DATE

RECEIVED BY:_____
Department

NAME	SIGNATURE	DATE

(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

(EXHIBITK.WPD)

EXHIBIT "K"

FORM DF-P-65

_____
(Date)

Director, Department of
Budget and Fiscal Services
City and County of Honolulu
Honolulu, Hawaii 96813

Subject: Contract No._____

_____

As of this date, _____
(Contractor)

acknowledges receipt of the following outstanding bodily injury or death and property damage claims made by third parties arising out of the performance of it work in connection with the subject contract. The Contractor agrees to notify the City of the final disposition of said claims; or, if no final disposition of such claims, their status before actual payment of any amount withheld by the City.

1. _____

2. _____

3. _____

Sincerely,

_____
(Authorized Signature)

_____
(Contractor's Name)

EXHIBIT "L"

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

REPORT OF EQUIPMENT PURCHASED WITH CONSTRUCTION CONTRACTS

INSTRUCTIONS

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

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

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

Agency _____ Agency Project Manager _____ Phone _____

Project _____

_____ Contractor_____

Check the appropriate box:

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

Comments:

_____ _____
Signature of department head or representative Date

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

Contractor:

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

_____ _____
Signature of contractor or representative Date

Agency: Check the appropriate box:

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

_____ _____
Signature of department head or representative Date

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

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

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

9. This is a sample of how the contractor shall provide the information that is required. *To request an electronic copy of this Word software table: Contact the Property Management & Disposal Section, Purchasing Division, BFS, 808-523-4781*

DETAILED LIST OF EQUIPMENT PURCHASED WITH CONSTRUCTION CONTRACTS

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

Agency _____ Agency Project Manager _____ Phone _____

Contractor _____ Project _____

SAMPLE

	DESCRIPTION	MAKE	MODEL NUMBER	SERIAL NUMBER	QTY	UNIT PRICE	TOTAL PRICE	Equipment IS MOVABLE OR REMOVABLE	SPECIFIC LOCATION (i.e. Room No.)
1	Portable lift	American Equipment Co	ABC123	12345678901 67890123456 98765432101	3	40,000.00	120,000.00	☑Yes ☐No	Mechanic Shop Room 3
2	Hand Truck 55 gallon	International Sales Inc	DEF45678	2345678912	1	4,000.00	4,000.00	☑Yes ☐No	Tire Shop, Work Station A
				TOTAL	4		**124,000.00**		

I certify that the following information is correct.

Page _____ of _____

Contractor or Representative _____ _____ Phone _____

Print name Signature

(6/3/04)

CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT

(Reference §3-122-112, HAR)

Reference: _____ _____
(Contract Number) (IFB/RFP Number)

_____ affirms it is in
(Company Name)
compliance with all laws, as applicable, governing doing business in the State of Hawaii to include the following:

1. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker's Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

maintains a "Certificate of Good Standing" from the Department of Commerce and Consumer Affairs, Business Registration Division.

Moreover, _____
(Company Name)
acknowledges that making a false statement shall cause its suspension and may cause its debarment from future awards of contracts.

Signature: _____

Print Name: _____

Title: _____

Date: _____